

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/20/1999**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**

By/Representing: **Sara Jermstad**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

**Alt. Drafters:**

Subject: **Real Estate - landlord/tenant**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	kahlepj 1 1/05/1999	jgeller 1 1/16/1999		_____			
/P1			martykr 1 1/16/1999	_____	lrb-docadmin 1 1/16/1999		
/P2	kahlepj 12/21/1999	jgeller 12/21/1999	kfollet 12/21/1999	_____	gretskl 12/21/1999		
/1	kahlepj 0 1/28/2000	jgeller 0 1/28/2000	martykr 01/31/2000	_____	lrb-docadmin 01/31/2000	lrb-docadmin 02/02/2000	

FE Sent For:

<END>

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/20/1999**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**

By/Representing: **Sara Jermstad**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Real Estate - landlord/tenant**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 1 1/05/1999	jgeller 1 1/16/1999		_____			
/P1			martykr 1 1/16/1999	_____	lrb-docadmin 1 1/16/1999		
/P2	kahlepj 1212111999	jgeller 1212111999	kfollet 12/21/1999	_____	gretskl 12/21/1999		
/1	kahlepj 01/28/2000	jgeller 01/28/2000	martykr 01/31/2000	_____	lrb-docadmin 01/31/2000		

**1999 DRAFTING REQUEST****Bill**Received: **10/20/1999**Received By: **kahlepj**Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**By/Representing: **Sara Jermstad**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Real Estate - landlord/tenant**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	kahlepj 1 1/05/1999	jgeller 11'16'1999		_____			
'P1			martykr 11'16'1999	_____	lrb_docadmin 11'16'1999		
'P2	kahlepj 12'21'1999	j geller 12/21/1999	kfollet 12/21/1999	_____	gretskl 12/21/1999		

FE Sent For:

&lt;END&gt;

1999 DRAFTING REQUEST

Bill

Received: 10/20/1999

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Tom Sykora (608) 266-1194

By/Representing: Sara Jermstad

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Real Estate - landlord/tenant

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/?	kahlepj 11/05/1999	jgeller 11/16/1999		_____			
/P1			martykr 11/16/1999		lrb_docadmin 11/16/1999		
FE Sent For:		<del>***</del> NOTES	12/21 jlg	12/21	12/21		

<END>

### 1999 DRAFTING REQUEST

#### Bill

Received: **10/20/1999**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**

By/Representing: **Sara Jermstad**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Real Estate - landlord/tenant**

Extra Copies:

#### Pre Topic:

No specific pre topic given

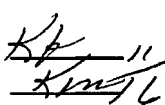
#### Topic:

Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

#### Instructions:

See Attached

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reuired</u>
1?	kahlepj	1/11/16 jlg	1/11/16				

FE Sent For:

<END>



LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for BILL drafts. Attach more pages if necessary.

Form with fields: Date of request: 10/18/99; Legislator or agency requesting this draft: Rep. Sykora; Name/phone number of person submitting request: Tom Sykora 10-1194; Persons to contact for questions about this draft: Sara Jermstad 6-1195, Ross Kinzler 255-5595; Describe the problem, including any helpful examples. How do you want to solve the problem? Please see attached letter. Request that statutes be amended pertaining to mobil home park regulations. Also request that the statutes be amended so as to require that the mobil home park owner always be the signatory on a lease.; If you know of any statute sections that might be affected, please list them or provide a marked [not re-typed] copy. S 710.15

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/I or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? [X] YES [ ] NO

If yes, anyone who asks? [ ] YES [X] NO

Any legislator? [ ] YES [X] NO [X] ONLY the following persons:

Ross Kinzler of WmHA and any agency (DATCP, Doc) that may be helpful

Do you consider this urgent? [ ] YES [X] NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

[ ] YES [X] NO If yes, please sign your name here:



2020



# Wisconsin **Manufactured Housing Association**



**Ross Kinzler, Executive Director**

202 State Street, Suite 200  
Madison, WI 53703-2215  
E-mail: info@wmha.org  
608-255-3131  
608-255-5595 Fax



September 14, 1999

**Rep. Tom Sykora**

PO Box 8953  
Madison, WI 53708

**Dear Rep. Tom Sykora:**

We'd like to bring to your attention a court decision that disregarded the clear intent of the Legislature. Many years ago, the Legislature adopted s. 710.15 which provides certain protections for owners of mobile homes located in mobile home parks. For example, the statute requires that park owners offer at least a one year written lease and that evictions must be for specified causes.

In *Benkowski v. Flood*, the Wisconsin Court of Appeals (District II) found that Mr. Benkowski was a "resident" within terms of the statute despite clear legislative history that he was not. In this case, Mr. Flood, the park owner, told Mr. Benkowski who owned four homes in the mobile home park that he desired to have owner occupied homes and not rentals. Once a renter, moved out, Mr. Flood sought to require that Mr. Benkowski sell the home to a person who would become an owner-occupant or to remove the home from the park. Mr. Flood's experience (as is common in the industry), is that owner-occupants have more home pride, follow the lease better and are just more responsible.

Mr. Benkowski sued claiming that the statute prohibits the park operator to require a home to be removed from the park because of a change of ownership or occupancy. Flood countered that he was not requiring the home to be removed because of a change of ownership or occupancy, instead he was requiring a change of ownership or occupancy. Benkowski also asserted that the statute provided these protections because he was a resident. A resident is defined as a person who rents a site from a park operator. [Flood countered that the same statute defines an operator as a person engaged in the business of renting plots of ground or mobile homes in a mobile home park . . . Therefore, he asserted that Benkowski was really an operator. In addition, he pointed to Legislative history that indicated clearly that the Legislature was attempting to protect the mobile home owner that was the owner-occupant

Remembering that Mr. Benkowski still has only a one-year lease, Mr. Flood is perplexed how he ever will regain control of his own mobile home park. The statute needs to be clarified. I'd like stop by and discuss this situation with you.

Sincerely,

Ross Kinzler  
Executive Director

---

*How get around  
reg under (1w) & def  
of lease?  
not reported?*

(b) "Depositor" means a person who, by agreement with a financial institution or by written power of attorney, has the right to issue orders or instructions concerning an account.

(c) "Financial institution" means a state or national bank, trust company, savings bank, building and loan association, savings and loan association or credit union doing business in this state.

(2) Except as provided in ch. 112 or subch. I of ch. 705, notice to a financial institution of a claim to all or part of an account by any person other than a depositor of the account or the financial institution has no effect upon the rights and duties of the depositor or financial institution with respect to the account, and notwithstanding such notice or claim the financial institution may honor the orders and instructions of its depositor regarding the account without liability to the claimant until otherwise ordered by a court or administrative agency of appropriate jurisdiction.

History: 1977 c. 430; 1989 a. 331.

**710.07 Conveyances by life tenant.** A conveyance made by a tenant for life or years purporting to grant a greater estate than the tenant possessed or could lawfully convey shall not work a forfeiture of the tenant's estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

History: 1993 a. 486.

**710.10 Removal of possessor of property.** In the following cases any person who holds possession of property, or the representatives or assigns of such person may be removed under ch. 799 or 843.

(1) A person holding in violation of s. 704.17 (4). or of s. 704.19 (8).

(2) A tenant at sufferance holding without permission.

(3) A possessor of property which has been sold upon foreclosure of a mortgage if the possessor's rights were extinguished by the foreclosure.

(4) A person who occupies or holds property under an agreement with the owner to occupy and cultivate it upon shares and the time fixed in the agreement for such occupancy has expired.

History: 1971 c. 211; 1975 c. 198; 1979 c. 32 s. 92 (16); 1993a.486.

**710.11 Transfer of land where dam exists.** A person may not accept the transfer of the ownership of a specific piece of land on which a dam is physically located unless the person complies with s. 31.14 (4).

History: 1981 c. 246.

This section does not apply to cranberry dams. *Tenpas v. DNR. 148 W (2d) 579, 436 NW (2d) 297 (1989).*

**710.15 Mobile home park regulations. (1) DEFINITIONS.** In this section:

(a) "Lease" means a written agreement between an operator and a resident or mobile home occupant establishing the terms upon which the mobile home may be located in the park or the mobile home occupant may occupy a mobile home in the park.

