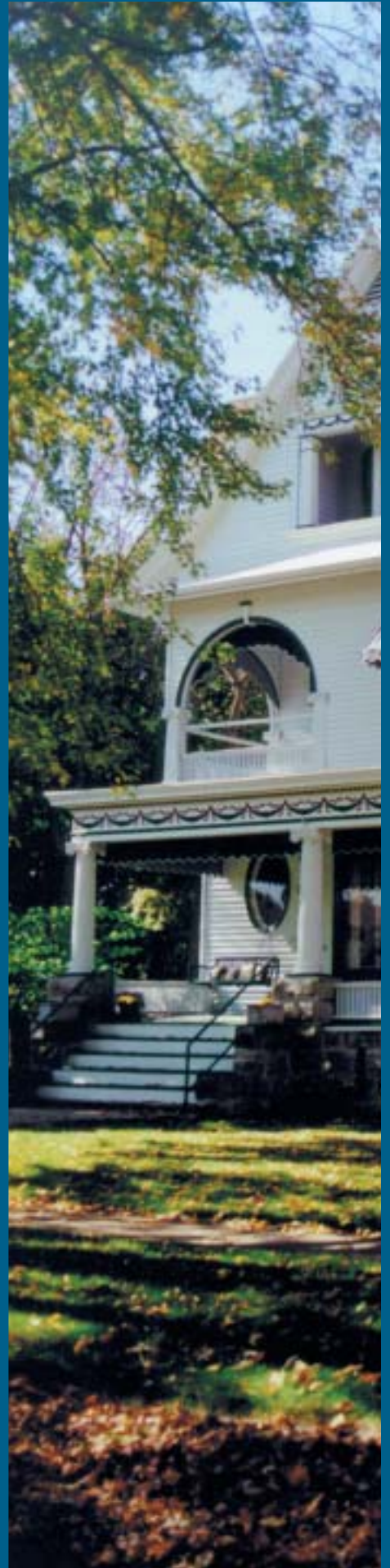





The Wisconsin Way

A Guide for Landlords and Tenants





More than 1.5 million Wisconsin residents live in rental housing. In some of the State's larger cities, more than half of the residents live in rental housing.

The Wisconsin rental housing industry is an important part of the Wisconsin economy and provides a vital housing option for consumers.

With hundreds of rentals occurring annually, it is important to both tenants and landlords that rules ensure these transactions are conducted fairly.

We hope this edition of the Wisconsin Way provides you with the information you need to be an informed tenant or landlord.

If you have any questions, please contact Consumer Protection at:

Department of Agriculture,
Trade & Consumer Protection
2811 Agriculture Drive
Madison WI 53718-6777

Mailing address:
PO Box 8911
Madison WI 53708-8911

Fax: 608 224-4939

Toll - free in Wisconsin only:
1 (800) 422-7128

Website:
www.datcp.state.wi.us

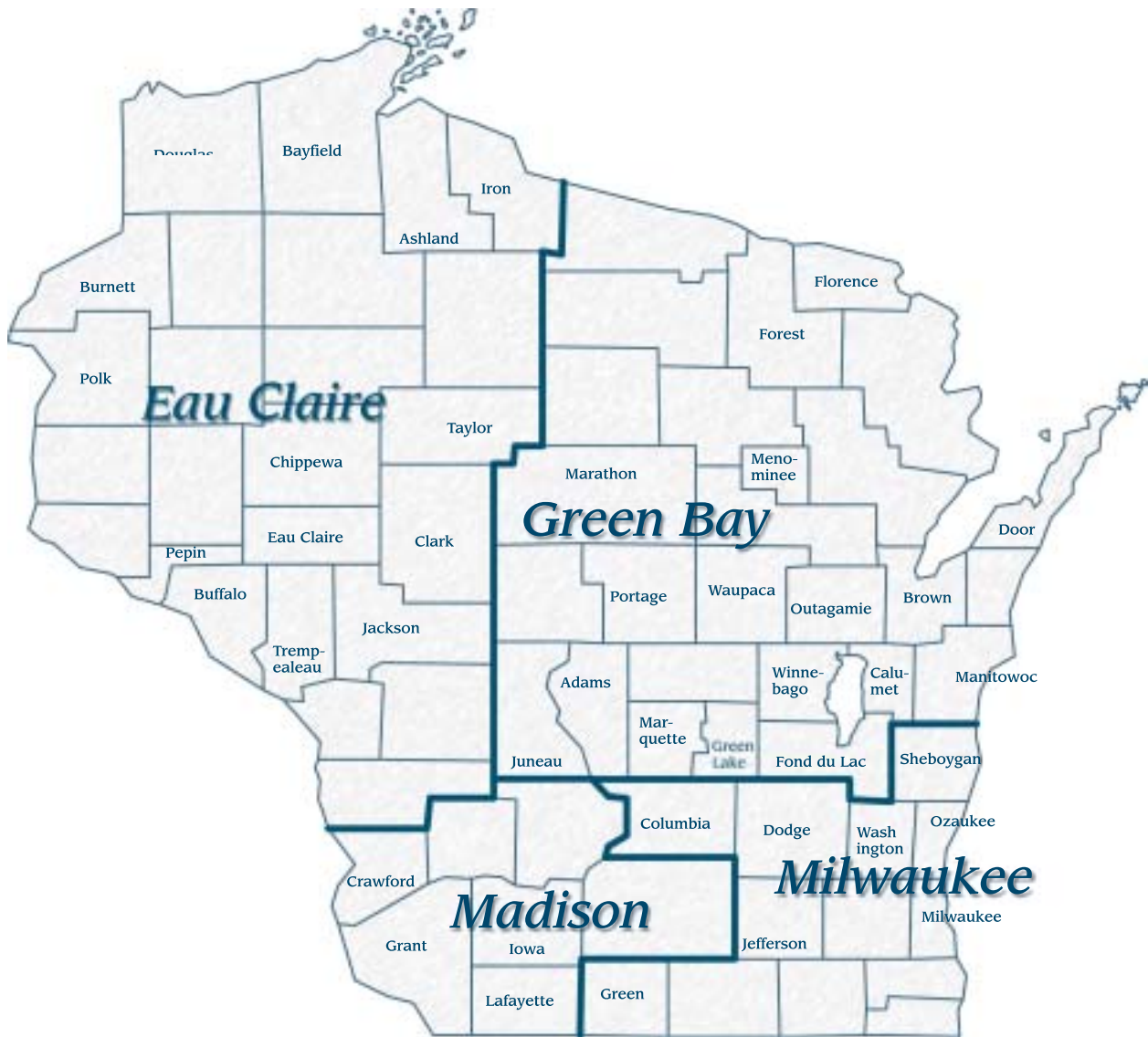
E-mail:
datcphotline@datcp.state.wi.us

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A Guide for Landlords and Tenants

Wisconsin Department of Agriculture,
Trade & Consumer Protection

Bureau of Consumer Protection



How To Contact Us:

- **Consumer Information Center**
Toll-Free Statewide
Consumer Hotline:
800-422-7128 (WI only)
- **Internet:**
www.datcp.state.wi.us
- **E-Mail:**
datcp hotline@datcp.state.wi.us
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(920) 448-5110
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Green Bay, WI 54301

Southeast Regional Office

(414) 266-1231
10930 W. Potter Road, Suite C
Milwaukee, WI 53226-3450

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(608) 224-4976
2811 Agriculture Drive
PO Box 8911
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This section provides a general overview of key parts of Wisconsin's "Landlord-Tenant law." (Wisconsin Administrative Code, ATCP 134)

Section I: Brief Overview

A. Things You Should Know Before Renting

Landlords:

Landlords may not advertise or rent condemned property.

Landlords may not engage in "bait and switch" of dwelling units. That is, the landlord may not show you one unit and rent you a completely different kind of unit.

Landlords *must disclose* the following information to prospective tenants:

- Housing code violations they know about, but have not yet corrected;
- Structural defects in the dwelling unit;
- If the unit doesn't have hot or cold running water;
- Serious plumbing or electrical problems;
- Whether the heating system can keep the unit at a temperature of at least 67° F;
- Whether tenants are required to pay utilities;
- How utility charges will be divided, if the dwelling unit is not individually metered.

Rental agreements do not have to be in writing. However, if the rental agreement is in writing, the landlord must let the tenants read it before they decide to rent and then the landlord must give the tenants a copy.

If the landlord requires the tenant to pay an earnest money deposit (which includes "application fees") with the rental application, the landlord has three (3) business days after accepting the deposit to accept the tenant or return the earnest money deposit. A prospective tenant and landlord can agree to a longer period to consider the application. This agreement must be in writing and cannot be for more than 21 days after the landlord first accepted the earnest money.



Section I - Brief Overview

If the landlord rejects the rental application, the landlord must return the entire earnest money deposit to the applicant by the end of the next business day after rejecting the application. If the applicants decide not to rent after the landlord accepts their application, the landlord may withhold actual costs or damages from the deposit.

A landlord may charge a prospective tenant the actual cost, up to \$20, to obtain a consumer credit report on the prospective tenant, *if* the report comes from a national consumer reporting agency. Generally, these reports come from Credit Bureaus in major cities in Wisconsin. (This new provision does *not* allow landlords to charge tenants for credit reports from credit information "resellers." The landlord must: notify the tenant of this charge before requesting the report, give the tenant a copy of the report, and allow the tenant to provide his or her own report, if the tenant's report is less than 30 days old.

To protect their security deposits, tenants should make a written list of the pre-existing defects and damages

Tenants:

Tenants have the right to inspect the unit before they rent it.

Before tenants agree to rent the property, it is a good idea to ask the landlord for a *written* list of the repairs the landlord promised to make and the date the landlord will complete the repairs.

If the tenant pays a security deposit, the tenant has 7 days from the first rental date to inspect the premises and notify the landlord of any pre-existing defects or damages to the dwelling unit.

To protect their security deposits, tenants should make a *written* list of the pre-existing defects and damages, keep a copy of the list for themselves and provide the original list to the landlord as a permanent record. This written list will help avoid disputes over damages later, when the tenants leave.

If tenants pay a security deposit, the tenants may request a list of damages or defects for which the landlord withheld money from the previous tenant's security deposit.

B. Responsibilities of Landlords and Tenants When Renting

Landlords:

At the start of a tenancy, the landlord must give the tenants the names and addresses of: (1) the person who collects or receives rent and (2) the person who manages and maintains the premises. The landlord must also give the tenants the name and address (in Wisconsin) where the tenant can deliver any legal papers or notices required by the rental agreement.

The landlord is responsible for making any repairs necessary to comply with local housing codes and to keep the premises safe. If the landlord refuses to repair major building defects, tenants may report the defects to the local building or health inspector. If the tenant makes such a report, the landlord may not retaliate by evicting the tenant.

A landlord has the right to inspect, repair, and show the premises at reasonable times. Generally, the landlord must give the tenants at least 12-hours advance notice before he or she may enter a dwelling unit. The landlord may enter with less notice in the case of an emergency or if the tenants agree to a shorter notice. The landlord must knock or ring the doorbell before entering and must identify himself or herself upon request.

A frequently asked question is “Can landlords raise the rent of month-to-month tenants if they give the tenants a written notice at least 28 days before the next rent due date?” (For example, the landlord may tell the tenants on March 25 that the rent will increase beginning on May 1.)

The answer is: Yes, **there is no state law limiting the amount of a rent increase.**

If tenants have a lease -- for example, a six-month or one-year lease -- the landlord may not increase the rent during the lease term, unless the lease specifically states otherwise.

Tenants:

Unless otherwise agreed, tenants are usually responsible for routine minor repairs. Tenants also must meet any maintenance and sanitation standards required by local housing codes.

Tenants are financially responsible for any damages that they or their guests cause.

C. Terminating a Tenancy

If there is no written lease and tenants rent on a month-to-month basis: The landlord may terminate the rental agreement by giving the tenants a written termination notice at least 28 days before the next rent due date.

The tenants may terminate the rental agreement by giving the landlord a written termination notice at least 28 days before the next rent due date, unless they agreed to give a longer notice (that is, more than 28 days). Tenants may serve the written notice in person or by certified or registered mail.

If tenants have a lease: Usually the lease ends automatically at the end of the lease period, unless the lease states otherwise.

Some longer term leases include an “automatic renewal” provision. That is, the lease automatically renews for another term, unless the tenants tell the landlord they do not want to renew the lease. The landlord must “remind” the tenants of this provision at least 15-30 days before the deadline for the tenants to tell the landlord whether they are leaving. If the landlord does not give the tenants this “reminder,” the landlord may not enforce the automatic renewal provision.

If there is no written lease and tenants rent on a month-to-month basis, the landlord may terminate the rental agreement by giving the tenants a written termination notice at least 28 days before the next rent due date



Section I - Brief Overview

If tenants paid a security deposit, the landlord must return it within 21 days after the tenants leave. If tenants vacate the premises before the last day of the lease, the tenants must notify the landlord in writing that they have left, in order to start the “21 day clock” for return of the security deposit. (For more information on determining when the 21 days for return of the security deposit begins, see the Security Deposit Section.) The tenants may have to pay the rent for the rest of the lease term, or at least until the landlord finds another suitable tenant. The landlord must make reasonable efforts to find a new tenant and minimize any rent losses.

The landlord may deduct money from the security deposit for unpaid rent, damages for which tenants are responsible (“tenant damage, waste or neglect”), and utility bills paid by the landlord. However, the landlord may not deduct money from the security deposit for routine carpet cleaning or painting, unless the carpet or walls show “tenant damage, waste or neglect.”

If the landlord makes any deductions from the security deposit, the landlord must give the tenants a written statement itemizing the amounts withheld and why. **State law does not require landlords to pay interest on security deposits.**

D. Contract with a Minor

The general rule in Wisconsin is that contracts with minors are void or voidable, at the option of the minor, regardless of whether the minor is emancipated or not. The only exceptions to this general rule are contracts involving duties imposed by law.

The minor can void a contract by any act which clearly shows the minor’s intentions to do so. No particular form words are required.

The general rule in Wisconsin is that a minor who is unable to return a purchased item need not do so in order to void the contract. When purchased item is used, depreciated, consumed, wasted or otherwise disposed of, the minor is not responsible for it’s value and the adult party who contracted with the minor must bear the loss.

E. Eviction

Landlords may evict tenants who don’t pay their rent, pay only part of their rent, or pay the rent late (even one day late). Landlords may also evict tenants who break the rules or terms of the rental agreement or cause damage to the property. Also, a landlord who receives written notice from a law enforcement agency that the dwelling unit has been declared a nuisance under Wisconsin Statutes, sections 823.113(1) or (1m)(b) may evict the tenant.

1. **Month-to-month tenants** may be given *either* a 5-day written notice or a 14-day written notice of termination.

- **5-Day Notice.** This notice gives the tenant 5 days to either pay the rent or move out. If the tenant pays the rent within the 5 days, the tenant can stay and the tenancy continues.
- **14-Day Notice.** This notice states that the tenancy has ended because the tenant failed to pay the rent, broke the rental agreement, or damaged the property. Now the tenant has 14 days to leave. (This notice does *not* give the tenant a chance to pay the rent and stay in the rental unit.)

Landlords may evict tenants who don't pay their rent, pay only part of their rent, or pay the rent late (even one day late). Landlords may also evict tenants who break the rules or terms of the rental agreement or cause damage to the property

2. Tenants with leases; termination notices. When landlords don't receive the rent on time, believe the tenant has broken the rental agreement or caused property damage, the landlord must give the tenant a *5-day written notice*.

- **Non-payment of rent:** If the tenant pays the rent within 5 days, the tenant stays and the tenancy continues.

However, within the next 12 months, if the tenant fails to pay the rent again, then the landlord may give the tenant a *14-day termination notice* for failure to pay rent. The landlord does not have to give the tenant another chance to pay the rent to continue the tenancy.

- **Other violations of the lease agreement:** If a tenant receives a 5-day notice for breaking the rental agreement, the tenant may stay in the rental unit, if the tenant makes a correction and complies with the rental agreement.

However, within the next 12 months, if the tenant breaks any rules or causes any property damage, the landlord may give the tenant a *final 14-day termination notice*. This notice will say how the tenant broke the rental agreement or what damage the tenant caused, or is responsible for.

If a tenant refuses to leave the premises after receiving the proper notice, the landlord may start an eviction action in Small Claims Court. Tenants have the right to appear in court to contest the eviction. If the tenant fails to appear in court, the landlord will automatically obtain the eviction order. The landlord may not confiscate personal belongings or use force to remove tenants from the rental unit, until the judge orders an eviction. The sheriff enforces the court eviction order. However, if the court decides that the tenants wrongfully stayed in the rental unit, the court can order the tenants to pay the landlord twice the amount of rent owed (prorated on a daily basis) for each day the tenants stayed in the rental unit unlawfully.

F. Foreclosure

If you suspect that your rental property is in foreclosure or is going into foreclosure, continue to make your rental payments as required by your rental agreement unless you are otherwise directed by the court or by the agent handling the foreclosure.

You can determine whether your rental property is in foreclosure by contacting the Clerk of Court for your county. You can also check on the Internet at the Wisconsin Circuit Court access site, wcca.wicourts.gov/index.xsl. If you find that your rental property is in foreclosure, you can contact the party foreclosing to determine how the foreclosure might affect your rental agreement.



Section II - Residential Rental Practices

Section II: Analysis of the "Residential Rental Practices" Rules

(Wisconsin Administrative Code, Chapter ATCP 134)

Commonly known as the "Landlord-Tenant" Rules

A. Changes to the Rules, Effective January 1, 1999

From 1996 -1998, the department met with many people, representing the interests of both landlords and tenants, to decide how to update and improve the existing landlord-tenant rules. The department had not changed the rules since 1979. After many hours of meetings, work and discussion, and with the help of many groups and individuals, the department revised the rules to clarify parts of the existing law and to add some new provisions. The changes apply to all rental agreements entered into, renewed or extended on or after January 1, 1999.

