



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 183

**Assembly
Amendments 1 and 9**

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Assembly Bill 183 makes numerous changes to landlord-tenant law and eviction actions in small claims court.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes changes to various provisions of the bill, as described below.

Disposal of Property Left on Premises by Evicted Tenant

Under current law, if a tenant leaves property of value on the rental premises after he or she has been evicted, the property must be removed and stored. In Milwaukee County, the sheriff must remove and store the property. In all other counties, the landlord may choose to be responsible for the removal and storage of the property. If the landlord does not choose to remove and store the property, the sheriff must do so.

Under the bill, if a tenant is evicted and leaves property on the rental premises, the landlord is not required to store the property unless the landlord and tenant have entered into a written agreement which provides otherwise. If the landlord does not intend to store personal property left behind by a tenant, the landlord must provide written notice either when the tenant enters into *or* renews the rental agreement, *or at any other time before the tenant is evicted from the premises*. If this notice is provided, the landlord may dispose of the property other than prescription medicine or medical equipment, in any manner that the landlord determines is appropriate.

Assembly Amendment 1 deletes the bill provision that authorizes a landlord to provide the notice described “at any time before the tenant is evicted,” and provides that any notice that is provided must be provided either when the tenant enters into *or* renews the rental agreement. However, the amendment also appears to eliminate the requirement that the landlord provide notice to an evicted tenant that they will not store property left behind by the tenant and the current law requirement that additional notice be

provided if the property left behind in a titled vehicle or manufactured home. As discussed below, Assembly Amendment 9 restores those notice requirements.

Timing of Return of Security Deposits

Under current law, if a tenant is evicted, a landlord must return the security deposit to the tenant, less any amounts that are appropriately withheld, within 21 days after the date on which the writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first. [s. 704.28 (4) (d), Stats.]

Under the bill, if a tenant is evicted, the landlord must return the security deposit to the tenant within 21 days after the date on which the tenant's rental agreement terminates or, if the landlord re-rents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins.

Under Assembly Amendment 1, the timing of the return of the security deposit of a tenant who is evicted depends on whether the tenant is evicted before or after the termination date of the rental agreement. If the tenant is evicted *before* that date, the landlord must return the security deposit within 21 days after the date on which the tenant's rental agreement terminates or, if the landlord re-rents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins. If the tenant is evicted *after* that date, the landlord must return the security deposit within 21 days after the date on which the landlord learns that the tenant has vacated the premises or the date the tenant is removed from the premises by eviction.

Notification to Prospective Tenant of Building Code or Housing Code Violations

Under current law, if a landlord has *actual knowledge* of any uncorrected building code or housing code violation in the dwelling unit or a common area that presents a significant threat to the prospective tenant's health or safety, the landlord must disclose the violation to a prospective tenant before entering into a rental agreement or accepting any earnest money or security deposit. [s. 704.07 (2) (bm), Stats.]

Under the bill, the landlord must disclose the types of violations described above only if he or she has received *written notice* of the violation from a local housing code enforcement agency.

Assembly Amendment 1 deletes this provision from the bill.

Commission of Crimes on Rental Property

Under current law, if a lease contains any of a list of prohibited provisions, the lease is void and unenforceable. Among the prohibited provisions is a provision that allows the landlord to terminate the tenancy of a tenant if a crime is committed in or on the rental property, even if the tenant could not reasonably have prevented the crime. [s. 704.44 (9), Stats.]

Under the bill, a lease is not void or unenforceable because it contains such a provision.

Assembly Amendment 1 replaces the current law provision described above with a provision that states that the lease is void and unenforceable if it contains a provision that allows the landlord to terminate a tenancy in a manner contrary to s. 106.50 (5m) (dm) or s. 704.16, Stats. Section 106.50 (5m) (dm), Stats., prohibits a landlord from evicting a tenant because of the tenant's status as a victim of domestic abuse, sexual assault, or stalking. Section 704.16, Stats., provides that a residential tenant may terminate his or her tenancy if the tenant or a child of the tenant faces an imminent threat of serious physical harm from another person if the tenant remains on the premises.

Termination of Tenancy in Mobile or Manufactured Home Community for Threat of Serious Harm

Under current law, a landlord may terminate the tenancy of a tenant if the tenant commits one or more acts, including verbal threats, that cause another tenant, or a child of that other tenant, who occupies a dwelling unit in the same single-family rental unit, multiunit dwelling, or apartment complex as the offending tenant, to face an imminent threat of serious physical harm from the offending tenant if the offending tenant remains on the premises. [s. 704.16 (3), Stats.]

Assembly Amendment 1 authorizes a landlord to terminate the tenancy of the tenant of a mobile or manufactured home community who threatens another tenant, or child of another tenant, of the mobile or manufactured home community under the same circumstances described above.

Timing of Appearance and Trial in Eviction Actions

Under current law, the summons in an eviction action specifies the date that the defendant (the tenant) must appear in court. That appearance date must be set at not less than five days or more than 30 days after the summons is issued. [s. 799.05 (3) (b), Stats.]

