

26 security deposit; prohibiting a landlord from
 27 approving or denying an application for occupancy
 28 based on a prospective tenant's choice to pay a fee in
 29 lieu of a security deposit; requiring that landlords
 30 who offer a tenant the fee option offer such option to
 31 all new tenants renting a dwelling unit on the same
 32 premises; providing an exception; providing
 33 construction; providing applicability; providing an
 34 effective date.

35

36 Be It Enacted by the Legislature of the State of Florida:

37

38 Section 1. Section 83.491, Florida Statutes, is created to
 39 read:

40 83.491 Fee in lieu of security deposit.-

41 (1) If a rental agreement requires a security deposit, a
 42 landlord may offer a tenant the option to pay a fee in lieu of a
 43 security deposit.

44 (2)(a) If a tenant agrees to pay a fee in lieu of a
 45 security deposit, the landlord must notify the tenant within 30
 46 days after the conclusion of the tenancy if there are any costs
 47 or fees due resulting from unpaid rent, fees, or other
 48 obligations under the rental agreement, including, but not
 49 limited to, costs required for repairing damage to the premises
 50 beyond normal wear and tear.

51 (b) A landlord may not submit a claim to an insurer to
52 recover the landlord's losses associated with unpaid rent, fees,
53 or other obligations under the rental agreement, including, but
54 not limited to, costs required for repairing damage to the
55 premises beyond normal wear and tear until at least 15 days
56 after providing the tenant with the required notice under
57 paragraph (a).

58 1. The landlord must include an itemized list of any
59 unpaid amounts and the dates such amounts were due,
60 documentation supporting any itemized damages and costs of
61 repairs, and a copy of any written objection or report of any
62 communication of objection by the tenant when the landlord
63 submits a claim to an insurer.

64 2. If an insurer pays a claim that was submitted under
65 this subsection to a landlord and the insurer has subrogation
66 rights, the insurer may, within 1 year after the tenancy that
67 was the subject of the claim ends, seek reimbursement from the
68 tenant for the amounts paid to the landlord. If the insurer
69 seeks reimbursement from the tenant, the following apply:

70 a. The insurer must provide the tenant with all
71 documentation for losses which the landlord provided to the
72 insurer in support of the landlord's claim and a copy of the
73 settlement statement documenting the insurer's payment of the
74 landlord's claim.

75 b. The tenant retains any defenses against the insurer

76 which the tenant would otherwise have against the landlord.

77 3. A landlord may not accept payment from both a tenant
78 and an insurer for amounts associated with the same rent, fees,
79 or damages.

80 (3) If a landlord offers a tenant the option to pay a fee
81 in lieu of a security deposit, the landlord must notify the
82 tenant in writing of all of the following:

83 (a) That the tenant has the option to pay a security
84 deposit instead of the fee at any time.

85 (b) That the tenant may, at any time, terminate the
86 agreement to pay the fee in lieu of the security deposit and
87 instead pay a security deposit as listed in a rental agreement
88 between the landlord and tenant or, if a security deposit was
89 not agreed upon in a rental agreement between the landlord and
90 tenant, in the amount that is otherwise offered to new tenants
91 for a substantially similar dwelling unit on the date that the
92 tenant terminates the agreement.

93 (c) Whether any additional charges apply for the options
94 provided in paragraphs (a) and (b).

95 (d) The amount of the payments required for each option
96 the landlord offers.

97 (e) That the fee is nonrefundable, if applicable.

98 (f) That the fee is only for securing occupancy without
99 paying a required security deposit.

100 (g) That the fee payment does not limit or change the

101 tenant's obligation to pay rent and fees, if any, under the
102 rental agreement or limit or change the tenant's obligation to
103 pay the costs of repairing damage to the premises beyond normal
104 wear and tear.

105 (h) That if the landlord uses any portion of the fee to
106 purchase insurance, the tenant is not insured and is not a
107 beneficiary of the landlord's insurance coverage, and that the
108 insurance does not limit or change the tenant's obligations to
109 pay rent and fees under the rental agreement or change the
110 tenant's obligation to pay the costs of repairing damage to the
111 premises beyond normal wear and tear.