(b) "Mobile home" has the meaning given under s. 66.058 (1) (d) but does not include any unit used primarily for camping, touring or recreational purposes.

(c) "Mobile home occupant" means a person who rents a mobile home in a park from an operator.

(d) "Operator" means a person engaged in the business of renting plots of ground or mobile homes in a park to mobile home owners or mobile home occupants.

(e) "Park" means a tract of land containing 2 or more plots of ground upon which mobile homes are located in exchange for the payment of rent or any other fee pursuant to a lease.

(f) "Resident" means a person who rents a mobile home site in a park from an operator.

(1 m) REQUIREMENT AND TERM OF LEASE. Every agreement for the rental of a mobile home site or mobile home shall be by lease. Every lease shall be for a term of at least one year unless the resi-

dent or mobile home occupant requests a shorter term and the operator agrees to the shorter term.

(2) RULES INCLUDED IN LEASE All park rules that substantially affect the rights or duties of residents or mobile home occupants or of operators, including park rules under sub. (2m) (b), shall be made a part of every lease between them.

(2m) EMERGENCY SHELTER DISCLOSURE (a) Every lease shall state whether the park contains an emergency shelter.

(b) If a park contains an emergency shelter under par. (a), the park rules shall state the location of the emergency shelter and procedures for its use.

(3) PROHIBITED CONSIDERATION OF AGE OF MOBILE HOME. (a) An operator may not deny a resident the opportunity to enter into or renew, and may not include, exclude or alter any terms of, a lease to continue to locate a mobile home in the park solely or in any part on the basis of the age of the mobile home.

(b) An operator may not require the removal of a mobile home from a park solely or in any part on the basis of the age of the mobile home, regardless of whether the ownership or occupancy of the mobile home has changed or will change.

(4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF MOBILE HOME. An operator may not require the removal of a mobile home from a park solely or in any part because the ownership or occupancy of the mobile home has changed or will change. An operator may refuse to enter into an initial lease with a prospective resident or mobile home occupant for any other lawful reason.

(4m) NO INTEREST IN REAL ESTATE; SCREENING PERMITTED. Neither sub. (3) (b) nor sub. (4) creates or extends any interest in real estate or prohibits the lawful screening of prospective residents and mobile home occupants by an operator.

(5m) TERMINATION OF TENANCY OR NONRENEWAL OF LEASE. Notwithstanding ss. 704.17 and 704.19, the tenancy of a resident or mobile home occupant in a park may not be terminated, nor may the renewal of the lease be denied by the park operator, except upon any of the following grounds:

(a) Failure to pay rent due, or failure to pay taxes or any other charges due for which the park owner or operator may be liable.

(b) Disorderly conduct that results in a disruption to the rights of others to the peaceful enjoyment and use of the premises.

(c) Vandalism or commission of waste of the property.

(d) A breach of any term of the lease.

(e) Violation of park rules that endangers the health or safety of others or disrupts the right to the peaceful enjoyment and use of the premises by others, after written notice to cease the violation has been delivered to the resident or mobile home occupant.

(em) Violation of federal, state or local laws, rules or ordinances relating to mobile homes after written notice to cease the violation has been delivered to the resident or mobile home occupant.

(f) The park owner or operator seeks to retire the park permanently from the rental housing market.

(g) The park owner or operator is required to discontinue use of the park for the purpose rented as a result of action taken against the park owner or operator by local or state building or health authorities and it is necessary for the premises to be vacated to satisfy the relief sought by the action.

(h) The physical condition of the mobile home presents a threat to the health or safety of its occupants or others in the park or, by its physical appearance, disrupts the right to the enjoyment and use of the park by others.

(i) Refusal to sign a lease.

(j) Material misrepresentation in the application for tenancy.

(k) Offer good cause.

(5r) NOTICE REQUIREMENTS APPLY. The notice requirements of s. 704.17 (1) (a), (2) (a) and (3) apply to a termination of tenancy

*\* (f) Resident means a person who rents a mobile home site in a park from an operator. for purpose of occupying the site.*  
*(1 m) REQUIREMENT AND TERM OF LEASE. Every agreement for the rental of a mobile home site or mobile home shall be by lease. Every lease shall be for a term of at least one year unless the resi-*  
*\* Park owner always signatory on lease*





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*D-note*

*per cat*

1 AN ACT *per cat*; relating to: rentals of mobile homes and termination of tenancies in  
2 mobile home parks.

**Analysis by the Legislative Reference Bureau**

*This is a preliminary draft. An analysis will be provided in a later*

**The people of the state of Wisconsin, represented in senate and assembly, do *version.* enact as follows:**

3 **SECTION 1.** 710.15 (1) (a) of the statutes is amended to read:  
4 710.15 (1) (a) "Lease" means a written agreement between an operator and a  
5 resident ~~or~~, between an operator and a mobile home occupant or among an operator,  
6 a resident and a mobile home occupant *per cat* establishing the terms upon which the mobile  
7 home may be located in the park or the mobile home occupant may occupy a mobile  
8 home in the park.

History: 1985 a. 235.

9 **SECTION 2.** 710.15 (1) (c) of the statutes is amended to read:

1 710.15 (1) (c) "Mobile home occupant" means a person who rents a mobile home  
2 in a park ~~from an operator.~~ ✓

History: 1985 a. 235.

3 SECTION 3. 710.15 (1) (d) of the statutes is amended to read:

4 710.15 (1) (d) "Operator" means a person engaged in the business of renting  
5 plots of ground or mobile homes in a park to mobile home owners or mobile home  
6 occupants. "Ooerator" does not include a resident. ✓

History: 1985 a. 235.

7 SECTION 4. 710.15 (lm) of the statutes is renumbered 710.15 (lm) (a).

8 SECTION 5. 710.15 (1m) (b) of the statutes is created to read:

9 710.15 (1m) (b) A resident may not agree to rent a mobile home in a park to  
10 a prospective mobile home occupant unless the operator of the park approves the  
11 rental and is a party to the agreement. Any rental agreement between a resident and  
12 a mobile home occupant that was entered into before the effective date of this  
13 paragraph . . . . [revisor inserts date], may not be renewed unless the operator of the  
14 park approves the renewal and is made a party to the rental agreement.

15 SECTION 6. 710.15 (2) of the statutes is amended to read:

16 710.15 (2) RULES INCLUDED IN LEASE. All park rules that substantially affect the  
17 rights or duties of residents of mobile home occupants or operators, including park  
18 rules under sub. (2m) (b), shall be made a part of every lease ~~between them.~~ ✓

History: 1985 a. 235.

19 SECTION 7. 710.15 (4) of the statutes is amended to read:

20 710.15 (4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF  
21 MOBILE HOME. ~~An~~ Except as provided in sub. (6), ✓ an operator may not require the  
22 removal of a mobile home from a park solely or in any part because the ownership  
23 or occupancy of the mobile home has changed or will change. ~~An~~ operator may refuse

Except as provided in sub. (6), an

1 to enter into an initial lease with a prospective resident or mobile home occupant for  
2 any other lawful reason.

3 History: 1985 a. 235.

**SECTION 8. 710.15 (5m) (intro.)** of the statutes is amended to read:

4 **710.15 (5m) TERMINATION OF TENANCY OR NONRENEWAL OF LEASE. (intro.)**

5 Notwithstanding ss. 704.17 and 704.19, and except as provided in sub. (6), the  
6 tenancy of a resident or mobile home occupant in a park may not be terminated, nor  
7 may the renewal of the lease be denied by the park operator, except upon any of the  
8 following grounds:

9 History: 1985 a. 235.

**SECTION 9. 710.15 (6)** of the statutes is created to read:

10 **710.15 (6) PERMITTED OCCUPANCY REQUIREMENTS. (a)** A park owner or operator

11 may require that a mobile home in a park may be occupied only by any of the  
12 following:

- 13 1. A person who rents a mobile home that is not owned by a resident from the
- 14 operator.
- 15 2. A person who owns the mobile home that he or she is occupying.

16 (b) If a park owner or operator makes a determination under par. (a) that will  
17 result in the termination of the tenancy of a mobile home occupant or resident, the  
18 tenancy may be terminated only at the end of a lease term.

