



REAL ESTATE LEASING MEETING AGENDA

Meeting of Real Estate Leasing Committee
Hawks Cay Resort, Duck Key, FL
May 25, 2022 – 2:00 – 3:30 pm
Zoom Meeting Only – Meeting Link:

https://us06web.zoom.us/join/9tZUpCuGgpzluGdzYJo3Frbbo_yZ3B1AcrzG4

1. Thanks to our Committee Sponsor – Attorney’s Title Fund Services, LLC (“The Fund”) - Melissa Scaletta
2. Approval of the Minutes from the Real Estate Leasing Meeting on Thursday, March 31, 2021 (Tallahassee).
3. Attendance and Minutes – Terrence Harvey
4. Presentation- Intro to Advanced Commercial Leasing Symposium

Speakers: **Rick Eckhard**, *Holland & Knight, LLP*; **Manuel Farach**, *Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.*; **Sebastian Jaramillo**, *Perlman Bajandas, Yevoli & Albright, P.L.*; **Melissa Scaletta**, Attorney’s Title Fund Services, LLC; **Michelle Hinden**, *Nishad Khan P.L.*; and **David Weisman**, *Greenspoon Marder, LLP*.
5. Update on Fees in Lieu of Security Deposits legislation and review of Public Interest Law Section (PILS) white paper (attached) – Kristen King Jaiven
6. Open Discussion: local ordinances impacting lease renewals, rent increases, and late fees.
7. Recap and Brainstorm:
 - a. 2023-2024 Legislative Year
 - b. CLE Topics
8. Upcoming Meetings:
 - a. July 21-23, 2022 – Executive Council Meeting & 2022 Legislative Update Seminar, The Breakers, Palm Beach
 - b. September 28-October 2, 2022 - Executive Council Meeting, Opal Sands Harborside, Bar Harbor, Maine
 - c. December 8-12, 2022, Executive Council Meeting, Four Seasons, Orlando, FL
9. Adjourn.



The Florida Bar

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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



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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.



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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

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

White Paper – SB 884/HB 537

Fees in Lieu of Security Deposits

I. Summary

Florida's Residential Landlord Tenant Act provides for the landlord to collect deposit money from a tenant that may be used for "security for performance of the rental agreement" at *Fla. Stat.* sec. 83.49. There is no limit on the amount of deposit money a landlord may require of the tenant. *Fla. Stat.* sec. 83.49(3) provides for the steps a landlord must follow to make a claim against the security deposit and the steps a tenant must take to object to the landlord's claim. SB 884 and HB 537 would provide an alternative to this process creating a scheme for fees to be paid by the tenant to the landlord in lieu of the security deposit. These fees would be paid by the tenant to the landlord on a recurring basis. The fees are not refundable. The tenant remains liable to the landlord for any damage to the unit beyond ordinary wear and tear. Though the intent of the bills seems to be to alleviate the lump sum outlay of money for the security deposit at the start of the lease agreement that is often difficult for tenants to pay, the bill fails to provide guardrails. Most detrimental to the tenant is that they may still be pursued for damage to the unit that might have otherwise been covered by a security deposit but is not covered by the fees.

II. Current Security Deposit Law in Florida

Though many states limit the amount of the security deposit a landlord may charge a tenant, Florida has no such limitation. Generally, security deposits are in the range of one or two months' rent paid in advance at the beginning of the lease term. *Fla. Stat.* sec. 84.39 sets out requirements for landlords in holding this deposit on behalf of the tenant.

When the tenant vacates the unit, the Florida Residential Landlord Tenant Act sets out very specific requirements for both the landlord and the tenant around the disbursement and/or refund of the security deposit. The landlord may make a claim against the deposit for damage in excess of normal wear and tear and in a written notice to the tenant the landlord must state the amount of the monetary claim and what the claim is for. The tenant may then respond in writing objecting to the claim or any portion of it. If the parties cannot resolve any differences about the security deposit, they may seek court adjudication. In such a case, a tenant is able to present evidence, including videos, photographs and witnesses indicating the condition they left the unit in as defense to the claim against the security deposit.

