



# Landlord Tenant Guide

Landlord-tenant relations in Wisconsin are regulated by Wis. Stat. ch. 704, and Wis. Admin. Code ch. ATCP 134.

## Wisconsin Administrative Code Chapter ATCP 134 ("ATCP 134")

Scope and Application: ATCP 134.01, The Residential Rental Practices rule applies to business practices related to the rental of most residential dwelling units in this state.

The Residential Rental Practices rule does not cover the following kinds of living arrangements:

- When a person lives in a premises operated by a public or private institution and the person lives there to receive medical, educational, counseling, religious, or similar services.
- When a person occupies a hotel, motel, boarding house, rooming house, or similar lodging for less than 60 days and the person is traveling away from their permanent place of residence.
- When a person lives in a premises owned and operated by the government or an agency of government. However, these rules do apply to federally subsidized rental housing if the housing is privately owned or operated (which includes HUD "Section 8" housing).
- When a member of a fraternal or social organization lives in a premises operated by that organization. However, if the organization rents rooms to non-members, these rules could apply to those rental agreements.
- When a person does commercial agricultural work on the leased premises.
- When a person operates and maintains the premises and the person lives on the premises free of charge as part of the employment arrangement.
- When a person lives in a dwelling unit that the person is in the process of buying under a contract of sale.



## ATCP 134.03

### Rental agreements and receipts

#### 1. Copies of rental agreements and rules; (ATCP 134.03(1))

If a rental agreement or any of the landlord's rules or regulations are in writing, the landlord should give the tenant a chance to read them before the tenant decides to rent. This gives the tenant a chance to find out what all the rental terms and conditions are before deciding whether to rent from that landlord. The landlord and tenant must agree on the essential terms of the tenancy, such as the total rent, the amount of the security deposit, and the specific dwelling unit the tenant will occupy.

Once the parties sign a written agreement, the tenant must receive a copy of the entire agreement.

By approving an individual as a prospective tenant, a landlord does not necessarily enter into a rental agreement with that person until they agree on the essential terms of tenancy. (See ATCP 134.02(10), definition of "Rental agreement" and the "Note.")

Understand, the rules do not require rental agreements to be in writing. Verbal rental agreements are traditional in many parts of the rental industry. Existing statutes allow verbal rental agreements and leases, Wis. Stat. sec. 704.01(1) and (3).

## **2. Receipts for tenant payments (ATCP 134.03(2))**

The landlord is required to give the tenant a written receipt any time the landlord accepts an earnest money deposit, a security deposit, or rent paid in cash. If the tenant pays by check, the rules do not require the landlord to provide a receipt, unless the tenant asks for a receipt.

## **ATCP 134.04**

### **Disclosure requirements**

#### **1. Identification of landlord or authorized agents (ATCP 134.04(1))**

In many disputes about building maintenance, tenants indicate that part of the problem is that the tenants are not able to contact the landlord about a pressing problem.

To help address these problems, this subsection requires the landlord to disclose, in writing, the name and address of the person or persons authorized to collect rent and the person or persons who manage and maintain the premises. The tenant must be able to contact these people relatively easily. In addition, the landlord must identify an owner of the premises or a person authorized to accept legal papers on behalf of the owner. The rule requires that this address (not a Post Office Box) be located within the State of Wisconsin, and that the landlord must provide notice of any change of the person's address within 10 business days of the change occurring.

These disclosure requirements do not apply to owner-occupied structures containing up to four dwelling units, since, in such cases, the landlord is living in the building and the tenant knows whom to contact.

#### **2. Code violations and conditions affecting habitability (ATCP 134.04(2))**

Local housing codes generally establish the standards which rental housing must meet. A landlord must maintain their rental properties under the requirements of local housing codes.

Local housing codes do not protect all rental housing in Wisconsin. Even in municipalities that have housing codes, individual rental units may not be inspected regularly.

Before entering into a rental agreement or accepting any earnest money or security deposit from a prospective tenant, the landlord must disclose to the prospective tenant any building or housing code violations that the landlord has actual knowledge of, affecting the dwelling unit or common areas of the premises, that present a significant threat to the prospective tenant's health or safety and which the landlord has not corrected.

The landlord must also disclose if the dwelling unit lacks hot or cold running water; if the heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature of at least 67° F during all seasons of the year the unit may be occupied; that the dwelling unit is not served by electricity, or the electrical wiring, fixtures or other components of the electrical system are not in safe operating condition; any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant; the dwelling unit is not served by plumbing facilities in good operating condition; or if the dwelling unit is not served by sewage disposal facilities in good operating condition.