\*\*\*\*NOTE: Section 710.15 (1m) (b) may eliminate the need for this provision. If you  
want to keep this provision, do you want to specify any amount of time for providing notice  
to an affected party before the end of a lease term?

19

(END)



SECTION #. Initial applicability.

#  
(1) The treatment of section 710.15 (1)(a),  
(c) and (d), (2) and (b)(a) of the statutes,  
the renumbering of section 710.15 (1m) of the  
statutes and the creation of section 710.15  
← (letter)  
(1m)(b) of the statutes first apply to  
or rental agreements  
leases entered into or renewed on the  
effective date of this subsection.

(END) ✓

~~Draft~~



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3785/7dn

PJK.....

PI  
jla

There are many approaches to resolving the problem that you related. The approach in this draft is just one. You may want to be more specific to the fact situation. You may simply want to repeal s. 710.15 (4). You may want to specifically allow termination of tenancy under s. 710.15 (5m) for a reason more closely related to your fact situation. Section 710.15 (1m) (b), created in this draft, may be sufficient for your purposes. In any case, any change may affect a current tenancy only at renewal. Let me know how you wish to proceed.

PJK

**DRAFTERS NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3785/P1dn  
PJK:jlg:km

November 16, 1999

There are many approaches to resolving the problem that you related. The approach in this draft is just one. You may want to be more specific to the fact situation. You may simply want to repeal s. 710.15 (4). You may want to specifically allow termination of tenancy under s. 710.15 (5m) for a reason more closely related to your fact situation. Section 710.15 (1m) (b), created in this draft, may be sufficient for your purposes. In any case, any change may affect a current tenancy only at renewal. Let me know how you wish to proceed.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

sect 3 → add language about "or mobile home occ."

Amend →

\* (to include sublease) although someone  
subletting a mobile  
home is not "engaged  
in the business"  
of renting mobile  
homes

def of resident (not necessary)

sect 7 2nd sentence (remove Except ...)

sect 9 needed or not?

(Sand - Sykora's office | LRB-3785

PJK

LAW OFFICES  
EDGARTON, ST. PETER, PETAK, MASSEY & BULLON

10 FOREST AVENUE

P. O. BOX 1276

FOND DU LAC, WISCONSIN 54601-1276

FAX NUMBER: (920) 922-9091

920-922-0470

A.D. (DAN) EDGARTON  
ROBERT V. EDGARTON  
RONALD L. PETAK  
JOHN AL. ST. PETER  
KATHRYN M. BULLON  
PAUL W. ROSENFELD

ALLAN L. EDGARTON (1908-1994)  
THOMAS L. MASSEY (1935-1996)  
GEORGE M. ST. PETER, OF COUNSEL  
NEIL HOBBS, OF COUNSEL

December 8, 1999

VIA FACSIMILE; 608-255-5595

Mr. Ross Kinzler  
Wisconsin **Manufactured** Housing Association  
202 State Street, Suite 200  
Madison, WI 53703-2215

VIA FACSIMILE: 608-264-6999

Rep. Tom Sykora  
Office 602-W  
P.O. Box 6953  
Madison, WI 537084953

Re: Proposed Amendments of Sac. 710.15, Stats.

Dear ROSS and Representative Sykora:

**First, let me say that Mr. Flood and I very much appreciate the opportunity to comment on these proposed amendments. After discussing the proposal with Mr. Flood, our comments are as follows:**

The proposed SEC. 710.15(1m)(b) provides in part: "**A resident may not agree to rent a mobile home in a park to a prospective mobile home occupant unless the operator of the park approves the rental and is a party to the agreement**" (my emphasis). The subsection then **provides a similar** right of approval for renewal of preexisting subleases. The existing definition of "resident" under sec. 710.15(1)(f), Stats., remains unchanged. I realize that the Court of Appeals **has** now held that this definition includes a sublessor who does not "reside" under any normal use of the term. However, should a subsequent case reach the Supreme Court, **such a person** would be free to argue that he is not a resident and therefore not restricted by sec. 710.15(1m)(b). We therefore believe that if the legislature follows this route that some consideration should be given to clarifying sec. 710.15(1)(f) in the following manner: **"resident" means a person who rents a mobile home site in a park from an operator, regardless of whether such person resides in, or occupies, any mobile home located upon the site.**

**resident other owner operator**

**resident other owner operator**

a sublessor?  
this does not address that

what case?

def does not require residence

I don't understand this one ↑

December 8, 1999

Page 2

*je (to cover renters who sublet)*

The proposed amendment of sec. 710.15(1)(d), Stats. states: "Operator' does not include a resident." Should mobile home occupants also be excluded **from** the definition?

Section 710.15(4), Stats, is the existing subsection that prohibits an operator **from** requiring the removal of a home because of a change in occupancy. The proposed amendment **makes this** prohibition subject to a newly created subsection 6, which permits an operator to require that a mobile home in his park be occupied only by those who either rent a mobile home from the operator or who own the mobile home that they are occupying, We have no quarrel with this approach. However, subdivision "b" of subsection 6 provides that: "If a park owner or operator makes a determination under par. (a) that will result in the **termination** of the tenancy of a mobile home occupant or resident, the tenancy may be terminated only at the end of a lease term" (my emphasis). Query: If a resident fails to **obtain the approval of the operator, as required under (1m)(b), before renting his mobile home** to an occupant, may the operator immediately terminate the resident's tenancy or would the operator's decision not to tolerate **the** rental constitute a "determination under par. (a)" **as** set forth in (6)(b)? **We would expect that a resident's violation** of (1m)(b) would be grounds for immediate termination of the resident's tenancy. If that is what is intended (and we believe that this indeed should be **the** intent), should a subdivision be added to **(5m)** to clarify **that** this would be grounds for immediate termination?

*(k) This good cause violation of state law*

The existing text of sec. 710.15(4), Stats. **contains** the expansive qualification that an operator may **refuse** to enter into an initial lease "for any other lawful reason." The amendment would preface this provision with the exception: "except **as provided in subsection 6.**" However, sub. 6 would also expand the operator's rights. Therefore, the proposed exception confuses us. Should it be omitted?

Lastly, the proposed subsection 6 would provide in part that an operator may require that a mobile home "be occupied only by any of the following: 1. A person who rents a mobile **home that is not owned by a resident from the operator.**" **It seems to us that the** use of the clause "that is not owned by a resident" is confusing and unnecessary,

*want to continue to allow rentals of res.-owned mobile homes? the key is 2, 3.*

We thank **you again** for your consideration of these **comments.** We would appreciate it if you would keep us advised as the **drafting** process **moves** forward.

Respectfully,

EDGARTON, ST. PETER, PETAK,  
MASSEY & BULLON

*Paul W. Rosenfeldt*  
Paul W. Rosenfeldt

PWR/jap  
cc: Mark Flood

**EDGARTON, ST. PETER, PETAK, MASSEY & BULLON  
LAW OFFICES**

10 Forest Avenue  
P. O. Box 1276  
Fond du Lac, Wisconsin 54836-1276

Telephone: **920-922-0470**  
Fax Number: **920-922-9091**

**\*\*\* FAX TRANSMISSION COVER SHEET \*\*\***

To: Pam Kohler	Fax No: 608-264-8522
From: Paul W. Rosenfeldt	Date: December 16, 1999
	Number of Pages including cover: 16
	Original to follow: Y N x

**COMMENTS/INSTRUCTIONS:**

IF YOU EXPERIENCE DIFFICULTY RECEIVING THIS TRANSMISSION,  
PLEASE CALL (920) 922-0470 AS SOON AS POSSIBLE. THANK YOU.

*The information contained in this facsimile is **privileged and confidential**. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this communication in error, please **notify** us immediately at the above telephone number and return the original to us by mail. Thank you.*

COURT OF APPEALS  
DECISION  
DATED AND FILED

July 14, 1999  
Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62. STATE.

No. 98-1972

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

ROBERT A. BENKOSKI,

PLAINTIFF-APPELLANT-  
CROSS- RESPONDENT,

v.

MARK A. FLOOD AND KATHLEEN M. FLOOD,

DEFENDANTS-RESPONDENTS-  
CROSS- APPELLANTS.

