

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134
Rules Clearinghouse #: 14-038
DATCP Docket #: 14-R-02

Rule Summary

Wisconsin Act 143 was enacted 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.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord, tenant and DATCP obligations in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.
- Violations of s. 704.28 or 704.44, Stats., may be an unfair trade practice under s. 100.20, Stats., and the department may not issue an order under s. 100.20, Stats., that conflicts with rights and duties arising under ch. 704, Stats.

This rule makes revisions to ch. ATCP 134 as necessary to conform it to provisions of ch. 704, Stats., as amended, and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Definitions

The proposed rule makes a minor technical revision to the existing rule definition of “dwelling unit” to conform to recent changes in ch. ATCP 125, Wis. Adm. Code.

The proposed rule revises existing rule definitions of “premises” and “rental agreement” to bring them into exact alignment with the most recent version of ch. 704, Stats.

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 various conditions affecting habitability, including uncorrected building code violations.

Act 143 created s. 704.07 (2) (bm), Stats., which requires disclosures relating to building code violations that are generally similar to the disclosures prescribed by the current rule.

This rule repeals and recreates the building code violation disclosure requirement to make it identical to the disclosure required by the statute.

Returning security deposits

The current rule establishes a minimum timeline for when security deposits must be returned to the tenant. In most cases, the landlord must return the security deposit within 21 days of the tenant vacating the property.

Act 143 created, and Act 76 amended s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Although under the statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re-rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

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

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 created 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 the rule to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to “nonstandard rental provisions” to conform to s. 704.28 (2), Stats., as created by Act 143

and amended by Act 76.

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.
- Authorizing landlord to confess judgment against the tenant.
- 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.
- Waive obligation on the part of the landlord to deliver and maintain the premises in fit or habitable condition.

Act 143 created and Act 76 revised portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, Act 143 created two new prohibited rental agreement provisions – allowing the landlord to take certain actions because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. Act 76 refined this particular prohibition to clarify that it apply to a termination of tenancy based solely on the commission of a crime. Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property and the rental agreement did not include the notice requirement relating to certain domestic abuse protections.

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 revises the prohibition on certain 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 created and Act 76 revised s. 704.05 (5), Stats., which 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 to align it with s. 704.11, Stats. It also replaces references to a written lien agreement with a more general written agreement. As with the current rule, this rule prescribes certain requirements and limitations on any agreement allowing the landlord to seize or hold a tenant's personal property.

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 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 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