#### **3. Utility charges (ATCP 134.04(3))**

Landlords often require tenants to pay the utility charges separate from the rent. Before deciding to rent a specific unit, it is important for a tenant to know whether or not the utility charges are included in the rent. A tenant needs this information so they can accurately determine the total cost of renting the unit.

ATCP 134.04(3), provides that the landlord must tell a prospective tenant if utility charges are not

included in the rent. The tenant must receive this information before signing a rental agreement or paying any money for an earnest money deposit or security deposit.

If utility charges are not included in the rent and individual dwelling units and common areas of the building are not separately metered, the landlord must tell the tenant how the costs for utility services will be allocated among the individual dwelling units.

## ATCP 134.05

### Earnest money deposits

Earnest money deposit is the money a prospective tenant gives a landlord in return for the option of entering into a rental agreement in the future or so the landlord will consider the person's application. The purpose of these deposits is to protect the landlord from possible costs or losses if the prospective tenant decides not to rent from the landlord. The rules do not prohibit earnest money deposits, nor do they set any limit on the maximum amount of the deposit.

#### 1. Accepting earnest money deposits (ATCP 134.05(1))

A landlord may not accept earnest money deposits until the landlord identifies the specific dwelling unit(s) for which the prospective tenant is being considered. (Note: Credit check fees are not "earnest money deposits".)

#### 2. Returning earnest money deposits (ATCP 134.05(2))

(a) When no rental agreement is made the landlord must return the full earnest money deposit to the applicant by the end of the next business day, by first-class mail or by delivering it to the applicant, after:

1. The landlord rejects the tenant's application or refuses to enter into a rental agreement with the applicant.
2. The applicant withdraws their application before the landlord accepts or rejects it.
3. The landlord does not approve the rental application within three business days after taking the earnest money deposit. The landlord and

applicant may agree, in writing, to a longer time for the landlord to consider the application, up to 21 days.

(b) If the landlord and tenant enter a rental agreement, then the landlord must either apply the earnest money deposit to the rent, apply it to the security deposit, or return it to the tenant.

If the landlord returns less than the full amount of the earnest money deposit and the prospective tenant accepts the partial amount, the prospective tenant still has the right to claim the landlord owes them the full amount of the deposit.

#### 3. Withholding an earnest money deposit (ATCP 134.05(3))

If the landlord approves the person to be a tenant, but the person decides not to enter into a rental agreement the landlord may withhold from the earnest money deposit for lost rent and advertising costs actually incurred due to the tenant's failure to rent the premises.

However, if the landlord significantly changed the rental terms previously discussed with the tenant and that is why the tenant withdrew their application, the landlord may not withhold money from the earnest money deposit.

If the landlord withholds money from the earnest money deposit for "lost rent," the landlord must make reasonable efforts to re-rent the premises to "mitigate damages" as provided under Wis. Stat. sec. 704.29

## ATCP 134.06

### Security deposits

Most Wisconsin landlords require a security deposit at the beginning of a tenancy to protect themselves from tenant damage or default.

#### 1. Check-In procedures; pre-existing damages (ATCP 134.06(1))

When the landlord requires a security deposit, the rules establish certain basic elements of a "check-in" procedure. First, before accepting any security deposit the landlord must provide written notice that the tenant has at least seven days to inspect

and document any preexisting damages or defects.

Second, the landlord must tell the tenant they have a right to receive a list or description of any physical damages for which the landlord withheld money from the previous tenant's security deposit prior to accepting a security deposit or converting an earnest money deposit to a security deposit. The landlord may require the prospective tenant to request this list of damages in writing.

If the tenant requests a list of previous damages, the landlord must provide the list within 30 days after receiving the request, or within seven days after charging the previous tenant for damages, whichever is later. The rules do not require the landlord to disclose the amount of the charges or the identity of the previous tenant. If the landlord repaired the damages, the landlord may note this on the list.

## **2. Returning security deposits (ATCP 134.06(2))**

The rules provide that the landlord must deliver or mail the security deposit, less any amounts properly withheld, to the last known address of the tenant within 21 days after the end of the rental agreement. If the tenant leaves the dwelling unit before the end of the rental agreement, the landlord still has 21 days after the end of the rental agreement to return the security deposit unless the landlord re-rents the dwelling unit before the end of the rental agreement. In that case, the landlord must return the security deposit within 21 days after the dwelling unit is re-rented.

