

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 838

SPONSOR: Judiciary Committee and Senator Saunders

SUBJECT: Landlord and Tenant

DATE: March 13, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Forgas	Johnson	JU	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute amends the security deposit provisions and the abandoned property provisions in the Florida Residential Landlord and Tenant Act, which are found in Part II of Chapter 83 of the Florida Statutes. The bill provides for the following:

- Enlarges the time period to 30 days within which a landlord must return a security deposit to a tenant or notify a tenant of a claim on the security deposit; and
- Relieves the landlord from compliance with the notice provisions of s. 715.104, F.S., which pertain to the treatment of abandoned or surrendered property, when the landlord provides written notice to the tenant.

The committee substitute also amends ss. 715.105, 715.106 and 715.109, F.S., which govern the sale or disposition of abandoned property, to raise to \$500 the value of abandoned property which requires no additional notification to the owner or former tenant before sale or disposition of the same.

Additionally, the committee substitute amends s. 475.011, F.S., which lists activities exempted from the real estate brokers and salespersons regulatory law, to include property management firms, or any apartment community owner, paying a finder's fee or referral fee to a tenant or employee of the apartment complex or property management firm. The exemption only applies to finder's fees or referral fees not exceeding \$50 per referral.

The effective date is July 1, 2001.

This committee substitute substantially amends the following sections of the Florida Statutes: 83.49, 83.67, 475.011, 715.105, 715.106, and 715.109.

II. Present Situation:

Security deposits under the Florida Residential Landlord and Tenant Act

Section 83.49, F.S., which is part of the Florida Residential Landlord and Tenant Act, provides guidelines for landlords and tenants to follow when security deposits are part of a residential rental agreement. The guidelines require the landlord to notify the tenant in writing of the manner in which the deposit is being held, the rate of interest, if any, which the tenant is to receive, and the time within which interest will be paid.

Once the lease is terminated and the tenant has vacated the premises, s. 83.49(3)(a), F.S., requires the landlord to return the security deposit within 15 days or give the tenant written notice of the landlord's intention to impose a claim on the deposit. If the landlord fails to give the required notice within 15 days, the landlord forfeits the right to impose a claim upon the security deposit. Pursuant to s. 83.49(3)(b), F.S., unless the tenant objects to the landlord's claim within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim and remit the balance of the security deposit, if any, to the tenant within 30 days after the date of the landlord's original notice to impose the claim.

Disposition of abandoned property

Section 83.67(3), F.S., generally prohibits landlords from removing the personal property of tenants from the rental property. However, if the tenant leaves property behind after surrendering or abandoning the premises, s. 83.67(3), F.S., provides that the landlord shall not be liable or responsible for storage or disposition of the tenant's personal property as long as the landlord provides written notification of this provision to the tenant.

Sections 715.10-715.111, F.S., known as the Disposition of Personal Property Landlord and Tenant Act, apply to residential tenancies to which the Florida Residential Landlord and Tenant Act apply. These sections provide an optional procedure for the disposition of personal property which remains on the premises after a tenancy has expired or terminated and the premises have been vacated by the tenant through eviction, surrender, abandonment, or otherwise. Section 715.104, F.S., requires a landlord to give written notice to the tenant, and any other person the landlord reasonably believes to be the owner of the property, that states: a general description of the property; where the property may be claimed; that reasonable costs for storage may be charged; and the date before which a claim for the property may be made.

If the landlord reasonably believes the personal property is worth less than \$250, s. 715.109, F.S., allows the landlord, upon proper written notice as provided for in ss. 715.105 and 715.106, F.S., to retain the property for the landlord's own use or dispose of it as the landlord wishes. If the property is worth more than \$250, then the landlord may dispose of the property through a public sale pursuant to s. 715.109, F.S. Pursuant to s. 715.11, F.S., the landlord has no liability for disposing of the personal property in accordance with the provisions of this Act.

