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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2024-12

### EVICITION OF A RESIDENTIAL TENANT

Eviction is the legal process by which a landlord may remove a tenant from occupying the landlord's property before the tenancy, or the right of the tenant to occupy the property, expires.<sup>1</sup> In Wisconsin, the eviction process begins when a landlord issues a termination notice to a tenant. If the termination notice is properly issued and the tenant has not left the premises, then the landlord may continue with the process by filing an eviction action in small claims court. Ultimately, a tenant may not be evicted unless the small claims court enters a judgment in favor of the landlord and orders the tenant be removed from the premises.<sup>2</sup>

This information memorandum provides an overview of the statutory framework for the eviction of a residential tenant in Wisconsin, as set forth in chs. [704](#) and [799](#), Stats., by summarizing the types of residential tenancies, the termination notice requirement, and small claims court proceedings for eviction actions.

### FEDERAL EVICTION LAW

Generally, state law determines the eviction process in Wisconsin. However, federal law enacted under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), requires a 30-day eviction notice for all covered property. [15 U.S.C. s. [9058 \(c\)](#).] A covered property is defined as any property that either participates in certain housing programs or has a federally backed mortgage or multifamily mortgage loan, which likely includes numerous properties in Wisconsin. [15 U.S.C. s. [9058 \(a\) \(2\)](#).] For covered properties, the federally imposed 30-day eviction notice applies instead of the shorter notice requirements specified in state law and detailed below. For properties that do not meet the definition of covered property, the eviction process that is summarized below applies.

### TYPES OF RESIDENTIAL TENANCIES

Wisconsin statutes generally recognize three types of residential tenancies: fixed-term lease; periodic tenancy; and tenancy at will. The eviction process varies depending on the type of tenancy, defined below.

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<sup>1</sup> Sometimes a tenant who stays beyond the end of the lease still has rights as a tenant. A holdover tenant is defined as a tenant who continues to occupy the premises after the expiration of their lease. Generally, landlords may follow [ch. 799](#), Stats., to evict a holdover tenant. However, if the landlord accepts rent from a holdover tenant, a periodic tenancy is created making the tenant a legal occupant again. [s. [704.25](#), Stats.]

<sup>2</sup> Landlords are specifically prohibited from self-help eviction, which means excluding, forcibly removing, or constructively evicting a residential tenant outside of the eviction procedures in [ch. 799](#), Stats. [s. [ATCP 134.09 \(7\)](#), Wis. Adm. Code.] However, in practice many tenants choose to vacate the premises voluntarily upon service of a termination notice or threat of eviction.

A **fixed-term lease** is an agreement, whether oral or written, for the transfer of possession of property for a definite period of time, meaning there is a fixed start date and expiration date. [s. [704.01 \(1\)](#), Stats.] The eviction statutes separate fixed-term leases into the following categories:

- Leases for one year or less.
- Leases for longer than one year, which must meet the requirements set forth in ss. [704.03 \(1\)](#) and [706.02](#), Stats., including that the lease be in writing.<sup>3</sup>

A **periodic tenancy** arises when a tenant holds possession of a premises without a valid lease but pays rent on a periodic basis. This includes a tenant who pays rent on a day-to-day, week-to-week, month-to-month, or year-to-year basis. [s. [704.01 \(2\)](#), Stats.]

A **tenancy at will** arises when the tenant holds possession of a premises with the permission of the landlord under circumstances not involving periodic payment of rent. However, a tenant who holds possession of real property under a purchase contract or employment contract is not considered an at-will tenant. [s. [704.01 \(5\)](#), Stats.]

## TERMINATION NOTICE

The eviction process begins when a landlord issues a tenant a termination notice, a document notifying the tenant that the tenancy will be terminated. [s. [704.17](#), Stats.] A termination notice does not immediately go into a court record, but to file an eviction action the landlord must show a proper termination notice was issued and the tenant failed to comply with the notice.

### Notice Requirements

The statutes establish certain requirements of a termination notice. First, the notice must be in writing. The notice must typically include the grounds or reasons for issuing the notice.<sup>4</sup> Next, the notice must include how many days the tenant has vacate, or permanently leave the premises. In certain situations, the notice may allow the tenant to remedy the violation, or resolve the cited reasons for the termination notice. [s. [704.17](#), Stats.] Lastly, the statutes require the landlord to issue the termination notice by one of the following methods:

- Giving a copy of the notice personally to the tenant or leaving a copy at the tenant's usual place of abode in the presence of some competent member of the tenant's family who is at least 14 years of age and is informed of the contents of the notice.
- Leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and mailing a copy by regular or other mail to the tenant's last-known address.
- Affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read, and mailing a copy by regular or other mail to the tenant's last-known

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<sup>3</sup> Under s. [704.03 \(1\)](#), Stats., a fixed-term lease for a year or more must set forth: (a) the amount of rent or other consideration; (b) the time of commencement and expiration of the lease; and (c) a reasonably definite description of the premises. Generally, under s. [706.02](#), Stats., a fixed-term lease must: (a) identify the parties; (b) identify the land; (c) identify the interest conveyed, and any material term, condition, reservation, exception, or contingency upon which the interest is to arise, continue or be extinguished, limited, or encumbered; (d) be signed by or on behalf of each of the grantors; (e) be signed by or on behalf of all parties, if a lease or contract to convey; and (f) be delivered.

