

## Chapter ATCP 134

## RESIDENTIAL RENTAL PRACTICES

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

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

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

(1) Operated by an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;

(2) Operated by a fraternal or social organization for the benefit of its members only;

(3) Under a contract of sale, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(4) In a hotel, motel, boarding house, lodging house or other similar premises on a transient basis;

(5) Furnished free of charge, or free of charge to employees conditioned upon employment in and about the premises;

(6) Under a rental agreement covering premises used by the occupant primarily for agricultural purposes;

(7) Owned and operated by government, or a subdivision or agency of government.

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

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

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

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the fu-

ture, or for having a rental application considered by the landlord.

(4) "Form provision" means a written rule, regulation, or rental or contract provision that has not been specifically and separately negotiated and agreed to by the tenant in writing. Any provision appearing as part of a preprinted form is rebuttably presumed to be a form provision.

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

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

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

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

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

(10) "Rental agreement" means any agreement, whether written or oral, for the rental or lease of a dwelling unit or premises, and includes contracts or rules and regulations which are incidental to, or adopted pursuant to a rental agreement.

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

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

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return of a security deposit, or an accounting for the security deposit.

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

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (2), Register, February, 1987, No. 374, eff. 3-1-87; correction in (12) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1993, No. 448.

**ATCP 134.03 Rental documents; deposit receipts. (1) COPIES OF RENTAL AGREEMENTS, RULES.** Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

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

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

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

1. The person or persons authorized to collect or receive rent and manage and maintain the premises, and who can readily be contacted by the tenant; and

2. The owner of the premises or other person authorized to accept service of legal process and other notices and demands on behalf of the owner. The address disclosed under this subdivision shall be an address within the state at which service of process can be made in person.

(b) The landlord and any successor of the landlord shall keep tenants informed of any changes in the information required under par. (a).

(c) This subsection does not apply to an owner-occupied structure containing no more than 4 dwelling units.

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

(a) All uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises. Disclosure shall be made by exhibiting to the prospective tenant those portions of the building and housing code notices or orders which have not been fully complied with. Code vio-

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lations shall not be considered corrected until their correction has been reported to code enforcement authorities.

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

1. The dwelling unit lacks hot and cold running water, plumbing or sewage disposal facilities in good operating condition.

2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature in the dwelling unit of at least 67°F (19°C) during all seasons of the year in which the dwelling unit may be occupied.

3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.

4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

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

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

**ATCP 134.05 Earnest money deposits. (1) REFUND OR CREDIT OF EARNEST MONEY DEPOSIT.** (a) If a rental application is rejected by the landlord, the entire amount of any earnest money deposit shall be immediately refunded to the prospective tenant.

(b) If a rental agreement is entered into, the entire amount of any earnest money deposit shall be applied toward the payment of rent or a security deposit, or returned to the tenant.

(2) **LIMITATIONS ON EARNEST MONEY WITHHOLDING.** (a) No portion of an earnest money deposit may be permanently withheld by a landlord in excess of actual costs and damages incurred because of the failure of a prospective tenant to enter into a rental agreement. Deposits may not be permanently withheld as compensation for lost rents unless the landlord has made reasonable efforts to mitigate the rental loss in accordance with s. 704.29, Stats.

(b) Upon request by any person giving an earnest money deposit, the landlord shall provide that person with a written statement accounting for all amounts permanently withheld from the deposit.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; reprinted to correct error in (1) (a), Register, March, 1984, No. 339.

**ATCP 134.06 Security deposits. (1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES.** Whenever a security deposit is required, the landlord shall:

(a) Upon acceptance of the deposit, inform the tenant that the tenant may inspect the dwelling unit and notify the landlord of any damages or defects which existed before the beginning of the tenancy. The tenant shall be given at least 7 days after the beginning of tenancy for the inspection and notification.

(b) Furnish the tenant with a written itemized description of any physical damages or defects for which deductions from the previous tenant's security deposit were made. The description shall be furnished to the new tenant before a security deposit is accepted, or at the same time the previous tenant is notified of security deposit deductions under sub. (4), whichever occurs later. If damages or defects have been repaired by the landlord, this may be noted in connection with the damage description. Disclosure of the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit, is not required.

**(2) RETURN OF SECURITY DEPOSITS.** The landlord shall, within 21 days after surrender of the premises, return all security deposits less any amounts withheld by the landlord. Deposits shall be returned in person, or by mail to the last known address of the tenant.

**(3) LIMITATIONS ON SECURITY DEPOSIT WITHHOLDING.** (a) Except for other reasons clearly agreed upon in writing at the time the rental agreement is entered into, other than in a form provision, security deposits may be withheld only for tenant damage, waste or neglect of the premises, or the nonpayment of:

1. Rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

2. Actual amounts owed for utility service provided by the landlord under terms of the rental agreement and not included in the rent.

3. Actual amounts owed by the tenant for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

4. Mobile home parking fees assessed against the tenant by a local unit of government under s. 66.058 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

(b) Nothing in this subsection shall be construed as authorizing any withholding for normal wear and tear or other damages or losses for which the tenant is not otherwise responsible under applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **UNAUTHORIZED ENTRY.** No landlord may enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. Entry may not be made except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry, consents to a shorter time period. This subsection does not apply to situations where the tenant requests or consents to a proposed entry at a specified time, a health or safety emergency exists, the tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage, or entry is otherwise authorized in writing other than in a form provision.

(3) **AUTOMATIC LEASE RENEWAL WITHOUT NOTICE.** No landlord shall enforce, or attempt to enforce, an automatic renewal or extension provision in any lease unless, as pro-

vided under s. 704.15, Stats., the tenant was given separate written notice of the pending automatic renewal or extension at least 15 days, but no more than 30 days before its stated effective date.

(4) **CONFISCATION OF PERSONAL PROPERTY.** No landlord shall seize or hold a tenant's personal property, or otherwise prevent the tenant from having access to or removing the tenant's personal property, except as authorized under s. 704.05 (5), Stats., or a lien agreement entered into in writing other than in a form provision.

(5) **RETALIATORY EVICTION.** No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit, in retaliation against a tenant because the tenant has:

(a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or

(b) Joined or attempted to organize a tenant's union or association; or

(c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

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

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

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

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

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

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