The Residential Rental Practices Rules apply to business practices related to the rental of most residential dwelling units in this state

B. What Living Arrangements Are Covered by the Rules?

The Residential Rental Practices Rules apply to business practices related to the rental of most residential dwelling units in this state.

[NOTE: Mobile home park operator-tenant relations are regulated by these rules and also by Wisconsin Administrative Code, Chapter ATCP 125, "Mobile Home Parks." DATCP administers both sets of rules.]

The Residential Rental Practices rules do not cover the following kinds of living arrangements:

- When a person lives in premises operated by a public or private institution and the person lives there to receive medical, educational, counseling, religious, or similar services. (For example, the rules do not apply to residences at hospitals, nursing homes, or university-owned dormitories).

- When a person lives in a hotel, motel, boarding house, rooming house, or similar lodging for less than 60 days and the person is traveling away from his/her permanent place of residence.
- When a person lives in premises owned and operated by the government or an agency of government. However, these rules *do* apply to federally subsidized rental housing, if the housing is privately owned or operated. (This includes HUD "Section 8" housing.)
- When a member of a fraternal or social organization (for example, a fraternity or sorority) lives in premises operated by that organization. (However, if the organization rents rooms to non-members, these rules do apply to those rental agreements.)
- When a person does commercial agricultural work and lives on the premises where he or she is working.
- When a person operates and maintains the premises and the person lives on the premises free of charge as part of the employment arrangement (for example, a "resident manager.")
- When a person lives in a dwelling unit that the person is in the process of buying under a contract of sale.

C. Analysis of the Rules

The department has over twenty years of experience handling landlord-tenant issues and has documented the most common problems and industry practices which create problems in the rental housing industry. The Residential Rental Practices Rules seek to address the main problems to help stop the problems from developing. Generally, the rules reinforce existing statutory rights given to tenants and incorporate court decisions from landlord-tenant cases in Wisconsin. The following discussion analyzes the individual provisions of the rules.

C1. ATCP 134.03 Rental Agreements and Receipts

(1) Copies of Rental Agreements and Rules; "Entering Into a Rental Agreement"

If a rental agreement (usually called a "lease") or any of the landlord's rules or regulations are in writing, this section requires the landlord to give the tenant a chance to read them *before* the tenant signs the lease. This gives the tenant a chance to find out what *all* the rental terms and conditions are before deciding whether to rent from that landlord. The landlord and tenant must agree on the essential terms of the tenancy, such as the total rent, including any non-refundable fees, the amount of the security deposit and the specific dwelling unit the tenant will occupy.

Once the parties sign a written agreement, the tenant must receive a copy of the entire agreement.

The landlord also *must give the tenant a receipt* for any earnest money or security deposit the tenant pays in cash.

By approving an individual as a prospective tenant, a landlord does not necessarily enter into a rental agreement with that person until they agree on the essential terms of tenancy. (See Wisconsin Administrative Code, section ATCP 134.02(10), definition of "Rental agreement" and the "Note.")

For example, when the landlord is considering a person's application for a number of vacancies, there is no "rental agreement" yet, because the tenant and landlord have not decided and agreed on:

- (a) the specific apartment the tenant will rent,
- (b) what the total rent will be,
- (c) what charges, fees or penalties the tenant must pay in addition to the rent, and
- (d) the tenant has not yet had a chance to review the lease and any non-standard rental provisions.

The rules do not require rental agreements to be in writing. Verbal rental agreements are traditional in many parts of the rental industry. About half of all Wisconsin renters currently live under verbal rental agreements. Existing statutes allow verbal rental agreements and it does not appear that the rental industry, as a whole, abuses these agreements.

(2) Receipts for Tenant Payments

The landlord is required to give the tenant a written receipt any time the landlord accepts an earnest money deposit, a security deposit, or rent paid in cash. If the tenant pays by check, the rules do not require the landlord to provide a receipt, unless the tenant asks for a receipt.

C2. ATCP 134.04 Disclosure Requirements

(1) Identification of Landlord or Authorized Agents

In many disputes about building maintenance, tenants indicate that part of the problem is that the tenants are not able to contact the landlord about a pressing problem. This issue comes up most often with absentee landlords (landlords who live outside the community). According to housing code officials, properties owned by these landlords have maintenance problems more often than other properties. In addition, even housing code enforcement officials have problems finding the address and identity of property owners who live outside of the community.

To help address these problems, this subsection requires landlords to disclose, in writing, the name and address of the person or persons authorized to collect rent and the person or persons who manage and maintain the premises. Tenants must be able to contact these people relatively easily. In addition, the landlord must identify an owner of the premises or a person authorized to accept legal papers on behalf of the owner. The rule requires that this address (not a Post Office Box) be located within the State of Wisconsin, and that the landlord must provide notice of any change of the person's address within 10 business days of the change occurring.

These disclosure requirements do not apply to owner-occupied structures containing up to four dwelling units, since, in such cases, the landlord is living in the building and the tenant knows whom to contact.

(2) Disclosure of Code Violations and Living Conditions

(a) Uncorrected building and housing code violations

Local housing codes generally establish the standards which rental housing must meet. Approximately three-fourths ($\frac{3}{4}$) of all renters in Wisconsin live in cities and towns which have local housing codes. Landlords must maintain their rental properties under the requirements of local housing codes. In addition, under existing state law, landlords must provide tenants with premises that are fit and habitable and free of substantial health and safety hazards.

The landlord's duty to provide fit and habitable premises includes a corresponding duty to disclose existing hazards or conditions that affect habitability. If housing code violations do exist, the rules require the landlord to tell prospective tenants about any uncorrected problems before the tenants make a final decision whether to rent the premises.

(Once the landlord corrects a violation, the landlord still must report the corrections to the local housing code enforcement authorities.) If a landlord keeps his or her rental property in compliance with local housing codes, or the landlord promptly corrects any violations, the rules do not require the landlord to make any disclosures under this subsection.

(b) Conditions affecting health or safety

Local housing codes do not protect all rental housing in Wisconsin. About one-fourth ($\frac{1}{4}$) of all Wisconsin tenants live in areas or municipalities that have no local housing codes. Even in municipalities that have housing codes, individual rental units may not be inspected regularly.

To address this problem, Wisconsin Administrative Code, section ATCP 134.04(2)(b), requires landlords to disclose conditions that affect the habitability of the rental unit that the landlord knows about or should know about, based on the landlord's reasonable and periodic inspections of the premises. The landlord must disclose these conditions, even if the landlord has not received a notice from enforcement authorities (building inspectors).

Specifically, the landlord must tell prospective tenants whether any of the following conditions exists:

- The dwelling unit lacks hot or cold running water;
- The heating system is not safe or cannot keep the unit heated to at least 67°F. (To eliminate confusion, the updated rule specifies that one measures the temperature in living areas of the dwelling unit, at the approximate center of the room, midway between floor and ceiling. The rules do not require that the dwelling unit must be able to maintain 67°F in all seasons of the year, only that the landlord must tell the prospective tenant if the unit cannot maintain that temperature. Lastly, 67°F is a minimum temperature requirement. The rules do not establish a maximum temperature, since the rules do not require dwelling units to have air conditioning).
- The dwelling unit does not have electricity, or the electrical wiring system or any part of it is not in safe operating condition;
- The dwelling unit has structural or other conditions which create a substantial health or safety hazard for the tenant or an unreasonable risk of personal injury;

- The dwelling unit does not have plumbing facilities or the plumbing is not in good operating condition;
- The dwelling unit does not have sewage disposal facilities or the sewage disposal system is not in good operating condition.

(3) Utility Charges; Charges for Water, Heat and Electricity

Rising utility costs are of great concern to landlords and tenants alike. As a result of increased utility costs, landlords often require tenants to pay the utility charges, separate from the rent. Before deciding to rent a specific unit, it is important for tenants to know whether or not the utility charges are included in the rent. Tenants need this information so they can accurately determine the total cost of renting the unit.

Wisconsin Administrative Code, section ATCP 134.04(3), provides that the landlord must tell prospective tenants if utility charges are not included in the rent. The tenant must receive this information before signing a lease or paying any money for an earnest money deposit or security deposit.

If utility charges are not included in the rent, and individual dwelling units and common areas of the building are not separately metered, the landlord must tell tenants how the costs for utility services will be allocated among the individual dwelling units. This requirement has been in the rules since 1980 to address complaints from tenants who found out, after they signed the lease, that they were paying utility charges for common areas in the building and other dwelling units.



C3. ATCP 134.05 Earnest Money Deposits and Credit Check Fees

Earnest Money Deposits. The term "earnest money deposit" means the money a prospective tenant gives a landlord so the landlord will temporarily "hold" a dwelling unit off the market or so the landlord will consider the person's application (application fees). The purpose of these deposits is to protect the landlord from possible costs or losses if the prospective tenant decides not to rent from the landlord. The rules do not prohibit earnest money deposits, nor do they set any limit on the maximum amount of the deposit.

Earnest money deposits are a common source of problems and disputes. Tenants complain that landlords wrongfully withheld their earnest money deposits, sometimes amounting to several hundred dollars, even though the landlords apparently suffered no monetary losses.

Most landlords return the earnest money deposits to the prospective tenant if the landlord rejected the person's rental application or the landlord had no "out-of-pocket" costs. The rules incorporate these fair business practices into the law.

(1) Accepting Earnest Money Deposits

Under the 1999 revisions to the rules, landlords may not accept earnest money deposits until the landlord identifies the specific dwelling unit(s) for which the prospective tenant is being considered. The landlord also must comply with the disclosure requirements under Wisconsin Administrative Code, sections ATCP 134.04(2) and (3), for each identified dwelling unit before accepting an earnest money deposit. (Note: Credit check fees are not "earnest money deposits".)

(2) Returning Earnest Money Deposits

(a) When no lease agreement is made the landlord must return the full earnest money deposit to the applicant by the end of the first business day after:

- The landlord rejects the tenant's application or refuses to rent to the tenant.
- The applicant withdraws their application before the landlord accepts or rejects it. (In cases where disputes arise regarding whether the tenant withdrew the application before the landlord accepted it, courts will analyze the material facts of the case. The department encourages landlords and tenants to keep good records of any documents or notices they sent to the other party, especially documents that show the postmark date.)

- The landlord does not approve the rental application within 3 business days after taking the earnest money deposit. (The landlord and applicant may agree, in writing, to a longer time for the landlord to consider the application, up to 21 days. If a landlord needs more than 21 days to process an application, the landlord has a couple of options. The landlord can decide not to take the earnest money deposit until later in the application process, or the landlord can refund the applicant's original deposit and accept a new deposit. Taking a new deposit would "restart" the "3-day or 21-day clock", as agreed to by the tenant.)

The landlord may return the deposit money to the applicant by first-class mail or by delivering it to the applicant.

(b) If the prospective tenant is accepted by the landlord, but does not enter into a lease agreement.

- If the landlord approves the person to be a tenant, but the person decides not to sign the lease, the landlord *may withhold* money from the earnest money deposit.

Section II - Residential Rental Practices

- However, if the landlord significantly changed the rental terms previously discussed with the tenants and that is why the tenants withdrew their application, then the landlord *may not withhold* money from the earnest money deposit.
- If the landlord withholds money from the earnest money deposit for "lost rent," the landlord must make reasonable efforts to re-rent the premises to "mitigate damages."

- If the landlord returns less than the full amount of the earnest money deposit and the prospective tenant accepts the partial amount, the prospective tenant still has the right to claim the landlord owes him/her the full amount of the deposit.

(c) When a lease agreement is signed.

If the landlord and tenant sign a lease, then the landlord must either apply the earnest money deposit to the rent, apply it to the security deposit, or return it to the tenant.

Credit Check Fees. The 1999 revision to the rules allows, for the first time, a landlord to charge a prospective tenant the actual cost, up to twenty dollars (\$20) for a "consumer credit report." (The term "consumer credit report" is defined in the federal Fair Credit Reporting Act, Title 15 USC 1681a(d) of the United States Code.) This allows the landlord to check the creditworthiness of the prospective tenant. (The landlord's actual cost is usually much less than \$20.00.)



Section II - Residential Rental Practices

In order for the landlord to charge for a credit report, the landlord must:

- Notify the tenant of the charge before requesting the report.
- Give the tenant a copy of the report.
- Obtain the report from a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" or a contract affiliate.

This means that if a landlord requests a credit report from one of the current "big three" national credit data repositories (TRW, Experian, Equifax) or a credit bureau, the landlord may charge the prospective tenant the actual

cost of that report, up to \$20. The rule does not allow landlords to charge applicants for credit reports obtained from local or regional consumer information databases, credit brokers, resellers, criminal background checks, reference checks, and sources of other personal information not contained in one of the three listed national credit repositories.

- If the tenant presents a copy of a consumer credit report that is less than 30 days old, the landlord may not charge the tenant for a credit check. If the landlord wishes to obtain a more recent report, then the landlord must pay for the report himself/herself and cannot charge the tenant for that report.

C4. ATCP 134.06 Security Deposits

Most Wisconsin landlords require a security deposit at the beginning of a tenancy to protect themselves from tenant damage or default. Tenants generally agree that landlords are entitled to a security deposit. However, problems involving the return of security deposits continue to rank as the main source of landlord-tenant disputes reported to the department.

The main problems cited by tenants include whether the landlord fairly withheld money from the security deposit, long delays in returning deposits, and the lack of any accounting for amounts the landlord withheld from the security deposit.

Q&A...

Question:

Can landlords require tenants to pay "cleaning" and other fees or deposits, in addition to the security deposit?

Answer:

Any type of "up front" deposit or refundable fee becomes part of the total security deposit and therefore, is subject to the limitations in Wisconsin Administrative Code, chapter ATCP 134 for withholding from the security deposit. Although the landlord *may* withhold a security deposit for tenant "damage, waste or neglect," the landlord *may not* withhold a deposit for "normal wear and tear."



If a landlord withholds any part of the security deposit for *routine cleaning or carpet cleaning* that is related to "normal wear and tear" this violates Wisconsin Administrative Code, chapter 134. The landlord cannot deduct cleaning costs, painting costs or carpet cleaning costs from a security deposit unless there was tenant "damage, waste or neglect."

(1) Check-In Procedures; Pre-existing Damages

People generally agree that a landlord should not withhold money from a tenant's security deposit for damages that occurred before the tenant rented the premises. As a practical matter though, tenants and landlords often do not keep records of the "pre-existing" damages and this causes problems later when it comes time to return the security deposit.

When the landlord requires a security deposit, the rules establish certain basic elements of a "check-in" procedure. First, the tenant must have at least 7 days to inspect and document any preexisting conditions. This 7-day period gives tenants at least one weekend to make an inspection.

Second, landlords must tell tenants they have a right to receive a list or description of any physical damages for which the landlord withheld money from the previous tenant's security deposit. The landlord must provide this list before he/she accepts a security deposit or converts an earnest money deposit to a security deposit. The landlord may require the prospective tenant to request this list of damages in writing. If the tenant requests a list of previous damages, the landlord must provide the list within 30 days after receiving the request, or within 7 days after charging the previous tenant for damages, whichever is later. The rules do not require the landlord to disclose the amount of the charges or the identity of the previous tenant. If the landlord repaired the damages, the landlord may note this on the list.

(2) Security Deposit Return; Requirements

The rules provide that the landlord must return the security deposit, less any amounts withheld by the landlord, in person or by mail to the last known address of the tenant within 21 days after the tenant surrenders the premises.

The 1999 rule revision clarifies three areas regarding return of security deposits:

- Any rent payment that is more than one month's prepaid rent is considered to be a security deposit. Nothing in the rules prevents a landlord from collecting more than one month's rent as security. However, when the tenant surrenders the premises, the landlord must treat any rent prepayment in excess of one month's rent as a security deposit and must account for it as such.
- If there are multiple tenants to a rental agreement and the landlord returns the security deposit by check or money order, the landlord shall make the check or money order payable to all the tenants who were parties to the rental agreement. Multiple tenants may designate in writing a specific person(s) to be the "payee", at any time during the rental agreement.
- When a landlord returns less than the full security deposit and the tenant accepts this partial amount, this still does not prevent the tenant from claiming that the landlord owes the tenant more or all of the security deposit.

If the landlord deducts any money from the security deposit, the landlord must give the tenant an itemized statement that describes each item

Section II - Residential Rental Practices

(3) "Surrender of the Premises" Defined

Under current rules, a landlord must return or account for a tenant's security deposit within 21 days after the tenant "surrenders" the premises to the landlord. The 1999 rule revision clarifies that a tenant "surrenders" the premises on the last day of tenancy specified under the rental agreement, except that:

- If the tenant gives the landlord a written notice that the tenant has vacated before the last day of tenancy specified in the rental agreement, "surrender" occurs when the landlord receives the written notice that the tenant has vacated. Thus, *if a tenant vacates early, the tenant must notify the landlord, in writing, that he/she has vacated the premises. This written notice is necessary to show when the tenant "surrendered" the premises.*

When the tenant mails this notice, the rule presumes that the landlord received the notice on the 2nd day after the tenant mailed it. So, if the tenant mails the notice to the landlord on Tuesday, under the rule, the premises were "surrendered" on Thursday.

- If the tenant vacates the premises after the last day of tenancy specified in the rental agreement, "surrender" occurs when the landlord learns that the tenant has vacated.

- If the tenant is evicted, "surrender" occurs when the sheriff executes the writ of restitution or the landlord learns that the tenant has vacated, whichever occurs first.
- If the tenant vacates but gives no written notice. In these situations the department looks at when the landlord became aware or should have become aware that the tenant had vacated, to determine when surrender of the premises occurs.

(4) Limitations on Security Deposit Withholding

(a) Generally, the landlord may withhold money from the security deposit ONLY for the following reasons:

- Tenant damage, waste or neglect of the premises;
- Nonpayment of rent;
- Nonpayment of actual amounts the tenant owes the landlord for utility services provided by the landlord, and;
- Nonpayment of government utility charges or mobile home parking fees.

