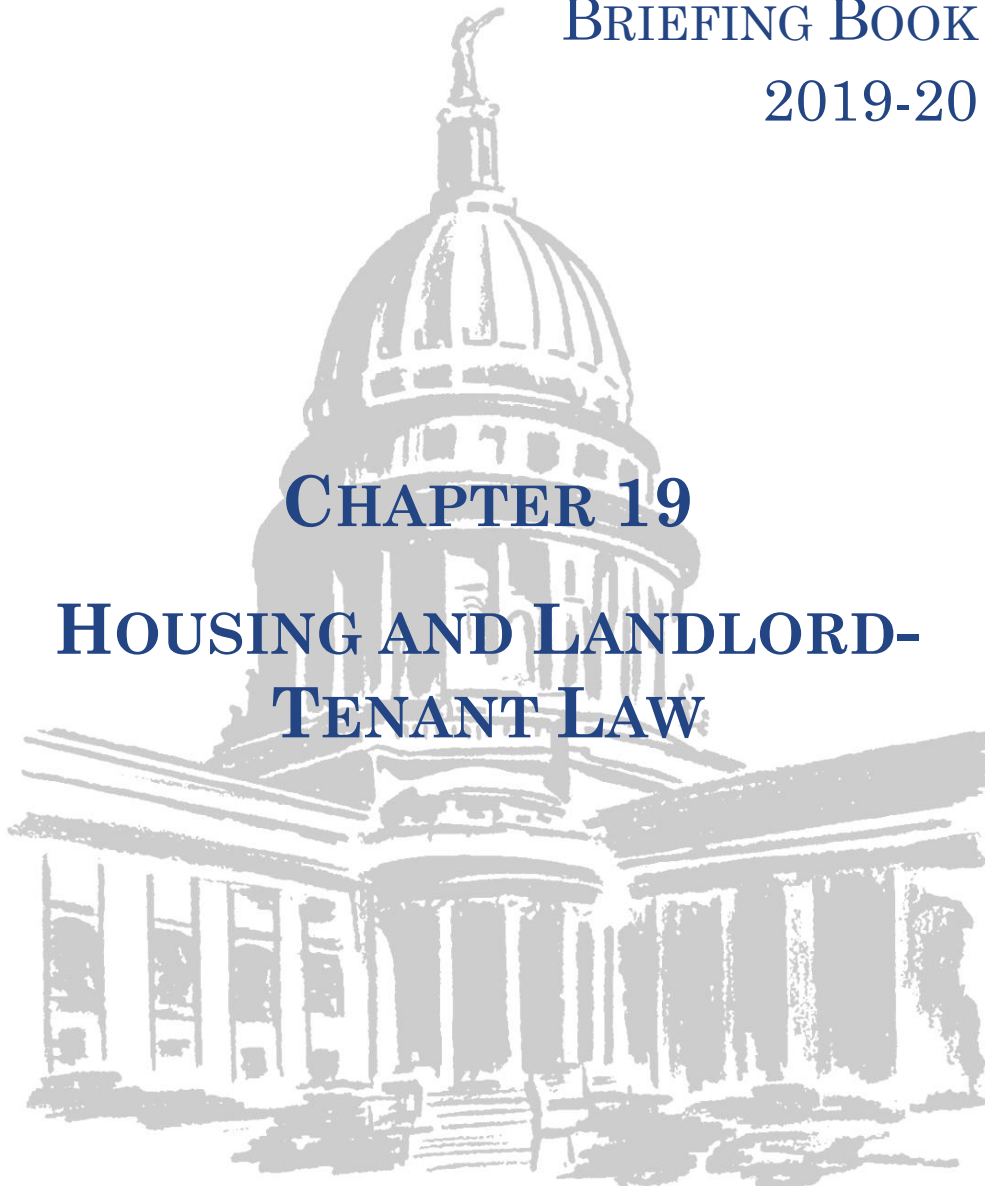


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CHAPTER 19
**HOUSING AND LANDLORD-
TENANT LAW**

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INTRODUCTION

The state and federal governments provide programs to subsidize the cost of housing. More than 100 local public housing authorities throughout the state also play a role.

The key federal agency involved in housing is the U.S. Department of Housing and Urban Development (HUD). The Wisconsin Housing and Economic Development Authority (WHEDA) and the Department of Administration (DOA) have primary roles in administering housing assistance programs at the state level.