RECEIVED  
JUL 14 1999

EDGARTON, ST. PETER  
PETAK, MASSEY & BULLON

APPEAL and CROSS-APPEAL from orders of the circuit court for Fond du Lac County: PETER L. GRIMM, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Snyder, P.J., Brown and Anderson, JJ.

**BROWN, J.** This appeal and cross-appeal concern the relationship between the owner of a mobile home park and the owner of four

rental mobile home units located in the park. The question presented is whether the owner of the units, Robert A. Benkoski, is a resident of the park for purposes of the statute and the administrative code chapter dealing with mobile homes, even though he **does not live in the park. We conclude that with respect to the park owners, Mark A. and Kathleen M. Flood, Benkoski is a resident under the statute and code.** As such, the Floods may not require him to remove his units from the park due to a change in ownership.

The following facts are not in dispute. Benkoski rents four mobile home sites in the Floods' mobile home park on which he keeps his mobile homes. He then rents the homes to tenants. Benkoski had already been renting out his mobile homes **at** the park when the Floods bought an interest in the mobile home park. In 1991, the Floods took over sole ownership of the park. Prior to that, the Floods, their business associates and Benkoski had entered into a written, **year-to-year lease.** Under **the lease,** Benkoski could not sublet the sites "unless prior **approval** has been granted **from** Lessor." In **1989, after** Benkoski **informed** the Floods that his homes **' were** for sale, the Floods informed **Benkoski that "the home[s] will be allowed to remain in the park for this resale only. The new buyers will have to remove the home from the park at the end of their lease."**

Benkoski wrote the Floods in July 1991 that their removal policy was "making it **difficult** for **[him]** to sell the mobilehomes to prospective buyers since you are making them remove the trailers **from** the park when it is time for them to **sell** ... to someone else." Three years later, Benkoski had found a potential buyer for one of the homes and sent the Floods a completed application for tenancy so that they could approve of the new buyer. The Floods rejected the application, stating that, they would "not be processing the application because of **our** stand on your removal of the rentals **from** the park as they are **sold.**" Again, in



January 1995, **Benkoski** found potential buyers for one of the mobile homes and submitted an application to the Floods. Again, the Floods rejected the application, this time stating that “[a]s has been our policy in the past when one of your mobile homes comes up for sale it must be removed from the park,”

The rejection of these applications prompted **Benkoski** to file suit **against** the Floods. **He claimed** the Floods **had** violated § 710,15(3)(b) and (4) STATS., which prohibit a mobile home park operator from requiring removal of a mobile home due to the age of the home or a change in ownership or occupancy. Further, **Benkoski** alleged that the removal requirement constituted a violation of **Wis. ADM. CODE § ATCP 12506(1)(a)**, which forbids an operator **from** placing unreasonable restrictions on the sale of a mobile home in the park. **Benkoski** sought to recover twice his pecuniary loss (in an amount to be determined at the time of the trial), along with his costs and reasonable attorney’s fees, pursuant to § 100.20(5), STATS.<sup>1</sup> Finally, **Benkoski** sought an injunction forbidding the Floods **from** requiring removal of his homes upon sale. The Floods counterclaimed, alleging that **Benkoski** had agreed to discontinue subletting the homes when the **current tenants left and remove the units from the park as they became vacant**. The Floods requested dismissal of **Benkoski’s** complaint and an injunction requiring removal of the homes.

**Benkoski** moved for summary judgment, which the court denied because it found material facts still in dispute. At that stage of the proceedings, the original trial court judge **recused** himself. When proceedings resumed before the new judge, **Benkoski** moved for partial summary judgment dismissing the

---

<sup>1</sup> Chapter ATCP 125 was **adopted** under § 100.20(2), STATS., so a violation of it is grounds for a suit for damages **under § 100.20(5)**. See **Note, Wis. ADM. CODE ch. 125**.

Floods' counterclaim and the Floods moved to dismiss Benkoski's action for failure to state a claim upon which relief may be granted.

The court granted Benkoski's motion and dismissed the Floods' counterclaim. The court found that if indeed there was an agreement that Benkoski remove **the** units upon sale, then such an agreement, if merely oral, was in violation of § 710. IS(1)(a), (1m) and **(4)**, STATS. Those subsections require leases to be in writing and prohibit removal requirements based on change of ownership or occupancy.

In response to the Floods' motion, **the** court dismissed **Benkoski's** claims for relief based on **WIS. ADM. CODE** ch. ATCP 125 and § 100.20(5), STATS. It found **that** Senkoski was an operator, not a resident or tenant, as defined in chapters ATCP 125 and 710, STATS. Because "ATCP 125 was intended to protect mobile home dwellers' investment in their homes," and Benkoski did not live in the mobile homes at the park, Benkoski was "not within the class of persons protected" by that chapter. The court declined, however, to dismiss Benkoski's claims for relief "founded solely upon sec. 710.15, Stats." In short, the court ruled that Benkoski could pursue an injunction but not money damages.

There~~&~~<sup>er,</sup> the parties entered into a stipulation agreeing that the only issue **remaining** was Benkoski's request for declaratory relief, this being that **the court find that § 710.15, STATS. , applies to the relationship between the Floods and Benkoski** and that the Floods "cannot insist upon the removal of [Benkoski's] mobile home **from [the park]** should said mobile home be transferred." Based on **the** affidavits and evidence presented, the court concluded that: Benkoski is an operator under § 710.15(1)(d); Benkoski is also a resident under § 710.15(1)(f); § 710.15(3) and (4) apply, to the relationship between the Floods and Benkoski due

to Benkoski's status as a resident, "regardless of his concurrent status as an operator." The court also vacated any inconsistent language present in its previous order dismissing Benkoski's **WIS. ADM. CODE** ch. ATCP 125 claims. Specifically, **it withdrew "Sec. 710.15(1)(d), Stats." from the sentence in the order declaring that Benkoski was "solely an 'operator' as defined in ATCP 125.01(3) . . . and sec. 710. U(1)(d), Stats." In sum, the court ruled that Benkoski was concurrently a resident and an operator for purposes of § 7 10.15, but solely an operator under ch. ATCP 125. Because he is not a tenant under ch. ATCP 125, the Floods never violated ch. ATCP 125 and Benkoski cannot pursue a claim for damages pursuant to § 100.20(5), STATS. Benkoski appealed and the Floods cross-appealed.**

Before delving into the parties' arguments, we set out the relevant statutory and administrative code provisions. Section 710.15, **STATS.**, sets forth mobile home park regulations. Under paragraph (1)(c), a "mobile home occupant" is "a person who rents a mobile home in a park **from** an operator." Section **710.15(1)(c)**. A "resident" is "a person who rents a mobile home site in a park from an operator." **Section 710.15(1)(f)**. An "operator" is "a person engaged in the business of renting plots of ground or mobile homes in a park to mobile home owners or mobile home occupants." Section **710.15(1)(d)**. Under subsection (1m), all agreements for rental of mobile homes must be by **lease**. Finally, **under subsection (4), "[a]n operator may not require the removal of a mobile home from a park solely or in any part because the ownership or occupancy of the mobile home has changed or will change."**

**WISCONSIN ADM. CODE** ch. ATCP 125 also regulates mobile home parks. In that chapter, a "tenant" is "any person renting a site **from** an operator," and an "operator" is "any person engaged in **the** business of renting sites . . . to tenants." See **WIS. ADM. CODE § ATCP 125.01(3), (9)**. A "site" is any plot of

land rented to accommodate a mobile home used for residential purposes, except for a plot used for the accommodation of a mobile home that is “[o]wned by the operator and occupied as a residence.” *Id.* at (7). Section ATCP 12506(1)(a) prohibits an operator **from** unreasonably restricting the sale of a tenant’s mobile **home.**<sup>2</sup> Finally, § ATCP 125.09(2) forbids an operator **from** imposing any term or **condition he or she knows or reasonably ought to know is in conflict with that** chapter or other applicable law.