Any payment starting a tenancy that is more than one month's prepaid rent is defined to be a security deposit. Nothing in the rules prevents a landlord from collecting more than one month's rent as security. However, when the tenant surrenders the premises, the landlord must treat it as a security deposit and must account for it as such.

## **3. Limitations on security deposit withholding (ATCP 134.06(3))**

**(a)** Generally, the landlord may withhold money from the security deposit only for the following reasons:

- Tenant damage, waste, or neglect of the premises;
- Nonpayment of rent;
- Nonpayment of actual amounts the tenant owes the landlord for utility services provided by the landlord;
- Nonpayment of government utility charges for which the tenant is responsible but become the liability of the landlord if the tenant does not pay, and;
- Any other payment for a reason provided in a nonstandard rental provision document described in par. (b).

**(b)** The rule allows landlords and tenants to mutually agree, in a "Nonstandard Rental Provision," to permit the landlord to withhold the security deposit for other reasons than those listed above with some exceptions.

**(c)** Specifically, the landlord may not negotiate a "Nonstandard Rental Provision" with the tenant to withhold the security deposit for any costs related to "normal wear and tear." Both the Wis. Stat. sec. 704.28(3) and residential rental practices rule ATCP 134.06(3)(C) prohibit routine across-the-board deductions from the security deposit for cleaning, painting, or carpet cleaning, that result from only "normal wear and tear."

However, a rental agreement may include a contractual provision requiring the tenant to pay for routine carpet cleaning. Even if the rental agreement includes the permitted provision, the cost for the routine carpet cleaning may not be collected by the landlord in advance because all prepayments in excess of one month's rent must be treated as "security deposit." Even if the rental agreement includes the permitted provision, a landlord may not deduct the cost of routine carpet cleaning from the security deposit because deductions for normal wear and tear are not allowed.

#### **4. Security deposit withholding; statement of claims (ATCP 134.06(4))**

If the landlord deducts any money from the security deposit, the landlord must give the tenant an itemized written statement of accounting. This statement must have two entries for each individual deduction:

1. a description of the item and physical damages or other reason for the claim, and
2. the amount withheld as reasonable compensation for the claim.

This allows for discussion about whether or not the claim is valid and whether or not the charge for the item is valid. Failure to describe the damage, waste, or neglect that led to each charge makes it appear the charges are being withheld for normal wear and tear.

The rules prohibit a landlord from intentionally falsifying any security deposit claim.

#### **5. Tenant failure to leave forwarding address (ATCP 134.06(5))**

The rules require the landlord to mail the security deposit and/or an accounting for the security deposit to the tenant's last known address. This rule applies even if the last known address is the dwelling unit the tenant rented under the rental agreement. A tenant should notify the postal service and the landlord, or the landlord's agent, of their change of address as soon as possible to insure they receive their security deposit in a timely manner. However, if a tenant fails to leave a forwarding address, this does not affect the tenant's rights to demand that the landlord return some or all of the security deposit.

### **ATCP 134.07**

#### **Promises to repair**

Some people agree to rent a dwelling unit based upon the landlord's promises to make certain repairs or improvements to the premises. Such promises may induce a person to rent a dwelling unit and should be in writing.

#### **1. Specific date of completion required (ATCP 134.07(1))**

For every "promise to repair," the landlord must specify the date or time period when the landlord will complete the repairs, cleaning, or improvements. This requirement applies to promises to clean, repair or improve any furnishings, facilities, or parts of the premises.

#### **2. Initial promises must be in writing (ATCP 134.07(2))**

If the landlord makes any promises to repair, clean or improve the premises before the parties sign the initial rental agreement, the landlord must put the promises to repair in writing. The landlord must give the tenant a copy of these promises.

#### **3. Repairs must be completed on time (ATCP 134.07(3))**

The landlord must complete the promised repairs or improvements within the time period stated in writing. The only excuses the rules "accept" for the landlord not completing the repairs on time are if:

- there is a labor stoppage,
- supplies are not available,
- there are unavoidable casualties, or
- there are other causes clearly beyond the landlord's control.

If something happens to delay the completion of the repairs, the landlord must tell the tenant what has happened that is beyond the landlord's control and give the tenant a new date when the repairs will be completed.

