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## Points of Interest:

- Security Deposits

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## LEGISLATIVE UPDATE: COMMERCIAL LEASES

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The regular session of the 77<sup>th</sup> Legislature passed House Bill No. 2803 that amends Chapter 93 of the Texas Property Code.

House Bill No. 2803 concerns commercial security deposits and the manner in which they are refunded upon termination of the lease.

Commercial leases typically do not contain a deadline for the return of a security deposit or require the landlord to provide to the tenant an accounting of any deductions made by the landlord to the deposit. For many years, such obligations have applied to residential landlords pursuant to Chapter 92 of the Texas Property Code. HB2803 now imposes these obligations upon commercial landlords and provides a remedy to tenants in the event the obligations are not fulfilled.

In connection with any lease entered into or renewed after September 1, 2001, the landlord must return the tenant's security deposit not later than 60 days after the tenant surrenders the premises and provides written notice to the landlord of the tenant's forwarding address. If the landlord makes any deductions to the deposit, the landlord must provide an accounting of the deductions to the tenant not later than 30 days after the tenant's surrender and notice. However, there is no duty to provide the accounting if the tenant owes rent at the time of the termination



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and there is no dispute as to the amount of rent owed. The amendments also include a statutory definition of "normal wear and tear" for purposes of determining appropriate deductions to the security deposit for damage to the premises.

If the landlord fails to provide the accounting or to return the security deposit within 30 days after surrender and notice from the tenant, the landlord is presumed to have acted in bad faith. If the landlord acts in bad faith, the tenant is entitled to recover \$100.00 plus 3 times the amount of the deposit wrongfully withheld and attorney's fees. The landlord acting in bad faith also forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises. Taken together, these provisions are inconsistent with respect to the deadline for returning the deposit. One section of the amendments requires the landlord to return the deposit within 60 days. Another section of the amendments provides that if the landlord does not return the deposit within 30 days, the landlord is presumed to have acted in

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bad faith. The net effect appears to be that the landlord must return the deposit within 30 days to avoid any risk of being found to have acted in bad faith.

HB2803 also contains two amendments favorable to landlords. First, a new remedy is created in favor of the landlord when the tenant fails to pay the last month's rent on the theory that the security deposit serves as last month's rent. In such a case, the landlord may recover from the tenant an amount equal to 3 times the amount of rent withheld by the tenant. Second, in the event of a sale of the property, the selling landlord may escape further liability for return of the security deposit, if the purchasing landlord sends written notice to the tenant that the purchaser will be responsible for return of the tenant's security deposit. The written notice must specify the amount of the deposit. The selling landlord obtains the equivalent of a release from the tenant without actually receiving an express release signed by the tenant.