Benkoski, in his appeal, argues that the court erred in dismissing his §100.20(5), STATS., claim for relief. He reasons that he is a tenant pursuant to WIS. ADM. CODE § ATCP 125.01(9), since he rents a site from an operator. As such, he **is** protected by ch. ATCP 125. The Floods, by informing him that he would have to remove his homes, **from** the park upon sale, had required removal of the homes at least partly on the basis of a change in ownership or occupancy. This is a violation of § 710.15(4), STATS.; as such, it is an unreasonable restriction on the sale of the homes and therefore a violation of § ATCP 125.06(1)(a). Furthermore, under § ATCP 125.09(2), an operator is prohibited **from** imposing **any term, condition, rule or regulation which the operator knows to be in conflict** with ch. ATCP 125 or other law. Because the Floods’ actions are in violation of **ch. ATCP 125, Benkoski** claims that he is entitled **to** damages under § 100.20(5). Finally, **Benkoski asserts that the court erred when it denied his initial motion for summary judgment, as there** were no material facts in dispute and **the** law was clearly on his side.

---

<sup>2</sup> It is worth noting that § 710.15(4), STATS., is reprinted in a note immediately following WIS. ADM. CODE § ATCP 125.06(1)(a) in the Wisconsin Administrative Code.

The Floods respond that Benkoski is not a tenant under ch. ATCP 125, and, even if he were, they have not violated any provision in that chapter. The Floods cite the **rule-making** history of **WIS. ADM. CODE** ch. ATCP 125 in support of their argument that the chapter was meant to protect those who own mobile **homes** and use them as residences, not those who sublet them out to others. Furthermore, the Floods claim that reasonable minds could differ as to whether § 7 10.15, STATS., governs their relationship with Benkoski. Therefore, it was **reasonable for them to conclude that it did not**. Because **their** actions were not unreasonable, they were not in violation of **§ ATCP 125.06(1)(a)**. **Regarding the court's denial of Benkoski's first motion for summary judgment, the Floods argue** that Benlcoski failed to make even a prima facie case that they had violated **§ 710.15(3)(b) and (4)**, as he never alleged that the Floods required removal because of a change in ownership. According to the Floods, the key issue in this case is their intent in telling Benkoski to remove **the** homes. Mark Flood's affidavit presents a lawful reason for requiring removal-they wanted to have their park contain all owner-occupied homes. This reason was never refuted, and so, the Floods argue, the trial court should have granted summary judgment in their favor.

On ~~cross~~ appeal, the Floods contend that the trial court **erred** in dismissing their **counterclaim**. **Chapter 710.15, STATS., does not govern their relationship with Benkoski, they argue, because Benkoski is not a "resident" for purposes of the statute.** The legislature intended the term "resident" to embrace only those living in their mobile homes. Therefore, since Benkoski is not protected under the **statute**, the Floods are not subject to **the** requirements of that section. Their agreement **with** Benkoski that he remove **the** homes upon resale did not need to be included in the lease.

We first 'address a threshold **matter** lingering in the parties' arguments. The parties dispute whether **Benkoski** is an operator under the statute. The trial court found that he was both an operator and a resident. We agree that **Benkoski** can wear two hats: he is **an** operator with respect to his tenants, those who sublet the lots and lease the homes **from him**. We address Benkoski's status in his relationship with the Floods below. Our point here is this: whether Benkoski, in his relationship with those from whom he collects rent, is an operator is **irrelevant** to this case. Our concern is **the** relationship between the Floods and Benkoski, not **the** relationship **between Benkoski** and his tenants.

We **address** ~~the~~ the major arguments in this case in three sections. First, we examine the application of § 710.15, STATS., to the case. Second, we look at whether WIS. ADM. CODE ch. ATCP 125 bears upon the parties' relationship. Third, we discuss the propriety of summary judgment in this case.

*Section 710.15, STATS.*

The **application** of a statute to a given set of facts is a question of law **we review de novo**. See *Voss v. City of Middleton*, 162 Wis.2d 737, 749, 470 N.W.2d 625, 629 (1991). When interpreting a statute, we look to the legislative intent. See *id*. If the statute is clear and unambiguous, we merely apply it to the facts of **the** case. See *id*. If, on the other **hand**, the statute is ambiguous, we look beyond its language to its history, object and scope. See *id*. A statute is ambiguous if reasonable minds could disagree on its meaning. See *Hauboldt v. Union Carbide Corp.*, 160 Wis.2d 662, 684, 467 N.W.2d 508, 517 (1991).

The Floods argue that § 710.15, STATS., **does** not govern their relationship with Benkoski because Benkoski is not a resident as **defined** in paragraph (l)(f) of that section. According to the Floods, when the definition of

resident is read in conjunction **with** the definition of mobile home occupant, one must conclude that a “resident” is someone who, at minimum, rents a mobile home site but owns **the**, mobile home” on the site. The Floods point to the disjunctive use of the terms mobile home occupant and resident elsewhere in **§ 710.15** to support **this** claim. Furthermore, the Floods argue. “common sense tells us that a resident is one who intends to reside.” **Finally, the Floods claim that to include Benkoski in the class of people meant to be protected by the statute would go against the legislative intent, as the legislature meant to protect only mobile home dwellers.**

Benkoski answers the Floods’ arguments regarding his status as a resident on two grounds. First, Benkoski urges that the Floods were precluded from challenging the trial court’s conclusion that Benkoski was a resident because that decision was compelled by a ruling in another action. Prior to the entry of Judge Peter L. Grimm’s order **finding** Benkoski to be a resident, Judge Dale L. English had made the same finding in an eviction action **between** Benkoski and the Floods. **Because the** determination in the eviction action was a valid and **final judgment, the Floods were estopped from relitigating that issue.** Second, Benkoski argues that he clearly falls within the **definition** of “resident” because he **rents sites in a mobile home park.**

We need not address the issue preclusion argument because we agree with Benkoski on the merits: The definition of resident in **§ 710.15(1)(f), STATS.**, is clear and unambiguous and **includes** Benkoski. “Resident” means a person who rents a mobile home site in a park from an operator.” *Id* Benkoski rents four sites **from** the Floods. **Therefore,** he is a resident.

Even though **we have** concluded that the statute is clear in its inclusion of Benkoski, we pause to **further** address some **of** the Floods' arguments. The Floods interpret the trial court's determination that Benkoski is a resident as a **conclusion** that "a resident is nothing more than a mobile home owner." The Floods point to the **drafting** record of § 710.15. *STATS.* , to refute this perceived conclusion and show that residency means **more than mere ownership**. A proposed version of the statute used the terms "ownership or residency" in place of "ownership or occupancy" in subsections (3) and (4). See Senate **Substitute Amend. to 1985 S.B. 217, LRB s0120/1**. The Floods argue that this disjunctive use of the terms proves that they are not synonymous.

Ultimately, the legislature chose to replace the phrase "ownership or residency" with "ownership or occupancy." The use of the phrase "ownership or occupancy" implies that "ownership" and "occupancy" are two different things. **But**, if, as **the** Floods contend, the section is only meant to protect those mobile home owners who choose to dwell in their mobile homes, then why the disjunctive between an owner and an occupant? **In § 710.15(3) and (4). *STATS.*, the legislature has prohibited a removal requirement based on any one of three things:** the age of the home, **who owns** the home, and who lives in the home. This shows that the situation where **someone** lives in a mobile home but does not own it was **considered**. That is exactly the situation **present** in this case. **As the Floods state in their brief, "common sense tells us that the legislature used the terms 'mobile home occupant' and 'resident' merely to distinguish between persons who rent the mobile home in which they live and those who reside in their own home but rent the site upon which it is located."** (Emphasis added.) The persons described by the emphasized language are none other than Benkoski's tenants. They are occupants. He is a resident.

I  
I  
I  
I



Finally, the Floods claim that the drafting record shows that the legislative intent was to, protect the investment of those who live in mobile homes. not to protect those who rent them out as a business. The drafting record cannot trump the clear **language** of the statute. And furthermore, the memo cited by the **Floods says that “[t]he right, or lack of right, to resell their homes in place has been the biggest problem testified to . . . by mobile home owners.”** Correspondence/Memorandum **from** Dept. of Agriculture, Trade and Consumer **Protection to Executive Office, May 21, 1985. Benkoski is experiencing just this** problem. He is a mobile home owner **attempting** to sell **his** mobile home in place. **He is covered** by the **state**. If the drafters of § 710.15, **STATS.**, meant to limit protection to owner-occupants they would have said so. Instead, they defined “resident” as a person renting a site. Benkoski fits this definition and so he is protected under § 710.15.

