

Clearinghouse Rule 98-001

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF AGRICULTURE, )  
TRADE AND CONSUMER PROTECTION )

Docket No. 98-0001

ss.

CERTIFICATION:

I, Ben Brancel, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order modifying chapter ATCP 134, Wisconsin Administrative Code, relating to residential rental practices was duly approved and adopted by the Department on October 12, 1998.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 13 day of October, 1998.



*Ben Brancel*

Ben Brancel  
Secretary



1-1-99



RULE COVERAGE

This rule clarifies the coverage of the current rules. The current rules apply to the rental of residential dwelling units in this state, except that the following dwelling units are exempt:

- A dwelling unit operated by a public or private institution if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services. (This rule redrafts, but does not change, the current exemption.)
- A dwelling unit operated by a fraternal or social organization for the benefit of its members. (This rule clarifies that the exemption applies only to dwelling units occupied by members of the organization.)
- A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest. (This rule redrafts, but does not change, the current exemption.)
- A dwelling unit, such as a dwelling unit in a hotel, motel, boarding house or lodging house, that is being rented only by tourist or transient occupants. (This rule clarifies what is meant by "tourist or transient occupants.")
- A dwelling unit which the landlord provides free of charge. (This rule clarifies that the exemption applies to a dwelling unit which the landlord provides as compensation to an employee operating or maintaining the premises, or which the landlord provides free of charge to any person.)
- A dwelling unit located on premises used primarily for agricultural purposes. (This rule clarifies that the exemption applies to a dwelling unit occupied by a tenant engaged in commercial agricultural operations on the premises.)

1 PRE-RENTAL DISCLOSURES AND PRACTICES

2  
3 Rental Agreement

4  
5 Under current rules, a "rental agreement" means any oral or  
6 written agreement for the rental of a dwelling unit. This rule  
7 clarifies that a "rental agreement" means an oral or written  
8 agreement, for the rental of a specific dwelling unit, in which  
9 the landlord and tenant agree on essential terms of tenancy such  
10 as rent.

11  
12 If the landlord and tenant have not yet agreed on the dwelling  
13 unit or essential terms of tenancy, the mere approval of a  
14 tenant's rental application does not create a "rental agreement"  
15 under this rule. This rule confirms the common law principle  
16 that an enforceable "rental agreement" conveying a tenancy  
17 interest in real estate does not arise until the parties agree on  
18 essential terms of tenancy, including the specific dwelling unit  
19 to be rented and the amount of rent to be paid.

20  
21 A "rental agreement" creates the relationship of landlord and  
22 tenant, from which certain rights and responsibilities flow.  
23 Under current rules, a "rental agreement" need not be made in  
24 writing. But under current rules, a landlord must make certain  
25 disclosures to a prospective tenant before entering into a  
26 "rental agreement." Current rules also regulate pre-rental  
27 practices by landlords, such as the receipt and disposition of  
28 earnest money deposits.

29  
30 Misrepresentations to Prospective Tenants

31  
32 This rule prohibits misrepresentations by landlords. Under this  
33 rule:

- 34  
35 • No landlord may, for the purpose of inducing any person to  
36 enter into a rental agreement:

- 37  
38 \* Misrepresent the location, characteristics or  
39 equivalency of dwelling units owned or offered by the  
40 landlord.

1  
2 \* Misrepresent the amount of rent to be paid by the  
3 tenant.

4  
5 \* Fail to disclose, in connection with any  
6 representation of rent amount, the existence of  
7 any non-rent charges which will increase the total  
8 amount payable by the tenant during tenancy.

- 9  
10 • No landlord may engage in "bait and switch" practices by  
11 misrepresenting to any person, as part of a plan or scheme to  
12 rent a dwelling unit to that person, that the person is being  
13 considered as a prospective tenant for a different dwelling  
14 unit.

15  
16 Credit Check Fee

17  
18 Under this rule, a landlord may require a prospective tenant to  
19 pay the landlord's actual cost, up to \$20, to obtain a consumer  
20 credit report on the prospective tenant from a consumer reporting  
21 agency that compiles and maintains files on consumers on a  
22 nationwide basis. The landlord must notify the prospective  
23 tenant of the charge before requesting the consumer credit  
24 report, and must provide the prospective tenant with a copy of  
25 the report. For the purpose of this rule, "consumer credit  
26 report" has the meaning given for "consumer report" in 15 USC  
27 1681a(d), and "consumer reporting agency that compiles and  
28 maintains files on consumers on a nationwide basis" has the  
29 meaning given in 15 USC 1681a(p), and includes the agency's  
30 contract affiliates. This definition excludes credit report  
31 resellers.

32  
33 A landlord may not require a prospective tenant to pay for a  
34 consumer credit report if the prospective tenant provides the  
35 landlord with a consumer credit report that is less than 30 days  
36 old from a consumer credit reporting agency that compiles and  
37 maintains files on consumers on a nationwide basis. This does not  
38 prohibit the landlord from obtaining a more current consumer  
39 credit report at the landlord's expense.

