



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an [official request](#) for approval of legislative or political activity, whether new or rollover.
- SBP 9.11 definitions:
 - Legislative or political activity is “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
 - A VBG is “a group within The Florida Bar funded by voluntary member dues in the current and immediate prior bar fiscal years.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. See SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

Submitted by: *(name of VBG or individual)* Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section

Address: *(address and phone #)* C/O Chris Sajdera, Chair: 200 East Palmetto Park Road, Suite 103, Boca Raton, Florida 33432 (561-910-3082)

Position Level: *(name of VBG)* Real Property, Probate, and Trust Law Section of the Florida Bar

Proposed Advocacy

Complete #1 below if the issue is legislative or #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

2. Political Proposal

3. Reasons For Proposed Advocacy

a. Per SBP 9.50(a), does the proposal meets the following requirements?
(select one) X Yes ____ No

- It is within the group's subject matter jurisdiction as described in the VBG's bylaws;
- It is beyond the scope of the bar's permissible legislative or political activity, **or** within the bar's permissible scope of legislative or political activity **and** consistent with an official bar position on that issue; **and**
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

b. Additional Information: Security deposit replacement products can cause unintended financial implications on unknowing consumers and present ambiguity regarding the applicability of the Landlord Tenant Act.

Referrals to Other Voluntary Bar Groups

VBGs must provide copies of the proposed legislative or political activity to all bar divisions, sections, and committees that may be interested in the issue. See SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The online form may be submitted before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

Public Interest Law Section
Business Law Section

Contacts

Board & Legislation Committee Appearance *(list name, address and phone #)*

Wilhelmina F. Kightlinger, Legislation Co-Chair of the RPPTL Section.

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Pete M. Dunbar, French Brown, and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Pete M. Dunbar, French Brown, and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone (850) 999-4100

WHITE PAPER

FEES IN LIEU OF SECURITY DEPOSITS

I. SUMMARY

This White Paper discusses the impact of offering security deposit replacement products (a/k/a fees in lieu of security deposits) to tenants in residential real estate transactions in lieu of placing a traditional security deposit - explaining both the consumer interests and technical issues to be considered if such products are to be authorized and regulated in the state of Florida.

II. CURRENT SITUATION

The practice of offering tenants in residential real estate lease transactions the option to pay a recurring, nonrefundable fee in lieu of placing a traditional security deposit presents numerous consumer protection issues and concerns as to how such fees are treated under the Florida Residential Landlord and Tenant Act (Chapter 83, *Florida Statutes*). Leading security deposit replacement companies (for example: LeaseLock, Rhino, and Jetty) (“SDR Companies”) offer a mix of insurance-type products, including bonds, that are marketed either to landlords (or property management companies) or directly to tenants (collectively, “SDR Products”). While these products appear to alleviate the high up-front costs tenants face when entering a new rental agreement, the sale of such products could lead to predatory practices on consumers given the absence of regulatory oversight, nonexistence of a cap on fees, and the lack of coverage such products offer tenants against landlord claims for damages and repair costs – costs that would typically be covered by a security deposit.

III. EFFECT OF PROPOSED CHANGES

SDR Companies operate under strict, one-sided agreements that seek to strip away tenant’s rights under the Florida Residential Landlord and Tenant Act (Chapter 83, *Florida Statutes*), including the rights tenants have to respond to damage claims made by landlords and the rights tenants have in security deposit funds held in connection with a rental agreement.

F. S. 83.49(3) establishes the process landlords must follow to make a claim against a security deposit and the rights tenants have to respond to such claims. Security deposits both ensure a tenant’s performance under a rental agreement and protects the landlord against damage caused to the property (collectively “Security Deposit Claims”). SDR Products provide an alternative to this process whereby fees are paid by the tenant to the landlord (or the landlord’s insurer) in lieu of the security deposit. The tenant, however, often remains liable to the landlord (or the landlord’s insurer) for any damage to the property beyond ordinary wear and tear as a result of the insurer’s subrogation rights and the ambiguity as to whether such fees fall under the definition of “Security Deposit” under the Florida Residential Landlord and Tenant Act. The result is that a tenant could unknowingly be billed for Security Deposit Claims (after paying recurring fees throughout the term of the rental agreement) that would usually be covered by a security deposit under protection of the Florida Residential Landlord and Tenant Act.

