

February 7, 2007

Representative Joan Ballweg, Chair
Special Committee on Disaster Preparedness Planning
Wisconsin Legislative Council
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701-2536

Re: Moratorium on rental evictions

Dear Representative Ballweg,

As we have witnessed over recent years, a natural disaster or crisis creates many challenges for government and individuals alike. Loss of life, sickness, property damage, and loss of infrastructure are just some of the difficulties that must be dealt with in protecting public health, safety, and welfare. Creating stability during this time of chaos is a formidable task, but one that can be realized through proper planning.

Accordingly, the Wisconsin REALTORS® Association (WRA) applauds the committee's work on developing a plan to help Wisconsin be better prepared in the event such tragedy strikes here. Obtaining information from a variety of sources on how best to resolve many of the possible issues during a state of emergency is paramount to minimizing the losses we suffer.

The WRA greatly appreciates the opportunity to provide the committee with written comments on the proposal to allow the governor to declare a moratorium on rental evictions during a state of emergency related to public health. This issue is of great importance to our members and to the owners of residential, rental property throughout the state.

Before providing you with our comments and questions on the proposed moratorium, we thought it would be helpful to provide you with some general background information on our association, rental units and landlords in Wisconsin, and process by which landlords must go through to evict a tenant.

Background Information

Information about the Wisconsin REALTORS Association

The WRA is a trade association that consists of over 19,000 real estate brokers, salespersons, developers, appraisers, and other real estate professionals. Our members represent over one million homeowners and property owners each year in a variety of real estate transactions. Accordingly, one of the primary functions of the WRA is to advocate for the interests of homeowners and property owners in a variety of public policy and legal matters throughout Wisconsin.

Who owns rental property in Wisconsin?

According to the 2000 U.S. Census, Wisconsin has approximately 657,884 residential, rental dwelling units. Rental units are located throughout Wisconsin in almost every city, village and town. They range in size from small efficiencies to large, single-family homes. While some of these units are part of large, multi-family complexes owned by corporations, most are smaller buildings (less than 8 units) owned by individuals or small “mom and pop” operations who rely upon the rental income from these units to support their households. Any interruption in this stream of rental income has a significant impact on the ability of the property owners to meet their financial obligations related and unrelated to the ownership of such property, including mortgage payments, property insurance, utilities, and general living expenses.

What is an eviction and what is the process for evicting someone?

In Wisconsin, landlord/tenant law is governed by Section 704 of the Wisconsin Statutes. However, local communities will often adopt ordinances to further regulate both landlords and tenants. In most cases, the landlord and tenant will enter into a written lease that will define the legal rights and responsibilities of both parties. If a tenant fails to pay the rent or meet any other terms of the lease, the only legal remedy available to a landlord is to evict the tenant. However, because the eviction process is costly and time consuming, it is pursued in most cases only as a last resort.

Contrary to popular belief, a landlord cannot unilaterally evict a tenant. An eviction is an action that only a court can grant to remove a tenant from a rental unit. To evict a tenant, a landlord must go through the following process:

- **Notice** – To begin an eviction action, the landlord must properly serve the tenant with a notice to vacate. In Wisconsin, most notices are 5, 14 or 28-day notices.
- **Right to cure** -- Most notices give the tenant the ability to stop the eviction process by paying the rent that is due or curing the problem with the lease within the notice period.
- **Summons and complaint** -- If the notice period expires, the landlord must obtain a stamped summons and complaint from the county court, pay the appropriate court fees, and then have the summons and complaint properly served upon the tenant.
- **Trial** -- The landlord and the tenant then appear before the judge to plead their respective cases. The judge will hear testimony from both sides and then determine whether an eviction is warranted or if the tenant has a valid defense.
- **Notice and removal by Sheriff** – If the judge rules in favor of the landlord, the landlord must deliver the judge’s order to the County Sheriff. The Sheriff will send a notice to the tenant to vacate the premises and, if the tenant fails to do so

within a specific period of time, the Sheriff will remove the tenant and any personal property from the rental unit.

After evicting a tenant from a rental unit, the landlord must then clean and make any necessary repairs to the unit before trying to find a new tenant to rent the unit. This process will often take several months, which means that the landlord will not receive any rent from that unit during this period. While Wisconsin law allows a landlord to collect “double rent” from a tenant that is evicted for nonpayment, the practical reality is that most landlords will never be able to collect this money. If the tenant wasn’t able to pay the rent, it is highly unlikely that the tenant will be able to pay double rent as a penalty.

