

DATCP Docket No. 20-R-02

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to create* ATCP 134.09 (8) (d) *relating to* residential rental practices.

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Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection

This emergency rule modifies Wis. Admin. Code ch. ATCP 134 to create a temporary prohibition on charging late rent fees or late rent penalties for any missed rent payment or any late rent payment during the current public health emergency and during the 90 days following the public health emergency.

*Statutes Interpreted*

Statutes Interpreted: Wis. Stat. ss. 93.07 (1) and 100.20 (2) (a). *See also* Wis. Stat. s. 704.95.

*Statutory Authority*

**Wis. Stat. s. 93.07 Department duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

**Wis. Stat. s. 100.20 (2) (a)**

The department [of Agriculture, Trade, and Consumer Protection], after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

## **Wis. Stat. s. 704.95 Practices regulated by the department of agriculture, trade and consumer protection**

Practices in violation of s. 704.28 or 704.44 may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.

### ***Related Statutes and Rules***

Wis. Stat. ss. 323.10 and 323.12 (4) (d). See also Executive Order #72, dated March 12, 2020, “Relating to a Proclamation Declaring a Health Emergency in Response to the COVID-19 Coronavirus”.

### ***Plain Language Analysis***

#### **Background**

This emergency rule modifies a current rule related to residential rental practices. Existing ch. ATCP 134 (Residential Rental Practices) and existing ch. 704, Stats. (Landlord and Tenant) both regulate dealings involving residential renters and their landlords. The department acted in response to Executive Order #72, dated March 12, 2020, “Relating to a Proclamation Declaring a Health Emergency in Response to the COVID-19 Coronavirus”. Item 6 directs “... all state agencies to assist as appropriate in the State’s ongoing response to the public health emergency.”

#### **Rule Content General**

This emergency rule on a temporary basis suspends the ability of a landlord to charge late rent fees or late rent penalties on residential rentals in Wisconsin. The provision expires at the earliest of the following three times: 150 days after the emergency rule is published in the official state newspaper (*See* Wis. Stat. s. 227.24 (1) (c)); 90 days after the expiration of the public health emergency; or 90 days after rescission of the proclamation of the public health emergency.

### ***Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations***

#### **Federal Programs**

The Department does not and cannot currently know all actions that the Federal government might take on rental housing during the COVID-19 emergency. The crisis, however, has led to negotiations focusing on a federal stimulus effort that could change the housing situation in the country. To date, the US Department of Housing and Urban Development placed a moratorium on evictions in its March 18, 2020 letter.

#### **Surrounding State Programs**

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants. States have responded differently to the ongoing COVID-19 crisis.

## *Illinois*

Governor Pritzker issued a stay-at-home order (Executive Orders 10 and 18). In Section 2 of Executive Order 10:

Pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(2), (8), and (10), all state, county, and local law enforcement officers in the State of Illinois are instructed to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation. No provision contained in this Executive Order shall be construed as relieving any individual of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual may have under tenancy or mortgage.

## *Iowa*

Governor Reynolds halted home evictions under an executive order (Sections 56 and 57 of her April 2 order). The Supreme Court has delayed civil trials until May 4, which effectively stops evictions until that date.

## *Michigan*

Governor Whitmer issued Executive Order 2020-19, Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home. In part, the order states:

The current state of emergency would be exacerbated by the additional threats to the public health related to removing or excluding people from their residences during the COVID-19 pandemic. To reduce the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is reasonable and necessary to provide temporary relief from certain eviction-related requirements and to temporarily prohibit the removal or exclusion of a tenant or mobile home owner from their residential premises, except in extreme circumstances.

## *Minnesota*

Governor Walz issued Emergency Executive Order 20-14, Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency. The order temporarily halts evictions. In doing so, the order states, “Public health and safety are promoted by stabilizing households which, through no fault of their own, may suddenly have the inability to afford rent. Providing a temporary moratorium on eviction actions allows these households to remain stably housed as they safeguard the health of themselves, their families, and other Minnesotans.” The order later adds, “Nothing in this Executive Order relieves a tenant’s obligation to pay rent.”

### ***Summary of Factual Data and Analytical Methodologies***

None taken. The department considered actions by other states. The department held a public hearing on the scope statement on April 3, 2020.

### ***Analysis and Supporting Documents used to Determine Effect on Small Business***

No analysis has been conducted.

*Effect on Small Business*

Many of the landlords affected by this rule are “small businesses.” The loss of late fees might have an impact on landlord revenues. The department does not know how many tenants are currently being charged late rent fees or late rent penalties during the period of abnormal economic disruption caused by the public health emergency.

A complete *regulatory flexibility analysis* is attached.

***DATCP Contact***

David A. Woldseth  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5164  
E-Mail: [DavidA.Woldseth@wisconsin.gov](mailto:DavidA.Woldseth@wisconsin.gov)

***Where Comments May Be Submitted***

David A. Woldseth  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5164  
E-Mail: [DavidA.Woldseth@wisconsin.gov](mailto:DavidA.Woldseth@wisconsin.gov)

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**FINDING OF EMERGENCY**

The Department of Agriculture, Trade and Consumer Protection (department) finds that an emergency exists and that promulgation of the attached emergency rule pursuant to Wis. Stat. s. 227.24 (1) (a) is necessary for the immediate preservation of the public peace, health, safety, and welfare. Therefore, the department proposes to prohibit the charging and accumulation of late rent fees and late rent penalties for any missed rent payment or any late rent payment during the public health emergency and during the 90 days following the public health emergency. This action was taken pursuant to the Governor’s Executive Order 72 to reduce economic hardship and related health, safety, and welfare risks to tenants affected by the COVID-19 pandemic.

**EMERGENCY RULE**

**SECTION 1.** ATCP 134.09 (8) (d) is created to read:

(d) During an emergency declared pursuant to Wis. Stat. s. 323.10 and for the 90 days following the expiration of the emergency, no landlord may charge any tenant a fee or a penalty for nonpayment of rent or late payment of rent.

**SECTION 2. EFFECTIVE DATE:** This rule takes effect following publication as provided in Wis. Stat. s. 227.24 (1) (c).

Dated this \_\_\_\_\_ day of April, 2020.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Randy J. Romanski  
Interim Secretary