State and federal laws, often referred to as “fair housing” laws, each prohibit discrimination in real estate transactions. At the federal level, the Fair Housing Act prohibits housing discrimination and is administered by HUD. The Wisconsin fair housing law is administered primarily by the Department of Workforce Development (DWD). Local governments and organizations such as the Metropolitan Milwaukee Fair Housing Council also play a role in providing fair housing services.

State law regulates the rental of residential property. Among other issues, landlord-tenant law governs rental agreements, landlord and tenant rights, and eviction proceedings.

HOUSING ASSISTANCE

Federal housing assistance programs date to the Great Depression. A 1934 Act authorized mortgage insurance programs, to spur lending. Public housing programs were developed shortly afterward. Several decades later, partly in response to concerns regarding concentrated poverty, program priorities shifted away from government-built housing, toward subsidized affordable housing in private developments.

Today, a complex landscape of federal, state, and local housing assistance programs aim to address multiple goals, including, for example, preventing homelessness, increasing homeownership, or incentivizing affordable housing construction. Although specific policies are often debated, lawmakers from various political perspectives often agree there is a role for government in addressing affordable housing shortages. This chapter summarizes a fraction of current programs applicable in Wisconsin.

HUD Programs

HUD – Wisconsin Field Office:

414-297-3214

<http://www.hud.gov/states/wisconsin>

HUD administers numerous housing assistance programs, as described below. More detailed information regarding HUD programs is available on www.hud.gov, www.makinghomeaffordable.gov, or through HUD’s Wisconsin field office in Milwaukee.

Several of HUD's better known programs include:

- **Mortgage Insurance Program.** HUD's Federal Housing Administration (FHA) supports homeownership by low- and moderate-income families through the Federal Housing Administration program. The program insures mortgages against loss, thus encouraging lenders to make loans to people who might not otherwise be able to meet the larger down payment requirements or higher interest rates that would be required in the absence of mortgage insurance.
- **Housing Counseling Programs.** HUD administers a grant program to sponsor housing counseling agencies, including approximately 25 agencies throughout Wisconsin, that provide services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. Counselors provide advice on avoiding foreclosure, home buying, renting, defaults, credit issues, and reverse mortgages.
- **Make Home Affordable Program.** The Making Home Affordable program, administered jointly with the U.S. Department of Treasury, helps to connect homeowners to counseling agencies and can help homeowners avoid foreclosure by reducing monthly loan payments, reducing the loan's interest rate, and modifying second mortgages.
- **Public Housing Program.** The federal public housing program provides housing at affordable rent for eligible low-income families, the elderly, and persons with disabilities. Local housing agencies receive HUD funds to manage housing and determine applicant eligibility based on income limits developed by HUD.
- **Housing Choice Voucher Program.** The housing choice voucher program is administered by local public housing agencies. This program, formerly known as "Section 8," provides assistance to low-income renters and first-time homebuyers. Participants must have income below 50% of median income for the relevant county or metropolitan area, and generally must contribute 30% of their adjusted monthly income for rent and utilities.

HUD was created by Congress in 1965. HUD's mission is to help both low- and moderate-income families by creating strong, sustainable, inclusive communities, and quality affordable homes for all.

[24 C.F.R. Parts 203, 214, 905-972, and 982.]

DOA Programs

The Division of Energy, Housing, and Community Resources (DEHCR) in DOA administers various supportive and affordable housing programs. Partnering with private and municipal utilities, DEHCR also administers several programs for home energy assistance and home weatherization.

State law requires DOA to prepare a comprehensive state housing strategy plan, known as the State of Wisconsin Consolidated Plan, once every five years. DOA submitted the most recent plan to the Legislature in October 2015.

The current *State of Wisconsin Consolidated Plan* is available on DOA's website at:

<http://www.doa.state.wi.us>

The plan serves as the state's application to HUD for key federal program funds and also acts as a plan for distributing federal and state dollars to a variety of housing programs, community programs, and economic

development programs. [s. 16.302, Stats.]