40

1 Earnest Money Deposits; Acceptance

2  
3 Under current rules, an "earnest money deposit" means a deposit  
4 which a rental applicant gives a landlord in return for the  
5 option of entering into a rental agreement in the future, or in  
6 return for having a rental application considered by the  
7 landlord. A credit check fee authorized by this rule (see above)  
8 is not considered an "earnest money deposit."

9  
10 Under current rules, before a landlord accepts any "earnest money  
11 deposit" from a prospective tenant, the landlord must make  
12 certain disclosures related to dwelling unit habitability and  
13 utility charges (see below). This rule clarifies that a landlord  
14 may not accept an "earnest money deposit" from a prospective  
15 tenant until the landlord identifies the dwelling unit(s) for  
16 which the tenant is being considered, and complies with  
17 applicable disclosure requirements for each identified dwelling  
18 unit.

19  
20 Earnest Money Deposits; Withholding

21  
22 Under this rule, a landlord may withhold from a properly accepted  
23 earnest money deposit if the prospective tenant fails to enter  
24 into a rental agreement after being approved for tenancy, unless  
25 the landlord has significantly altered the rental terms  
26 previously disclosed to the tenant. Under this rule, as under  
27 the current rule, the landlord may withhold for actual costs and  
28 damages incurred because of the tenant's failure to enter into a  
29 rental agreement. The landlord may not withhold for lost rents  
30 unless the landlord has made a reasonable effort to mitigate  
31 those losses, as provided under s. 704.29, Stats.

32  
33 This rule creates a note referring to the Wisconsin court of  
34 appeals decision in Pierce v. Norwick, 202 Wis. 2d 588 (1996),  
35 regarding the award of damage claims for improper withholding of  
36 security deposits. The same principles may be applicable to  
37 earnest money deposits.

1 Earnest Money Deposits; Return  
2

3 This rule modifies current rules, which require a landlord to  
4 refund an applicant's earnest money deposit if the landlord  
5 rejects his or her rental application. Under this rule, a  
6 landlord must refund an applicant's earnest money deposit by the  
7 end of the next business day after any of the following occurs:  
8

- 9 • The landlord rejects the rental application.  
10  
11 • The applicant withdraws the rental application before the  
12 landlord approves it.  
13  
14 • The landlord fails to approve the rental application by the  
15 end of the third business day after the landlord accepts the  
16 earnest money deposit, or by the end of a later date to which  
17 the parties agree in writing. The later date may not be more  
18 than 21 calendar days after the landlord accepts the earnest  
19 money deposit.  
20

21 Although this rule clarifies the definition of "rental agreement"  
22 (see above), it does not change current rules which require a  
23 landlord to do one of the following upon entering into a "rental  
24 agreement" with a tenant:  
25

- 26 • Apply the tenant's earnest money deposit, if any, as rent.  
27  
28 • Hold the tenant's earnest money deposit, if any, as a security  
29 deposit to secure the tenant's obligations under the rental  
30 agreement.  
31  
32 • Return the tenant's earnest money deposit, if any, to the  
33 tenant.  
34

35 This rule clarifies that, merely by accepting a partial refund of  
36 an earnest money deposit, a tenant does not automatically waive  
37 any claim which he or she may have to a larger refund.  
38  
39  
40

1 Security Deposits

2  
3 Under current rules, a "security deposit" means the total of all  
4 payments and deposits given by a tenant to a landlord as security  
5 for the performance of the tenant's obligations under the rental  
6 agreement, and includes all rent payments in excess of one  
7 month's prepaid rent.

8  
9 This rule clarifies, by note, that nothing prohibits a landlord  
10 from collecting more than one month's prepaid rent. However, if  
11 the landlord holds any rent prepayment in excess of one month's  
12 prepaid rent when the tenant surrenders the premises, the  
13 landlord must treat that excess as a "security deposit." (See  
14 below.)

15  
16 Check-In Procedures; Pre-Existing Damages

17  
18 Under current rules, a landlord must do all of the following  
19 before accepting a security deposit from a tenant:

- 20  
21 • Inform the tenant that the tenant has 7 days after the start  
22 of tenancy to inspect the dwelling unit and notify the  
23 landlord of any pre-existing damages or defects.  
24  
25 • Give the tenant a list of damages charged to the previous  
26 tenant's security deposit.

27  
28 This rule modifies the current rules. Under this rule, before a  
29 landlord accepts a security deposit or converts an earnest money  
30 deposit to a security deposit, the landlord must notify the  
31 tenant in writing that the tenant may do any of the following by  
32 a specified deadline date which is not less than 7 days after the  
33 start of tenancy:

- 34  
35 • Inspect the dwelling unit and notify the landlord of any  
36 preexisting damages or defects.  
37  
38 • Request a list of physical damages or defects, if any, charged  
39 to the previous tenant's security deposit. The landlord may  
40 require the tenant to make this request, if any, in writing.