*WISCONSIN ADMINISTRATIVE CODE Chapter ATPC 125*

**As with statutes, the interpretation** of administrative rules is a **question of law we review de novo. See State v. Busch, 217 Wis.2d 429, 441, 576 N.W.2d 904, 908 (1998). We do, however, defer to an agency’s interpretation of** its own rule when that **interpretation** is reasonable and the agency has expertise in **the area. See State v. Flood, 195 Wis.2d 515, 524, 536 N.W.2d 458, 462 (Ct. App. 1995).** Here, we are not reviewing an agency decision; rather, we are reviewing the trial court’s conclusion that Benkoski is “solely an ‘operator’ as defined in ATPC 125.01(3)” and thus “not within the class of persons protected by ATPC 125.” This conclusion was the basis for the dismissal of Benkoski’s claim for damages pursuant to **WIS. ADM. CODE §§ ATPC 125.06, .09 and § 100.20(5),** **STATS.**

If **Benkoski** is a “resident” under **§ 710.15(1)(f)**, STATS., he must be a “tenant” under **WIS. ADM. CODE § ATCP 125.01(9)**. The code defines a tenant as “any person renting a site from an operator.” Section **ATCP 125.01(9)**. Benkoski rents sites **from** the Floods. He is a tenant for purposes of ch. ATCP 125.

We now turn to Benkoski’s allegations that the Floods violated **WIS. ADM. CODE §§ ATCP 125.06 and .09**. Under those sections, a park operator may not “unreasonably restrict the sale of a tenant’s mobile home” or “impose any term or condition . . . which the operator knows or reasonably ought to know is in conflict with this chapter or other applicable law.” Sections ATCP 125.06, .09. Benkoski argues that the Floods’ condition that his home be removed when sold is a violation of **§ 710.15(4)**, STATS. Because the condition is contrary to the law, it is per se unreasonable and the Floods ought to have known it was in conflict with the law. The Floods respond that the statute is ambiguous; this means reasonable minds could differ as to its application, and thus it was reasonable for them to conclude that it did not **apply** to Benkoski. Furthermore, **the** Floods contend that they did not require removal of **Benkoski’s** homes because they were going to be sold. Rather, they claim, their motivation was to **limit** the park to owner-occupied homes.

We have already concluded that **§ 710.15**, STATS., is not ambiguous. Benkoski, as a resident, was protected by the section and the Floods reasonably should have known **this**. Furthermore, **§ 710.15(4)** makes it very clear that an operator may not require removal upon sale. The letters **from** the Floods and their agent to **Benkoski** clearly demonstrate that the Floods were imposing such a requirement. They said; “[**W**]hen one of your mobile homes comes up for sale it must be removed from **the** park.” **We** say, as a matter of law, that this quoted

statement shows **that** removal was required at least in part “because the ownership or occupancy of the mobile home has changed or will change.” Section 710.15(4). Such a removal **requirement** is a **violation** of **§ 710.15(4)**. We agree with Benkoski that a condition of sale that is contrary to the law is **per se** unreasonable. Therefore, the Floods did violate WIS. ADM. CODE **§§** ATCP 125.06 and **.09**.

***Summary Judgment***

Now that we have concluded **that** the Floods did violate the administrative code, we must decide if Benkoski was entitled to **summary judgment**. In reviewing a grant or **denial** of summary judgment, we use the same methodology as the trial court. See ***Green Spring Farms v. Kersten***, 136 **Wis.2d** 304, 315, 401 **N.W.2d** 816, 820 (1987). While we do not review the entire procedure, we note that the moving party has the burden of establishing that there is no dispute regarding any material fact. See ***Grams v. Boss***, 97 **Wis.2d** 332, 338, 294 **N.W.2d** 473, 477(1980). “Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.” ***Id*** at 33%39,294 **N.W.2d** at 477.

Here, the parties dispute the amount of damages claimed by Benkoski. **Benkoski** claimed, **in** his motion for summary judgment, that his pecuniary loss is \$7000, the allegedly proposed purchase price in his **first** attempt to get the Floods to approve, a sale. The Floods point out that Benkoski did not produce any evidence to support his damages claim. For example, “Benkoski has not submitted **affidavits from** the alleged buyers that they intended to purchase the home or had the means to do so.” In addition to Benkoski’s lack of documentation, we are puzzled as to his claim that he is entitled to the entire proposed purchase price. He still has the mobile home. He should not be able to

have his cake and eat it too just because the Floods violated the code? At the very least, the amount Benkoski was damaged is a material fact, it is in dispute, and thus summary judgment was inappropriate. *Cf. Wisconsin Elec. Power Co. v. California Union Ins. Co.*, 142 Wis.2d 673, 684, 419 N.W.2d 255, 259 (Ct. App. 1987) (holding summary judgment appropriate where amount of damages was **uncontested** and no other material fact was in dispute). We therefore affirm the trial court's denial of summary judgment.

### **Conclusion**

We **hold** that Benkoski, as a person who rents mobile home sites in a park, is a resident pursuant to **§ 710.15(1)(f)**, STATS. He is also a tenant under WIS. ADM. CODE **§ ATCP 125.01(9)**. His relationship with the Floods is therefore subject to the regulations set forth in **§ 710.15** and ch. ATCP 125. The Floods informed Benkoski *that* his homes would have to be removed when sold. This policy is in violation of **§ 710.15(4)** and **§§ ATCP 125.06** and **.09**. Thus, Benkoski is entitled to damages pursuant to **§ 100.20(5)**, STATS. We affirm those parts of the trial court's orders **in** accord with this opinion and reverse those in conflict. We remand the case for **further** proceedings to determine the amount of Benkoski's damages.

---

<sup>3</sup> Benkoski cites *Nick v. Toyota Motor Sales, USA, Inc.*, 160 Wis.2d 373, 466 N.W.2d 215 (1991), to **support** his damages claim. *Nicks* is a Lemon Law case. Under the Lemon Law, the measure of pecuniary **loss** is the purchase price **less** an allowance for use. See *id* at 386, 466 N.W.2d at 220. But in a Lemon Law case, the **car has been** returned to the manufacturer.

*By the Court.*—Orders affirmed in part; reversed in part and cause  
remanded: |

Recommended for publication in the **official** reports.

|

|

|

|



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*Regenerate*

1 **AN ACT to renumber 710.15 (1m); to amend 710.15 (1)(a), 710.15 (1)(c), 710.15**  
2 **(l)(d), 710.15 (2), 710.15 (4) and 710.15 (5m) (intro.); and to create 710.15 (lm)**  
3 **(b) and 710.15 (6) of the statutes; relating to:** rentals of mobile homes and  
4 termination of tenancies in mobile home parks.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

5 **SECTION 1.** 710.15 (1) (a) of the statutes is amended to read:  
6 710.15 (1) (a) "Lease" means a written agreement between an operator and a  
7 resident ~~or, between an operator and a mobile home occupant or among an operator,~~  
8 a resident and a mobile home occupant establishing the terms upon which the mobile  
9 home may be located in the park or the mobile home occupant may occupy a mobile  
10 home in the park.

1 SECTION 2. 710.15 (1) (c) of the statutes is amended to read:

2 710.15 (1) (c) "Mobile home occupant" means a person who rents a mobile home  
3 in a park ~~from an operator.~~

4 SECTION 3. 710.15 (1) (d) of the statutes is amended to read:

5 710.15 (1) (d) "Operator" means a person engaged in the business of renting  
6 plots of ground or mobile homes in a park to mobile home owners or mobile home  
7 occupants. "Operator" does not include a resident. *→ or a mobile home occupant* 4

Insert 2-7

8 (SECTION 4. 710.15 (lm) of the statutes is renumbered 710.15 (lm) (a).

9 SECTION 5. 710.15 (lm) (b) of the statutes is created to read:

10 710.15 (lm) (b) A resident may not agree to rent a mobile home in a park to  
11 a prospective mobile home occupant unless the operator of the park approves the  
12 rental and is a party to the agreement. Any rental agreement between a resident and  
13 a mobile home occupant that was entered into before the effective date of this  
14 paragraph . . . . [revisor inserts date], may not be renewed unless the operator of the  
15 park approves the renewal and is made a party to the rental agreement.