Landlords may also pursue the tenant for damages above and beyond the amount of the security deposit.

III. Application of SB 884/HB 537 Within the Framework of the Florida Residential Landlord Tenant Act

These bills create an alternative within the Act for the tenant to pay a recurring fee in lieu of the lump sum security deposit. There is no limitation on the amount of the fee; the fee may be on a monthly basis or some other schedule; the landlord may assess “additional charges” related to the fee; though the landlord must offer the option to all tenants if the landlord chooses to provide for this option, nothing indicates each tenant must be charged the same fee amount. The bill makes clear that the fee is not a security deposit as defined by the Act. Pursuant to Fla. Stat. sec. 83.43(6) the fee may be designated as rent and subject the tenant to risk of eviction if the fee is not paid on schedule.

IV. Use of an Insurtech Platform by the Landlord

The “fee in lieu of security deposit” scheme is driven by the nascent technology of insurtech platforms – emergent insurance-like products that intend to make security deposits obsolete, Security Deposit Replacement products (SDR). These companies sell their products to landlords and landlords use the “fees” paid by the tenant to purchase the products (though the bill does not require any of this). In some cases the product acts as an insurance product – the landlord makes a claim to the SDR company, claim is evaluated, and either paid or denied. Some SDR companies, however, pursue tenants for subrogation claims. In this case, Florida tenants would have paid a regular fee, yet still be charged for damage, and further, not have the defenses that might otherwise be available to them under Florida Residential Landlord Tenant Act, including the recovery of attorney’s fees if the tenant prevails against the SDR company on the damage claim.

V. The Bills Lack Adequate Tenant Protections

The bills provide a very broad framework for landlords to assess a fee against tenants in lieu of the security deposit with very little in the way of protecting tenants from a variety of abuses.¹ In addition to what is outlined above, the bills pose the following risks for tenants:

-if a landlord chooses to offer a fee in lieu of the security deposit, landlords may discriminate against tenants based on which option they choose. The bill provides no protection;

¹ “Security Deposit Alternatives – the Misleading Marketing of Renter’s Choice.”
<https://shelterforce.org/2020/12/10/security-deposit-alternatives-the-misleading-marketing-of-renters-choice/>

-nothing in the bill requires that the landlord obtain an insurance or bond product, but if the landlord chooses to do so, they may charge the tenant in excess of what the product costs;

- nothing in the bill requires that the landlord obtain an insurance or bond product, but if the landlord chooses to do so, they may choose a cheap product that covers very little, opening the tenant up to further being pursued for damages.

-subrogation rights should not be allowed;

VII. Conclusion

Security deposits for residential tenancies can pose a financial burden for many tenants. A fee in lieu of the security deposit could provide an alternative that some tenants might find useful. However, SB 884/HB 537 are so broadly drafted that the bills will cause substantial harm to tenants, outweighing any possible benefits.



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LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Address: *(address and phone #)*

Position Level: *(TFB section/division/committee)*

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: ☐ Support ☐ Oppose ☐ Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

II. Political Proposals:

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent *with Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

B. Which goal or objective of the Bar's strategic plan is advanced by the proposal?

C. Does the proposal relate to: (*check all that apply*)

- _____ Regulating the profession
- _____ Improving the quality of legal services
- _____ Improving the functioning of the system of justice
- _____ Increasing the availability of legal services to the public
- _____ Regulation of trust accounts
- _____ Education, ethics, competency, and integrity of the legal profession

D. Additional Information:

PRIOR POSITIONS TAKEN ON THIS ISSUE
--

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

TFB Section/Division/Committee

Support/Oppose

Date

Others (*attach list if more than one*)

TFB Section/Division/Committee

Support/Oppose

Date

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a position must be circulated to sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request if the below section is not completed. Please attach referrals and responses to this form. If you do not believe other sections and committees are affected and you did not circulate this form to them, please provide details below.

Referrals

Name of Group or Organization	Support, Oppose or No-Position

Reasons for Non-Referrals:

CONTACTS

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

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

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

Submit this form and attachments to the Office of General Counsel of The Florida Bar – <mailto:jhooks@floridabar.org>, (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.