1 Under this rule, if a tenant requests a list of damages charged  
2 to the previous tenant's security deposit, the landlord must  
3 provide that list within 30 days, or within 7 days after the  
4 landlord notifies the previous tenant of the security deposit  
5 deductions, whichever occurs later. The landlord may explain  
6 that some or all of the listed damages or defects have been  
7 repaired, if that is the case. The landlord need not disclose  
8 the previous tenant's identity, or the amounts withheld from the  
9 previous tenant's security deposit.

#### 10 11 Landlord Identification

12  
13 Under current rules, a landlord (other than the resident owner of  
14 a structure containing 4 or fewer dwelling units) must disclose  
15 both of the following at or before the time that the landlord and  
16 tenant enter into a rental agreement:

- 17
- 18 • The name and address of the person responsible for managing  
19 and maintaining the dwelling unit.
  - 20
  - 21 • The name and address of the property owner, or a person  
22 authorized to accept service of legal process on behalf of the  
23 property owner.
  - 24

25 Under current rules, the landlord must give the tenant an updated  
26 disclosure whenever this information changes. This rule  
27 clarifies that the landlord must mail or deliver the updated  
28 disclosure to the tenant within 10 days after the change occurs.

#### 29 30 Dwelling Unit Condition and Utility Charges; Disclosures

31  
32 This rule clarifies current rental disclosure requirements.  
33 Under current rules, a landlord must disclose the following  
34 conditions, if they exist, before entering into a rental  
35 agreement or accepting any earnest money deposit or security  
36 deposit from the prospective tenant:

- 37
- 38 • Uncorrected housing code violations affecting the dwelling  
39 unit. (This rule makes no change.)

- 1 • That the dwelling unit lacks hot and cold running water.  
2 (This rule clarifies to say hot or cold running water.)  
3
- 4 • That the dwelling unit lacks plumbing facilities in good  
5 operating condition. (This rule clarifies, but makes no  
6 substantive change.)  
7
- 8 • That the dwelling unit lacks sewage disposal facilities in  
9 good operating condition. (This rule clarifies, but makes no  
10 substantive change.)  
11
- 12 • That heating facilities serving the dwelling unit are not in  
13 safe operating condition, or are not capable of maintaining a  
14 temperature of 67° F (19° C) during all seasons of the year in  
15 which the dwelling unit may be occupied. (This rule clarifies  
16 that, for purposes of this disclosure, temperatures in living  
17 areas are measured at the center of the room, midway between  
18 floor and ceiling.)  
19
- 20 • That the dwelling unit is not served by electricity, or the  
21 electrical system is not in safe operating condition. (This  
22 rule makes no change.)  
23
- 24 • Any structural or other conditions in the dwelling unit which  
25 constitute a substantial hazard to the health or safety of the  
26 tenant, or create an unreasonable risk of personal injury as a  
27 result of any reasonably foreseeable use of the premises,  
28 other than negligent use or abuse. (This rule makes no  
29 change.)  
30
- 31 • Whether heat, water and electricity are included in the rent  
32 or billed separately. If dwelling units are not separately  
33 metered, the landlord must also disclose the basis on which  
34 utility charges will be allocated. (This rule makes no  
35 change.)  
36

### 37 Nonstandard Rental Provisions

38  
39 Current rules identify certain rental provisions which, because  
40 of their potential unfairness to tenants, may not be incorporated

1 as boilerplate "form provisions" in a rental agreement. These  
2 provisions, if used at all, must be separately negotiated between  
3 the landlord and tenant.

4  
5 This rule clarifies the procedure by which these provisions must  
6 be separately negotiated. Under this rule, the following  
7 provisions may not be included in any rental agreement unless  
8 they are included in a separate written document entitled  
9 "NONSTANDARD RENTAL PROVISIONS:"

- 10
- 11 • Any agreement expanding the landlord's normal rights of entry  
12 to the tenant's dwelling unit (see below).
  - 13
  - 14 • Any agreement expanding the normal reasons for which a  
15 landlord may withhold from the tenant's security deposit (see  
16 below).
  - 17
  - 18 • Any lien agreement giving the landlord a lien on the tenant's  
19 personal property to secure performance of the tenant's  
20 obligations under the rental agreement (see below).

21  
22 The landlord must discuss each "nonstandard rental provision," if  
23 any, with the prospective tenant. If a tenant signs or initials  
24 a "nonstandard rental provision," it is presumed that the  
25 landlord has discussed that individual provision with the tenant  
26 and that the tenant agreed to it.

27  
28  
29 **PRACTICES DURING TENANCY**

30  
31 **Receipts for Cash Rent Payments**

32  
33 Under current rules, a landlord must give a tenant an immediate  
34 receipt for any cash deposit, such as an earnest money or  
35 security deposit, paid by the tenant. Under this rule, a  
36 landlord must also give a tenant a receipt for any rent payment  
37 which a tenant pays in cash. The receipt must state the nature  
38 and amount of the payment. The landlord need not give a receipt  
39 for a rent payment made by check.