(b) The rule allows landlords and tenants to mutually agree, in "Nonstandard Rental Provision," to permit the landlord to withhold the security deposit for other reasons than those listed in paragraph (a), above, with some very important exceptions. Specifically, the landlord may not negotiate a "Nonstandard Rental Provision" with the tenant to withhold the security deposit for any costs related to "normal wear and tear." For example, the rules prohibit routine across-the-board deductions from the security deposit for cleaning, painting, or carpet cleaning, that result from only "normal wear and tear."

(5) Nonstandard Rental Provisions

The 1999 rule revisions clarify that if the landlord wants to include any additional provisions to the rental agreement, the landlord and the prospective tenant must separately negotiate those provisions. Under the rules, a rental agreement may include the following provisions only if the landlord and tenant separately negotiate them and include them in a separate written document entitled, "Nonstandard Rental Provision":

1. Expanded landlord right of entry into the dwelling unit.
2. Authorized deductions from a tenant's security deposit.
3. Lien agreements.

Q&A...

Question:

Can landlords use "Nonstandard Rental Provision," for provisions other than security deposit deductions, lien agreements, and expanded rights to enter the unit?

Answer:

Although "Nonstandard Rental Provision" may cover subjects other than those listed above, the department cautions landlords about the use of "Nonstandard Rental Provision" since their use may result in unintentional violations of Wisconsin Administrative Code, chapter ATCP 134.

"Nonstandard Rental Provision" cannot include provisions that are prohibited by Wisconsin Administrative Code, chapter 134, by Wisconsin Statutes, chapters 704 and 799, or other state, municipal or federal laws (such as Fair Housing Laws). For example, provisions allowing deductions from the security deposit for normal wear and tear are prohibited.

In any case where a landlord presents a rental agreement that contains a *Nonstandard Rental Provision*, the landlord must specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement. The tenant must sign or initial each nonstandard provision. If the tenant signs or initials a *Nonstandard Rental Provision*, then a court will presume that the landlord discussed each provision with the tenant and the tenant agreed to each provision before signing the form.

There may be more than one *Nonstandard Rental Provision* contained within a single document, and the document may be pre-printed. If there are multiple provisions contained within a single document, the tenant must sign or initial each provision contained within the document.

Since the landlord is obligated to provide habitable premises under Wis. Stat. §704.07(2), any attempt to waive this obligation of the landlord is void.

Q&A...

Question:

Can a lease or "Nonstandard Rental Provision," include a provision about carpet cleaning?

Answer:

Neither a lease nor a "Nonstandard Rental Provision" may include a provision that claims to authorize an "automatic deduction" from the security deposit for cleaning or other maintenance that is caused by "normal wear and tear."

A provision to authorize a routine withholding from the security deposit for "normal wear and tear" violates Wisconsin Administrative Code, chapter ATCP 134.

The landlord may make deductions from the security deposit only when there is tenant "damage, waste or neglect" or other damages for which the tenant is legally responsible.

Landlords are cautioned to ensure that any non-refundable or "up-front" fees or costs are clearly disclosed as part of the total rent payable in any advertising for the dwelling unit.

Rental agreements do not have to be in writing. However, if the rental agreement is in writing, the landlord must let the tenants read it before they decide to rent and then the landlord must give the tenants a copy

Section II - Residential Rental Practices

(6) Security Deposit Withholding; Statement of Claims

If the landlord deducts any money from the security deposit, the landlord must give the tenant an itemized statement that describes each item of damages, or other claim against the deposit, and states the amount of money withheld for each claim. The rules prohibit landlords from intentionally falsifying any security deposit claim.

(7) Tenant Failure to Leave Forwarding Address

The rules require the landlord to mail the security deposit or an accounting for the security deposit to the *tenant's last known address*. The landlord does not violate the rules if the postal service is unable to complete mail delivery. This rule applies even if the last known address is the dwelling unit the tenant rented under the rental agreement. Tenants should notify the postal service and the landlord, or the landlord's agent, of their change of address as soon as possible to insure they timely receive their security deposits. However, if a tenant fails to leave a forwarding address, this does not affect the tenant's rights to demand that the landlord return more or all of the security deposit.

C5. ATCP 134.07 Promises to Repair

Often people agree to rent a dwelling unit based upon the landlord's promises to make certain repairs or improvements to the premises. Such promises may unfairly induce a person to rent a dwelling unit. Considering the complaints the department receives, it is clear that many landlords make promises to repair, but only a little more than half of the landlords actually carry out those promises. Although promises to repair are theoretically binding on the landlord, they are difficult to enforce, especially when the promises are not in writing.

(1) Specific date of completion required

For every "promise to repair," the landlord must specify the date or time period when the landlord will complete the repairs or improvements. This requirement applies to promises to clean, repair or improve any furnishings, facilities or parts of the premises.

(2) Initial promises must be in writing

If the landlord makes any promises to repair before the parties sign the initial (first) rental agreement, the landlord must put the promises to repair in writing. The landlord must give the tenant a copy of these promises. By requiring the landlord to put these promises to repair in writing, the department's goal is to increase the landlord's accountability with respect to promises that directly affected the tenant's decision to enter into a rental agreement.

(3) Repairs must be completed on time

The landlord must complete the promised repairs or improvements within the time period stated in writing. The only excuses the rules "accept" for the landlord not completing the repairs on time is if: there is a labor stoppage, supplies are not available, there are unavoidable casualties, or there are other causes clearly beyond the landlord's control. If something happens to delay the completion of the repairs, the landlord must tell the tenant what has happened that is beyond the landlord's control and give the tenant a new date when the repairs will be completed.

If the landlord withholds money from the earnest money deposit for "lost rent," the landlord must make reasonable efforts to re-rent the premises

C6. ATCP 134.08 Prohibited Rental Agreement Provisions

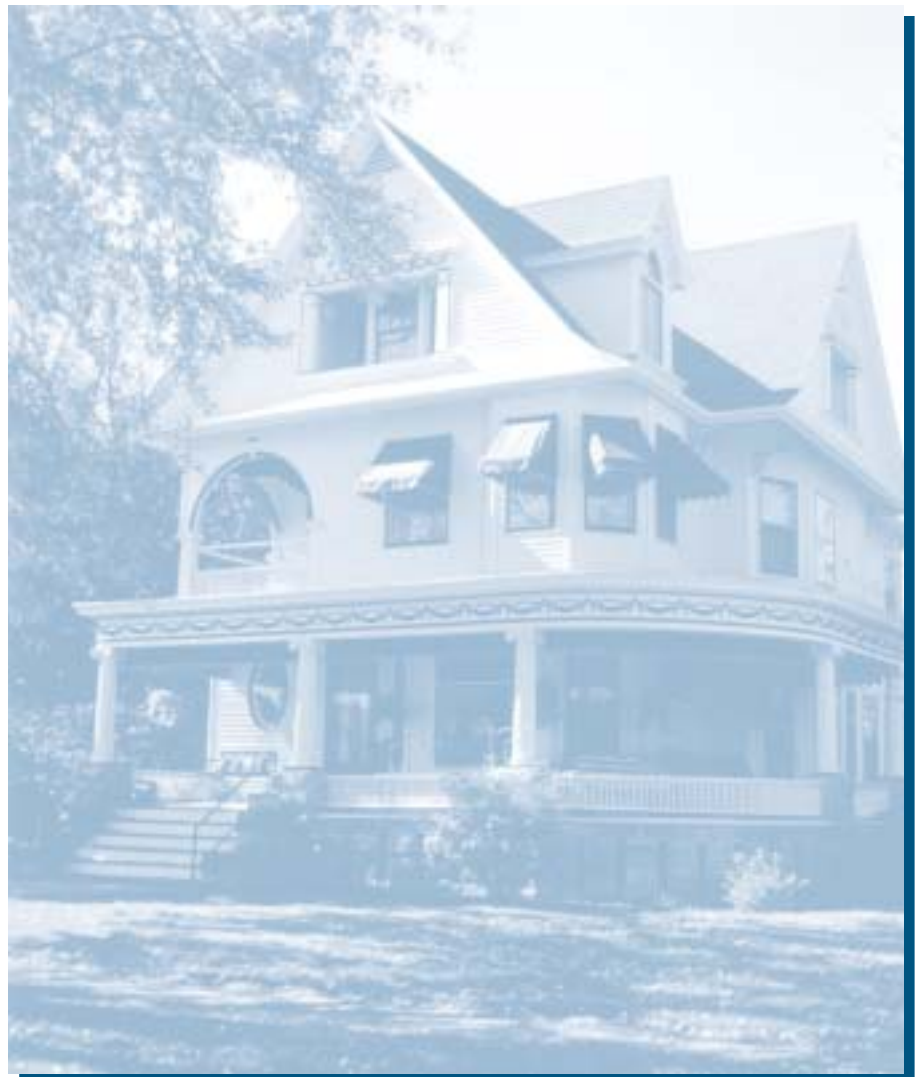
Many written rental agreements today contain "boilerplate" paragraphs which landlords use in all of their leases and which often are unfair to the consumer. Although our courts have decided that many of these "boilerplate" provisions are void and unenforceable, these same provisions continue to show up in rental agreements.

Under the rules, rental agreements *may not include* any provision which:

- (1) **Authorizes the landlord to evict or exclude the tenant from the premises**, unless the landlord has followed the statutory eviction process and has a court order.
- (2) **Provides for the acceleration of rent payments**. If the tenant breaches the lease or defaults on the lease, or in any way tries to waive the landlord's obligation to mitigate damages and re-rent the premises as required under Wisconsin Statutes, section 704.29.

- (3) **Requires the tenant to agree to pay any attorney's fees or costs the landlord may incur in any legal action or dispute arising out of the rental agreement.** (However, this does not prohibit landlords or tenants from recovering attorney's fees and costs through a court proceeding or hearing.)

- (4) **Authorizes the landlord to "confess judgment" against the tenant.** If a tenant "confesses judgment," this means the tenant admits 'guilt' and that he/she owes the landlord whatever amounts the landlord says. The court can then order the tenant to pay the landlord without ever notifying the tenant or giving the tenant a chance to give his/her side of the story in court.



Section II - Residential Rental Practices

- (5) Says the landlord is not liable for or responsible for any property damage or personal injury caused by the landlord's negligent acts or omissions.
- (6) Says the tenant is liable for personal injuries arising from causes clearly outside the tenant's control, or for property damage caused by natural disasters or persons other than the tenant, the tenant's guests, or persons the tenant has invited to the premises.

- (7) Waives any statutory or other legal obligation that requires the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.

Although landlords and tenants may agree that the tenants will be responsible for some maintenance duties, tenants cannot legally give up their legal rights, such as the right to safe and habitable housing.

Routine across-the-board deductions from the tenant's security deposit for charges or fees for cleaning, painting or carpet cleaning, unrelated to any abuse, waste or neglect by the tenant, are strictly prohibited.

C7. ATCP 134.09 Prohibited Practices

(1) Advertising or Rental of Condemned Premises

Landlords may not advertise or rent condemned or placarded premises. If the premises do not meet minimum requirements for human habitation, the landlord may not try to rent the premises. After the landlord completes the necessary repairs and the premises comply with local building and safety ordinances, the landlord may advertise the premises for rent.

(2) Unauthorized Entry

Current Landlord-Tenant law provides that tenants have the right to exclusive possession of the dwelling unit during the tenancy, unless the landlord and tenant have a written agreement that provides differently. [See Wisconsin Statutes, section 704.05(2)] Although the landlord has no general right to enter the dwelling unit without the tenant's permission, state law does authorize the landlord to enter the premises without advance approval under certain circumstances.



Advance Notice Required:

Landlords *may* enter the premises (1) after giving the tenant at least 12 hours advance notice and (2) during reasonable hours, to do any of the following:

- Inspect the premises,
- Make repairs, or
- Show the premises to prospective tenants or purchasers.

Advance Notice Not Required:

Landlords may enter the premises *without advance notice* if:

- The tenant requests or consents, in advance, to the time the landlord plans to enter the dwelling unit;
- A health or safety emergency exists;
- The tenant is absent and the landlord reasonably believes that entry is necessary to preserve or protect the premises;
- The tenant and landlord have a written agreement in a "Nonstandard Rental Provision", which identifies other reasonable times the landlord may enter the dwelling unit.

These provisions are an important statement of public policy. Their purpose is to safeguard tenants' basic rights to privacy and freedom from unannounced intrusions, while at the same time protecting the landlord's legitimate property interests.

Landlords' unannounced or unauthorized entry into dwelling units is a frequent source of landlord-tenant complaints and disputes.

If a landlord enters a dwelling unit while it is rented, the landlord must first announce his or her presence to any persons who may be present in the dwelling unit. That is, the landlord must knock on the door or ring the doorbell. If anyone is present when the landlord enters, the landlord must identify himself/herself, if anyone so requests.

(3) Automatic Lease Renewal Without Notice

State statutes currently provide that an "automatic renewal" clause in a lease is not enforceable against a tenant unless the landlord reminds the tenant of the clause, *in writing*, between 15-30 days prior to the date in the lease by which the tenants must notify the landlord whether they intend to stay or leave. (Landlords should review the language in Wisconsin Statutes, section 704.15 for the notice requirements.) Some landlords try to automatically renew a lease without giving the tenant the required notice.

A tenant who does not know about the notice requirements may feel pressured into agreeing to renew the lease. (The statute makes the automatic renewal clause unenforceable, unless the landlord gave the tenant the required "reminder.")

Example:

The lease has an automatic renewal clause. The lease will expire on December 31, 2000. The lease provides that the tenant must give the landlord 30 days' notice if the tenant does not plan to renew the lease.

Notice Requirements:

- The tenant must notify the landlord by December 1, 2000, whether the tenant plans to renew the lease.
- The landlord must give the tenant a written notice, reminding the tenant of the automatic renewal clause, between November 1, 2000 and November 15, 2000.

Section II - Residential Rental Practices

(4) Confiscating Personal Property

The rules prohibit landlords from taking a tenant's personal property or preventing a tenant from taking possession of their personal property, unless authorized by statute [Wisconsin Statutes, section 704.05(5)] or by a lien agreement entered into in writing by the parties in a "Nonstandard Rental Provision." This prohibition reinforces the statutory policy in Wisconsin Statutes, section 704.11, which abolishes the landlord's common law right to distraint for rent. ("Distraint for rent" is an old legal term that means the landlord could take any of the tenants' personal property and keep it until the tenant paid the rent. Years ago, the landlord would keep things like the tenant's cows or sheep. Today, personal property includes items like couches, beds, stereo equipment, television sets, computers, etc.)

(5) Retaliatory Eviction

Landlords may not evict or retaliate against a tenant (by doing things like turning off the heat, water or electricity to the dwelling unit) because the tenant has:

- Reported a building or housing code violation to government authorities;
- Joined or tried to organize a tenants' union or association;
- Asserted or attempted to assert his/her legal rights as a tenant.

Although the laws protect tenants from a retaliatory eviction for joining a tenants' union, this section does not protect a tenant who participates in a rent strike or other activities that are not specifically authorized by state or local law.

(6) Failure to Deliver Possession

Landlords must give the tenant access to the dwelling unit at the time agreed upon in the rental agreement. The only time it is permissible for the landlord not to "deliver possession" of the dwelling unit on the agreed date is when something happens which is beyond the landlord's control. For example, if the furnace for the dwelling unit suddenly quit working the night before the tenant was scheduled to move in and all the water pipes froze, the landlord might not be able to turn over possession of the dwelling unit the next day.

(7) Self-Help Eviction

Landlords may not exclude, forcibly evict, or constructively evict a tenant from a dwelling unit unless the landlord follows the eviction procedures established by law (Wisconsin Statutes, chapter 799). "Constructive eviction" includes, for example, when the landlord disconnects or terminates utility services, changes the locks, removes the doors from the dwelling unit, or harasses the tenants in other ways.

Landlords may not exclude, forcibly evict, or constructively evict a tenant from a dwelling unit unless the landlord follows the eviction procedures established by law

(8) Late Rent Fees and Penalties

Landlords may not charge tenants a "late rent fee" or "late rent penalty," unless the rental agreement specifically provides for such a penalty.

If the tenant has given the landlord a rent prepayment, the landlord must first apply that prepayment to any rent that is past due, before the landlord may charge the tenant a late rent fee or penalty.

Landlords may not charge tenants a fee or penalty for not paying a late rent fee or late fee penalty. For example, the tenant's rent of \$500 for April was late and the landlord charged the tenant a \$50 late rent fee. In May, the tenant paid the \$500 rent on time, but the tenant did not pay the \$50 late rent fee from April. In this situation, the landlord cannot deduct the \$50 April late fee "off the top", and then claim that the tenant only paid \$450 for rent, adding another \$50 late fee in May.

Landlords may not accept earnest money deposits until the landlord identifies the specific dwelling unit(s) for which the prospective tenant is being considered

(9) Misrepresentations

The rule prohibits landlords from making misrepresentations about the rental property or the rental agreement in order to get a prospective tenant to agree to rent from the landlord.

Under this rule, no landlord may:

- Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.
- Misrepresent or fail to disclose the total amount of rent and other non-refundable fees the tenant must pay. For example, a landlord may not advertise a unit for \$600 a month in the newspaper or on a sign and then charge a first month's rent which is more than \$600 or charge non-refundable fees which, when added to the rent, cause the total payment due in any month to exceed \$600. The highest amount payable during any rent paying period must be disclosed in any form of advertising.
- Fail to tell a prospective tenant about any non-rent charges that will increase the total amount the tenant must pay during their tenancy.

- Engage in "bait and switch" practices. For example, the landlord may not tell a prospective tenant that the landlord is considering the person for an apartment in an 8-plex on 25th Street, when the landlord really plans to rent a smaller apartment in a very large apartment complex on 2nd Street, in an industrial area. Also, the landlord may not show a fancy "model" apartment and then rent a unit which is dirty, or in poor repair.