Programs Financed With State Funds

DOA housing programs financed with state funds include:

- The **Housing Cost Reduction Initiative (HCRI) Program**. The HCRI program provides direct financial assistance to reduce the housing costs of low- and moderate-income households. Funds may be used for assistance to eligible homebuyers and eligible homeowners facing foreclosure. Funds are awarded to local governments, tribes, and organizations.
- The **Homeless Prevention Program (HPP)**. The HPP provides funds for security deposits, short-term rental assistance, and utility costs. The HPP is funded through the HCRI program.
- The **Transitional Housing Grant Program**. The Transitional Housing Grant program provides competitive grants to organizations and county or municipal governments for the provision of transitional housing and associated supportive services for people who are homeless, to facilitate transition to self-sufficiency.
- The **Interest Bearing Real Estate Trust Account (IBRETA) Program**. The IBRETA program is funded from earnings on interest-bearing real estate common trust accounts into which real estate brokers and salespersons deposit down payments, earnest money, and similar types of real estate payments. Interest or dividends from IBRETA accounts are sent to the state to provide funds for programs serving homeless individuals and families.
- The **State Shelter Subsidy Grant (SSSG) Program**. The SSSG program gives formula-based grants to support homeless shelter facilities and services for homeless persons to recipients including nonprofit organizations, federally recognized American Indian tribes or bands, housing and community development authorities, and county or municipal governments.

[ss. 16.303 to 16.308, Stats.]

Programs Financed With Federal Funds

DOA also administers initiatives financed with federal HUD funding, through the Home Investment Partnerships program, generally referred to as the HOME program.¹ This HOME program is separate from WHEDA's home ownership mortgage loan program, described below, which also uses HOME as an acronym. The HUD-funded HOME program primarily helps households having incomes no greater than 80% of county median income. However, the household income threshold drops to 60% of county median income for rental rehabilitation and home rental housing development programs for most households. These federal HUD HOME-funded programs include the following:

- The **HOME Homebuyer and Rehabilitation (HHR) Program**. The HHR program provides grants to local organizations assisting qualified low-income homebuyers and landlords. Assistance includes subsidization of housing rehabilitation expenses, acquisition costs such as down payments and closing costs, or construction expenses for single-family, owner-occupied dwellings.
- The **HOME Rental Housing Development Program**. The HOME Rental Housing Development program funds projects leading to additional rental units for low-income households, through new construction or the acquisition and rehabilitation of existing properties. Awards are made to community housing development organizations that sponsor the developments.

[24 C.F.R. Part 92; ss. 16.309 and 16.54, Stats.]

DOA administers various other federally financed programs. One key program is community development block grants, through which local governments receive grants for local housing programs.

[ss. 16.309 and 16.54, Stats.; ch. Adm 90, Wis. Adm. Code.]

Programs for Home Energy Assistance and Weatherization

DOA's DEHCR administers several programs for home energy assistance and for home weatherization. These programs include the following:

- The **Wisconsin Home Energy Assistance Program (WHEAP)**. WHEAP provides cash benefit assistance in the form of heating costs, electric costs, and energy crises. WHEAP operates with both federal and state funding.
- The **Wisconsin Weatherization Assistance Program**. DOA contracts with various community action agencies, housing authorities, local governments, and other non-profit organizations to provide weatherization services to eligible households. The weatherization services are designed to reduce home heating bills, save energy, and make the home warmer in the winter and cooler in the summer.

¹ The federal HOME program also provides grants to local governments and nonprofit organizations for homelessness prevention.

[ss. 16.26 and 16.27, Stats.; ch. Adm 45, Wis. Adm. Code.]

WHEDA Programs

Many low- to moderate-income Wisconsin households are assisted by WHEDA, which sells mortgage revenue bonds to finance housing development, and provides mortgage loans to qualifying individuals at below-market interest rates. WHEDA also administers three federally-funded programs on behalf of the state, as described below.

WHEDA incurs debt by issuing bonds, secured by a capital reserve fund, to finance private housing construction and loans.

The Legislature created WHEDA as an authority, not a state agency, so that its operating budget is not included in the state budget. Article VIII, Section 7, of the Wisconsin Constitution authorizes the state to incur debt to defend itself and for other public purposes, but does not explicitly authorize the state to incur debt by selling mortgage revenue bonds to finance private housing. Thus, WHEDA's operating budget is financed primarily from interest earnings on loans it makes, from its investments, and from administrative fees it assesses.

[ch. 234, Stats.]