1 Fit and Habitable Premises

2  
3 Under current rules, a landlord may not use a boilerplate "form  
4 provision" in a rental agreement to secure the tenant's waiver of  
5 any statutory or other legal obligation which the landlord may  
6 have to provide fit and habitable premises, or to maintain the  
7 premises during tenancy. This rule strengthens the current  
8 provision, by prohibiting any rental provision which purports to  
9 waive those legal obligations.

10  
11 Unauthorized Entry

12  
13 With certain exceptions, current rules limit the reasons for  
14 which a landlord may enter a tenant's dwelling unit. The current  
15 rules also require prior notice of entry (normally 12 hours prior  
16 notice), and prohibit entry except at reasonable times.

17  
18 This rule clarifies the current rules. With certain exceptions,  
19 this rule prohibits a landlord from doing any of the following:

- 20  
21 • Entering a dwelling unit during tenancy except to inspect the  
22 premises, make repairs, or show the premises to prospective  
23 tenants or purchasers, as authorized under s. 704.05(2),  
24 Stats. A landlord may enter for the amount of time reasonably  
25 required to inspect the premises, make repairs, or show the  
26 premises to prospective tenants or purchasers.  
27  
28 • Entering a dwelling unit during tenancy except upon advance  
29 notice and at reasonable times. Advance notice means at least  
30 12 hours advance notice unless the tenant, upon being notified  
31 of the proposed entry, consents to a shorter time period.  
32

33 These entry restrictions do not apply if any of the following  
34 applies:

- 35  
36 • The tenant, knowing the proposed time of entry, requests or  
37 consents in advance to the entry.  
38  
39 • A health or safety emergency exists.  
40

- 1 • The tenant is absent and the landlord reasonably believes that  
2 entry is necessary to protect the premises from damage.

3  
4 Under current rules, a tenant may agree to a nonstandard rental  
5 provision (other than a boilerplate "form provision") which  
6 authorizes the landlord to enter a tenant's dwelling unit under  
7 circumstances not authorized above. This rule clarifies that:

- 8  
9 • The nonstandard provision, if any, must be contained in a  
10 separate written document entitled "NONSTANDARD RENTAL  
11 PROVISIONS" (see above).  
12  
13 • The landlord must specifically identify and discuss the  
14 nonstandard provision with the tenant, and provide a copy to  
15 the tenant.  
16  
17 • If the tenant signs or initials the nonstandard provision, it  
18 is presumed that the landlord has specifically identified and  
19 discussed it with the tenant, and that the tenant has agreed  
20 to it.

21  
22 Under this rule, no landlord may enter a tenant's dwelling unit  
23 during tenancy without first announcing the entry to persons who  
24 may be present in the dwelling unit (such as by knocking or  
25 ringing the doorbell). The landlord must also identify himself  
26 or herself upon request.

27  
28 **Late Rent Fees and Penalties**

29  
30 This rule prohibits a landlord from charging a late rent fee or  
31 late rent penalty, except as specifically provided in a written  
32 rental agreement. Before charging a late rent fee or late rent  
33 penalty, the landlord must apply all rent prepayments received  
34 from the tenant to offset the amount of rent owed by the tenant.  
35 A landlord may not charge a tenant a fee or penalty for  
36 nonpayment of a late rent fee or late rent penalty.



1 check, draft or money order payable to all tenants who are  
2 parties to the rental agreement, unless otherwise authorized by  
3 the tenants in writing.

4  
5 Reasons for Withholding Security Deposit

6  
7 Under current rules, a landlord may withhold a tenant's security  
8 deposit only for the following purposes:

- 9
- 10 • Tenant damage, waste or neglect of the premises.
  - 11
  - 12 • Unpaid rent for which the tenant is legally responsible,  
13 subject to the landlord's duty to mitigate under s. 704.29,  
14 Stats.
  - 15
  - 16 • Payment which the tenant owes under the rental agreement for  
17 utility service provided by the landlord but not included in  
18 the rent.
  - 19
  - 20 • Payment for direct utility service provided by a government-  
21 owned utility, to the extent that the landlord becomes liable  
22 for the tenant's nonpayment.
  - 23
  - 24 • Unpaid mobile home parking which a local unit of government  
25 has charged to the tenant under s. 66.058(3), Stats., to the  
26 extent that the landlord becomes liable for the tenant's  
27 nonpayment.
  - 28
  - 29 • Other reasons specified in a rental provision which is  
30 separately negotiated between the landlord and tenant (not  
31 just a boilerplate "form provision").
  - 32

33 This rule clarifies that any rental provision expanding a  
34 landlord's authority to withhold a security deposit must be  
35 negotiated in the following manner:

- 36
- 37 • The nonstandard provision, if any, must be contained in a  
38 separate written document entitled "NONSTANDARD RENTAL  
39 PROVISIONS" (see above).
  - 40