C8. ATCP 134.10 Effect of Rules on Local Ordinances

The Residential Rental Practices rules do not prohibit or nullify any local government ordinances that do not directly conflict with the requirements of these rules. If there is a direct conflict between the Residential Rental Practices rules and a local ordinance and if a person complies with the ordinance he or she would violate the rules, then the rules control. For example, if a town ordinance allows landlords to rent condemned property, that ordinance conflicts with the Residential Rental Practices rules [Wisconsin Administrative Code, section ATCP 134.09(1)] and the rules would control. So, in this case it would still be illegal for a landlord to try to rent the condemned property. Landlords and tenants must comply with both the local ordinances and the Residential Rental Practices rules.

D. Penalties for Violating the Residential Practice Rules

The department believes that most landlords comply with the rules voluntarily, just as they do with other laws. When the department finds violations, it tries to obtain voluntary compliance from the appropriate party whenever possible. However, if enforcement action becomes necessary, violations of the rules may result in significant penalties. These penalties are part of the state statutes that the state legislature enacted. (Wisconsin Statutes, section 100.26) They also apply to other administrative rules the department administers, such as rules on auto repairs, home improvements, sweepstakes, and telemarketing. In individual cases, either the department and the person who violated the rules will mutually agree to a penalty amount, or a court will ultimately decide what the penalty will be.

A rental agreement may not include a provision which says a tenant is liable for personal injuries arising from causes clearly outside the tenant's control, or for property damage caused by natural disasters or persons other than the tenant, the tenant's guests or persons the tenant has invited to the premises

The actual penalties imposed by a court will depend on the seriousness of the violations and the damages or harm that resulted. In unusually serious cases, the maximum penalty is a civil forfeiture (which is basically the same as a "fine") of up to \$10,000 for each violation. If a court finds that the person intentionally violated the rules, the penalty may be a fine up to \$5,000 for each violation or a year in the county jail, or both. Of course, courts do not impose these maximum penalties for minor or technical violations. Less serious violations will ordinarily result in smaller penalties.

Minimum statutory penalties are a civil forfeiture of \$100 for each violation or for intentional violations, a criminal fine of \$25 for each violation. In addition to any other penalties, the court may issue an injunction telling the person not to violate the rules again in the future and may order the person who violated the rules to pay restitution to the victim. That is, the landlord must pay the tenant for any monetary losses suffered because of the violations.

The Department of Agriculture, Trade, and Consumer Protection investigates alleged violations of the Residential Rental Practices rules. If prosecution is necessary, the department works in cooperation with the Wisconsin Department of Justice, or the local District Attorney.

E. Private Remedy for Violations of the Rules

State law also allows anyone who suffers monetary losses because of violations of the Residential Rental Practices rules to file a lawsuit on their own in state court (usually small claims court) against the violator. In such an individual lawsuit the victim shall recover from the violator twice the amount of their monetary losses (or damages), plus costs, including reasonable attorney's fees. [Wisconsin Statutes, section 100.20(5)] Parties may seek this remedy directly in court, without filing a complaint with the department or involving the department. How much a person will actually recover depends on whether the victim can satisfactorily prove to the court what losses and damages he/she suffered.

The 1999 revision to the rules includes a reference to a decision issued by the Wisconsin Supreme Court in 1996. [See the notes following Wisconsin Administrative Code, sections ATCP 134.05(3) and ATCP 134.06(2)(a)] This case, *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), provides some guidance on what the courts look at in deciding how to award damages against a landlord who violated the rules in Wisconsin Administrative Code, chapter ATCP 134, regarding security deposits and earnest money deposits.

Section III: Text of Wisconsin Administrative Code, Chapter ATCP 134

Residential Rental Practices (revised, effective 1/1/99)

- ATCP 134.01 Scope and application.
- ATCP 134.02 Definitions.
- ATCP 134.03 Rental agreements and receipts.
- ATCP 134.04 Disclosure requirements.
- ATCP 134.05 Earnest money deposits and credit check fees.
- ATCP 134.06 Security deposits.
- ATCP 134.07 Promises to repair.
- ATCP 134.08 Prohibited rental agreement provisions.
- ATCP 134.09 Prohibited practices.
- ATCP 134.10 Effect of rules on local ordinances.

Note: Chapter Ag 134 was renumbered chapter ATCP 134 under s. 13.93 (2m) (b) 1., Stats., Register. April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s.100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 134.01 Scope and application. This chapter is adopted under authority of s. 100.20, Stats. This chapter applies to the rental of dwelling units located in this state, but does not apply to the rental or occupancy of any of the following:

- (1) A dwelling unit operated by a public or private institution if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services.
- (2) A dwelling unit occupied by a member of a fraternal or social organization which operates that dwelling unit.
- (3) A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest.
- (4) A dwelling unit, such as a dwelling unit in a hotel, motel, or boarding house, that is being rented only by tourist or transient occupants.
- (5) A dwelling unit which the landlord provides free of charge to any person, or which the landlord provides as consideration to a person whom the landlord currently employs to operate or maintain the premises.
- (6) A dwelling unit occupied by a tenant who is engaged in commercial agricultural operations on the premises.
- (7) [A dwelling unit] owned and operated by government, or a subdivision or agency of government.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80: am. (intro.), (1) to (6), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.02 Definitions. (1) "Building and housing codes" means laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.

(1m) "Consumer credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. ATCP 125.01(1) and (7).

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord. "Earnest money deposit" does not include a fee which a landlord charges for a credit check in compliance with s. ATCP 134.05(3).

(5) "Landlord" means the owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them.

(6) "Lease" means a lease as defined in s. 704.01 (1), Stats.

(7) "Owner" means one or more persons, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.

Section III - Text of Chapter ATCP 134

(8) "Person" means an individual, partnership, corporation, association, estate, trust, and any other legal or business entity.

(9) "Premises" means a dwelling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

(10) "Rental agreement" means an oral or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

Note: By approving an individual as a prospective tenant, a landlord does not necessarily enter into a "rental agreement" with that individual, or vice-versa. A "rental agreement" (creating a tenancy interest in real estate) arises only after the parties agree on the essential terms of tenancy, including the specific dwelling unit which the tenant will occupy and the amount of rent which the tenant will pay for that dwelling unit.

(11) "Security deposit" means the total of all payments and deposits given by a tenant to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of 1 month's prepaid rent.

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriff's execution of a judicial writ of restitution issued under s. 799.44, Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

(13) "Tenancy" means occupancy, or a right to present occupancy under a rental agreement, and includes periodic tenancies and tenancies at will. The term does not include the occupancy of a dwelling unit without consent of the landlord after expiration of a lease or termination of tenancy under ch. 704, Stats.

(14) "Tourist or transient occupants" means tourists or other persons who occupy a dwelling unit for less than sixty (60) days while traveling away from their permanent place of residence.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (2), Register, February, 1987, No. 374, eff. 3-1-87; correction in (12) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1993, No. 448; cr.(1m), (1r) and (14), am. (3) and (10), r. (4), Register, December, 1998, No. 526, eff. 1-1-99.

ATCP 134.03 Rental agreements and receipts. (1) COPIES OF RENTAL AGREEMENTS, RULES. Rental

agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

(2) RECEIPTS FOR TENANT PAYMENTS. (a) Immediately upon accepting any earnest money or security deposit, the landlord shall provide the tenant or prospective tenant with a written receipt for the deposit, stating the nature of the deposit and its amount. A receipt is not required where payment is made by check bearing a notation describing the purpose for which it was given, unless requested by the tenant.

(b) If a tenant pays rent in cash, the landlord upon receiving the cash payment shall provide the tenant with a written receipt stating the nature and amount of the payment. A landlord is not required to provide a receipt for rent payments made by check.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; renum. (2) to be (2)(a), cr. (2)(b), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.04 Disclosure requirements. (1) IDENTIFICATION OF LANDLORD OR AUTHORIZED AGENTS. (a) The landlord shall, except as provided under par. (c), disclose to the tenant in writing, at or before the time a rental agreement is entered into, the name and address of:

1. The person or persons authorized to collect or receive rent and manage and maintain the premises, and who can readily be contacted by the tenant; and
2. The owner of the premises or other person authorized to accept service of legal process and other notices and demands on behalf of the owner. The address disclosed under this subdivision shall be an address within the state at which service of process can be made in person.

(b) A landlord shall keep tenants informed of changes, if any, in the information required under par. (a). The landlord shall mail or deliver written notice of each change within 10 business days after the change occurs.(c) This subsection does not apply to an owner-occupied structure containing no more than 4 dwelling units.

(2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:

(a) All uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises. Disclosure shall be made by exhibiting to the prospective

tenant those portions of the building and housing code notices or orders which have not been fully complied with. Code violations shall not be considered corrected until their correction has been reported to code enforcement authorities.

(b) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection, whether or not notice has been received from code enforcement authorities:

1. The dwelling unit lacks hot or cold running water.
2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature, in all living areas of the dwelling unit, of at least 67° F (19° C) during all seasons of the year in which the dwelling unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.
3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.
4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.
5. The dwelling unit is not served by plumbing facilities in good operating condition.
6. The dwelling unit is not served by sewage disposal facilities in good operating condition.

(3) **UTILITY CHARGES.** If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.

Note: A sample form which landlords may use to make the disclosures required under s. ATCP 134.04 is contained in the department publication, "Landlords and Tenants -- The Wisconsin Way." You may obtain a copy of this publication by calling the department's toll-free Consumer Hotline, 1-800-422-7128, or by sending a written request to:

Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (1)(b), (2)(b) 1. and 2., cc. (2)(b) 5. And 6., Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.05 Earnest money deposits and credit check fees. (1) **ACCEPTING AN EARNEST MONEY DEPOSIT.** A landlord may not accept an earnest money deposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which that applicant is being considered for tenancy.

Note: A credit check fee authorized under sub. (4) is not an "earnest money deposit" or a "security deposit." See definition of "earnest money deposit" under s. ATCP 134.02(3).

(2) **REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT.** (a) A landlord who receives an earnest money deposit from a rental applicant shall send the full deposit to the applicant by first-class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:

1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.
2. The applicant withdraws the rental application before the landlord accepts that application.
3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.

(b) A landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:

1. Apply the earnest money deposit as rent or as a security deposit.
2. Return the earnest money deposit to the tenant.

(c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under par. (a) or (b) merely by accepting a partial payment or credit of that amount.

(3) **WITHHOLDING AN EARNEST MONEY DEPOSIT.**

(a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.

(b) A landlord may withhold from an earnest money deposit, under par. (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into a rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

Note: See *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), regarding the

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award of damage claims for failure to comply with provisions of this chapter related to security deposits. The same method of computing a tenant's damages may apply to violations related to earnest money deposits.

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to \$20, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests a consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

Note: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; reprinted to correct error in (1) (a), Register, March, 1984, No.339; r. and recr., Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.06 Security deposits. (1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES. (a) Before a landlord accepts a security deposit, or converts an earnest money deposit to a security deposit under s. ATCP 134.05(1)(b), the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified deadline date which is not less than 7 days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.
2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(b) If a tenant makes a request under par. (a)2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired. The landlord shall provide the list within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(2) RETURNING SECURITY DEPOSITS. (a) Within 21 days after a tenant surrenders the rental premises, the landlord shall deliver or mail to the tenant the full amount of any security deposit held by the landlord, less any amounts properly withheld by the landlord under sub. (3).

Note: A rent payment in excess of one month's prepaid rent is considered a "security deposit" as defined under ATCP 134.02(11). This chapter does not prevent a landlord from collecting more than one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the landlord must treat that excess as a "security deposit" under sub. (2).

Note: See *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits and earnest money deposits.

(b) A tenant surrenders the premises under par. (a) on the last day of tenancy provided under the rental agreement, except that:

1. If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.
2. If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.
3. If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

(c) If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

(d) If a landlord returns a security deposit in the form of a check, draft or money order, the landlord shall make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless the tenants designate a payee in writing.

(e) A tenant does not waive his or her right to the full amount owed under par. (a) merely by accepting a partial payment of that amount.

(3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS. (a) A landlord may withhold from a tenant's security deposit only for the following:

1. Tenant damage, waste or neglect of the premises.
2. Unpaid rent for which the tenant is legally responsible, subject to s. 704.29, Stats.
3. Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

4. Payment which the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

5. Unpaid mobile home parking fees which a local unit of government has assessed against the tenant under s. 66.058 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

6. Other reasons authorized in the rental agreement according to par. (b).

(b) A rental agreement may include one or more nonstandard rental provisions which authorize a landlord to withhold from a tenant's security deposit for reasons not identified under par. (a). The landlord shall include the nonstandard provisions, if any, in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre-printed.

(c) This subsection does not authorize a landlord to withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Note: For example, a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse.

(4) **SECURITY DEPOSIT WITHHOLDING; STATEMENT OF CLAIMS.** (a) If any portion of a security deposit is withheld by a landlord, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim.

(b) No landlord may intentionally misrepresent or falsify any claim against a security deposit, including the cost of repairs, or withhold any portion of a security deposit pursuant to an intentionally falsified claim.

(5) **TENANT FAILURE TO LEAVE FORWARDING ADDRESS.** A landlord who has otherwise complied with this section shall not be considered in violation solely because the postal service has been unable to complete mail delivery to the person addressed. This subsection does not affect any other rights that a tenant may have under law to the return of a security deposit.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; r. and recr. (1) to (3), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.07 Promises to repair. (1) **DATE OF COMPLETION.** Every promise or representation made by a landlord to a tenant or prospective tenant to the effect that the dwelling unit or any other portion of the premises, including furnishings or facilities, will be cleaned, repaired or otherwise improved by the landlord shall specify the date or time period on or within which the cleaning, repairs or improvements are to be completed.

(2) **INITIAL PROMISES IN WRITING.** All promises made before the initial rental agreement shall be in writing with a copy furnished to the tenant.

(3) **PERFORMANCE; UNAVOIDABLE DELAYS.** No landlord shall fail to complete the promised cleaning, repairs or improvements on the date or within the time period represented under sub. (1), unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or other causes beyond the landlord's control. The landlord shall give timely notice to the tenant of reasons beyond the landlord's control for any delay in performance, and stating when the cleaning, repairs or improvements will be completed.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

ATCP 134.08 Prohibited rental agreement provisions. No rental agreement may:

(1) Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799 Stats.

(2) Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport to waive the landlord's obligation to mitigate damages as provided under s. 704.29, Stats.

(3) Require payment, by the tenant, of attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent the recovery of costs or attorney's fees by a landlord or tenant pursuant to a court order under ch. 799 or 814, Stats.

(4) Authorize the landlord or any agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.

(5) Relieve, or purport to relieve the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. This does not affect ordinary maintenance obligations assumed by a tenant under a rental agreement, in accordance with sub. (7) and s.704.07, Stats.

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(6) Impose, or purport to impose liability on a tenant for:

(a) Personal injury arising from causes clearly beyond the tenant's control.

(b) Property damage caused by natural disasters, or by persons other than the tenant or the tenant's guests or invitees. This does not affect ordinary maintenance obligations assumed by a tenant under the rental agreement, in accordance with sub. (7) and s. 704.07, Stats.

(7) Waive any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; correction in (1) and (3) made under s. 13.93 (2m), (b) 7, Stats., Register, August, 1990, No. 416, am. (7), Register, December, 1998., No. 516, eff. 1-1-99.

ATCP 134.09 Prohibited practices. (1) **ADVERTISING OR RENTAL OF CONDEMNED PREMISES.** No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze, or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.

(2) **UNAUTHORIZED ENTRY.** (a) Except as provided under par. (b) or (c), no landlord may do any of the following:

1. Enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05(2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

2. Enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry, consents to a shorter time period.

(b) Paragraph (a) does not apply to an entry if any of the following applies:

1. The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.
2. A health or safety emergency exists.
3. The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

(c) A rental agreement may include a nonstandard rental

provision authorizing a landlord to enter a tenant's dwelling unit at reasonable times, under circumstances not authorized under par. (a) or (b). The landlord shall include the nonstandard provision, if any, in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials the nonstandard rental provision, it is reputedly presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre-printed.

(d) No landlord may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, and identifying himself or herself upon request.

Note: For example, a landlord may announce his or her presence by knocking or ringing the doorbell. If anyone is present in the dwelling unit, the landlord must then identify himself or herself upon request.

(3) **AUTOMATIC LEASE RENEWAL WITHOUT NOTICE.** No landlord shall enforce, or attempt to enforce, an automatic renewal or extension provision in any lease unless, as provided under s.704.15, Stats., the tenant was given separate written notice of the pending automatic renewal or extension at least 15 days, but no more than 30 days before its stated effective date.

(4) **CONFISCATING PERSONAL PROPERTY.** (a) No landlord may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property, except as authorized under s. 704.05(5), Stats., or a written lien agreement between the landlord and tenant.

(b) A lien agreement under par. (a), if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the lien agreement in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the lien agreement with the tenant before the tenant enters into any rental agreement with the landlord. The lien agreement is not effective unless signed or initialed by the tenant.

Note: See s. 704.11, Stats.

(5) **RETALIATORY EVICTION.** No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or

substantial reduction of heat, water or electricity to the dwelling unit, in retaliation against a tenant because the tenant has:

- (a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or
- (b) Joined or attempted to organize a tenant's union or association; or
- (c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

(6) **FAILURE TO DELIVER POSSESSION.** No landlord shall fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the landlord is unable to deliver possession because of circumstances beyond the landlord's control.

(7) **SELF-HELP EVICTION.** No landlord may exclude, forcibly evict or constructively evict a tenant from a dwelling unit, other than by an eviction procedure specified under ch. 799, Stats.

(8) **LATE RENT FEES AND PENALTIES.** (a) No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.

(b) Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant.

(c) No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

(9) **MISREPRESENTATIONS.** (a) No landlord may do any of the following for the purpose of inducing any person to enter into a rental agreement:

1. Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.
2. Misrepresent the amount of rent or non-rent charges to be paid by the tenant.
3. Fail to disclose, in connection with any representation of rent amount, the existence of any non-rent charges which will increase the total amount payable by the tenant during tenancy.

(b) No landlord may misrepresent to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Note: Paragraph (b) prohibits "bait and switch" rental practices by landlords. See also s. 100.18(9), Stats.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80, am. (2)

and (4), Register, December 1998, No. 516, eff. 1-1-99.