### **ATCP 134.08**

#### **Prohibited rental agreement provisions**

Under the rules, rental agreements that contain any of the following provisions are void in their entirety:

- 1. Allows a landlord to do any of the following because a tenant has contacted an entity for law**



**enforcement services, health services, or safety services:** Increase rent, decrease services, bring an action for possession of the premises, refuse to renew a rental agreement, or threaten to take any action to do so. (ATCP 134.08(1))

2. **Authorizes the landlord to evict or exclude the tenant from the premises,** other than by judicial eviction procedures as provided under ch. 799, Stats.(ATCP 134.08(2))
3. **Provides for the acceleration of rent payments or waives the landlord's obligation to mitigate damages in the event of tenant default.** If the tenant breaches or defaults on their rental agreement, the landlord may not require the tenant to immediately pay for future rent payments that the tenant is otherwise obligated to pay. Also, under the rule, the landlord is obligated to attempt to "mitigate the damages." In most cases, this means that the landlord must try to reduce the amount of rent the tenant is still obligated to pay by trying to re-rent the apartment. A rental agreement may not in any way try to waive the landlord's obligation to mitigate damages and re-rent the premises as required under, Wis. Stat. sec.704.29. (ATCP 134.08(3))
4. **Requires the tenant to agree to pay any attorney's fees or costs the landlord may incur in any legal action or dispute arising out of the rental agreement.** However, this does not prohibit the landlord or tenant from recovering attorney's fees and costs under a court order under Wis. Stats. ch. 799 or 814. (ATCP 134.08(4))
5. **Authorizes the landlord to "confess judgment" against the tenant.** A lease agreement cannot contain a provision that requires a tenant to agree with any accusation of a lease violation made by the landlord. (ATCP 134.08(5))
6. **Says the landlord is not liable for or responsible for any property damage or personal injury** caused by the landlord's negligent acts or omissions. (ATCP 134.08(6))
7. **Says the tenant is liable for personal injuries arising from causes clearly outside the tenant's control,** or for property damage caused by natural disasters or persons other than the tenant, the

tenant's guests, or persons the tenant has invited to the premises. (ATCP 134.08(7))

8. **Waives any statutory or other legal obligation that requires the landlord to deliver the premises in a fit or habitable condition,** or maintain the premises during tenancy. While tenants may be held responsible for some maintenance duties, tenants cannot legally give up their rights, such as the right to safe and habitable housing. (ATCP 134.08(8))
9. **Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is a victim of that crime.** (ATCP 134.08(9))
10. **Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include, the notice required by Wis. Stat. sec. 704.14.** (ATCP 134.08(10))

It is important to note that a rental provision requiring the tenant to pay for professional carpet cleaning or other routine cleaning, in the absence of negligence or improper use by the tenant, does not render a rental agreement void. Because routine carpet cleaning is not an obligation statutorily imposed on either the landlord or the tenant, assigning this responsibility to a tenant through a contractual provision does not render a rental agreement void.

## ATCP 134.09

### Prohibited practices

1. **Advertising or rental of condemned premises (ATCP 134.09(1))**

Landlords may not advertise or rent a premise that has been condemned for human habitation. If the premise is condemned or the landlord has received a notice of intent to do so, the landlord may not try to rent the premises. After the landlord completes the necessary repairs and the premise complies with local building and safety ordinances, the landlord may advertise the premises for rent.

## 2. Unauthorized Entry (ATCP 134.09(2))

Landlord-tenant law provides that a landlord may enter a rented dwelling unit only under certain specified circumstances, unless the landlord and tenant have agreed to a Non-Standard Rental Provision that specifically authorizes the entry under additional circumstances. Although the landlord has no unfettered right to enter the dwelling unit without the tenant's permission, state law does authorize the landlord to enter the premises without advance approval under limited circumstances.

### Entry Permitted Advance Notice Required:

If the entry is otherwise authorized, the landlord may enter the premises (1) after giving the tenant at least 12 hours advance notice and (2) during reasonable hours, to do any of the following:

- Inspect the premises;
- Make repairs;
- Show the premises to prospective tenants or purchasers; or
- For reasons authorized by a Non-Standard Rental Provision.

### Entry Permitted Advance Notice Not Required:

A landlord may enter the premises without advance notice if:

- The tenant requests or consents, in advance, to the time the landlord plans to enter the dwelling unit;
- a health or safety emergency exists; or
- the tenant is absent and the landlord reasonably believes that entry is necessary to preserve or protect the premises.