- 1 • The landlord must specifically identify and discuss the  
2 nonstandard provision with the tenant, and provide a copy to  
3 the tenant.  
4
- 5 • If the tenant signs or initials the nonstandard provision, it  
6 is presumed that the landlord has specifically identified and  
7 discussed it with the tenant, and that the tenant has agreed  
8 to it.  
9

10 Neither this rule nor the current rules authorize a landlord to  
11 withhold a security deposit for normal wear and tear, or for  
12 other damages or losses for which the tenant cannot reasonably be  
13 held responsible under applicable law.  
14

#### 15 Failure to Return or Properly Account for Security Deposit

16  
17 This rule clarifies that, merely by accepting a partial refund of  
18 an earnest money deposit, a tenant does not automatically waive  
19 any claim which he or she may have to a larger refund.  
20

21 This rule creates a note referring to the appellate court  
22 decision in Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding  
23 the award of damage claims for failure to comply with rules  
24 related to security deposits.  
25

### 26 EVICTION AND RELATED ISSUES

#### 27 28 Confiscating Personal Property

29  
30 Under current rules, a landlord may not confiscate a tenant's  
31 personal property, or prevent a tenant from taking possession of  
32 the tenant's personal property, except as authorized by s.  
33 704.05(5), Stats., or a lien agreement with the tenant. The lien  
34 agreement may not be created by a boilerplate "form provision" in  
35 the rental agreement, but must be separately negotiated with the  
36 tenant. This rule clarifies the method by which a lien  
37 agreement, if any, must be negotiated:  
38

- 1 • A lien agreement, if any, must be contained in a separate  
2 written document entitled "NONSTANDARD RENTAL PROVISIONS" (see  
3 above).
- 4
- 5 • The landlord must specifically identify and discuss the lien  
6 agreement with the tenant, and must give the tenant a copy.  
7
- 8 • The tenant must sign or initial the lien agreement.  
9

### 10 Self-Help Eviction

11  
12 Current law, under ch. 799, Stats., affords landlords a prompt  
13 judicial procedure for evicting tenants whose tenancy is  
14 terminated. This procedure was enacted, in part, to discourage  
15 self-help evictions by landlords.  
16

17 Current rules prohibit rental agreements which purport to  
18 authorize self-help eviction. This rule prohibits self-help  
19 eviction. Under this rule, a landlord may not exclude, forcibly  
20 evict or constructively evict a tenant other than by an eviction  
21 procedure specified under ch. 799, Stats.  
22  
23

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24 SECTION 1. ATCP 134.01(title), (intro.), and (1) to (6) are  
25 amended to read:

26 ATCP 134.01(title) SCOPE AND APPLICATION. This chapter is  
27 adopted under authority of s. 100.20, Stats., ~~and~~ This chapter  
28 applies to the rental of dwelling units located in this state.  
29 ~~It~~ but does not apply to the rental or occupancy of dwelling  
30 units any of the following:

1           (1) ~~Operated by an institution, public or private, if A~~  
2 dwelling unit operated by a public or private institution if  
3 occupancy is incidental to detention or the provision of medical,  
4 geriatric, educational, counseling, religious or similar  
5 services.

6           (2) ~~Operated by a~~ A dwelling unit occupied by a member of a  
7 fraternal or social organization for the benefit of its members  
8 only, which operates that dwelling unit.

9           (3) ~~Under~~ A dwelling unit occupied, under a contract of  
10 sale, if the occupant is by the purchaser of the dwelling unit or  
11 a person who succeeds to the purchaser's successor in interest.

12           (4) ~~In~~ A dwelling unit, such as a dwelling unit in a hotel,  
13 motel, or boarding house, lodging house or other similar premises  
14 on a transient basis, that is being rented only by tourist or  
15 transient occupants.

16           (5) ~~Furnished~~ A dwelling unit which the landlord provides  
17 free of charge to any person, or free of charge to employees  
18 conditioned upon employment in and about which the landlord  
19 provides as consideration to a person whom the landlord currently  
20 employs to operate or maintain the premises.

1           (6) ~~Under a rental agreement covering premises used by the~~  
2 ~~occupant primarily for agricultural purposes; A dwelling unit~~  
3 ~~occupied by a tenant who is engaged in commercial agricultural~~  
4 ~~operations on the premises.~~

5  
6           **SECTION 1m.**     ATCP 134.02(1m) is created to read:

7           ATCP 134.02(1m) "Consumer credit report" has the meaning  
8 given for "consumer report" in 15 USC 1681a(d).

9  
10          **SECTION 1r.**     ATCP 134.02(1r) is created to read:

11          ATCP 134.02(1r) "Consumer reporting agency that compiles  
12 and maintains files on consumers on a nationwide basis" has the  
13 meaning given in 15 USC 1681a(p), and includes the agency's  
14 contract affiliates.

15  
16          **SECTION 2.**     ATCP 134.02(3) is amended to read:

17          ATCP 134.02(3) "Earnest money deposit" means the total of  
18 any payments or deposits, however denominated or described, given  
19 by a prospective tenant to a landlord in return for the option of  
20 entering into a rental agreement in the future, or for having a

1 rental agreement considered by a landlord. "Earnest money  
2 deposit" does not include a fee which a landlord charges for a  
3 credit check in compliance with s. ATCP 134.05(3).