Real estate brokers and salespersons

Part I of chapter 475, F.S., contains provisions pertaining to the licensing and regulation of real estate brokers, salespersons, and schools. Section 475.01(1)(a), F.S., defines a broker as a "...person who, for another, and for a compensation or valuable consideration...takes any part in the procuring of lessees...of the real property of another..." Section 475.01(1)(i), F.S., defines real property as "...any interest or estate in land...including any leasehold..."

Section 475.011, F.S., provides a list of activities and persons that are exempted from regulation and licensure under part I of chapter 475, F.S. Subsection (4) of s. 475.011, F.S., provides that salaried employees of owners of apartment communities, who work in an onsite rental office in a leasing capacity, are exempted from part I of chapter 475. However, there is no specific exemption for residents of apartment complexes, or employees of apartment complexes who do not work in a leasing capacity, who receive a referral fee or discount on rent when they refer a new tenant to an apartment complex. Accordingly, receiving referral fees could be construed as an activity that requires the tenant, or employee of an apartment complex who does not work in a leasing capacity, to be licensed as a real estate broker under chapter 475, F.S.

III. Effect of Proposed Changes:

Security deposits

Section 83.49(3)(a), F.S., is amended to enlarge the time from 15 to 30 days within which the landlord must return the tenant's security deposit after the termination of the lease or notify the tenant of a claim upon the deposit.

Disposition of abandoned property

The committee substitute also amends s. 83.67(3), F.S., to specify that a landlord may remove a tenant's personal property after surrender or abandonment without being required to comply with s. 715.104, F.S., as long as the landlord gives written notice of the same in the lease or some other written document. This effectively relieves the landlord of complying with the notice requirements contained in s. 715.104, F.S., prior to removing and disposing of the tenant's property. However, this probably does not relieve the landlord of the notice requirements in s. 715.104, F.S., if the property left in the rental unit is property of someone other than the tenant.

The committee substitute also amends the notice provisions contained in ss. 715.105 and 715.106, F.S., to reflect that abandoned property believed to be worth less than \$500 may be kept, sold, or destroyed by the landlord if the property is not claimed after 10 days of the original notice if it is personally served, or after 15 days of mailing if the notice is mailed, without further notice to the former tenant or owner of the property. The committee substitute also makes a similar monetary change in s. 715.109, F.S., which allows a landlord to retain or dispose of the abandoned property worth less than \$500 after expiration of the aforementioned time periods prescribed by s. 715.105(2)(b), F.S., and s. 715.106(2)(b), F.S.

Real estate brokers and salespersons

Section 475.011, F.S., is amended to add a new exemption to the list of persons and activities not requiring licensure under part I of chapter 475. The committee substitute provides that part I does not apply to any property management firm, or any owner, of an apartment community, who pays a finder's fee or referral fee to an unlicensed person who is a tenant in, or an employee of, that apartment complex. The exemption only applies to referral fees and finder's fees that do not exceed \$50 per transaction. The phrase "finder's fee or referral fee" is defined as a fee paid, rent credit, or something of value given to a person for introducing or arranging an introduction between the parties to a transaction involving the rental of an apartment unit. An unlicensed person is not permitted to advertise or promote his or her services in procuring, or assisting to procure, prospective tenants or lessors of apartment units.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Some landlords and property management companies have complained that the current statute's 15-day notification requirement to the tenant regarding claims upon the security deposit makes it difficult for landlords to obtain accurate inspections and estimates for repairs to the rental property. As a result, the landlords must return either the entire deposit, or some portion thereof, because they are fearful of violating the statute's provisions and being subjected to a lawsuit for costs and attorney's fees. The bill's extension of the notification period from 15 to 30 days should provide landlords with sufficient time to obtain accurate inspections and repair estimates. However, it will delay by 15 days the time it takes for a tenant to receive his or her security deposit.

The bill's provisions regarding the landlord's disposition of abandoned property should reduce the storage fees currently being incurred by landlords as the value of abandoned property that can be disposed of without storing the same is being raised from \$250 to \$500.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
