

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134
Rules Clearinghouse #: Not Yet Assigned
DATCP Docket #: 12-R-07

Rule Summary

The Wisconsin legislature enacted Act 143 on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Confiscating personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

As a result of Act 143, some provisions of the existing rule overlap and conflict with Ch. 704. This rule would modify the current rule to conform to the new statutory requirements.

Disclosures required before entering into a rental agreement

The current rule requires certain disclosures a landlord must make to the tenant before entering into a rental agreement with, or accepting any earnest money or security deposit from, a prospective tenant. These disclosures relate to conditions affecting habitability.

Act 143 creates s. 704.07 (2) (bm), Stats., which requires disclosures relating to habitability that are similar, but not identical, to the disclosures prescribed by the current rule.

This rule repeals and recreates the required disclosures to make them identical to the disclosures required by statute.

Returning security deposits

Under the current rule, if the tenant surrenders the property before the last day of the rental agreement, the landlord must return the security deposit within 21 days after the landlord receives a written notice from the tenant that the tenant has surrendered the premises.

Act 143 creates s. 704.28 (4) (b), Stats., which requires the landlord, if the tenant surrenders the property before the last day of the rental agreement, to return the security deposit within 21 days after the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to be identical to the provision Act.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant's security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities or assessments that the landlord is liable for unpaid amounts; or other reasons specifically listed in the rental agreement as "nonstandard rental provisions."

Act 143 creates s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the wording of the provisions relating to withholding a tenant's security deposit to conform with Act 143, but does not substantially change the requirements from the current rule.

Prohibited rental agreement provisions

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord's attorney's fees in the event of a dispute.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.

Act 143 creates portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule makes minor changes in wording related to prohibited rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the

provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

Act 143 allows a landlord to dispose of personal property left behind by the tenant at the landlord's discretion as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule so that provisions relating to abandoned personal property are identical to the statute.

Small Businesses Affected

The current rule and the proposed rule regulate transactions between landlords and tenants. Many landlords are small businesses. However, this proposed rule does not have any material effect on any small business. The proposed rule does not change the duties and responsibilities of landlords in relation to their tenants. Instead, the proposed rule states the duties and responsibilities of the landlord and eliminates inconsistencies between the Ch. 704, Stats., and Ch. ATCP 134, Wis. Admin. Code.

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any new reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for "small businesses". The nature of the subject matter does not lend itself to differentiating between types of businesses.

Conclusion

This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 20____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sandy Chalmers, Administrator,
Division of Trade and Consumer Protection