4 SECTION 3. ATCP 134.02(4) is repealed.

5 SECTION 4. ATCP 134.02(10) is amended to read:

6 ATCP 134.02(10) "Rental agreement" means any an oral or  
7 written agreement, ~~whether written or oral,~~ for the rental or  
8 lease of a specific dwelling unit or premises, ~~and includes~~  
9 ~~contracts or rules and regulations which are incidental to, or~~  
10 ~~adopted pursuant to a rental agreement~~ in which the landlord and  
11 tenant agree on essential terms of tenancy such as rent.

12 "Rental agreement" includes a lease. "Rental agreement" does not  
13 include an agreement to enter into a rental agreement in the  
14 future.

15  
16 SECTION 5. ATCP 134.02(10) (note) is created to read:

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

1 SECTION 6. ATCP 134.02(14) is created to read:

2 ATCP 134.02(14) "Tourist or transient occupants" means  
3 tourists or other persons who occupy a dwelling unit for less  
4 than sixty (60) days while traveling away from their permanent  
5 place of residence.

6 SECTION 7. ATCP 134.03(title) is amended to read:

7 ATCP 134.03(title) RENTAL AGREEMENTS AND RECEIPTS.

8 SECTION 8. ATCP 134.03(2)(title) is amended to read:

9 ATCP 134.03(2)(title) RECEIPTS FOR TENANT PAYMENTS.

10 SECTION 9. ATCP 134.03(2) is renumbered ATCP 134.03(2)(a).

11 SECTION 10. ATCP 134.03(2)(b) is created to read:

12 ATCP 134.03(2)(b) If a tenant pays rent in cash, the  
13 landlord upon receiving the cash payment shall immediately  
14 provide the tenant with a written receipt stating the nature and  
15 amount of the payment. A landlord is not required to provide a  
16 receipt for rent payments made by check.

17 SECTION 11. ATCP 134.04(1)(b) is amended to read:

18 (b) ~~The landlord and any successor of the~~ A landlord shall  
19 keep tenants informed of any changes, if any, in the information  
20 required under par. (a). The landlord shall mail or deliver

1 written notice of each change within 10 business days after the  
2 change occurs.

3 SECTION 12. ATCP 134.04(2)(b)1. and 2. are amended to read:

4 ATCP 134.04(2)(b)1. The dwelling unit lacks hot ~~and~~ or cold  
5 running water, ~~plumbing or sewage disposal facilities in good~~  
6 ~~operating condition.~~

7 (b)2. Heating facilities serving the dwelling unit are not  
8 in safe operating condition, or are not capable of maintaining a  
9 temperature, in all living areas of the dwelling unit, of at  
10 least 67° F(19° C) during all seasons of the year in which the  
11 dwelling unit may be occupied. Temperatures in living areas  
12 shall be measured at the approximate center of the room, midway  
13 between floor and ceiling.

14  
15 SECTION 13. ATCP 134.04(2)(b)5. and 6. are created to read:

16 ATCP 134.04(2)(b)5. The dwelling unit is not served by  
17 plumbing facilities in good operating condition.

18 (b)6. The dwelling unit is not served by sewage disposal  
19 facilities in good operating condition.

20

1 SECTION 14. ATCP 134.04(note) is created to read:

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

9  
10 Division of Trade and Consumer Protection  
11 Department of Agriculture, Trade and Consumer  
12 Protection  
13 2811 Agriculture Drive  
14 P.O. Box 8911  
15 Madison, WI 53708-8911  
16

17 SECTION 15. ATCP 134.05 is repealed and recreated to read:

18 ATCP 134.05 EARNEST MONEY DEPOSITS AND CREDIT CHECK FEES.

19 (1) ACCEPTING AN EARNEST MONEY DEPOSIT. A landlord may not  
20 accept an earnest money deposit or security deposit from a rental  
21 applicant until the landlord identifies to the applicant the  
22 dwelling unit or units for which that applicant is being  
23 considered for tenancy.

24 NOTE: A credit check fee authorized under sub. (4) is not  
25 an "earnest money deposit" or a "security deposit."  
26 See definition of "earnest money deposit" under s. ATCP  
27 134.02(3).  
28

29 (2) REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT. (a)

30 A landlord who receives an earnest money deposit from a rental

1 applicant shall send the full deposit to the applicant by first-  
2 class mail, or shall deliver the full deposit to the applicant,  
3 by the end of the next business day after any of the following  
4 occurs:

5 1. The landlord rejects the rental application or refuses  
6 to enter into a rental agreement with the applicant.

7 2. The applicant withdraws the rental application before  
8 the landlord accepts that application.