ATCP 134.10 Effect of rules on local ordinances. (1) This chapter does not prohibit or nullify any local government ordinance with which it is not in direct conflict as provided in sub. (2).

(2) In the event of any direct conflict between this chapter and any local government ordinance, such that compliance with one can only be achieved by violating the other, this chapter shall be controlling.

(3) Compliance with local government ordinances shall not relieve any person from the duty of complying with this chapter.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80. *****

Note from DATCP: Effective date: The amended rules shall take effect on January 1, 1999.

Initial applicability: The amended rules apply to rental agreements entered into, renewed or extended after January 1, 1999, and to continuing periodic tenancies beginning with the first rent-paying period beginning after January 1, 1999.

Section IV: Text of Wisconsin Statutes, Chapter 704

Landlord and Tenant (Wisconsin Statutes 1997-98)

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704.45 Retaliatory conduct in residential tenancies prohibited.

704.90 Self-service storage facilities.

704.01 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Lease," means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. A lease is included within this chapter even though it may also be treated as a conveyance under ch. 706. An agreement for transfer of possession of only personal property is not a lease.

(2) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent.

(3) "Premises" mean the property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

(4) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

(5) "Tenant at will" means any tenant holding with the permission of the tenant's landlord without a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

History: 1983 a. 189; 1993 a. 486.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.03 Requirement of writing for rental agreements and termination. (1) ORIGINAL AGREEMENT. A lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

(2) **ENTRY UNDER UNENFORCEABLE LEASE.** If a tenant enters into possession under a lease for more than one year which does not meet the requirements of sub. (1), and the tenant pays rent on a periodic basis, the tenant becomes a periodic tenant. If the premises in such case are used for residential purposes and the rent is payable monthly, the tenant becomes a month-to-month tenant; but if the use is agricultural or nonresidential, the tenant becomes a year-to-year tenant without regard to the rent-payment periods. Except for duration of the tenancy and matters within the scope of ss. 704.05 and 704.07, the terms and conditions govern the tenancy agreed upon. Notice as provided in s. 704.19 is necessary to terminate such a periodic tenancy.

(3) **ASSIGNMENT.** An assignment by the tenant of a leasehold interest which has an unexpired period of more than one year is not enforceable against the assignor unless the assignment is in writing reasonably identifying the lease and signed by the assignor; and any agreement to assume the obligations of the original lease which has an unexpired period of more than one year is not enforceable unless in writing signed by the assignee.

(4) **TERMINATION OF WRITTEN LEASE PRIOR TO NORMAL EXPIRATION DATE.** An agreement to terminate a tenancy more than one year prior to the expiration date specified in a valid written lease is not enforceable unless it is in writing signed by both parties. Any other agreement between the landlord and tenant to terminate a lease prior to its normal expiration date, or to terminate a periodic tenancy or tenancy at will without the statutory notice required by s. 704.19 may be either oral or written. Nothing herein prevents surrender by operation of law.

(5) **PROOF.** In any case where a lease or agreement is not in writing signed by both parties but is enforceable under this section, the lease or agreement must be proved by clear and convincing evidence.

History: 1993 a. 486.

704.05 Rights and duties of landlord and tenant in absence of written agreement to contrary. (1) **WHEN SECTION APPLICABLE.** So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. This section applies to any tenancy.

(2) **POSSESSION OF TENANT AND ACCESS BY LANDLORD.** Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the

premises, make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

(3) **USE OF PREMISES, ADDITIONS, OR ALTERATIONS BY TENANT.** The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering, or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

(4) **TENANT'S FIXTURES.** At the termination of the tenancy, the tenant may remove any fixtures installed by the tenant if the tenant either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by the tenant only if the tenant replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

(5) **STORAGE OR DISPOSITION OF PERSONALTY LEFT BY TENANT.** (a) **Procedure.** If a tenant removes from the premises and leaves personal property, the landlord may do all of the following:

1. Store the personalty, on or off the premises, with a lien on the personalty for the actual and reasonable cost of removal and storage or, if stored by the landlord, for the actual and reasonable value of storage. The landlord shall give written notice of the storage to the tenant within 10 days after the charges begin. The landlord shall give the notice either personally or by ordinary mail addressed to the tenant's last-known address and shall state the daily charges for storage. The landlord may not include the cost of damages to the premises or past or future rent due in the amount demanded for satisfaction of the lien. The landlord may not include rent charged for the premises in calculating the cost of storage. Medicine and medical equipment are not subject to the lien under this subdivision, and the landlord shall promptly return them to the tenant upon request.

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2. Give the tenant notice, personally or by ordinary mail addressed to the tenant's last-known address, of the landlord's intent to dispose of the personalty by sale or other appropriate means if the property is not repossessed by the tenant. If the tenant fails to repossess the property within 30 days after the date of personal service or the date of the mailing of the notice, the landlord may dispose of the property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if the landlord has first stored the personalty under subd.1. If the proceeds minus the costs of sale and minus any storage charges are not claimed within 60 days after the date of the sale of the personalty, the landlord is not accountable to the tenant for any of the proceeds of the sale or the value of the property. The landlord shall send the proceeds of the sale minus the costs of the sale and minus any storage charges to the department of administration for deposit in the appropriation under s. 20.505(7)(gm)

3. Store the personalty without a lien and return it to the tenant.

(c) Rights of third persons. The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by the tenant or by others. That lien has priority over any ownership or security interest, and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. The tenant or any secured party has the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges under par. (a) for removal, storage, disposition and arranging for the sale.

(d) Other procedure. The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.

History: 1993 a. 374, 486.

Constructive eviction discussed. *First Wis. Trust Co. v. L. Wiemann Co.* 93 W (2d) 258, 286 NW (2d) 360 (1980).

Allegation in lessee's complaint that premises were undamaged did not relieve lessor of burden to prove damages. *Rivera v. Eisenberg*, 95 W (2d) 384, 290 NW (2d) 539 (Ct. App. 1980).

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? *Love*, 1975 WLR 19.

704.06 Water heater thermostat settings. A landlord of premises which are subject to a residential tenancy and served by a water heater serving only that premises shall set the thermostat of that water heater at no higher than 125 degrees Fahrenheit before any new tenant occupies

that premises or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

History: 1987 a. 102.

704.07 Repairs; untenability. (1) APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements of this section in a residential tenancy is void. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

(2) DUTY OF LANDLORD. (a) Unless the repair was made necessary by the negligence or improper use of the premises by the tenant, the landlord is under duty to:

1. Keep in reasonable state of repair portions of the premises over which the landlord maintains control;
2. Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services which the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator or air conditioning;
3. Make all necessary structural repairs;
4. Except for residential premises subject to a local housing code, repair or replace any plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition, except as provided in sub. (3)(b).
5. For a residential tenancy, comply with local housing code applicable to the premises.

(b) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from the landlord's duty as to the other tenants to make repairs as provided in par. (a).

(c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either sub. (3) or (4) governs.

(3) DUTY OF TENANT. (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(b) Except for residential premises subject to a local housing code, the tenant is also under a duty to keep

plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

(c) A tenant in a residential tenancy shall comply with a local housing code applicable to the premises.

(4) **UNTENANTABILITY.** If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of sub. (2) materially affecting the health or safety of the tenant, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard or the substantial violation of sub. (2) materially affecting the health or safety of the tenant; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

History: 1981 c. 286; 1993 a 213, 486, 491.

The remedy provided by (3) does not exclude diminution of market value as an alternative method of computing such damages, and although the former is to be preferred where the property is easily repairable and the latter where the injury does not destroy the property, evidence of each method may be introduced by either party with the lesser amount awardable as the proper measure of damages. *Laska v. Steinpreis*, 69 W (2d) 307, 231 NW (2d) 196.

Landlord must exercise ordinary care toward tenant and others on premise with permission. *Pagelsdorf v. Safeco Ins. Co. of America*, 91 W (2d) 734, 284 NW (2d) 55 (1979).

Sub. (3)(a) requires a tenant to pay for damage which the tenant negligently causes to a landlord's property regardless of whether the landlord or landlord's insurer initially pays for the damage. *Bennett v. West Bend Mutual Ins. Co.* 200 W (2d) 313, 546 NW (2d) 204 (Ct. App. 1996).

Landlord and tenant law-the implied warranty of habitability in residential leases. 58 MLR 191.

Landlord no longer immune from tort liability for failure to exercise reasonable care in maintaining premises. 64 MLR 563 (1981).

704.09 Transferability; effect of assignment or transfer; remedies. (1) **TRANSFERABILITY OF INTEREST OF TENANT OR LANDLORD.** A tenant under a tenancy at will or any periodic tenancy less than year-to-year may not assign or sublease except with the agreement or consent of the landlord. The interest of any other tenant or the interest of any landlord may be transferred except as the lease expressly restricts power to transfer. A lease restriction on transfer is construed to apply only to voluntary transfer unless there is an express restriction on transfer by operation of law.

(2) Effect of transfer on liability of transferor. In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of any contractual obligations under the lease, except in the special situation governed by s. 704.25 (5).

(3) Covenants which apply to transferee. All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach which occurs during the period when the successor holds his or her interest, unless the successor has by contract assumed greater liability; a personal representative may also recover damages for a breach for which the personal representative's decedent could have recovered.

(4) Same procedural remedies. The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

(5) Consent as affecting subsequent transfers. If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers. History: 1971 c. 211 s. 126; 1993 a. 486.

704.11 Lien of landlord. Except as provided in ss. 704.05 (5), 704.90 and 779.43 or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distraint for rent is abolished.

History: 1979 c. 32 s. 92 (9); 1987 a. 23 s. 2.

704.13 Acts of tenant not to affect rights of landlord. No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord or the latter's successors in interest can prejudice the right of the original landlord or the original landlord's successors to possession of the premises. History: 1993 a. 486.

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704.15 Requirement that landlord notify tenant of automatic renewal clause. A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to the lessor, gives to the tenant written notice in the same manner as specified in s. 704.21 calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

History: 1993 a. 486.

704.17 Notice terminating tenancies for failure to pay rent or other breach by tenant. (1) MONTH-TO-MONTH AND WEEK-TO-WEEK TENANCIES. (a) If a month-to-month tenant or a week-to-week tenant fails to pay rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. A month-to-month tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a month-to-month tenant commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's agreement, other than for payment of rent, the tenancy can be terminated if the landlord gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(c) A property owner may terminate the tenancy of a week-to-week or month-to-month tenant if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(2) TENANCIES UNDER A LEASE FOR ONE YEAR

OR LESS, AND YEAR-TO-YEAR TENANCIES. (a) If a tenant under a lease for a term of one year or less, or a year-to-year tenant, fails to pay any installment of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a tenant has been given such a notice and has paid the rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent installment of rent on time, the tenant's tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a tenant under a lease for a term of one year or less, or a year-to-year tenant, commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice. A tenant is deemed to be complying with the notice if promptly upon receipt of such notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach. If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(c) A property owner may terminate the tenancy of a tenant who is under a lease for a term of one year or less or who is a year-to-year tenant if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the

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credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(3) LEASE FOR MORE THAN ONE YEAR. (a) If a tenant under a lease for more than one year fails to pay rent when due, or commits waste, or breaches any other covenant or condition of the tenant's lease, the tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay the rent, repair the waste, or otherwise comply with the lease on or before a date at least 30 days after the giving of the notice, and if the tenant fails to comply with the notice. A tenant is deemed to be complying with the notice if promptly upon receipt of the notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach; but in case of failure to pay rent, all rent due must be paid on or before the date specified in the notice.

(b) A property owner may terminate the tenancy of a tenant who is under a lease for a term of more than one year if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(4) FORM OF NOTICE AND MANNER OF GIVING. Notice must be in writing and given as specified in s. 704.21. If so given, the tenant is not entitled to possession or occupancy of the premises after the date of termination specified in the notice.

(5) CONTRARY PROVISION IN THE LEASE. Provisions in the lease or rental agreement for termination contrary to this section are invalid except in leases for more than one year.

History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267.

Only a limited number of defenses may be raised in an eviction action, including such defenses as the landlord's title to the premises and whether the eviction was in retaliation for the tenant's reporting housing

violations, but not including those raised by defendants as to violation of federal antitrust and state franchise laws-as well as public policy defenses. *Clark Oil & Refining Corp. v. Leistikow*, 69 Wis. 2d 226, 230 N.W.2d 736.

Absent notice of termination, the violation of the terms of a lease that required landlord permission for long term guests did not result in the tenants losing their rights to possession of the property. Consequently the tenants' guests were on the premises with the legal possessor's permission and were not trespassers. *Johnson v. Blackburn*, 220 Wis. 2d 260, 582 N.W.2d 488 (Ct. App. 1998).

704.19 Notice necessary to terminate periodic tenancies and tenancies at will. (1) SCOPE OF SECTION. The following types of tenancies, however created, are subject to this section:

(a) A periodic tenancy, whether a tenancy from year-to-year, from month-to-month, or for any other periodic basis according to which rent is regularly payable; and

(b) A tenancy at will.

(2) REQUIREMENT OF NOTICE. (a) A periodic tenancy or a tenancy at will can be terminated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless any of the following conditions is met:

1. The parties have agreed expressly upon another method of termination and the parties' agreement is established by clear and convincing proof.

2. Termination has been effected by a surrender of the premises.

3. Subsection (6) applies.

(b) A periodic tenancy can be terminated by notice under this section only at the end of a rental period. In the case of a tenancy from year-to-year the end of the rental period is the end of the rental year even though rent is payable on a more frequent basis. Nothing in this section prevents termination of a tenancy for nonpayment of rent or breach of any other condition of the tenancy, as provided in s. 704.17.

(3) LENGTH OF NOTICE. At least 28 days' notice must be given except in the following cases: If rent is payable on a basis less than monthly, notice at least equal to the rent-paying period is sufficient; all agricultural tenancies from year-to-year require at least 90 days' notice.

(4) CONTENTS OF NOTICE. Notice must be in writing, formal or informal, and substantially inform the other party to the landlord-tenant relation of the intent to terminate the tenancy and the date of termination. A notice is not invalid because of errors in the notice which do not mislead, including omission of the name of one of several landlords or tenants.

(5) EFFECT OF INACCURATE TERMINATION DATE IN

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NOTICE. If a notice provides that a periodic tenancy is to terminate on the first day of a succeeding rental period rather than the last day of a rental period, and the notice was given in sufficient time to terminate the tenancy at the end of the rental period, the notice is valid; if the notice was given by the tenant, the landlord may require the tenant to remove on the last day of the rental period, but if the notice was given by the landlord the tenant may remove on the last day specified in the notice. If a notice specified any other inaccurate termination date, because it does not allow the length of time required under sub. (3) or because it does not correspond to the end of a rental period in the case of a periodic tenancy, the notice is valid but not effective until the first date which could have been properly specified in such notice subsequent to the date specified in the notice, but the party to whom the notice is given may elect to treat the date specified in the notice as the legally effective date. If a notice by a tenant fails to specify any termination date, the notice is valid but not effective until the first date which could have been properly specified in such notice as of the date the notice is given.

(6) **TENANT MOVING OUT WITHOUT NOTICE.** If any periodic tenant vacates the premises without notice to the landlord and fails to pay rent when due for any period, such tenancy is terminated as of the first date on which it would have terminated had the landlord been given proper notice on the day the landlord learns of the removal.

(7) **WHEN NOTICE GIVEN.** Notice is given on the day specified below, which is counted as the first day of the notice period:

(a) The day of giving or leaving under s. 704.21 (1) (a) and (2) (a) and (b);

(b) The day of leaving or affixing a copy or the date of mailing, whichever is later, under s. 704.21 (1) (b) and (c);

(c) The 2nd day after the day of mailing if the mail is addressed to a point within the state, and the 5th day after the day of mailing in all other cases, under s. 704.21 (1) (d) and (2) (c);

(d) The day of service under s. 704.21 (1) (e) and (2) (d).

(e) The day of actual receipt by the other party under s. 704.21 (5).

(8) **EFFECT OF NOTICE.** If a notice is given as required by this section, the tenant is not entitled to possession or occupancy of the premises after the date of termination as specified in the notice.

History: 1993 a. 486; 1995 a. 225.

A landlord cannot evict a tenant solely because the tenant has reported building code violations. *Dickhut v. Norton*, 45 Wis. 2d 389, 173 N.W.2d 297.

Retaliatory eviction as a defense. 54 MLR 239.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.21 Manner of giving notice. (1) **NOTICE BY LANDLORD.** Notice by the landlord or a person in the landlord's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the tenant or by leaving a copy at the tenant's usual place of abode in the presence of some competent member of the tenant's family at least 14 years of age, who is informed of the contents of the notice;

(b) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last-known address;

(c) If notice cannot be given under par. (a) or (b) with reasonable diligence, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last-known address;

(d) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

(2) **NOTICE BY TENANT.** Notice by the tenant or a person in the tenant's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the landlord or to any person who has been receiving rent or managing the property as the landlord's agent, or by leaving a copy at the landlord's usual place of abode in the presence of some competent member of the landlord's family at least 14 years of age, who is informed of the contents of the notice;

(b) By giving a copy of the notice personally to a competent person apparently in charge of the landlord's regular place of business or the place where the rent is payable;

(c) By mailing a copy by registered or certified mail to the landlord at the landlord's last-known address or to the person who has been receiving rent or managing the property as the landlord's agent at that person's last-known address;

(d) By serving the landlord as prescribed in s. 801.11 for the service of a summons.

(3) **CORPORATION OR PARTNERSHIP.** If notice is to be given to a corporation notice may be given by any method provided in sub. (1) or (2) except that notice under

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sub. (1) (a) or (2) (a) may be given only to an officer, director, registered agent or managing agent, or left with an employe in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to a general partner or managing agent of the partnership, or left with an employe in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least 14 years of age, who is informed of the contents of the notice.

(4) NOTICE TO ONE OF SEVERAL PARTIES. If there are 2 or more landlords or 2 or more cotenants of the same premises, notice given to one is deemed to be given to the others also.