112 (4)(a) If a tenant decides to pay a fee in lieu of a
113 security deposit, a written agreement to collect the fee must be
114 signed by the landlord, or the landlord's agent, and the tenant.
115 The written agreement may not contain any clause that
116 contradicts s. 83.45 or s. 83.47. The written agreement must, at
117 a minimum, specify all of the following:

118 1. The amount of the fee, which may not be increased
119 during the term of the rental agreement.

120 2. How and when the fee is to be collected.

121 3. The process and timeframe during which a tenant must
122 pay the security deposit specified in the rental agreement if
123 the tenant defaults on paying the fee, and that such default
124 will not adversely affect the tenant's credit rating if the
125 security deposit is timely paid.

126 4. That the written agreement may be terminated at any
 127 time as long as the tenant pays the amount of the security
 128 deposit specified in the rental agreement.

129 5. If the tenant pays the amount of the security deposit
 130 specified in the rental agreement, then the tenant's default on
 131 paying the fee or termination of the written agreement may not
 132 adversely impact the tenant's credit report.

133 (b) The written agreement specified under paragraph (a)
 134 must also include a disclosure in substantially the following
 135 form:

136
 137 FEE IN LIEU OF SECURITY DEPOSIT

138
 139 THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE
 140 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS
 141 UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION
 142 TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND
 143 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT
 144 OR HIS OR HER GUESTS MAY CAUSE.

145
 146 THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME
 147 AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY
 148 DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA
 149 STATUTES.

150

151 THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY
152 BOTH PARTIES AND THE TENANT AGREES TO PAY THE LANDLORD
153 A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED
154 UNDER SECTION 83.491, FLORIDA STATUTES. IF THE
155 LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO
156 PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS
157 NOT A BENEFICIARY OF SUCH COVERAGE, AND THE INSURANCE
158 DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS
159 UNDER THE RENTAL AGREEMENT.

160
161 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
162 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
163 RIGHTS AND OBLIGATIONS.

164
165 (5) A fee in lieu of a security deposit may be:

166 (a) A recurring monthly fee, payable on the same date that
167 the rent payment is due under the rental agreement; or

168 (b) Payable upon a schedule that the landlord and tenant
169 choose and as specified in the written agreement.

170 (6) A fee collected under this section, or an insurance
171 product or a surety bond accepted, by a landlord in lieu of a
172 security deposit is not a security deposit as defined in s.
173 83.43(12).

174 (7) A landlord has exclusive discretion as to whether to
175 offer tenants the option to pay a fee in lieu of a security

176 deposit and is not required to offer such fee option to tenants.
177 However, if a landlord offers a tenant an option to pay a fee in
178 lieu of a security deposit, the landlord may not use a
179 prospective tenant's choice to pay, or offer to pay, a fee in
180 lieu of a security deposit as criteria in the determination to
181 approve or deny an application for occupancy, and the landlord
182 must also offer all new tenants renting a dwelling unit on the
183 same premises the option to pay a fee in lieu of a security
184 deposit, unless the landlord chooses to prospectively terminate
185 the fee option for all new rental agreements.

186 (8) (a) This section does not:

187 1. Require a fee collected in lieu of a security deposit
188 to be used to purchase an insurance product or a surety bond; or

189 2. Prohibit a tenant from being offered or sold an
190 insurance product or a surety bond to present to the landlord in
191 lieu of a security deposit if the offer or sale of such
192 insurance product or surety bond complies with the laws of this
193 state.

194 (b) Acceptance by a landlord of an insurance product or a
195 surety bond that is purchased or procured by a tenant, a
196 landlord, or an agent of the landlord may not be considered an
197 offer on the part of the landlord to allow a tenant to pay a fee
198 in lieu of a security deposit for the purposes of subsection
199 (7).

200 (9) This section applies to rental agreements entered into

CS/HB 133

2023

201 | or renewed on or after July 1, 2023.

202 | Section 2. This act shall take effect July 1, 2023.