If a landlord enters a dwelling unit while it is rented, the landlord must first announce his or her presence to any persons who may be present in the dwelling unit. For example, the landlord must knock on the door or ring the doorbell. If anyone is present when the landlord enters, the landlord must identify themselves before entering.

## Automatic lease renewal without notice (ATCP 134.09(3))

State statutes currently provide that an "automatic renewal" clause in a lease is not enforceable against a tenant unless the landlord gives a written reminder of the clause to the tenant 15 to 30 days before the tenant's last chance to notify the landlord whether the tenant intends to stay or leave. Landlords should review the language in Wis. Stat. sec. 704.15 for the notice requirements.

The statute makes the automatic renewal clause unenforceable, unless the landlord gave the tenant the required "reminder."

## 3. Confiscating personal property (ATCP 134.09(4))

The rules prohibit landlords from taking a tenant's personal property or preventing a tenant from taking possession of their personal property, unless authorized by Wis. Stat. §§. 704.05(5), 704.11, or 779.43.

## 4. Retaliatory eviction (ATCP 134.09(5))

A landlord may not increase rent, decrease services (such as water, electricity or heat), refuse to renew a lease, bring an action to evict or threaten to do any of these things, if it is caused by the landlord's desire to retaliate against the tenant because the tenant has:

- Reported a violation of ATCP 134 or reported a building or housing code violation to government authorities;
- complained to the landlord about a violation of ATCP 134, Wis. Stat. ch. 704 which describes the duties of the landlord;
- complained to the landlord about violations of the local housing code; or
- asserted or attempted to assert his/her legal rights as a tenant, including joining or attempting to organize a tenants union or organization.

Before filing any formal legal action, a tenant should first consider attempting to resolve problems informally with the landlord.

## 5. Failure to deliver possession (ATCP 134.09(6))

A landlord must give the tenant access to the dwelling unit at the time agreed upon in the rental agreement. The only time it is permissible for the landlord not to "deliver possession" of the dwelling unit on the agreed date is when something happens which is beyond the landlord's control.

## 6. Self-help eviction (ATCP 134.09(7))

A landlord may not exclude, forcibly evict, or constructively evict a tenant from a dwelling unit unless the landlord follows the eviction procedures established by law (Wis. Stat. ch. 799). "Constructive eviction" could include the landlord taking actions like the following: disconnecting utility services, changing the locks, removing the doors from the dwelling unit, or harassing the tenants in other ways.

## 7. Late rent fees and penalties (ATCP 134.09(8))

A landlord may not charge a tenant a "late rent fee" or "late rent penalty," unless the rental agreement specifically provides for such a penalty.

If the tenant was late paying rent the previous month and gives the landlord a rent payment for the current month, the landlord must first apply that payment to any rent that is currently due before applying any part of that payment to a late fee.

Landlords may not charge tenants a fee or penalty for not paying a late rent fee or late fee penalty.

## 8. Misrepresentations (ATCP 134.09(9))

The rule prohibits a landlord from making misrepresentations about the rental property or the rental agreement in order to get a prospective tenant to agree to rent from the landlord.

Under this rule, no landlord may:

- Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord. For example, the landlord may not

show a "model" apartment and then rent a unit which is unlike the "model" apartment shown.

- Misrepresent or fail to disclose the total amount of rent and other non-rent charges the tenant must pay.
- Fail to tell a prospective tenant about any non-rent charges that will increase the total amount the tenant must pay during their tenancy.
- Engage in "bait and switch" practices. For example, the landlord may not tell a prospective tenant that the landlord is considering the person for an apartment in an 8-plex on 25th Street when the landlord really plans to rent the person a smaller apartment in a very large apartment complex on 2nd Street.

## ATCP 134.10

### Effect of rules on local ordinances

As to local government ordinances, the Residential Rental Practices rules in ATCP 134 do not prohibit or nullify any local government ordinance unless compliance with that ordinance and ATCP 134 is impossible. If there is a direct conflict between the Residential Rental Practices rules in ATCP 134 and a local ordinance such that, by complying with the ordinance a person would violate the rules in ATCP 134, then the ATCP 134 rules control whenever it is possible to comply with both a landlord and tenant must comply with both the local ordinances and the Residential Rental Practices rules.