WHEDA Housing Programs for Homebuyers and Homeowners

Programs administered by WHEDA to assist qualified individuals with purchasing or improving homes include the following:

- **WHEDA Advantage Program.** The WHEDA Advantage program provides first mortgage loans to qualified low- and moderate-income homebuyers. The program allows the purchase of a single-family home or a duplex and also provides loans for major rehabilitation of a home (at least 33% of the purchase price of the home). Among the various types of assistance, WHEDA Advantage loans provide down payment assistance and assistance with closing costs. The program is based on a national lending initiative agreement between Fannie Mae and state housing finance agencies.
- **WHEDA FHA Advantage Program.** The WHEDA FHA Advantage program is similar to the WHEDA Advantage program. It provides low-cost mortgage loans to qualified low- and moderate-income homebuyers with flexible underwriting. The borrower may purchase an existing single-family home or a HUD reviewed and approved condominium. The borrower must also participate in homebuyer education.
- **Easy Close Advantage Program.** The Easy Close Advantage program offers low-cost, fixed interest rate loans to qualifying WHEDA Advantage program participants which may be used for a down payment on a home, closing costs, and homebuyer education expenses.

- **Property Tax Deferral Loan Program.** Under the Property Tax Deferral Loan program, low-income elderly homeowners are able to convert home equity into income to pay property taxes.

[subch. I, ch. 234, Stats.]

WHEDA Housing Programs for the Development and Rehabilitation of Housing
WHEDA administers other programs to encourage the development of housing for low- to moderate-income persons, including the following:

- **WHEDA Foundation Grant Program.** Under the WHEDA Foundation Grant program, grants are provided by the WHEDA Foundation (a nonprofit corporation, founded by WHEDA), to nonprofit organizations and local governments for improving housing opportunities for low- and moderate-income persons, elderly persons, disabled persons, and persons in crisis.
- **Multifamily Housing Programs.** WHEDA provides numerous loan options to assist in the development and rehabilitation of affordable multifamily housing for low- to moderate-income persons, homeless persons, or persons with disabilities. Some loans are short-term and others are long-term.

[s. 234.65, Stats.; see generally, subch. I, ch. 234, Stats.]

Federally-Funded Programs Administered on Behalf of the State

WHEDA administers the following federally-funded housing programs on behalf of the state:

- **Low-Income Housing Tax Credit Program.** WHEDA administers the state's low-income housing tax credit program, which assists the development or rehabilitation of affordable rental housing.
- **HUD Housing Choice Voucher Program.** WHEDA acts on behalf of the state to distribute rental vouchers for low-income Wisconsin households in communities that do not have local housing agencies. This program is also described under HUD programs above.
- **WHEDA Preservation Revolving Loan Fund (PRLF).** PRLF is funded by the U.S. Department of Agriculture. WHEDA uses PRLF funds to allocate loans to rural multifamily developments in communities of 20,000 or less if the multifamily housing integrates low-income families and individuals, as well as people who are elderly or have disabilities.

HOUSING DISCRIMINATION

Housing discrimination is prohibited under the federal Fair Housing Act and Wisconsin's Fair Housing Law. HUD's Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. At the

state level, the Equal Rights Division in DWD is primarily responsible for administering and enforcing Wisconsin's fair housing law. DWD also provides technical assistance regarding enforcement matters to local government, as well as private and nonprofit organizations in the state. At the local level, in some areas, organizations such as fair housing councils help individuals understand their rights with respect to fair housing.

Federal Fair Housing Act

The federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, is codified at 42 U.S.C. s. 3601, *et seq.* Traditional grounds for discrimination prohibited by the federal Fair Housing Act are race or color, national origin, religion, and sex. Disability and familial status were added in 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a “protected class” of persons, and those individuals within the class are protected from housing discrimination based on the characteristic.

The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, or familial status.

With respect to disability, the Fair Housing Act prohibits the refusal of reasonable modifications at the expense of the disabled person. The law also prohibits the refusal of reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary for persons with disabilities to have the equal opportunity to use and enjoy the dwelling. The Fair Housing Act requires certain multifamily dwellings to be designed and constructed as accessible housing.

With respect to familial status, the Fair Housing Act includes prohibitions on discrimination based on characteristics such as being pregnant or having children under the age of 18 living with parents or legal custodians, with some exceptions.

[42 U.S.C. ss. 3604-3606.]

The federal Fair Housing Act covers most housing, but generally excludes single-family housing sold or rented without the use of a broker, as well as owner-occupied buildings with fewer than four units.

The federal Fair Housing Act also imposes accessibility requirements for persons with physical disabilities on multifamily housing, which include requirements related to sizing of passageways, placement of door handles and

Wisconsin's Fair Housing Law protects the following six additional classes not protected under federal law:
(1) sexual orientation;
(2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking;
(4) lawful source of income;
(5) age; and (6) ancestry.

outlets, and access to existing common areas. The act applies to buildings with **four or more** dwelling units first ready for occupancy after March 13, 1991.