9 3. The landlord fails to approve the rental application by  
10 the end of the third business day after the landlord accepts the  
11 applicant's earnest money deposit, or by a later date to which  
12 the tenant agrees in writing. The later date may not be more  
13 than 21 calendar days days after the landlord accepts the earnest  
14 money deposit.

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

18 1. Apply the earnest money deposit as rent or as a security  
19 deposit.

20 2. Return the earnest money deposit to the tenant.

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

5 (3) WITHHOLDING AN EARNEST MONEY DEPOSIT. (a) A landlord  
6 may withhold from a properly accepted earnest money deposit if  
7 the prospective tenant fails to enter into a rental agreement  
8 after being approved for tenancy, unless the landlord has  
9 significantly altered the rental terms previously disclosed to  
10 the tenant.

11 (b) A landlord may withhold from an earnest money deposit,  
12 under par. (a), an amount sufficient to compensate the landlord  
13 for actual costs and damages incurred because of the prospective  
14 tenant's failure to enter into a rental agreement. The landlord  
15 may not withhold for lost rents unless the landlord has made a  
16 reasonable effort to mitigate those losses, as provided under s.  
17 704.29, Stats.

18 NOTE: See Pierce v. Norwick, 202 Wis. 2d 588 (1996),  
19 regarding the award of damage claims for failure  
20 to comply with provisions of this chapter related to  
21 security deposits. The same method of computing a  
22 tenant's damages may apply to violations related to  
23 earnest money deposits.  
24

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

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

16 NOTE: Paragraph (b) does not prohibit a landlord from  
17 obtaining a more current consumer credit check at the landlord's  
18 expense.

19

20

1 SECTION 16. ATCP 134.06(1) to (3) are repealed and  
2 recreated to read:

3 ATCP 134.06(1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES.

4 (a) Before a landlord accepts a security deposit, or converts an  
5 earnest money deposit to a security deposit under s. ATCP  
6 134.05(1)(b), the landlord shall notify the tenant in writing  
7 that the tenant may do any of the following by a specified  
8 deadline date which is not less than 7 days after the start of  
9 tenancy:

10 1. Inspect the dwelling unit and notify the landlord of any  
11 preexisting damages or defects.

12 2. Request a list of physical damages or defects, if any,  
13 charged to the previous tenant's security deposit. The landlord  
14 may require the tenant to make this request, if any, in writing.

15 (b) If a tenant makes a request under par. (a)2., the  
16 landlord shall provide the tenant with a list of all physical  
17 damages or defects charged to the previous tenant's security  
18 deposit, regardless of whether those damages or defects have been  
19 repaired. The landlord shall provide the list within 30 days  
20 after the landlord receives the request, or within 7 days after

1 the landlord notifies the previous tenant of the security deposit  
2 deductions, whichever occurs later. The landlord may explain  
3 that some or all of the listed damages or defects have been  
4 repaired, if that is the case. The landlord need not disclose  
5 the previous tenant's identity, or the amounts withheld from the  
6 previous tenant's security deposit.

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

12 NOTE: A rent payment in excess of one month's prepaid rent  
13 is considered a "security deposit" as defined under  
14 ATCP 134.02(11). This chapter does not prevent a  
15 landlord from collecting more than one month's prepaid  
16 rent. However, if the landlord holds any rent  
17 prepayment in excess of one month's prepaid rent when  
18 the tenant surrenders the premises, the landlord must  
19 treat that excess as a "security deposit" under sub.  
20 (2).

21  
22 See Pierce v. Norwick, 202 Wis. 2d 588 (1996),  
23 regarding the award of damage claims for failure  
24 to comply with provisions of this chapter related  
25 to security deposits and earnest money deposits.

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

4 1. If the tenant vacates before the last day of tenancy  
5 provided under the rental agreement, and gives the landlord  
6 written notice that the tenant has vacated, surrender occurs when  
7 the landlord receives the written notice that the tenant has  
8 vacated. If the tenant mails the notice to the landlord, the  
9 landlord is deemed to receive the notice on the second day after  
10 mailing.

11 2. If the tenant vacates the premises after the last day of  
12 tenancy provided under the rental agreement, surrender occurs  
13 when the landlord learns that the tenant has vacated.

14 3. If the tenant is evicted, surrender occurs when a writ  
15 of restitution is executed, or the landlord learns that the  
16 tenant has vacated, whichever occurs first.

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

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

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

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

- 12 1. Tenant damage, waste or neglect of the premises.
- 13 2. Unpaid rent for which the tenant is legally responsible,  
14 subject to s. 704.29, Stats.
- 15 3. Payment which the tenant owes under the rental agreement  
16 for utility service provided by the landlord but not included in  
17 the rent.
- 18 4. Payment which the tenant owes for direct utility service  
19 provided by a government-owned utility, to the extent that the  
20 landlord becomes liable for the tenant's nonpayment.

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

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

7           (b) A rental agreement may include one or more nonstandard  
8 rental provisions which authorize a landlord to withhold from a  
9 tenant's security deposit for reasons not identified under par.