The bill changes the appearance date to not less than five days or more than 14 days after the summons is issued. Assembly Amendment 1 changes the appearance date to not less than five days or more than 25 days after the summons is issued.

The court generally sets the matter for a trial or hearing when the tenant makes the initial appearance. Current law does not specify the required timing of the trial or hearing. [ss. 799.20 (4) and 799.206 (3), Stats.]

The bill specifies that the trial or hearing must be scheduled within 20 days after the date of appearance. Assembly Amendment 1 specifies that a trial or hearing on the issue of possession of the premises involved in the action must be held and completed within 30 days after the date of appearance, and provides that this provision applies only to residential tenancies.

Timing of Order for Judgment and Issuance of Writ of Restitution in an Eviction Action

Assembly Amendment 1 adds a provision that requires the court to immediately enter an order for restitution of the premises to the landlord if the court finds, in an eviction action, that the landlord is entitled to possession of the premises. Current law and the bill do not specify the timing for such an order.

Current law does not specify a time limit within which a writ of restitution must be issued in an eviction action. The bill requires a writ of restitution to be issued within five days after the judgment for restitution of the premises to the landlord. Assembly Amendment 1 requires a writ of restitution to be issued immediately after the judgment for restitution of the premises to the landlord.

Who May Appear in a Small Claims Action

Under current law, in any small claims action, a person may commence and prosecute or defend an action or proceeding himself or herself, or by an attorney or a full-time authorized employee of the person. [s. 799.06 (2), Stats.]

The bill eliminates the requirement that the employee be a full-time employee and also allows small claims action by a member of the person, an agent of the member or an authorized employee of the agent. This provision applies to all small claims actions, not only evictions.

Assembly Amendment 1 clarifies that “member” means a member as defined in s. 183.0102 (15), Stats.:

“Member” means a person who has been admitted to membership in a limited liability company as provided in s. 183.0801 and who has not dissociated from the limited liability company.

Initial Applicability

Assembly Amendment 1 adds provisions relating to initial applicability to specify that:

- The bill generally takes effect on the first day of the third, rather than first, month beginning after publication. Under both the bill and the amendment, the provisions relating to towing of vehicles take effect on the first day of the seventh month beginning after publication, and the provisions relating to administrative rules promulgated by the Department of Transportation take effect the day after publication.
- The changes to the notice requirements regarding the landlord’s intent not to store personal property left behind by a tenant first apply to property left behind by a tenant under a rental agreement renewed on the effective date of the bill.
- The changes pertaining to eviction of the tenant of a mobile or manufactured home community first apply to acts committed by the tenant on the effective date of bill.
- The changes regarding the prohibited provisions of rental agreements first apply to a rental agreement entered into or renewed on the effective date of bill.
- The changes to eviction and other small claims court procedures first apply to actions filed on the effective date of the bill.

- The new procedures regarding the disposal of property left on the premises by the tenant after eviction first apply to eviction actions filed on the effective date of the bill. [Item 23 of the amendment.]

ASSEMBLY AMENDMENT 9

Assembly Amendment 9 makes several changes to the bill, as described below.

Towing of Vehicles Parked on Private Property

Current law prohibits the towing of a vehicle involved in trespass parking on a private parking lot or facility without the permission of the vehicle owner, unless a parking citation is issued by a traffic officer or a repossession judgment is issued.

Under the bill, if the property is properly posted, a property owner may have a vehicle towed from the property, even if a parking citation or a repossession judgment has not been issued.

Under Assembly Amendment 9, if a property owner has a vehicle towed, and neither a citation or repossession judgment have been issued, the towing service must notify a local law enforcement agency of the make, model, and license plate of the vehicle and the location to which the vehicle has been towed. The notification must be provided “upon the vehicle’s removal.”

Disposal of Property Left on Premises by Evicted Tenant

Assembly Amendment 9 specifies that the landlord may dispose of the property that is found on the premises from which a tenant is evicted under the new procedures created by the bill only if the landlord has provided notice to the tenant that the landlord will not store property left behind by a tenant who removes from the premises. Combined with the change made to the notice provisions of the bill by Assembly Amendment 1, the notice must be provided either when the tenant enters into or renews the rental agreement.

Manufactured Home, Mobile Home, or Titled Vehicle Remaining on Premises After Eviction

Under current law, if a tenant leaves *abandoned* personal property that is a manufactured home, mobile home, or titled vehicle, before disposing of the abandoned property, the landlord must provide notice to the tenant and any secured party of which the landlord has actual notice.

Under Assembly Amendment 9, if an evicted tenant leaves a titled vehicle or mobile or manufactured home on the premises, the landlord must provide notice to the tenant of their intent to sell or otherwise dispose of the vehicle or home before they may sell or otherwise dispose of it.

Bill History

Assembly Amendment 1 was offered by Representative Stroebel on May 8, 2013. On May 9, 2013, the Assembly Committee on Housing and Real Estate voted to recommend adoption of the amendment and passage of the bill, as amended, on votes of Ayes, 5; Noes, 3.

Assembly Amendment 9 was offered by Representative Stroebel on May 13, 2013. On May 14, 2013, the Assembly adopted Assembly Amendments 1 and 9 on voice votes.

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