



**Rent Stabilization Board**

**RENT STABILIZATION BOARD**

DATE: November 15, 2004

TO: Honorable Members of the Rent Stabilization Board

FROM: IRA/AGA Committee

SUBJECT: Proposed Amendment to Regulations 701 [Security Deposits] and 702 [Payment of Interest on Security Deposits] and Proposed Repeal of Regulation 703 [Payment of Interest Where Funds are not Deposited] to Conform to Measure P.

**Recommendation:**

That the Board adopt on first reading proposals to amend Regulation 701, 702 and 703 to conform to Measure P.

**Background and Need For Rent Stabilization Board Action:**

On November 2, 2004, the voters of Berkeley passed Measure P, section 3 of which amended Section 7 of the Rent Stabilization Ordinance to modify the method for determining the amount of interest that landlords are required to pay while holding tenant security deposits. Prior to Measure P, Section 7 required landlords to place a tenant's security deposit into a federally-insured interest-bearing account and each December return to the tenant the actual amount of interest earned. The ordinance did not mandate any particular type of account or interest rate. Beginning in 1984, the Rent Board adopted Regulations 701, 702 and 703 to clarify and implement certain provisions of Rent Ordinance Section 7.

Now, however, Measure P (section 3) specifies that a landlord must pay interest at the average rate earned by 6-month CDs as published by the Federal Reserve Board regardless of how the landlord holds the deposit. In fact, a landlord is no longer required to place security deposits in a bank or savings & loan. Consequently, it is recommended that the Board modify Regulations 701 and 702 as proposed and repeal Regulation 703 to conform with the changes to Section 7 brought about by Measure P (section 3). On November 4, 2004, the IRA/AGA Committee voted 2-0-0-2 to modify Regulations 701 and 702 and repeal Regulation 703. No change is proposed for Regulations 704 [Deduction of Interest From Rent], 705 [Prohibiting the Increase of Security Deposits During a Tenancy] or 706 [Refund of Security Deposit].

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701. Security Deposits

(A) Any security deposit or payment, as that term is defined in Section 7 of the Ordinance, shall be placed *held* by the landlord in ~~an interest-bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation~~ *a fiduciary capacity for the benefit of the tenant* until such time as it is returned to the tenant or entitled to be used by the landlord pursuant to Section 1950.5 of the California Civil Code.

~~(B) The landlord shall clearly designate the account in a fashion that indicates that the monies deposited therein are held in a fiduciary capacity for the benefit of the tenant or tenants. *Until such time as it is returned to the tenant or is entitled to be used by the landlord as provided in Civil Code section 1950.5, the security deposit or payment shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board. The Rent Board shall compute and publicize the interest rate applicable under this section on an ongoing basis.*~~

702. Payment of Interest on Security Deposits

(A) ~~Once a year in December, the landlord shall return to each tenant the actual amount of interest earned accrued by said security deposit as provided in Regulation 701 through October 31 of that year either as a rent rebate or cash payment. The landlord shall furnish the tenant with a clear statement indicating the amount of each deposit or payment held on behalf of the tenant, the rate of interest paid by the financial institution on the deposit, the time period in which the interest was earned and the amount in dollars and cents of interest paid.~~

~~(B) The tenant may request that the landlord provide verification that deposits or payments held on behalf of the tenant have been properly placed at a financial institution. Upon receipt of a written request from the tenant, the landlord shall obtain written verification from the financial institution that the landlord has deposited funds which are sufficient to cover all deposits or payments held on behalf of the tenant. Said verification shall include the name of the financial institution, branch and location, type of account, current rate of interest paid on said account and the names and capacities of persons holding title to the account. The interest payable in December of each year shall be at the rate equal to the 12 month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published in Federal Reserve Board Statistical Release H.15 on the first business day of each month for the prior twelve months ending on November 1, rounded to the nearest tenth.~~

~~(C) Upon the tenant's departure from the premises, the balance of any interest accrued since the last October 31<sup>st</sup> shall be paid at the average monthly rate from the last November 1<sup>st</sup> to the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest.~~

~~(D) If a landlord has not previously returned interest to which a tenant is entitled, the landlord shall return to the tenant all interest earned on said security deposit which has accrued from June 28, 1980, or the date of commencement of tenancy, whichever is later, until the date upon which the payment was made.~~

703. Payment of Interest Where Funds are not Deposited

**Repeal.**

~~(A) — If the landlord fails to place the payment or deposit at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the landlord shall nevertheless pay interest on said deposit or payment to the tenant. The interest due the tenant shall be the greater of:~~

~~(1) — The passbook rate which would have been paid by such an institution had the monies been properly deposited;~~

~~(2) — The legal rate of interest on unpaid judgements established by the State of California; (Code of Civil Procedures 685.10)~~

~~(3) — The interest actually earned by the deposit or payment in the use to which the landlord put the monies; or~~

~~(4) — If the security deposit is in the form of an advance payment of six or more months' rent, twenty percent.~~

~~(B) — Payment of interest pursuant to Regulation 703 shall not relieve the landlord of any of the penalties or disabilities otherwise imposed by Regulation or the Rent Stabilization and Eviction for Good Cause Ordinance and any amendments thereto.~~