Wisconsin Fair Housing Law

Wisconsin’s Fair Housing Law, also known as the “open housing law,” is similar to its federal counterpart. However, the state law prohibits discrimination based on a wider range of characteristics than federal law. State law prohibits housing discrimination against the same protected classes as federal law, as well as: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry. [s. 106.50 (1m) (h), Stats.]

With respect to disability and familial status, the Wisconsin Fair Housing Law includes similar provisions to the Federal Fair Housing Act.

Covered Housing

Wisconsin’s open housing law differs from the federal Act in that it covers single-family residences that are owner-occupied. According to the governing statute: “The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated.” [s. 106.50 (1), Stats.]

Accessibility Requirements

State law also imposes accessibility requirements for persons with physical disabilities on multifamily housing. Accessibility requirements under the state open housing law are similar to those under the federal Act. The state law applies to housing first ready for occupancy on or after October 1, 1993, consisting of **three or more** dwelling units and including **at least one** elevator. [s. 101.132, Stats.]

Enforcement and Complaints

A person may file a complaint with HUD on HUD’s website at:
www.hud.gov/complaints_home

Federal and state fair housing laws are enforced primarily in response to complaints initiated by individuals who feel that they have been discriminated against in their search for housing. Complaints may be filed under either the federal Fair Housing Act or the Wisconsin Fair Housing Law. Some areas of the state are served by a fair housing council, which may

assist individuals in the complaint process, as described below.

Complaints Under the Federal Fair Housing Act

A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding:

Information on filing a state fair housing complaint is available on the DWD's Equal Rights Division website:

http://www.dwd.wisconsin.gov/er/civil_rights/housing/housing.htm

First, a person may file a complaint with HUD no later than one year after the alleged discrimination occurred. HUD will then investigate the claim and determine whether it finds reasonable cause to believe that discrimination occurred. If charges are issued, the person who filed the complaint will not have to pay the

costs of pursuing a legal remedy.

Second, a person may file a civil action at his or her expense in federal district court or state court no later than two years after the alleged discrimination occurred. This option is only available if an administrative law judge has not yet started a hearing.

A benefit of the first option is that the federal government pays for the proceeding if HUD does not dismiss the complaint, whereas a person choosing the second option does so at his or her own expense.

Complaints Under Wisconsin's Law

A person alleging a violation under Wisconsin's open housing law may file a complaint with DWD's Equal Rights Division no later than one year after the alleged discrimination occurred. DWD's Equal Rights Division must find **probable cause** to believe that discrimination occurred before charges may be issued, whereas the federal Act requires only **reasonable cause**. [s. 106.50 (6), Stats.]

In addition, a person alleging a violation of Wisconsin's Fair Housing Law, including the Attorney General on behalf of an aggrieved person, may bring an action for enforcement in civil court. [s. 106.50 (6m), Stats.]

Fair Housing Councils

To find out if a particular area is served by a fair housing council, contact:

Metropolitan Milwaukee Fair Housing Council, Inc. (MMFH)

(414) 278-1240

<http://www.fairhousingwi.com>

A fair housing council is an organization that helps individuals to understand their options for pursuing a complaint under the fair housing laws. Assistance is provided in Milwaukee by the Metropolitan Milwaukee Fair Housing Council, which also helps individuals in other communities find out if their area is served by a fair housing council.

RESIDENTIAL LANDLORD-TENANT LAW

State law regulates the rental of residential properties and provides for the severability of rental agreements and prohibited provisions. Residential landlord-tenant law is a mix of

state statutes, administrative rules, and common law (law derived from court decisions on individual cases). Cities, villages, towns, and counties are prohibited from enacting or enforcing ordinances that place certain limits requirements on landlords. [ss. 66.0104 and 66.1010, Stats.]

Chapter 704, Stats., sets forth the main part of Wisconsin statutory law governing landlord and tenant relationships. Among other provisions, the chapter sets forth requirements relating to landlords' obligations and liability, security deposits, termination of tenancies, and terms that render leases unenforceable.

Exclusive Right of Possession

Unless a lease specifies otherwise, a residential tenant generally has an exclusive right to possession of the leased premises. However, with advance notice, and at reasonable times, a landlord may enter the premises to inspect or repair the property or to show the premises to prospective tenants or purchasers. If a tenant is absent from the premises, a landlord may also enter without notice, if the landlord reasonably believes that the entry is necessary to preserve or protect the premises. [s. 704.05 (2), Stats.]