10          (a). The landlord shall include the nonstandard provisions, if  
11 any, in a separate written document entitled **"NONSTANDARD RENTAL**  
12 **PROVISIONS"** which the landlord provides to the tenant. The  
13 landlord shall specifically identify and discuss each nonstandard  
14 provision with the tenant before the tenant enters into any  
15 rental agreement with the landlord. If the tenant signs or  
16 initials a nonstandard rental provision, it is rebuttably  
17 presumed that the landlord has specifically identified and  
18 discussed that nonstandard provision with the tenant, and that  
19 the tenant has agreed to it.

20           NOTE: The separate written document under par. (b) may be  
21               pre-printed.  
22

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

5 NOTE: For example, a landlord may not withhold from a  
6 tenant's security deposit for routine painting or  
7 carpet cleaning, where there is no unusual damage  
8 caused by tenant abuse.  
9

10  
11 SECTION 18. ATCP 134.08(7) is amended to read:

12 ATCP 134.08(7) ~~Provide, by means of a form provision, for~~  
13 ~~the waiver of~~ Waive any statutory or other legal obligation on  
14 the part of the landlord to deliver the premises in a fit or  
15 habitable condition, or maintain the premises during tenancy.

16 SECTION 19. ATCP 134.09(2) and (4) are repealed and  
17 recreated to read:

18 ATCP 134.09(2) UNAUTHORIZED ENTRY. (a) Except as provided  
19 under par. (b) or (c), no landlord may do any of the following:

20 1. Enter a dwelling unit during tenancy except to inspect  
21 the premises, make repairs, or show the premises to prospective  
22 tenants or purchasers, as authorized under s. 704.05(2), Stats.

23 A landlord may enter for the amount of time reasonably required

1 to inspect the premises, make repairs, or show the premises to.  
2 prospective tenants or purchasers.

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

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

9 1. The tenant, knowing the proposed time of entry, requests  
10 or consents in advance to the entry.

11 2. A health or safety emergency exists.

12 3. The tenant is absent and the landlord reasonably  
13 believes that entry is necessary to protect the premises from  
14 damage.

15 (c) A rental agreement may include a nonstandard rental  
16 provision authorizing a landlord to enter a tenant's dwelling  
17 unit at reasonable times, under circumstances not authorized  
18 under par. (a) or (b). The landlord shall include the  
19 nonstandard provision, if any, in a separate written document  
20 entitled "NONSTANDARD RENTAL PROVISIONS" which the landlord

1 provides to the tenant. The landlord shall specifically identify  
2 and discuss the nonstandard provision with the tenant before the  
3 tenant enters into any rental agreement with the landlord. If  
4 the tenant signs or initials the nonstandard rental provision, it  
5 is rebuttably presumed that the landlord has specifically  
6 identified and discussed that nonstandard provision with the  
7 tenant, and that the tenant has agreed to it.

8 NOTE: The separate written document under par. (b) may be  
9 pre-printed.  
10

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

15 NOTE: For example, a landlord may announce his or her  
16 presence by knocking or ringing the doorbell. If  
17 anyone is present in the dwelling unit, the  
18 landlord must then identify himself or herself upon  
19 request.  
20

21 (4) CONFISCATING PERSONAL PROPERTY. (a) No landlord may  
22 seize or hold a tenant's personal property, or prevent the tenant  
23 from taking possession of the tenant's personal property, except

1 as authorized under s. 704.05(5), Stats., or a written lien  
2 agreement between the landlord and tenant.

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

12 SECTION 20. ATCP 134.09(4)(note) is created to read:

13 NOTE: See s. 704.11, Stats.

14 SECTION 21. ATCP 134.09(7) to (9) are created to read:

15 ATCP 134.09(7) SELF-HELP EVICTION. No landlord may  
16 exclude, forcibly evict or constructively evict a tenant from a  
17 dwelling unit, other than by an eviction procedure specified  
18 under ch. 799, Stats.

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

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

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

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

12           1. Misrepresent the location, characteristics or  
13 equivalency of dwelling units owned or offered by the landlord.

14           2. Misrepresent the amount of rent or non-rent charges to  
15 be paid by the tenant.

16           3. Fail to disclose, in connection with any representation  
17 of rent amount, the existence of any non-rent charges which will  
18 increase the total amount payable by the tenant during tenancy.

19           (b) No landlord may misrepresent to any person, as part of  
20 a plan or scheme to rent a dwelling unit to that person, that the

1 person is being considered as a prospective tenant for a  
2 different dwelling unit.

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

5  
6 EFFECTIVE DATE. The rules contained in this order shall  
7 take effect on January 1, 1999.

8 INITIAL APPLICABILITY. The rules contained in this order  
9 apply to rental agreements entered into, renewed or extended  
10 after January 1, 1999, and to continuing periodic tenancies  
11 beginning with the first rent-paying period beginning after  
12 January 1, 1999.

13

14

15 Dated this 13 day of October, 1998.

16

17

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21

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23

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel  
Secretary

OCT 14 1998