The Residential Rental Practices rules may not change any of the rights or duties assigned to landlord and tenant in Wis. Stat. ch. 704.

### Nonstandard rental provisions

If the landlord wants to include any additional provisions to the rental agreement, the landlord and the prospective tenant must separately negotiate those provisions. Under the rules, a rental agreement may include the following provisions only if the landlord and tenant separately negotiate them and include them in a separate written document entitled, "Nonstandard Rental Provision":



1. Expanded landlord right of entry into the dwelling unit. (ATCP 134.09(2)(c))
2. Authorized deductions from a tenant's security deposit. (ATCP 134.06(3)(b))
3. Holding tenants personal property (ATCP 134.09(4)(b))

## Wis. Stat., sec. 704.17

### Terminating a Tenancy/Risk of Eviction

After giving proper notice to the tenant under Wis. Stat. sec. 704.17, a landlord may start eviction proceedings for any of the following reasons.

A landlord may start an eviction in small claims court against a tenant who does not pay their rent, pays only part of their rent, or pays the rent late (even one day late). A landlord may also start the eviction process against a tenant who breaks the rules or terms of the rental agreement or causes damage to the property. A landlord who receives written notice from a law enforcement agency that the dwelling unit has been declared a nuisance under Wisconsin Statutes section 823.113(1) or (1m)(b) may begin eviction proceedings against the tenant.

Tenants may be given either a written 5-day or 14-day notice to vacate the property.

- 5-day “Cure” Notice. This written notice from the landlord gives the tenant five days to remedy or move out within five days. If the tenant remedies, the tenancy continues. If the tenant fails to remedy within 5 days, the landlord may start eviction proceedings under Wis. Stat. ch. 799.
- 14-day Notice. This written notice specifies that the tenancy has ended because the tenant is in default under the rental agreement. This notice does not offer the option of paying the rent or correcting the breach.

For month-to-month tenancies, a landlord may serve a 14-day Notice for either rent non-payment or for damage/lease breach, without first serving a 5-day Notice to cure.

For tenants on a lease for one year or less who fail to pay a rent installment on time, the landlord must first provide a 5-day “cure” Notice and option to remedy

before starting an eviction action under Wis. Stat. ch. 799. If the tenant remedies but fails to pay a rent installment on time again within 12 months, the landlord may then serve a 14-day notice with no option to cure.

If a tenant refuses to leave the premises after receiving the proper notice, the landlord may start an eviction action in Small Claims Court. A tenant has the right to appear in court to contest the eviction. If the tenant fails to appear in court, the landlord may automatically obtain the eviction order. The landlord may not confiscate personal belongings or use force to remove tenants from the rental unit until the judge orders an eviction under Wis. Stat. sec. 799.44.

Additionally, if the court decides that the tenants wrongfully stayed in the rental unit, the court can order the tenants to pay the landlord twice the amount of rent owed (prorated on a daily basis) for each day the tenants stayed in the rental unit unlawfully. Wis. Stat. sec. 704.27

### Criminal Activity: Wis. Stat. sec. 704.17(3m)

A landlord may serve a tenant a 5-day Notice to vacate the premises, without an option to stay, for criminal actions by the tenant or their guests which threaten the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or immediate neighbors. This also applies to criminal activity which threatens the health or safety of the landlord or their agents, and to drug-related criminal activity on or near the premises. Such a 5-day Notice must include the following:

- The basis for the notice.
- A description of the criminal activity or drug-related criminal activity, the date it took place on, and identification or description of the individuals who took part in the activity.
- Notice that the tenant may seek legal advice/volunteer clinic or tenant resource center.
- Notice that the tenant has the right to contest the allegations before a court commissioner or judge if an eviction action is filed.

This does not apply to a tenant who is a victim of the criminal activity.

## Change of Ownership

When a rental unit changes owners in the middle of a lease, the new owner must observe all terms of the existing lease. The new owners cannot make changes (except minor rule changes) until the lease expires. Wis. Stat. sec. 704.09(3).

## Foreclosure – Protecting Tenants at Foreclosure Act

If a tenant suspects that their rental property is in foreclosure or is going into foreclosure, the tenant should continue to make their rental payments as required by the rental agreement unless the tenant is otherwise directed by the court or by the agent handling the foreclosure.