16 SECTION 6. 710.15 (2) of the statutes is amended to read:

17 7 10.15 (2) RULES INCLUDED IN LEASE. All park rules that substantially affect the  
18 rights or duties of residents ~~or~~, mobile home occupants or & operators, including park  
19 rules under sub. (2m) (b), shall be made a part of every lease ~~between them.~~

20 SECTION 7. 710.15 (4) of the statutes is amended to read:

21 710.15 (4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF  
22 MOBILE HOME. ~~An~~ Except as provided in sub. (6), an operator may not require the  
23 removal of a mobile home from a park solely or in any part because the ownership  
24 or occupancy of the mobile home has changed or will change. ~~An~~ Except as provided

Insert 3-2

1 ~~in subsection (1m),~~ operator may refuse to enter into an initial lease with a prospective  
2 resident or mobile home occupant for any other lawful reason.

3 SECTION 8. 710.15 (5m) (intro.) of the statutes is amended to read:

4 710.15 (5m) TERMINATION OF TENANCY OR NONRENEWAL OF LEASE. (intro.)

5 Notwithstanding ss. 704.17 and 704.19, and except as provided in sub (6), the  
6 tenancy of a resident or mobile home occupant in a park may not be terminated, nor  
7 may the renewal of the lease be denied by the park operator, except upon any of the  
8 following grounds:

9 SECTION 9. 710.15 (6) of the statutes is created to read:

Insert 3-14

10 710.15 (6) PERMITTED OCCUPANCY REQUIREMENTS. (a) A park owner or operator  
11 may require that a mobile home in a park <sup>be</sup> may be occupied only by any of the  
12 following:

13 1. A person who rents <sup>from the operator,</sup> a mobile home that is not owned by a resident ~~of the~~

14 ~~operator~~

15 2. A person who owns the mobile home that he or she is occupying.

Insert 3-18

16 (b) If a park owner or operator makes a determination under par. (a) that will  
17 result in the termination of the tenancy of a mobile home occupant or resident, the  
18 tenancy may be terminated only at the end of a lease term.

\*\*\*\*NOTE: Section 710.15 (1m) (b) may eliminate the need for this provision. If you want to keep this provision, do you want to specify any amount of time for providing notice to an affected party before the end of a lease term?

19 SECTION 10. Initial applicability.

20 (1) The treatment of section 710.15 (1) (a), (c) and (d) <sup>and</sup> (2) ~~and (e)~~ of the  
21 statutes, the renumbering of section 710.15 (1m) of the statutes and the creation of



1 section 710.15 (1m) (b) of the statutes first apply to leases or rental agreements  
2 entered into or renewed on the effective date of this subsection.

3 **(END)**

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3785/P1ins  
PJK:jlg:km

INSERT 2-7

\*\*\*\*NOTE: I added "or a mobile home occupant" to cover a mobile home occupant who sublets a mobile home that he or she is renting, although doing so would probably not rise to the level of being "engaged in the business of renting mobile homes".

\*\*\*\*NOTE: I do not think that the definition of "resident" needs to be amended. The court in *Benkoski v. Flood* found the definition to be unambiguous and interpreted it correctly. The proposed addition to the definition does not change it in any way; it merely adds unnecessary language.

(END OF INSERT 2-7)

INSERT 3-2

1 SECTION 1. 710.15 (4)<sup>✓</sup> of the statutes is amended to read:  
2 710.15 (4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF  
3 MOBILE HOME. ~~An~~ Except as provided in sub. (6)<sup>✓</sup>, an operator may not require the  
4 removal of a mobile home from a park, or refuse to enter into an initial lease with a  
5 prospective resident or mobile home occupant, solely or in any part because the  
6 ownership or occupancy of the mobile home has changed or will change. ~~An operator~~  
7 ~~may refuse to enter into an initial lease with a prospective resident or mobile home~~  
8 ~~occupant for any other lawful reason.~~

History: 1985 a. 235.

\*\*\*\*NOTE: I propose the foregoing amendment to s. 710.15 (4)<sup>✓</sup>. This subsection has always been confusing to me and I finally realized why: the two sentences equate two different things without saying so. The second sentence seems to imply that requiring the removal of a mobile home is the same thing as refusing to enter into an initial lease. It is confusing to state that one may refuse to enter into an initial lease for any other reason when the first reason for not entering into an initial lease has not been stated.

(END OF INSERT 3-2)

INSERT 3-14

\*\*\*\*NOTE: Because under this <sup>bill</sup> ~~draft~~, an operator must be a party to every lease, it could be argued that a person is renting a mobile home from the operator even if the mobile home is owned by a resident. The language "not owned by a resident" is intended to allow an operator to prohibit rentals of resident-owned mobile homes. If you do not want to be able to prohibit the rental of mobile homes that are owned by residents, not

only is the "not owned by a resident" unnecessary, the whole subdivision is. Without the "not owned by a resident", you have the current law definition of a mobile home occupant.

(END OF INSERT 3-14)

INSERT 3-18

- 1 (b) If a park owner or operator decides to impose a requirement specified in par.  
2 (a),<sup>✓</sup> the requirement may only apply to leases entered into or renewed after the  
3 decision is made.

\*\*\*\*NOTE: Because a change in mid-stream could unconstitutionally impair a contract, any decision by an operator under par. (a), i.e., to require a certain type of occupancy in the park, may only apply to new or renewed leases. If, after the operator made such a decision, a resident rented out his or her mobile home without making the operator a party to the lease,<sup>✓</sup> the operator would be able to terminate the tenancy immediately under s. 710.15 (5m) (em): violation of state law, i.e., s. 710.15 (lm) (b), created in this draft.

(END OF INSERT 3-18)

100  
100



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3785/P2  
PJK:jlj:kjf

*Wisconsin*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*Reaen*

1 **AN ACT** to *renum* 4 **er** 710.15 (1m); **to amend** 710.15 (1) (a), 710.15 (1) (c), 710.15  
2 (1) (d), 710.15 (2), 710.15 (4) and 710.15 (5m) (intro.); and **to create** 710.15 (1m)  
3 (b) and 710.15 (6) of the statutes; **relating to:** rentals of mobile homes and  
4 termination of tenancies in mobile home parks.

*Insert A* ✓ →

---

**Analysis by the Legislative Reference Bureau**  
~~This is a preliminary draft. An analysis will be provided in a later version.~~

---

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

5 SECTION 1. 710.15 (1) (a)<sup>X</sup> of the statutes is amended to read:  
6 710.15 (1) (a) "Lease" means a written agreement between an operator and a  
7 resident ~~or, between an operator and a mobile home occupant or among an operator,~~  
8 a resident and a mobile home occupant establishing the terms upon which the mobile  
9 home may be located in the park or the mobile home occupant may occupy a mobile  
10 home in the park.

1 SECTION 2. 710.15 (1) (c)<sup>y</sup> of the statutes is amended to read:

2 710.15 (1) (c) "Mobile home occupant" means a person who rents a mobile home  
3 in a park ~~from an operator.~~

4 SECTION 3. 710.15 (1) (d)<sup>x</sup> of the statutes is amended to read:

5 710.15 (1) (d) "Operator" means a person engaged in the business of renting  
6 plots of ground or mobile homes in a park to mobile home owners or mobile home  
7 occupants. "Operator" does not include a resident or a mobile home occupant.

\*\*\*\*NOTE: I added "or a mobile home occupant" to cover a mobile home occupant who  
sublets a mobile home that he or she is renting, although doing so would probably not rise  
to the level of being "engaged in the business of renting mobile homes"

\*\*\*\*NOTE: I do not think that the definition of "resident" needs to be amended. The  
court in *Benkoski v. Flood* found the definition to be unambiguous and interpreted it  
correctly. The proposed addition to the definition does not change it in any way; it merely  
adds unnecessary language.

8 SECTION 4. 710.15 (1m)<sup>x</sup> of the statutes is renumbered 710.15 (1m) (a).

9 SECTION 5. 710.15 (1m) (b)<sup>x</sup> of the statutes is created to read:

10 710.15 (1m) (b) A resident may not agree to rent a mobile home in a park to  
11 a prospective mobile home occupant unless the operator of the park approves the  
12 rental and is a party to the agreement, Any rental agreement between a resident and  
13 a mobile home occupant that was entered into before the effective date of this  
14 paragraph .... [revisor inserts date], may not be renewed unless the operator of the  
15 park approves the renewal and is made a party to the rental agreement.