The current eviction process contains sufficient checks and balances to protect the rights of both landlords and tenants. Any change to this process must be careful to avoid making the process unfair for one of the two parties.

Specific Concerns with Proposed Moratorium

As drafted, the proposed moratorium would authorize the governor to declare a moratorium on all rental evictions during a state of emergency related to public health. However, according to the minutes from the January 10, 2007 meeting, the committee discussed the possibility of expanding the scope of the governor’s authority to call a moratorium on rental evictions during any state of emergency, not only a state of emergency related to public health.

As indicated below, the proposed moratorium could have a destructive impact on the residential, rental housing market and all residential landlords in Wisconsin. A broadening of the governor’s authority to declare such moratoria would only make matters worse. For the reasons stated below, we strongly urge the committee to reconsider its recommendation to allow the governor to declare a moratorium on residential, rental evictions.

- Places an excessive financial burden on landlords -- The proposed moratorium on rental evictions places an excessive and unfair financial burden on owners of rental property to subsidize the housing costs for tenants. Under the moratorium, every renter in Wisconsin (approximately 650,000) would be eligible to receive free rent for an undetermined amount of time until their eligibility for emergency assistance is determined. While some may argue that not all renters will take advantage of the moratorium, there is no reason to believe this to be true given the absence of any penalty to stop paying rent. This financial impact on the individual owners of rental property would be devastating, resulting in possible bankruptcy, property foreclosure, and general property devaluation.

Related questions

- Why did the committee believe that it was fair to place this financial risk/burden solely on landowners rather than the general public? Did the committee propose similar moratoria on enforcement mechanisms related to failures to pay bills for other necessities such as medical expenses, food, utilities, etc.? If not, why?
 - Why did the committee choose to apply the moratorium to only evictions from rental units? Why not foreclosures on residential dwellings? Why not commercial buildings and office space?
 - Under the proposal, will the State compensate all landlords for rents not received during the moratorium? If so, what is the process and timeframe for receiving payment?
 - If a tenant applies for emergency assistance but is determined to be ineligible, will the tenant be responsible for any rents not paid during this time period? If the tenant does not pay such rents, will the State be responsible for making the payments? If the tenant receives emergency assistance, will the money go directly to the landlord or the tenant? If the money goes to the tenant and the tenant does not pay the landlord, is the State responsible for paying any rents owed to the landlord?
- Allows tenants to ignore lease terms with no penalty – The proposed moratorium would prevent landlords from evicting tenants for *any* reason during the moratorium period. Under most residential leases, a landlord can evict a tenant for breaking the terms of the lease including excessive noise, violence, criminal activity, pets (if not allowed), smoking (if not allowed), property damage, and allowing other people not identified on the lease to live in the unit. While the committee has apparently asked that the bill draft exclude rental evictions that are the result of drug or criminal gang activity, there are many other dangerous and destructive activities that fall outside of this narrow exclusion that could threaten the health and safety of neighboring residents and/or the physical appearance or structural integrity of the dwelling unit.

Related questions

- If a landlord is unable to evict a tenant for breaches of the lease, how will the landlord enforce the lease terms?
- If one tenant's actions affects the ability of the landlord to meet his lease obligations to other tenants (e.g., quiet enjoyment and habitable premises) and the landlord cannot evict the tenant causing the problems, will the other tenants be able to terminate the lease and vacate the premises without penalty? If so, will the State compensate the landlord for the loss of rent caused by the other tenants vacating until a new renter is found?

- Halts current eviction processes unrelated to state of emergency – The proposed moratorium places a stay on all evictions even those unrelated to the state of emergency. In other words, if the eviction process is commenced due to a breach of the lease terms prior to a state of emergency, the act of declaring a state of emergency will halt the eviction proceeding. This is fundamentally unfair to the landlord and other tenants who may now be required to continue living next to someone who has proven to be a disturbance or who has otherwise broken the rules outlined in the lease agreement.

Conclusion

Again, we thank the committee members for providing us with the opportunity to comment on this proposal. We would be happy to provide you with any additional information that you may need for future meetings.

Sincerely,

William Malkasian
President