

SECTION

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The Record

# BUSINESS

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BUSINESS

## ASK A LAWYER

### Deposit law doesn't apply to commercial landlords

**Q. Is a landlord of commercial property required to place a tenant's security deposit in a segregated interest-bearing account?**

A landlord of commercial property in New Jersey is not required to place a tenant's security deposit in a segregated interest-bearing account. In fact, commercial landlords sometimes commingle security deposits with their own funds or even "spend" such money by, for example, paying real estate brokerage commissions or attorneys' fees. They may also pay the contractors who are preparing a tenant's premises for occupancy.

The New Jersey Security De-

posit Act only requires residential landlords to place a tenant's security deposit in a segregated interest-bearing account.

Therefore, if a commercial tenant wants to try to "protect" its security deposit, it can either request that the landlord place the deposit in a segregated interest-bearing account (such agreement to be contained in the lease between the landlord and the tenant), or it can offer the landlord some type of security other than cash, such as an irrevocable and negotiable letter of credit issued by a bank with whom the tenant has a relationship.

The ultimate form a security deposit takes, and the degree to which it is protected, will depend upon prevailing market conditions, square footage of the premises to be leased by the tenant, the term of the proposed lease and the negotiating skills of the attorneys, as well as other factors.

In conclusion, because commercial landlords and commercial tenants are presumed to be sophisticated parties of equal bargaining power, the parties must resolve the issue regarding the treatment of the tenant's security deposit by negotiation.

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