(5) EFFECT OF ACTUAL RECEIPT OF NOTICE. If notice is not properly given by one of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the party alleging actual receipt to prove the fact by clear and convincing evidence.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1993 a. 486.

704.22 Service of process in residential tenancy on nonresident party. (1) A party to a residential tenancy in this state who is not a resident of this state shall designate an agent to accept service of process in this state for an action involving the tenancy. The agent shall be a resident of this state or a corporation authorized to do business in this state. If a party is a corporation, the agent is the corporation's registered agent.

(2) Designation of an agent under sub. (1) shall be in writing and filed with the department of financial institutions.

History: 1981 c. 300; 1995 a. 27.

704.23 Removal of tenant on termination of tenancy. If a tenant remains in possession without consent of the tenant's landlord after termination of the tenant's tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

History: 1993 a. 486.

704.25 Effect of holding over after expiration of lease; removal of tenant. (1) REMOVAL AND RECOVERY OF DAMAGES. If a tenant holds over after expiration of a lease, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

(2) CREATION OF PERIODIC TENANCY BY HOLDING OVER. (a) Nonresidential leases for a year or longer. If premises are leased for a year or longer primarily for other than private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a year-to-year basis.

(b) All other leases. If premises are leased for less than a year for any use, or if leased for any period primarily for private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a month-to-month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(c) When election takes place. Acceptance of rent for any period after expiration of a lease or other conduct manifesting the landlord's intent to allow the tenant to remain in possession after the expiration date constitutes an election by the landlord under this section unless the landlord has already commenced proceedings to remove the tenant.

(3) TERMS OF TENANCY CREATED BY HOLDING OVER. A periodic tenancy arising under this section is upon the same terms and conditions as those of the original lease except that any right of the tenant to renew or extend the lease, or to purchase the premises, or any restriction on the power of the landlord to sell without first offering to sell the premises to the tenant, does not carry over to such a tenancy.

(4) EFFECT OF CONTRARY AGREEMENT. This section governs except as the parties agree otherwise either by the terms of the lease itself or by an agreement at any subsequent time.

(5) HOLDOVER BY ASSIGNEE OR SUBTENANT. If an assignee or subtenant hold over after the expiration of the lease, the landlord may either elect to:

(a) Hold the assignee or subtenant or, if he or she participated in the holding over, the original tenant as a periodic tenant under sub. (2); or

(b) Remove any person in possession and recover damages from the assignee or subtenant or, if the landlord has not been accepting rent directly from the assignee or subtenant, from the original tenant.

(6) NOTICE TERMINATING A TENANCY CREATED BY HOLDING OVER. Any tenancy created pursuant to this section is terminable under s. 704.19.

History: 1983 a. 36.

704.27 Damages for failure of tenant to vacate at end of lease or after notice. If a tenant remains in possession without consent of the tenant's landlord after expiration of

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a lease or termination of a tenancy by notice given by either the landlord or the tenant, or after termination by valid agreement of the parties, the landlord may recover from the tenant damages suffered by the landlord because of the failure of the tenant to vacate within the time required. In absence of proof of greater damages, the landlord may recover as minimum damages twice the rental value apportioned on a daily basis for the time the tenant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the tenant for the prior rental period, and includes the money equivalent of any obligations undertaken by the tenant as part of the rental agreement, such as payment of taxes, insurance and repairs.

History: 1993 a. 486.

This section requires a minimum award of double rent where greater damages have not been proved. *Vincenti v. Stewart*, 107 Wis. 2d 651, 321 N.W.2d 340 (Ct. App. 1982).

"Rental value" includes only those obligations tenant is required to pay during holdover period regardless of whether or not tenant uses premises. *Univest Corp. v. General Split Corp.* 148 Wis. 2d 29, 435 N.W.2d 234 (1989).

704.29 Recovery of rent and damages by landlord; mitigation. (1) Scope of section. If a tenant unjustifiably removes from the premises prior to the effective date for termination of the tenant's tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord can recover rent and damages except amounts which the landlord could mitigate in accordance with this section, unless the landlord has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease, a periodic tenant, or an assignee of either.

(2) MEASURE OF RECOVERY. In any claim against a tenant for rent and damages, or for either, the amount of recovery is reduced by the net rent obtainable by reasonable efforts to rerent the premises. Reasonable efforts mean those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that such steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant is credited with rent actually received under a re rental agreement minus expenses incurred as a reasonable incident of acts under sub. (4), including a fair proportion of any cost of remodeling or other capital improvements. In any case the landlord can recover, in addition to rent and other

elements of damage, all reasonable expenses of listing and advertising incurred in re renting and attempting to re rent (except as taken into account in computing the net rent under the preceding sentence). If the landlord has used the premises as part of reasonable efforts to re rent, under sub. (4) (c), the tenant is credited with the reasonable value of the use of the premises, which is presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it is reasonable for the landlord to rent the other premises for the landlord's own account in preference to those vacated by the defaulting tenant.

(3) BURDEN OF PROOF. The landlord must allege and prove that the landlord has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part thereof was not reasonable, that any terms and conditions upon which the landlord has in fact re rented were not reasonable, and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with sub. (4) (c); the tenant also has the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by re renting.

(4) ACTS PRIVILEGED IN MITIGATION OF RENT OR DAMAGES. The following acts by the landlord do not defeat the landlord's right to recover rent and damages and do not constitute an acceptance of surrender of the premises:

(a) Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;

(b) Rentering the premises or a part thereof, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;

(c) Use of the premises by the landlord until such time as re renting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that the landlord will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period;

(d) Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

History: 1993 a. 486.

Sale of property constituted acceptance of surrender of premises and termination of lease. *First Wis. Trust Co. v. L. Wiemann Co.* 93 Wis. 2d 258, 286 N.W.2d 360 (1980).

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Court's retention of jurisdiction to determine damages for rents not yet due is permitted. Mitigation expenses which may be recovered are limited to necessary expenses incurred and does not include compensation for time spent in mitigating damages. *Kersten v. H.C. Prange Co.* 186 Wis. 2d 49, 520 NW(2d) 99 (Ct. App. 1994).

Landlord has obligation to re-rent when tenant breaches lease; specific performance is not proper remedy. *Chi-Mil. Corp. v. W. T. Grant Co.* 422 F. Supp. 46.

704.31 Remedy on default in long terms; improvements.

(1) If there is a default in the conditions in any lease or a breach of the covenants thereof and such lease provides for a term of 30 years or more and requires the tenant to erect or construct improvements or buildings upon the land demised at the tenant's own cost and exceeding in value the sum of \$50,000, and such improvements have been made and the landlord desires to terminate the lease and recover possession of the property described therein freed from all liens, claims or demands of such lessee, the landlord may, in case of any breach or default, commence an action against the tenant and all persons claiming under the tenant to recover the possession of the premises leased and proceed in all respects as if the action was brought under the statute to foreclose a mortgage upon real estate, except that no sale of the premises shall be ordered.

(2) The judgment shall determine the breach or default complained of, fix the amount due the landlord at such time, and state the several amounts to become due within one year from the entry thereof, and provide that unless the amount adjudged to be due from the tenant, with interest thereon as provided in the lease or by law, shall be paid to the landlord within one year from the entry thereof and the tenant shall, within such period, fully comply with the judgment requiring the tenant to make good any default in the conditions of the lease, that the tenant and those claiming under the tenant shall be forever barred and foreclosed of any title or interest in the premises described in the lease and that in default of payment thereof within one year from the entry of the judgment the tenant shall be personally liable for the amount thereof. During the one-year period ensuing the date of the entry of the judgment the possession of the demised premises shall remain in the tenant and the tenant shall receive the rents, issues and profits thereof; but if the tenant fails to comply with the terms of the judgment and the same is not fully satisfied, and refuses to surrender the possession of the demised premises at the expiration of said year, the landlord shall be entitled to a writ of assistance or execution to be issued and executed as provided by law.

(3) This section does not apply to a lease to which a local professional baseball park district created under subch. III of ch. 229 is a party.

History: 1993 a. 486; 1995 a. 56.

704.40 Remedies available when tenancy dependent upon life of another terminates. (1) Any person occupying premises as tenant of the owner of a life estate or any person owning an estate for the life of another, upon cessation of the measuring life, is liable to the owner of the reversion or remainder for the reasonable rental value of the premises for any period the occupant remains in possession after termination of the life estate. Rental value as used in this section has the same meaning as rental value defined in s. 704.27.

(2) The owner of the reversion or remainder can remove the occupant in any lawful manner including eviction proceedings under ch. 799 as follows:

(a) If the occupant has no lease for a term, upon terminating the occupant's tenancy by giving notice as provided in s. 704.19;

(b) If the occupant is in possession under a lease for a term, upon termination of the lease or one year after written notice to the occupant given in the manner provided by s. 704.21 whichever occurs first, except that a farm tenancy can be terminated only at the end of a rental year.

(3) The occupant must promptly after written demand give information as to the nature of the occupant's possession. If the occupant fails to do so, the reversioner or remainderman may treat the occupant as a tenant from month-to-month.

History: 1979 c. 32 s. 92 (16); 1993 a. 486.

704.45 Retaliatory conduct in residential tenancies prohibited. (1) Except as provided in sub. (2), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:

(a) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(b) Complaining to the landlord about a violation of s. 704.07 or a local housing code applicable to the premises.

(c) Exercising a legal right relating to residential tenancies.

(2) Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (1).

(3) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

History: 1981 c. 286.

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704.90 Self-service storage facilities. (1) DEFINITIONS. In this section:

(a) "Default" means the lessee fails to pay rent or other charges due under a rental agreement for a period of 7 consecutive days after the due date under the rental agreement.

(am) "Last-known address" means the address provided by a lessee to an operator in the most recent rental agreement between the lessee and the operator or the address provided by a lessee to an operator in a written notice of a change of address, whichever address is provided later.

(b) "Leased space" means space located within a self-service storage facility that a lessee is entitled to use for the storage of personal property on a self-service basis pursuant to a rental agreement and that is not rented or provided to the lessee in conjunction with property for residential use by the lessee.

(c) "Lessee" means a person entitled to the use of a leased space, to the exclusion of others, under a rental agreement, or the person's sublessee, successor or assign.

(d) "Operator" means the owner, lessor or sublessor of a self-service storage facility, an agent of any of them or any other person who is authorized by the owner, lessor or sublessor to manage the self-service storage facility or to receive rent from a lessee under a rental agreement.

(e) "Personal property" means movable property not affixed to land, including goods, wares, merchandise, motor vehicles, watercraft, household items and furnishings.

(f) "Rental agreement" means a lease or agreement between a lessee and an operator that establishes or modifies any provisions concerning the use of a leased space, including who is entitled to the use of the leased space.

(g) "Self-service storage facility" means real property containing leased spaces but does not include a warehouse or other facility if the operator of the warehouse or facility issues a warehouse receipt, bill of lading or other document of title for personal property stored in the leased spaces.

(2) USE OF LEASED SPACE. (a) An operator may not knowingly permit a leased space to be used for residential purposes.

(b) A lessee may not use a leased space for residential purposes.

(2m) Written rental agreement. Every rental agreement shall be in writing and shall contain a provision allowing the lessee to specify the name and last-known address of a person who, in addition to the lessee, the operator is

required to notify under sub. (5) (b) 1.

(3) LIEN AND NOTICE IN RENTAL AGREEMENT. (a) An operator has a lien on all personal property stored in a leased space for rent and other charges related to the personal property, including expenses necessary to the preservation, removal, storage, preparation for sale and sale of the personal property. The lien attaches as of the first day the personal property is stored in the leased space and is superior to any other lien on or security interest in the personal property except for a statutory lien or a security interest that is perfected by filing prior to the first day the personal property is stored in the leased space, a security interest in a vehicle perfected under ch. 342 or a security interest in a boat perfected under ch. 30.

(b) A rental agreement shall state in boldface type that the operator has a lien on personal property stored in a leased space and that the operator may satisfy the lien by selling the personal property, as provided in this section, if the lessee defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(4) CARE AND CUSTODY. Except as provided in the rental agreement and in this section, a lessee has exclusive care, custody and control of personal property stored in the lessee's leased space.

(4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement is subject to the procedures and remedies in subs. (4r) to (9) and (12).

(4r) DENIAL OF ACCESS; REMOVAL AND STORAGE.

(a) If a lessee defaults, an operator may deny the lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a).

(b) After the termination, by expiration or otherwise, of a rental agreement for the use of a leased space by a lessee, an operator may remove personal property remaining in the leased space and store the personal property at another site within or outside the self-service storage facility or the operator may continue to store the personal property in the leased space, and the operator may deny the former lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a). The operator may charge a reasonable rent for storage of the personal property, whether at another site or in the leased space. A former lessee who fails to pay the rent is subject to all procedures and remedies set forth in this section for default.

(5) REDEMPTION AND NOTICE OF OPPORTUNITY TO REDEEM. (a) At any time prior to sale under sub. (6),

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a lessee may redeem personal property by paying the operator any rent and other charges due. Upon receipt of such payment, the operator shall return the personal property, and thereafter the operator shall have no liability to any person with respect to such personal property.

(b) An operator may not sell personal property under sub. (6) unless the operator first delivers the following 2 notices:

1. A first notice sent by regular mail to the last-known address of the lessee and the person, if any, specified in the rental agreement under sub. (2m) containing all of the following:

a. Notification that the lessee is in default or has failed to pay rent for the storage of personal property abandoned after the termination of the rental agreement or both.

b. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

c. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

d. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

2. A 2nd notice sent by certified mail to the last-known address of the lessee containing all of the following:

a. A statement that the operator has a lien on personal property stored in a leased space.

ag. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

am. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

b. An itemized statement of the operator's claim for rent and other charges due as of the date of the notice and of additional rent and other charges that will become due prior to sale and the dates when they will become due.

c. A demand for payment of the rent and other charges due within a time period not sooner than 14 days after the date of the notice.

d. A statement that unless the rent and other charges are paid within the time period under subd. 2. c., the personal property will be sold, a specification of the date, time and place of sale and a statement that if the property is sold the operator shall apply the proceeds of the sale first to satisfy the lien and shall report and deliver any balance to the state treasurer as provided under ch. 177.

e. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

(6) SALE, NOTICE OF SALE AND PROCEEDS OF SALE. (a) After the expiration of the time period given in the 2nd notice under sub. (5) (b) 2. c., an operator may sell personal property that was stored in a lessee's leased space to satisfy the lien under sub. (3) (a) in the manner set forth in pars. (b) and (c) if all of the following conditions are met:

2. The operator has complied with the notice requirements under sub. (5) (b).

3. The lessee has failed to redeem the personal property under sub. (5) (a) within the time period specified in the notice under sub. (5) (b) 2. c.

4. An advertisement of the sale is published once a week for 2 consecutive weeks in a newspaper of general circulation where the self-service storage facility is located.

5. The advertisement under subd. 4. contains all of the following:

a. A brief and general description of the personal property reasonably adequate to permit its identification, as provided in the notices under sub. (5) (b).

b. The address of the self-service storage facility, the number, if any, of the space where the personal property is located and the name of the lessee.

6. The sale takes place not sooner than 15 days after the first publication under subd. 4.

7. The sale is conducted in a commercially reasonable manner and conforms to the terms of the notices under sub. (5) (b).

8. The sale is held at the self-service storage facility or at the nearest suitable place to the place where the personal property is stored.

(b) The operator shall apply the proceeds of the sale first to satisfy the lien under sub. (3) (a). The operator shall report and deliver any balance to the state treasurer as provided under ch. 177.

(c) A purchaser in good faith of personal property sold takes the personal property free and clear of any rights of any person against whom the lien under sub. (3) (a) was

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valid and any rights of any other lienholder, regardless of any noncompliance with the requirements of this section by any person.

(7) NOTICE; PRESUMPTION OF DELIVERY. Notice by mailing under sub. (5) (b) is presumed delivered if deposited with the U.S. postal service, properly addressed to the last-known address of the lessee or person specified in the rental agreement under sub. (2m) with postage prepaid.

(8) SUPPLEMENTAL NATURE OF SECTION. This section does not impair or affect in any way the right of parties to create liens by special contract or agreement, nor does it impair or affect any lien not arising under this section, whether the other lien is statutory or of any other nature.

(9) RULES. The department of agriculture, trade and consumer protection may promulgate rules necessary to carry out the purposes of this section.

(10) PENALTIES. (a) Except as provided in par. (b), any person who violates this section or any rule promulgated under this section may be required to forfeit not more than \$1,000 for the first offense and may be required to forfeit not more than \$3,000 for the 2nd or any later offense within a year. Each day of continued violation constitutes a separate offense. The period shall be measured by using the dates of the offenses which resulted in convictions.

(b) Paragraph (a) does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(c) Forfeitures under par. (a) shall be enforced by action on behalf of the state by the department of justice or by the district attorney of the county where the violation occurs.

(11) DUTIES OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION. (a) Except as provided in par. (c), the department of agriculture, trade and consumer protection shall investigate alleged violations of this section and rules promulgated under sub. (9). To facilitate its investigations, the department may subpoena persons and records and may enforce compliance with the subpoenas as provided in s. 885.12.

(b) Except as provided in par. (a), the department may, on behalf of the state, bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or any rule promulgated under sub. (9).

(c) This subsection does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or

fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(12) RIGHT TO ACTION FOR VIOLATION. In addition to the remedies otherwise provided by law, any person injured by a violation of this section or any rule promulgated under sub. (9) may bring a civil action to recover damages together with costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1), and any equitable relief as may be determined by the court.

History: 1987 a. 23; 1991 a. 39; 1995 a. 27.

Section V - Removal and Storage of Tenant's Property Upon Eviction

Section V: Analysis of Wisconsin Act 317

Wisconsin Legislative Council
Staff July 15, 1998

Information Memorandum
98-24*

Relating to the Removal and Storage of a Tenant's Property Upon Eviction (1997 Wisconsin Act 317)

This Information Memorandum describes recent changes to the law governing the removal and storage of a tenant's property upon eviction of the tenant set forth in s. 799.45, Stats. These changes were passed into law as 1997 Wisconsin Act 317, which was signed by Governor Tommy G Thompson on June 30, 1998. The Act takes effect on July 15, 1998. The Act originated as 1997 Assembly Bill 872, which was introduced by Representative Grothman and others; cosponsored by Senator Weeden and others.