16 SECTION 6. 710.15 (2)<sup>x</sup> of the statutes is amended to read:

17 710.15 (2) **RULES INCLUDED IN LEASE.** All park rules that substantially affect the  
18 rights or duties of residents ~~or~~, mobile home occupants or & operators, including park  
19 rules under sub. (2m) (b), shall be made a part of every lease ~~between them.~~

20 SECTION 7. 710.15 (4)<sup>x</sup> of the statutes is amended to read:

1           **710.15 (4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF**  
 2 MOBILE HOME. ~~An~~ Except as provided in sub. (6), an operator may not require the  
 3 removal of a mobile home from a park, or refuse to enter into an initial lease with a  
 4 prospective resident or mobile home occupant, solely ~~or in any part~~ because the  
 5 ownership or occupancy of the mobile home has changed or will change. An operator  
 6 may refuse to enter into an initial lease with a prospective resident or mobile home  
 7 occupant for any other lawful reason.

however →  
score →

plain text  
or disapprove a sublease to → score

\*\*\*\*NOTE: I propose the foregoing amendment to s. 710.15 (4). This subsection has always been confusing to me and I finally realized why: the two sentences equate two different things without saying so. The second sentence seems to imply that requiring the removal of a mobile home is the same thing as refusing to enter into an initial lease. It is confusing to state that one may refuse to enter into an initial lease for any other reason when the first reason for not entering into an initial lease has not been stated.

8           **SECTION 8.** 710.15 (5m) (intro.)<sup>x</sup> of the statutes is amended to read:

9           710.15 (5m) TERMINATION OF TENANCY OR NONRENEWAL OF LEASE. (intro.)  
 10 Notwithstanding ss. 704.17 and 704.19, and except as provided in sub. (6), the  
 11 tenancy of a resident or mobile home occupant in a park may not be terminated, nor  
 12 may the renewal of the lease be denied by the park operator, except upon any of the  
 13 following grounds:

14           **SECTION 9.** 710.15 (6)<sup>x</sup> of the statutes is created to read:

15           **710.15 (6) PERMITTED OCCUPANCY REQUIREMENTS.** (a) A park owner or operator  
 16 may require that <sup>each</sup> A mobile home in a park be occupied only by any of the following:  
 17           1. A person who rents, from the operator, a mobile home that is not owned by  
 18 a resident.

\*\*\*\*NOTE: Because under this bill an operator must be a party to every lease, it could be argued that a person is renting a mobile home from the operator even if the mobile home is owned by a resident. The language "not owned by a resident" is intended to allow an operator to prohibit rentals of resident-owned mobile homes. If you do not want to be able to prohibit the rental of mobile homes that are owned by residents, not only is the "not owned by a resident" unnecessary, the whole subdivision is. Without the "not owned by a resident", you have the current law definition of a mobile home occupant.

1 2. A person who owns the mobile home that he or she is occupying.

2 (b) If a park owner or operator decides to impose a requirement specified in par.

3 (a), the requirement may only apply to leases entered into or renewed after the  
4 decision is made.

\*\*\*\*NOTE: Because a change in mid-stream could unconstitutionally impair a contract, any decision by an operator under par. (a), i.e., to require a certain type of occupancy in the park, may only apply to new or renewed leases. If, after the operator made such a decision, a resident rented out his or her mobile home without making the operator a party to the lease, the operator would be able to terminate the tenancy immediately under s. 710.15 (5m) (em): violation of state law, i.e., s. 710.15 (1m) (b), created in this draft.

5 SECTION 10. Initial applicability.

6 (1) The treatment of section 710.15 (1) (a), (c) and (d) and (2) of the statutes,  
7 the renumbering of section 710.15 (1m) of the statutes and the creation of section  
8 710.15 (1m) (b) of the statutes first apply to leases or rental agreements entered into  
9 or renewed on the effective date of this subsection.

10 (END)



INSERT A

Current law contains some provisions that regulate mobile home parks, such as prohibiting a mobile home park operator from requiring the removal of a mobile home because of its age and specifying the bases on which a tenancy in a park may be terminated or not renewed. A "mobile home occupant" is defined as a person who rents a mobile home in a park from an operator. A "resident" is defined as a person who rents a mobile home site in a park from an operator. An "operator" is defined as a person engaged in the business of renting mobile home sites or mobile homes in a park. Thus, a resident who rents out mobile homes that he or she owns and that are located on sites that he or she rents from an operator may also be considered an operator under the statute. This bill changes the definition of "operator" by adding that an "operator" does not include a resident or a mobile home occupant. The bill also changes the definition of "mobile home occupant" so that anyone who rents a mobile home in a park, regardless of whether the home is rented from the operator or a resident, is a mobile home occupant. In addition, the bill provides that a resident may not rent out a mobile home that he or she owns in a park unless the operator approves the rental and is a party to the agreement.

The bill provides that a park owner or operator may require that each mobile home in a park be occupied only by a person who rents the mobile home from the operator or a person who owns the mobile home that he or she is occupying. This provision may not be used to terminate a tenancy but it may be the basis for not renewing a lease. This provision is also an exception to the current law provision that prohibits an operator from requiring the removal of a mobile home from a park solely or in any part because the ownership or occupancy of the mobile home has changed or will change. The bill changes this provision by prohibiting an operator from requiring the removal of a mobile home from a park, and from refusing to enter into an initial lease with a prospective resident or mobile home occupant, solely because the ownership or occupancy of the mobile home has changed or will change. An operator may, however, refuse to enter into an initial lease, or disapprove a sublease, for any other lawful reason.

(end of ins. A)

## Kahler, Pam

---

**From:** , Jermstad, Sara  
**Sent:** Tuesday, February 01, 2000 11:45 AM  
**To:** Kahler, Pam  
**Subject:** LRB-3785

Hi Pam. I shared the draft with Ross Kinzler for the Wisconsin Manufactured Housing Assoc. Instead of trying to relaying his concerns, I thought I would just forward the email onto you. Please do call me if you have questions.

Thank you,

Sara Jermstad  
Office of Rep. Sykora  
266-I 195

-----Original Message-----

From: Ross Kinzler [mailto:ross@wmha.org]  
Sent: Tuesday, February 01, 2000 10:15 AM  
To: sara.jermstad@legis.state.wi.us  
Subject: Draft bill

Sara, I think this draft is a vast improvement. I just have one question (for which I don't necessarily have an answer) Ask the drafter if the following language from current law also needs to be amended since it requires that every lease in a mobile home park be a written lease:

**710.15(5)** [ Requirement and term of lease. Every lease for the rental of a mobile home site or mobile home shall be by lease. Every lease shall be for a term of at least one year unless the resident or mobile home occupant request a shorter term in writing and the operator agrees to a shorter term.

The paragraph might need to be made applicable to a sublease in sentence one. A new, third sentence might say that a sublease may be for any term agreeable to the prospective renter, the mobile home owner and the park owner.

The bill creates two possible types of leases. The first is a lease between the homeowner/resident and the park operator. The second, is a sublease involving a mobile home occupant and the homeowner/resident and the operator. Current law as cited above would address the minimum one year term requirement and provide for an opt out in the simple resident/operator type lease, but it would not seem to apply nor cover the second type, the sublease.

Just a thought! Otherwise, I recommend introduction. Thanks for all of your help.

Ross Kinzler  
Executive Director  
WI Manufactured Housing Association  
202 State Street, Ste 200  
Madison, WI 53703  
608 255 3131 voice  
608 255 5595 fax

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 01/3 112000

**To:** Representative Sykora

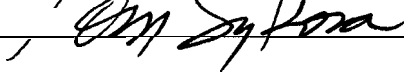
**Relating to LRB drafting number: LRB-3785**

**Topic**


Require that mobile home park owner enter into every lease and specify that a resident is someone who resides in the park

**Subject(s)**

Real Estate - landlord/tenant

1. **JACKET** the draft for introduction \_\_\_\_\_   
**in the Senate** \_\_\_\_\_ or the **Assembly** \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with **changes incorporated.**

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_  *No+ Needed*.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682