A tenant can determine whether their rental property is in foreclosure by contacting the Clerk of Court for their county. A tenant can also check on the Internet at the Wisconsin Circuit Court access site, [wcca.wicourts.gov](http://wcca.wicourts.gov). If a tenant finds that their rental property is in foreclosure, a tenant can contact the party foreclosing to determine how the foreclosure might affect their rental agreement.

Even though the bank is receiving the rent payments, all other rights and responsibilities that the owner/landlord has with respect to the tenants remain in place. Until the bank actually forecloses, the owner is still the owner. Landlords must maintain the rental unit in a fit and habitable condition, the financial institution is not explicitly obligated to assume the maintenance duties of the owner.

## Penalties for violating the residential rental practice rule

The department understands that a vast majority of landlords strive to fully comply with the rules voluntarily. When the department finds violations, it tries to obtain voluntary compliance from the appropriate party whenever possible. However, if enforcement action becomes necessary, violations of the rules in ATCP 134 may result in penalties.

The actual penalties imposed by a court will depend on the seriousness of the violations and the damages or harm that resulted. Under Wis. Stat. sec. 100.26(6), a court may impose a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. A district

attorney may also bring criminal misdemeanor charges for violations of these rules which may result in a fine not less than \$25 nor more than, up to \$5,000 for each violation or a year in the county jail, or both. See Wis. Stat. sec. 100.26(3).

In addition to any other penalties, the court may issue an injunction telling the person not to violate the rules again in the future and may order the person who violated the rules to pay restitution to the victim.

A person may also bring a private action under Wis. Stat. sec. 100.20(5) to recover the “pecuniary loss” caused by violations of ATCP 134.

The Department of Agriculture, Trade, and Consumer Protection investigates alleged violations of the Residential Rental Practices rules. If prosecution is necessary, the department works in cooperation with the Wisconsin Department of Justice, or the local District Attorney.

## Private remedy for violations of the rules

State law allows anyone who suffers monetary losses because of violations of the Residential Rental Practices rules to file a lawsuit on their own in state court (usually small claims court) against the violator. In a private individual lawsuit, the victim can recover from the violator up to twice the amount of their “pecuniary loss” that is their monetary “out-of-pocket” losses (or damages), plus costs including reasonable attorney's fees under Wis. Stat. sec. 100.20(5). How much a person actually recovers depends on whether the victim can satisfactorily prove to the court what monetary losses and damages are suffered. The exact amount the victim recovers is decided by the courts.

Parties may seek this remedy directly in court without filing a complaint with the department. However, the department's involvement can often assist in resolving a complaint. In addition, complaints assist the department in monitoring the business' practices to ensure they are following Wisconsin's Residential Rental Practices rules.

For more information, see the notes following Wis. Admin. Code ch. ATCP 134.05(3) and ATCP 134.06(2)(a) which references a decision issued by the Wisconsin Supreme Court. That decision, *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), provides some guidance on what

the courts look at in deciding how to award damages against a landlord who violated the rules in Wis. Admin. Code ch. ATCP 134, regarding security deposits and earnest money deposits.

## **Additional information**

Wis. Admin. Code ch. ATCP 134, Residential Rental Practices:

[http://docs.legis.wisconsin.gov/code/admin\\_code/atcp/090/134](http://docs.legis.wisconsin.gov/code/admin_code/atcp/090/134)

Wis. Stat. ch. 704 Landlord and Tenant:

<http://docs.legis.wisconsin.gov/statutes/statutes/704.pdf>

Wis. Admin. Code ch. ATCP 125, Manufactured Home Communities:

[http://docs.legis.wisconsin.gov/code/admin\\_code/atcp/090/125.pdf](http://docs.legis.wisconsin.gov/code/admin_code/atcp/090/125.pdf)

Wis. Stat. ch. 799, Sections 799.40 to 799.45 Evictions:

<http://docs.legis.wisconsin.gov/statutes/statutes/799.pdf>

Tenants' Rights & Responsibilities - BCP fact sheet:

<https://datcp.wi.gov/Documents/LT-TenantsRights143.pdf>



*For more information or to file a complaint, visit our website or contact:*

Wisconsin Department of Agriculture,  
Trade and Consumer Protection  
*Bureau of Consumer Protection*  
2811 Agriculture Drive, PO Box 8911  
Madison, WI 53708-8911

Email: [DATCPHotline@wi.gov](mailto:DATCPHotline@wi.gov)

Website: [datcp.wi.gov](http://datcp.wi.gov)

(800) 422-7128

TTY: (608) 224-5058