The provisions of the Act first apply to writs of restitution (i.e., orders of eviction) issued on July 15, 1998.

Copies of 1997 Wisconsin Act 317 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone; (608) 266-2400

A. Authority of a landlord to move and store or dispose of property left in the premises by a tenant who has been evicted.

Under prior law, a landlord was not authorized to remove and store or dispose of any property left in the premises which were the subject of an eviction action by a tenant who had been evicted. Rather, only the sheriff was permitted to remove and store or dispose of such property.

Act 317 provides that in counties *other* than counties with a population of 500,000 or more, that is, in *any county other than Milwaukee County*, if certain conditions are met, the landlord may choose to remove and store or dispose of property found in the premises by a tenant who has been evicted. *Section B* of this Information Memorandum describes the responsibilities of the sheriff if the landlord chooses to remove and store or dispose of property found in the premises. If the landlord does not choose to remove and store or dispose of the property left in the premises, then the sheriff must do so. *Section C* of this Information Memorandum describes the procedures followed by the sheriff when the sheriff removes and stores or disposes of property found in the premises.

Because Act 317 does not apply to Milwaukee County, the procedure for removal and storage of property found in the premises upon eviction in Milwaukee County are unchanged; the sheriff must remove and store or dispose of the property. That procedure is set forth in Section C of this Information Memorandum.

The conditions which must be met in order for a landlord to remove and store or dispose of property found in the premises from which a tenant has been evicted are the following:



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1. Notifying the sheriff. The landlord or his or her attorney or agent must notify the sheriff that the landlord or his or her agent will be responsible for the removal and storage or disposal of the property that is found in the premises, and which does not belong to the landlord, when the writ of restitution is delivered to the sheriff. The writ of restitution is the court order issued in an eviction action which requires the sheriff to remove the tenant from the premises.

2. File with the clerk of court. The landlord or the landlord's attorney or agent must file with the clerk of court that issued the writ of restitution a bond or an insurance policy to pay the departing tenant and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.

If the landlord notifies the sheriff that the landlord or his or her agent will remove and store or dispose of property found in the premises, the landlord is not required to provide the sheriff with a deposit for the cost of removal of the property, as is required when the sheriff removes the property.

If the landlord or landlord's agent removes and stores any property left on the premises by a tenant who has been evicted, the landlord or the landlord's agent must do all of the following:

1. Notify the sheriff not later

than the date on which the sheriff executes the writ of restitution of the address of the premises where the former tenant's property will be stored.

2. Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the name, address and telephone number of the person the former tenant may contract to obtain possession of the property.

3. Exercise ordinary care in removing the property from the premises and in the handling and storage of all property removed from the premises.

4. Have warehouse or other receipts issued with respect to the property stored issued in the name of the former tenant.

5. Obtain a bond or insurance policy to pay the former tenant and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.

6. Impose charges for the removal and storage of the property removed from the premises that do not exceed the rate determined by the sheriff to be the average rate for such services available in the county.

7. Within three days after the removal of the property, notify the former tenant of the charges imposed for removal and storage of the former tenant's property and of any receipt or other document required for the tenant to obtain possession of the property which has been removed and stored. The Act specifies that this notice must be in writing and must be personally served upon the former tenant or mailed to the former tenant at his or her last-known address even if that address is the address of the premises from which the former tenant has been evicted.

As set forth in Section B., below, the sheriff may prevent the landlord or his or her agent from removing property from the premises if the landlord or his or her agent; (1) fail to exercise ordinary care in the removal and handling of the property; and (2) fail to comply with items 1., 2., 5. or 6., immediately above.

If, in the exercise of ordinary care, the sheriff determines the property to be removed from the premises is without monetary value, the landlord may deliver the property, or have it delivered, to some appropriate place established for the collection, storage and disposal of refuse. In determining that the property to be removed is without monetary value, the sheriff is not required to search apparently valueless property for hidden or secreted articles of value.

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If any property has been delivered to a place for collection, storage and disposal of refuse, the sheriff must notify the former tenant of the place to where the goods have been delivered within three days of removal of the goods.

The Act does not require the landlord or his or her agent to store property removed from the premises in any certain place. The Act permits the landlord to store the property in his or her premises. The Act specifies that a landlord who stores property received under a writ of restitution is not required to be licensed as a public warehousekeeper under ch. 99, Stats.

All expenses incurred by the landlord for storage and other like charges after delivery of the property to a place of safekeeping are the responsibility of the former tenant.

B. Responsibilities of the Sheriff if the Landlord Chooses to Remove and Store Property Left on the Premises

The Act provides that if the landlord chooses to remove and store property left in the premises by a tenant who has been evicted, the sheriff must:

- 1. Assist the landlord or his or her agent in the removal of all personal property found in the premises which is not the property of the landlord, using such reasonable force as may be necessary.**
- 2. Supervise the removal and handling of property by the landlord or his or her agent.**
- 3. Exercise ordinary care in the removal or supervision of removal, handling and storage of property removed from the premises.**

In addition, the sheriff may prevent the landlord or his or her agent from removing property if the landlord or his or her agent fails to exercise ordinary care in the removal and handling of the property. The sheriff may also prevent the landlord or his or her agent from removing property if the landlord or his or her agent fails to do any of the following:

- 1. Notify the sheriff** not later than the date on which the sheriff executes the writ of restitution of the address of the premises where the former tenant's property will be stored.
- 2. Notify the sheriff** not later than the date on which the sheriff executes the writ of restitution of the name, address and telephone number of the person the former tenant may contract to obtain possession of the property.
- 3. Obtain a bond or insurance policy to pay the former tenant** and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.
- 4. Impose charges for the removal and storage** of the property removed from the premises that do not exceed the rate determined by the sheriff to be the average rate for such services available in the county.



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C. Procedures Followed by Sheriff in Removing and Storing Property Remaining in Premises Upon Eviction of Tenant

When a sheriff executes a writ of restitution and the landlord does not notify the sheriff that the landlord or his or her agent will be responsible for the removal and storage or disposal of the property, or if the eviction occurs in Milwaukee County, the sheriff is required to remove any personal property left on the premises by the tenant who has been evicted. The procedures to be followed by the sheriff are set forth below. Act 317 did not amend these procedures; they remain the same as under prior law.

The sheriff is required to take any property removed from the premises which are the subject of an eviction action to a place of safekeeping within the county selected by the sheriff. The sheriff may engage the services of a mover or trucker for these purposes. The sheriff must exercise ordinary care in the removal of the property.

If the sheriff determines, in the exercise of ordinary care, that property which has been left on the premises by the former tenant is without monetary value, the sheriff may deliver or arrange for the delivery of the property to an appropriate place established for the collection, storage and disposal of refuse. In determining

that property which has been left on the premises is without monetary value, the sheriff is not required to search apparently valueless property for hidden or secreted articles of value.

Within three days of the removal of the property, the sheriff must mail to the former tenant a notice stating where the former tenant's property is being kept. The sheriff must provide to the former tenant any receipt or other document required to obtain possession of the property.

All expenses incurred for storage of the property and other similar charges after delivery by the sheriff to a place of safekeeping are the responsibility of the former tenant. However, prior to executing the writ of restitution, the sheriff may require the landlord to deposit a reasonable sum representing the probable cost of removing the property left on the premises by the tenant who is to be evicted. The costs which the sheriff may require the landlord to deposit include an hourly charge for the services of each deputy assigned to inventory the property and all other necessary expenses incurred in executing the writ of restitution and all necessary expenses incurred in taking possession and storing the property.

- This Information Memorandum was prepared by Mary Matthias, Senior Staff Attorney, Legislative Council Staff

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Section VI: Wisconsin Statutes, Chapter 799 (Sections 799.40 to 799.45)*"Evictions" (Wisconsin Statutes, 1997-98)*

799.40 Eviction actions. (1) **WHEN COMMENCED.** A civil action of eviction may be commenced by a person entitled to the possession of real property to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.

(2) **JOINDER OF OTHER CLAIMS.** The plaintiff may join with the claim for restitution of the premises any other claim against the defendant arising out of the defendant's possession or occupancy of the premises.

(3) **EXCEPTION.** Nothing in this section shall affect ss. 704.09 (4) and 704.19.

(4) **STAY OF PROCEEDING.** The court shall stay the proceedings in a civil action of eviction if the tenant applies for emergency assistance under s. 49.138. The tenant shall inform the court of the outcome of the determination of eligibility for emergency assistance. The stay remains in effect until the tenant's eligibility for emergency assistance is determined and, if the tenant is determined to be eligible, until the tenant receives the emergency assistance.

History: 1979 c. 32 s. 66; 1979c. 176; Stats. 1979 s. 799.40; 1991 a. 39; 1995 a. 289.

Constructive eviction discussed. *First Wis. Trust Co. v. L. Wiemann Co.* 93 W (2d) 258, 286 NW (2d) 360 (1980).

Eviction practice in Wisconsin. *Boden*, 54 MLR 298.

Burden of proof required to establish defense of retaliatory eviction. 1971 WLR 939.

Tenant eviction protection and takings clause. *Manheim*. 1989 WLR 925 (1989).

799.41 Complaint in eviction actions. The complaint shall be in writing and subscribed by the plaintiff or attorney in accordance with s. 802.05. The complaint shall identify the parties and the real property which is the subject of the action and state the facts which authorized the removal of the defendant. The description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described. A description by street name and number is sufficient. If the complaint relates only to a portion of described real estate, that portion shall be identified. If a claim in addition to the claim for restitution is joined under s. 799.40 (2), the claim shall be separately stated. The prayer shall be for the removal of the defendant or the property or both and, if an additional claim is joined, for the other relief sought by the plaintiff.

History: Sup. Ct. Order, 67 W (2d) 585, 766 (1975); 1975 c. 218; 1979 c. 32 ss. 66, 92(16); Stats. 1979 s. 799.41; 1987 a. 403.

799.42 Service and filing in eviction actions. The complaint shall be served with the summons when personal or substituted service is had under s. 799.12(1).

History: 1979 c. 32 ss. 66, 92(16); Stats. 1979 s. 799.42; 1987 a. 208.

799.43 Defendant's pleading in eviction actions. The defendant may plead to the complaint orally or in writing, except that if the plaintiff's title is put in issue by the defendant, the answer shall be in writing and subscribed in the same manner as the complaint. Within the limitation of s. 799.02 the defendant may counterclaim provided that in construing s. 799.02 as applied to eviction actions, any claim related to the rented property shall be considered as arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

History: Sup. Ct. Order, 67 W (2d) 585, 766 (1975); 1975 c. 218; 1979 c. 32 ss. 66, 92(16); Stats. 1979 s. 799.43.

Counterclaims relating to oral agreements to pay increased rent, unfair trade practices, oral guarantees and interference with quiet enjoyment were properly dismissed as extrinsic to the lease. *Scalzo v. Anderson*, 87 W (2d) 834, 275 NW (2d) 894 (1979).

799.44 Order for judgment; writ of restitution. (1) **ORDER FOR JUDGMENT.** In an eviction action, if the court finds that the plaintiff is entitled to possession, the order for judgment shall be for the restitution of the premises to the plaintiff and, if an addition cause of action is joined under s. 799.40(2) and plaintiff prevails thereon, for such other relief as the court orders. Judgment shall be entered accordingly as provided in s. 799.24.

(2) **WRIT OF RESTITUTION.** At the time of ordering judgment for the restitution of premises, the court shall order that a writ of restitution be issued, and the writ may be delivered to the sheriff for execution in accordance with s. 799.45. No writ shall be executed if received by the sheriff more than 30 days after its issuance.

(3) **STAY OF WRIT OF RESTITUTION.** At the time of ordering judgment, upon application of the defendant with notice to the plaintiff, the court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment. Any such stay shall be conditioned upon the defendant paying all rent or other charges due and unpaid at the entry of judgment and upon the defendant paying the reasonable value of the occupancy of the premises, including reasonable charges, during the period of the stay upon such terms and at such times as the court directs. The court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the court directs, conditioned upon the defendant's faithful performance of

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the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of the stay, the plaintiff may file an affidavit executed by the plaintiff or attorney, stating the facts of such default, and the writ of restitution may forthwith be issued.

(4) WRIT OF RESTITUTION; FORM AND CONTENTS.

The writ of restitution shall be in the name of the court, sealed with its seal, signed by its clerk, directed to the sheriff of the county in which the real property is located, and in substantially the following form:

(Venue and caption)

THE STATE OF WISCONSIN To the Sheriff of
County:

The plaintiff,, of recovered a judgment against the defendant,, of, in an eviction action in the Circuit Court of County, on the Day of, (year), to have restitution of the following described premises:

.... (description as in complaint), located in County, Wisconsin.

YOU ARE HEREBY COMMANDED To immediately remove the defendant,, from the said premises and to restore the plaintiff,, to the possession thereof. You are further commanded to remove from said premises all personal property not the property of the plaintiff, and to store and dispose of the same according to law, and to make due return of this writ within ten days.

Witness the Honorable, Judge of the said Circuit Court, this day of, (year)

..... Clerk

History: 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92(16); 1979 c. 176; Stats. 1979 s. 799.44; 1997 a. 250.

799.445 Appeal. An appeal in an eviction action shall be initiated within 15 days of the entry of judgment or order as specified in s. 808.04(2). An order for judgment for restitution of the premises under s. 799.44(1) or for denial of restitution is appealable as a matter of right under s. 808.03(1) within 15 days after the entry of the order for judgment for restitution or for denial of restitution. An order for judgment for additional causes of action is appealable as a matter of right under s. 808.03(1) within 15 days after the entry of the order for judgment for the additional causes of action. No appeal by a defendant of an order for judgment for restitution of the premises may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment. The undertaking shall provide that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the

appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings pending the determination of the appeal. If the tenant fails to pay rent when due, or otherwise defaults in the terms of the undertaking, the payment guaranteed by the undertaking with surety shall be payable immediately to the plaintiff and shall not be held in escrow by the court. Upon the failure of the tenant to pay rent when due, or upon other default by the tenant in the terms of the undertaking, the stay of proceedings shall be dismissed and the sheriff shall immediately execute the writ of restitution.

History: 1983 a. 219 s. 39; 1993 a. 466.

Judicial Council Note, 1983: This section is renumbered from s. 808.07(7), and amended to replace the appeal deadline of 10 days after mailing notice of entry of judgment by the time period specified in s. 808.04(2), for greater uniformity. The appeal deadline established by that statute applies regardless of whether the action has been tried to a 12-person jury. [Bill 151-S]

799.45 Execution of writ of restitution. (1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff, and after payment to the sheriff of the fee required by s. 814.70(8), the sheriff shall execute the writ. If the plaintiff, or the plaintiff's attorney or agent, does not notify the sheriff under sub. (3)(am) that the plaintiff or his or her agent will remove and store or dispose of the property, the sheriff may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property chargeable to the plaintiff under s. 814.70(8) and (10) and of the services of deputies under s. 814.70(8). In case of dispute as to the amount of the required deposit, the amount of that deposit shall be determined by the court under s. 814.70(10).

(2) HOW EXECUTED; DUTIES OF SHERIFF. In executing the writ of restitution the sheriff shall:

(a) Remove from the premises described in the writ the person of the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

(b) Remove or supervise removal from the premises described in the writ, using such reasonable force as may be necessary, all personal property found in the premises not the property of the plaintiff.

(bg) Assist the plaintiff or his or her agent in the

removal, under sub. (3)(am), of all personal property found in the premises described in the writ, not the property of the plaintiff, using such reasonable force as may be necessary.

(c) Exercise ordinary care in the removal or supervision of removal of all persons and property from the premises and in the handling and storage of all property removed from the premises.

(3) MANNER OF REMOVAL AND DISPOSITION OF REMOVED GOODS. (a) In accomplishing the removal of property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker unless the plaintiff notifies the sheriff under par. (am) that the plaintiff will remove and store or dispose of the property.

(am) When delivering a writ of restitution to the sheriff in counties other than counties with a population of 500,000 or more, the plaintiff or his or her attorney or agent may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property that is found in the premises described in the writ and that does not belong to the plaintiff. When notifying the sheriff that the plaintiff or the plaintiff's agent will remove the property, the plaintiff or his or her attorney or agent shall file the bond or insurance policy required under subd. 5. with the clerk of court that issued the writ of restitution. If the sheriff is notified that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property under this paragraph, the sheriff shall, in executing the writ of restitution, supervise the removal and handling of the property by the plaintiff or the plaintiff's agent. The sheriff may prevent the plaintiff or the plaintiff's agent from removing property under this paragraph if the plaintiff or the plaintiff's agent fails to comply with subd. 1., 2., 5. or 6. or if the plaintiff or the plaintiff's agent fails to exercise ordinary care in the removal and handling of the property as required under subd. 3. If the plaintiff or the plaintiff's agent remove and store the property under this paragraph, the plaintiff or the plaintiff's agent shall do all of the following:

1. Notify the sheriff not later than the date on which the sheriff executes the writ or restitution of the address of the premises where the defendant's property will be stored.
2. Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the name, address and telephone number of the person the defendant may contact to obtain possession of the property.
3. Exercise ordinary care in removing the property from the premises and in the handling and storage of all property removed from the premises.

4. Have warehouse or other receipts issued with respect to the property stored under this paragraph issued in the name of the defendant.

5. Obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.

6. Impose charges for the removal and storage of the property removed from the premises that do not exceed the rate determined by the sheriff to be the average rate for such services available in the county.

7. Within 3 days of the removal of the property, notify the defendant under sub. (4) of the charges imposed under subd. 6. and of any receipt or other document required to obtain possession of the property.