Landlord Obligations

A residential landlord generally has a duty to do all of the following:

- Keep the premises and equipment in the landlord's control in a reasonable state of repair.
- Make all necessary structural repairs.
- Comply with local housing code requirements.

[s. 704.07 (2), Stats.]

Severability of Rental Agreements and Prohibited Provisions

Provisions of a rental agreement are generally severable. Severability allows certain provisions in a lease to be invalidated without invalidating the other provisions. An example of a provision that is void and severable from the rental agreement is an agreement to waive any of the duties owed by either the landlord or tenant requiring the property to meet code requirements and be fit for tenants. [ss. 704.02 and 704.07 (1), Stats.]

Rental agreement provisions found to be void or unenforceable are generally severable from the rental agreement itself. This allows the rest of the agreement to be enforceable. Some prohibited provisions are not severable, and render the entire agreement invalid.

However, under the statutes, certain provisions found to be void or unenforceable will not be severed from the agreement but, instead, will render the entire lease void and

unenforceable. A provision will render an entire rental agreement void and unenforceable if it does any of the following:

- Allows a landlord to take certain retaliatory actions because a tenant has contacted an entity for law enforcement, health, or safety services.
- Authorizes the eviction or exclusion of a tenant from the premises other than by a process established in state statute.
- Provides for accelerated rent payments in the event of tenant default or breach of obligations under the rental agreement or otherwise waives the landlord's statutory obligation to mitigate damages.
- Requires a tenant to pay attorney fees or costs incurred by the landlord, except as required by court order.
- Authorizes a landlord to act on the tenant's behalf in an action arising under the rental agreement.
- States that a landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord.
- Imposes liability on a tenant for personal injury arising from causes clearly beyond the tenant's control or for property damage caused by natural disasters or persons other than the tenant or the tenant's guests or invitees.
- Waives a landlord's statutory or other legal obligations to deliver the premises in a habitable condition and maintain the premises.
- Allows a landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime.
- Allows the landlord to terminate a tenancy for a crime committed in relation to the rental property if the rental agreement does not include a statutorily required notice relating to certain domestic abuse protections.

Terminations of Tenancy and Eviction

A landlord may terminate a tenancy for one or more of the following reasons, subject to statutory notice requirements:

- A tenant stays beyond the period included in a lease termination notice for a periodic tenancy or a tenancy at will.
- A tenant fails to pay required rent.
- A tenant, a member of the tenant's household, or a guest or other invitee of the tenant or a member of the tenant's household: (1) engages in criminal activity that threatens the health or safety of, or right to peaceful enjoyment of, the premises by other tenants or persons residing in the immediate vicinity; (2) engages in any criminal activity that

threatens the health or safety of the landlord (or the landlord’s agent); or (3) engages in any drug-related activity on or near the premises.

- While subject to one of several types of court orders, a tenant commits certain acts, including verbal threats, which cause another tenant (or the other tenant’s child) in the same unit, multi-unit dwelling, apartment complex, or manufactured or mobile home community, to face an imminent threat of serious physical harm.

[ss. 704.16 (3), 704.17, and 704.19 (8), Stats.]

A landlord (or other person entitled to the possession of property) may commence a civil action to evict a person whose tenancy has been terminated (or who is otherwise occupying property illegally). Special timelines, pleading requirements, and remedies apply to eviction actions. [ss. 799.40 to 799.445, Stats.] A court must temporarily stay such eviction proceedings if a tenant applies for the emergency assistance program, which provides limited assistance to qualifying families in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. [s. 799.40 (4), Stats.]

In some instances, a tenant may argue that the tenant has been subject to a “constructive eviction.” Technically, “constructive eviction” is a defense to an action brought by a landlord for unpaid rent. The defense applies if a tenant has been forced to vacate rental housing because of substantial habitability concerns materially affecting the tenant’s health and safety. [s. 704.07 (4), Stats.]

ADDITIONAL REFERENCES

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs and agencies, including state housing programs, the property tax deferral loan program, and WHEDA. The Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb>.
2. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) publishes the *Landlord Tenant Guide*. The guide is available on DATCP’s website, www.datcp.wi.gov.

GLOSSARY

Fair Housing Act: A federal law prohibiting housing discrimination based on race, color, national origin, religion, sex, disability, or familial status.

Fair Housing Law: A state law, also called the “Open Housing Law,” prohibiting housing discrimination.

HUD: The U.S. Department of Housing and Urban Development.

WHEDA: The Wisconsin Housing and Economic Development Authority.

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