IV. ANALYSIS

SDR Products and the agreements used by, and practices of, SDR Companies in connection with such products present numerous consumer protection concerns, including but not limited to:

- a. Caps on Fees and Regulatory Oversight. A tenant who purchases a SDR Product will be faced with the requirement to pay nonrefundable fees throughout the original term of the rental agreement and all renewal terms compared to a traditional security deposit that is placed at the commencement of a rental agreement and transfers over to any renewal term(s) (and has the potential to be fully or partially refunded at the conclusion of the rental agreement). SDR Products are insurance products, since the tenant is paying for coverage instead of depositing funds. Accordingly, the Florida Office of Insurance Regulation should ensure tenants are not paying exorbitant amounts to obtain such coverage, including a cap on fees for initial policies and bonds and a lower cap on renewals, and should otherwise regulate this form of insurance just like it does other insurance products.
- b. Failure to Purchase Insurance. Funds should be used to purchase insurance for the protection of tenant. If a fee is collected by a landlord but insurance coverage is not provided, the funds should be designated as a Security Deposit under the Florida Residential Landlord and Tenant Act.
- c. Coverage for Claims. SDR Products could leave tenants in a situation in which they have paid recurring, nonrefundable fees throughout the term of the rental agreement (and renewals) but are still obligated to pay Security Deposit Claims due to the insurer's subrogation rights. This practice is misleading to tenants who believe they are paying into a security deposit or for an insurance policy and could lead to unexpected and inequitable costs imposed on tenants. If an SDR product is obtained, the tenant should be protected against claims by the landlord to the same extent as would have applied had a security deposit been posted.
- d. Non-Discrimination. Tenants should not be discriminated against for using an SDR Product instead of placing a traditional security deposit. Specifically, if a tenant presents an offer to lease property to a landlord that includes the use of an SDR Product, the landlord should not consider the tenant's decision to use an SDR Product as a factor in deciding whether to accept or decline the offer.
- e. Credit Protection. Credit reporting on tenant defaults under the terms of SDR Product agreements should be limited to situations in which both the tenant did default on the agreement and was unable to work out an alternative solution with the landlord.
- f. Disclosures. Proper guidelines should be established to ensure tenants receive adequate disclosures prior to purchasing SDR Products that clearly outline the risks associated with using such products.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have an impact on state or local governments.

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

SDR Products have a direct positive economic impact on the SDR Companies and possibly landlords who choose to charge a fee in lieu of a security deposit but not purchase insurance coverage (or landlords who profit from increasing the fee beyond the insurance premium). Property management companies could also see a positive economic impact, as such fees could create a new revenue stream especially if they are paid anything of value in connection with the sale of the product. SDR Products could be a benefit to tenants who cannot come up with an upfront security deposit but can afford to pay an additional monthly fee for an SDR Product but could also negatively impact tenants if the fee amounts do not bear a reasonable proportion to the amount of the security deposit that would have otherwise been required and do not provide the tenant with coverage for Security Deposit Claims. The SDR Companies use of credit reporting in connection with their standard contracts could also have long-term negative financial implications for tenants.

VII. CONSTITUTIONAL ISSUES

The agreements used by SDR Companies often have one-sided provisions that strip tenants of their rights to due process. At least two leading SDR Companies require tenants to submit to arbitration or small claims courts in which a jury trial is waived. This practice divests tenants of their rights under the Florida Residential Landlord and Tenant Act and puts them in a vulnerable position when they have to ultimately respond to the insurer for Security Deposit Claims made by their landlord.

VIII. OTHER INTERESTED PARTIES

The Public Interest Law Section
Business Law Section



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Business Law Section

From: Real Property, Probate and Trust Law Section, RP Leasing Committee

Re: Proposed Legislative Position re: Opposition to Fees in Lieu of Security Deposits

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is to :

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

Thanks for your consideration of this request. Please let us know if your section will provide comments.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Public Interest Law Section

From: Real Property, Probate and Trust Law Section, RP Leasing Committee

Re: Proposed Legislative Position re: Opposition to Fees in Lieu of Security Deposits

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is to :

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

Thanks for your consideration of this request. Please let us know if your section will provide comments.