(b) Except as provided in pars. (am) and (c), the property removed from such premises shall be taken to some place of safekeeping within the county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4) stating the place where the goods are kept and, if the plaintiff had not removed the property under par. (am), shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the sheriff under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the sheriff or by the plaintiff to a place of safekeeping shall be the responsibility of the defendant. Any person accepting goods from the sheriff or the plaintiff for storage under this subsection, or the plaintiff, if he or she stores the property in his or her premises, shall have all of the rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges, including the lien of a warehouse keeper under s. 407.209. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the sheriff to the place of safekeeping.

(c) When, in the exercise of ordinary care, the sheriff determines that property to be removed from premises described in the writ is without monetary value, the sheriff or the plaintiff, if he or she has agreed to remove the property under par.(am), may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case the sheriff shall notify the defendant as specified in sub. (4) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the sheriff under this subsection does not include searching apparently value less property for hidden or secreted articles of value.

(d) All of the rights and duties of the sheriff under this

Section VI - Eviction Statutes

section may be exercised by or delegated to any of the deputies.

(4) MANNER OF GIVING NOTICE TO DEFENDANT.

All notices required by sub. (3) to be given to the defendant by the sheriff or by the plaintiff shall be in writing and shall be personally served upon the defendant or mailed to the defendant at the last-known address, even if such address be the premises which are the subject of the eviction action.

(5) RETURN OF WRIT; TAXATION OF ADDITIONAL COSTS.

(a) Within 10 days of the receipt of the writ, the sheriff shall execute the writ and perform all of the duties required by this section and return the same to the court with the sheriff's statement of the expenses and charges incurred in the execution of the writ and paid by the plaintiff.

(b) Upon receipt of the returned writ and statement from the sheriff, the clerk shall tax and insert in the judgment as prescribed by s. 799.25 the additional costs incurred by the plaintiff.

History: 1979 c. 32 ss. 66, 92(16); 1979 c. 176; Stats. 1979 s. 799.45; 1981 c. 317 s. 2202; 1983 a. 500 s. 43; 1993 a. 486; 1997 a. 317.

Sheriff was liable in official capacity for actions of deputy executing untimely writ of restitution. *Wolf-Lillie v. Sonquist*, 699 F (2d) 864 (1983).

See note to 407.210, citing *Wegwart v. Eagle Movers, Inc.* 441 F Supp. 872.



Section VII: Tenants' Guide to Waste Reduction and Recycling

More than one million people live in apartments throughout Wisconsin and they create 700 thousand tons of garbage every year! If everyone in a 100-unit apartment complex or condominium recycled all of the items required by law, each month they would help the environment in the following ways:

- By producing 12,150 fewer pounds of trash
- By saving 9 cubic yards of landfill space
- By preventing 26 pounds of air pollution

What needs to be recycled?

By law, the following items must be recycled in Wisconsin:

- Newspapers, magazines and cardboard
- Clear, brown and green glass jars and bottles
- Plastic containers (#1 & #2)
- Aluminum cans
- Steel and tin cans

By separate collection or drop off:

- Grass clippings, leaves, sticks and brush
- Motor oil
- Tires
- Vehicle batteries
- Appliances

Your responsibilities:

- Separate recyclables from garbage in your apartment. (If your building's dumpsters contain recyclables, your waste hauler can and will stop collection.)
- Prepare recyclables so they are clean and free of contamination.
- Try to reduce the amount of waste you generate.
- Reuse products and containers as much as possible.
- Notify the local unit of government that enforces the recycling ordinance for your area if apartments or businesses are not fulfilling their responsibilities.

Your landlord's responsibilities:

- Provide adequate, separate containers for recyclables.
- Arrange for recyclables to be collected and transported to a recycling or processing facility.
- Notify apartment residents in writing about the recycling program when they move in, and at least semi-annually remind them about it.
- Comply with local recycling ordinances.



Section VIII - Sample Disclosure Form for Landlords

Section VIII - Sample Disclosure Form for Landlords

This Checklist is for Landlords to use when renting residential dwelling units.

Prospective Tenants' Names:	Unit Applied For:
	Unit Number:
	Building:
	Address:

When the tenant(s) applied to rent the dwelling unit:

1. Copies of the Rental Agreements and Rules and Regulations:

- _____ I gave the tenant(s) a copy of the rental agreement.
_____ I gave the tenant(s) a copy of the current rules and regulations.

2. Promises to Repair:

- _____ I made no promises to repair the unit.
_____ I promised to repair the items noted on the attached list and I gave a copy of the list to the tenant(s).

3. Condition of the Property:

I told the tenant(s) the following information about the specific unit/apartment they want to rent:

Check all statements that apply:

- _____ I gave the tenant(s) a list of any uncorrected building and housing code violation notices I have received which affect the dwelling unit and common areas of the premises.
_____ The unit does not have hot running water.
_____ The unit does not have cold running water.
_____ The unit's plumbing facilities (sinks, water faucets) are not in good operating condition.
_____ The unit's sewage disposal facilities (toilet, garbage disposal) are not in good operating condition.
_____ The heating facilities in the unit are not in safe operating condition or cannot keep the temperature in the unit at 67°F (19°C) during all the seasons of the year in the living areas of the unit.
(The 67°F is measured at the center of the room, half way between the ceiling and the floor.)
_____ The unit does not have electricity or the electrical wiring, outlets, fixtures and other parts of the electrical system in the unit are not in safe operating condition.
_____ There are structural problems or other conditions in the dwelling unit or premises which present a substantial health or safety hazard or which create an unreasonable risk of personal injury.

4. Charges. I gave the tenant(s) the following information:

- _____ The charges for water: _____ are included.
_____ The charges for heat: _____ are included in the rent.
_____ are separately metered.
_____ The charges for electricity: _____ are included in the rent.
_____ are separately metered.
_____ *If all utility services are not included in the rent or are not separately metered,*
I explained how the tenants' share of the costs will be calculated.
_____ The charge(s) for rent and all non-refundable fees.

5. Earnest Money Deposits:

The tenant(s) gave me an Earnest Money Deposit with the application form and I:

- _____ Gave the tenant(s) a receipt for the Deposit.
_____ The tenant(s) paid with a check that says it's for an Earnest Money Deposit and the tenant(s) didn't ask for a receipt.

Section VIII - Sample Disclosure Form for Landlords

When the landlord accepts a Security Deposit:

6. Right to Inspect for Pre-Existing Damages:

_____ I told the tenants they have a right to inspect the dwelling unit and notify me of any damages or defects which exist before they move in.

7. Check-In Form:

_____ I will give the tenants a written check-in/check-out sheet either before they move in or at the time they move in.

8. Right to List of Damages and Defects from the Previous Tenant(s):

_____ I told the tenants they have the right to request a written list of the physical damages and defects for which I deducted money from the previous tenant's security deposit.

_____ The tenants requested the list of damages and defects and I provided the list.

9. Receipt for Security Deposit:

_____ I gave the tenant(s) a receipt for the security deposit.

_____ The tenant(s) paid the security deposit by check, with a note on the check stating the purpose of the check, and the tenant did not request a receipt.

_____ I applied the earnest money deposit to the security deposit.

When the Tenant(s) sign the Lease/Rental Agreement:

10. Copies of Lease or Rental Agreements, Rules and Regulations, and Nonstandard Rental Provisions:

_____ I gave the tenant(s) a signed copy of the rental agreement and a copy of the current rules and regulations.

_____ I gave the tenant(s) a copy of any separate Nonstandard Rental Provisions that they signed.

11. Unit Identification:

_____ I gave the tenant the location and address of the dwelling unit(s) the tenant(s) will be renting (as shown at the top of this form).

12. Written Notice of Contact Persons for Payment of Rent, Maintenance & Management, or Service of Legal Papers:

_____ I gave the tenant, in writing, the names and addresses of:

_____ The person or persons to whom the tenant should pay rent;

_____ The persons the tenant should contact regarding management and maintenance of the premises; and

_____ The owner or some other person who is located in the state of Wisconsin and who is authorized to accept personal service of legal papers and notices on behalf of the owner.

(Landlord's Signature)

(Date)

(Tenants' Signature)

(Date)

(Tenants' Signature)

(Date)

(Tenants' Signature)

(Date)

(Tenants' Signature)

(Date)

Tenants' Rights & Responsibilities

As a tenant in Wisconsin, you have rights and responsibilities. To avoid problems, it is important that you know what these rights and responsibilities are:

What You Should Know Before You Rent

- Landlords may not advertise or rent condemned property.
- Landlords must disclose housing code violations they have been notified of but have not corrected. They must also reveal structural defects, a lack of hot or cold running water, serious plumbing, or electrical problems, and other hazards.
- Landlords must also disclose:
 - If the heating unit cannot maintain a temperature of at least 67°F.
 - If you are required to pay utilities.
 - How utility charges will be divided if the dwelling is one of several not individually metered.
 - The total amount of rent and other non-refundable fees. The highest amount payable during any rent paying period must be disclosed in any form of advertising.

You have the right to inspect the unit before you rent it. We recommend you take along a flashlight, light bulb, hairdryer, pen, and the following checklist:

- ✓ *Turn on each light switch to see if it works.*
- ✓ *Check outlets (use hairdryer) and sockets (use light bulb). Defects could cause fires.*
- ✓ *Turn on sink and bathtub faucets - check for leaks, proper drainage and water temperature.*
- ✓ *Flush toilets - check for leaks.*
- ✓ *Look for smoke detectors.*
- ✓ *Check ceilings and walls for cracks and water stains.*
- ✓ *Are there deadbolts on apartment and exterior doors?*
- ✓ *Push on the windows. Are they secure? Are latches in good working order?*
- ✓ *Check for window storms and screens.*
- ✓ *Check condition of furnace. Even in summer, turn up thermostat to make sure it actually works.*
- ✓ *Look at water heater to see if it is leaking.*

Promises of repairs by a landlord should be provided to you in writing, including a completion date, before you agree to rent the property.

Rental agreements are not required to be in writing. However, if there is a written rental agreement, the landlord must give you an opportunity to read it before you decide to rent. When renting, you must be furnished with a copy of the agreement.

If an earnest money deposit is required with your rental application, the landlord must return the entire deposit by the end of the next business day if your application is rejected. If for some reason you decide not to rent, the landlord may withhold from your deposit actual costs or damages.

Section VIX - Tenants' Rights & Responsibilities

If a security deposit is required, you have 7 days from the first rental date to inspect the premises and notify the landlord of any defects so that they will not be unfairly charged to you. You should notify the landlord in writing and keep a copy for your own records. In addition, before accepting your security deposit, the landlord must notify you that you have the right to request a list of damages charged to the previous tenant.

The landlord may charge you the actual cost, up to \$20, to obtain a credit report from one of the three nationwide credit reporting agencies (not credit information resellers), provided the landlord has notified you in advance of the charge and also gives you a copy of the report. If you have a credit report that is less than 30 days old, you may give this report to the landlord to avoid paying for a new report.

What You Should Know While Renting

At the start of a tenancy, the landlord must provide you with the name and address of a person who can be readily contacted regarding maintenance problems.

The landlord is responsible for making any repairs that are necessary to comply with local housing codes and to keep the premises safe. If the landlord refuses to repair major building defects, you may report the defect to your local building or health inspector. The landlord may not retaliate by evicting you.

Unless otherwise agreed, tenants are usually responsible for routine minor repairs. You are also required to comply with any maintenance and sanitation requirements imposed on tenants

by local housing codes. You are financially responsible for any damages that you or your guests have caused.

A landlord has the right to inspect, repair, and show the premises at reasonable times. Except for emergency situations, the landlord may enter only after a 12-hour advance notice unless you allow entry on shorter notice.

If you are a tenant renting by the month, the landlord may raise your rent by giving you written notice at least 28 days before the next rent due date. There are no state laws limiting the amount of a rent increase.

If you have a written lease, the rent may not be increased during that time period, unless specifically stated in the lease.



A landlord has the right to inspect, repair, and show the premises at reasonable times

Section XIX - Tenants' Rights & Responsibilities

What You Should Know About Terminating a Tenancy

If you are renting by the month, the landlord may terminate the rental agreement by giving you a written termination notice at least 28 days before the next rent due date. You must use the same procedure in notifying the landlord of your intent to terminate the rental agreement. Tenants may serve the written notice in person or by certified or registered mail.

A six-month or one-year lease usually terminates automatically at the end of the lease, unless the rental agreement specifies otherwise. If the lease provides that it will be automatically renewed or extended unless you give advance notice of termination, the landlord must "remind" you of the provision at least 15-30 days in advance of the notice deadline. Otherwise, the landlord may not attempt to enforce the automatic renewal.

If you "break" a lease by moving out early, you may be obligated to pay for the remainder of the term unless another suitable tenant is found. However, the landlord must make reasonable efforts to find a substitute tenant and minimize any rent losses. Also, if you move out early, *you must notify the landlord in writing of your departure after you have vacated* the dwelling unit in order to "start the 21 day clock" for the return or accounting of your security deposit.

When moving out, it is always a good idea to contact your landlord to arrange for a final checkout inspection. If your landlord does not agree, find someone to be a witness to inspect the premises with you.

If you paid a security deposit, the landlord must return it to you within 21 days after you move out. The landlord may deduct for unpaid rent or damages for which you are responsible.

On the other hand, a routine across-the-board deduction from the security deposit for cleaning or carpet shampooing, in the absence of abuse, waste, or neglect on your part, is prohibited.

Deductions can also be made for your utility bills paid by the landlord.

If there are any deductions from the security deposit, the landlord must furnish you with a written statement itemizing the amounts withheld.

State law does not require payment of interest on security deposits.



Risk of Eviction

Tenants who pay partial rent, no rent, or late rent (even one day late) put themselves at risk of eviction, as do tenants who break the rules or terms of the rental agreement or cause damage.

Month-to-month tenants may be given either a written "5-Day Quit or Pay Rent Notice" or a 14-day written notice to vacate the property.

- **5-day Notice.** This written notice from the landlord gives the tenant five days to pay rent or move out within the five days. If the tenant pays, the tenancy continues.
- **14-day Notice.** This written notice specifies that the tenancy has ended because the tenant failed to pay the rent, broke the agreement, or damaged the property. This notice does not offer the option of paying the rent and staying in the building. If the landlord wants you to leave the property for violations of the rental agreement, a 14-day notice to vacate the property is usually given.

Termination Notices for Tenants on Leases

When landlords don't receive the rent on time or believe the tenant has broken the rental agreement or caused damage, they may serve a 5-day written notice.

- If the tenant pays the rent within 5 days, the tenancy continues. If the tenant fails to pay the rent again within the following 12 months, the landlord may then give a 14-day termination notice for failure to pay rent without any other opportunity for the tenant to continue the tenancy.
- If tenants receive a 5-day notice for breaking the agreement, they may remain if they make a correction and comply. If tenants break any rule or cause damage within the following 12 months, the landlord may give a final 14-day termination notice specifying the breach or damage.

If you refuse to leave the premises after your tenancy has been terminated, the landlord may start an eviction action against you in Small Claims Court. You will be served a summons. This is your notice to appear in court, it does not mean you are evicted. In court, the judge asks you and the landlord to explain your sides and then will make a decision about your eviction. If you receive a summons for eviction, seek the help of a legal aid service (look up LEGAL AID in the yellow pages of your phone book) or

consult with a private attorney (call the State Bar of Wisconsin Lawyer Referral Service (800) 362-9082 or (608) 257-4666).

Removal from the Premises

The landlord may not confiscate your personal belongings, turn off your utilities, lock you out of your apartment, or use force to remove you.

If the small claims court judge rules in the landlord's favor, the judge may issue a court order requiring you to leave the property. If you don't, the county sheriff may remove you and your belongings from the premises. These steps may only be taken after the small claims court hearing and after the judge orders the eviction. If the court determines that you have wrongfully overstayed, the landlord could be awarded twice the amount of rent, prorated on a daily basis, for each day you unlawfully occupy the premises.

Section VIX - Tenants' Rights & Responsibilities

Unhealthy & Unsafe Conditions

Sometimes rental units become unhealthy, unsafe, or unlivable due to a landlord's failure to maintain the property. It would be wise to get legal advice to learn if the tenant is able to legally abate (adjust) the rent. A lawyer may indicate how to document the condition, what agencies to contact, and what should be put in writing. If not done legally, rent abatement could result in eviction.

If conditions are so bad that tenants feel they can no longer safely live in a rental unit, a lawyer should be contacted before the tenants officially move out to prevent further financial obligation.

If a Problem Develops

If a problem develops between you and your landlord, information and assistance may be available from various local groups and agencies, including housing code officials, landlord and tenant associations, and the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Landlord-tenant relations in Wisconsin are regulated by Chapter 704, Wisconsin Statutes, and by Chapter ATCP 134, Wis. Adm. Code. In addition, Chapter ATCP 125, Wis. Adm. Code, further regulates mobile home park operator-tenant relations.

If a landlord violates Chapter ATCP 134, for example, by refusing to return or account for your security deposit, you may be able to start an action in Small Claims Court. Section 100.20(5), Wisconsin Statutes, enables you to recover twice the amount of any actual monetary loss, together with court costs and reasonable attorney fees. Copies of Chapter ATCP 134 may be obtained from the Department's Division of Trade and Consumer Protection.

For more information, or to file a complaint, contact the

**Bureau of Consumer Protection
Toll-free in Wisconsin
(800) 422-7128**

Milwaukee (414) 266-1231

Madison (608) 224-4960

Green Bay (920) 448-5110

FAX: (608) 224-4939

TTY: (608) 224-5058

E-MAIL:
datcph hotline@datcp.state.wi.us

WEBSITE:
www.datcp.state.wi.us

Contact Us

Copies of this booklet and other consumer protection brochures are available by contacting:

Bureau of Consumer Protection
Department of Agriculture, Trade & Consumer Protection
PO Box 8911
Madison, WI 53708-8911

Toll-free Hotline: **800 422-7128 (WI only)**

Email: datcph hotline@datcp.state.wi.us

Website: www.datcp.state.wi.us

Fax: (608) 224-4939

TTY: (608) 224-5058

Direct Line: (608) 224-4976

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