<sup>4</sup> A 28-day termination notice for a tenancy at will or a periodic tenant does not need to include a reason for issuing the notice. [s. [704.19 \(4\)](#), Stats.]

address, but only if notice cannot be issued by either of the first two methods with reasonable diligence.

- Mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address.
- Serving the tenant as prescribed under current law for the service of a summons.

[s. [704.21](#), Stats.]

## Options Available to the Tenant

In response to receiving a termination notice, a tenant may vacate the premises or, in some cases, may remedy the cited reason for issuing the termination notice. The grounds for termination determines the whether the tenant has a statutory right to remedy the violation.<sup>5</sup> A landlord has grounds to terminate a tenancy in the following circumstances: (1) non-payment of rent; (2) breach;<sup>6</sup> (3) waste;<sup>7</sup> (4) lease agreement violation; (5) nuisance; (6) criminal activity; and (7) unsafe housing. [ss. [704.16](#) and [704.17](#), Stats.]

By default, the termination notice must always give the tenant a timeline to vacate the premises. If the tenant voluntarily vacates the premises within the timeline in the notice, no eviction action may be commenced against the tenant.<sup>8</sup> [s. [704.17](#), Stats.]

A tenant may have the option to stop the eviction process by remedying the reason cited as the grounds for issuing the termination notice. [s. [704.17](#), Stats.] For example, if the reason for the termination notice is non-payment of rent, the tenant may have the option to pay the outstanding rent to stop the eviction process. [s. [704.17 \(1p\) \(a\)](#) and [\(2\) \(a\)](#), Stats.] If the issue is breach, waste, or a lease agreement violation, the tenant would have the option to either promptly take reasonable steps to remedy the waste, breach, or violation or offer the landlord a good faith and reasonable offer to pay for the resulting damages to stop the eviction process. [s. [704.17 \(1p\) \(b\)](#) and [\(2\) \(b\)](#), Stats.]

## Length of the Termination Notice

The grounds for the termination notice, along with the kind of tenancy for certain grounds, determines the minimum length of time set forth in the termination notice for the tenant to vacate or remedy the violation.

## Non-Payment of Rent, Breach, Waste, and Lease Agreement Violations

If a landlord issues a termination notice for non-payment of rent, breach, waste, or violating the lease agreement, the length of the termination notice is determined by the type of tenancy.

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<sup>5</sup> The statutes only establish a minimum length of time a tenant has to vacate the premises or remedy the violation, so the landlord may issue a termination notice with a longer timeframe or include the option to remedy the violation, even if it is not statutorily required.

<sup>6</sup> Breach refers to a material violation of the tenant's statutory duties under s. [704.07 \(3\)](#), Stats.

<sup>7</sup> Waste means "unreasonable conduct by an owner of a possessory estate that results in physical damage to real estate and substantial diminution in the value of estates in which others have an interest." [*Pleasure Time, Inc. v. Kuss*, 78 Wis. 2d 373 (1973).]

<sup>8</sup> An eviction action may only be commenced against a person who is actively in possession of the premises, but not entitled to possession of the premises. Therefore, a person who is not in possession of the premises cannot be evicted. [s. [799.40 \(1\)](#), Stats.] However, a landlord could start a small claims court or civil court action for any unpaid rent and other monetary damages caused by the tenant.

The length of notice for a **fixed-term lease for one year or less** depends on whether the landlord is issuing an initial notice or is issuing a subsequent notice within one year of issuing the initial notice. Specifically, the landlord may issue an initial five-day notice that allows the tenant to remedy the violation. [s. [704.17 \(2\) \(a\) and \(b\)](#), Stats.] If the tenant remedies the violation, the eviction process ends. If the tenant does not remedy the violation, the eviction process may continue.

If within one year of the initial notice there is another violation of the same kind as the initial notice, the landlord may instead issue a 14-day notice to vacate the premises with no right to remedy the violation. [s. [704.17 \(2\) \(a\) and \(b\)](#), Stats.]

To terminate a **fixed-term lease for more than one year**, a landlord must issue a 30-day notice with the right to remedy the violation. [s. [704.17 \(3\) \(a\)](#), Stats.]

There are three ways a landlord may terminate a **periodic tenancy**. First, in the instance of non-payment of rent, breach, or waste, a landlord may choose to issue a termination notice in the same way as for a lease for one year or less. Second, a landlord may immediately issue a 14-day notice with no right to remedy. [s. [704.17 \(1p\)](#), Stats.] Lastly, a landlord may end a periodic tenancy, without grounds or explanation, by issuing a 28-day notice as long as the last day of the termination notice aligns with the last day of the rental period.<sup>9</sup> [s. [704.19 \(3\)](#), Stats.]

A landlord may terminate a **tenancy at will** at any time. The statutes generally require the landlord to issue a 28-day notice to the tenant to vacate the premises. Also, the landlord is not required to explain the reasons for the termination.

## Nuisance

A landlord may terminate any tenancy with a five-day notice if the landlord receives a written notice from a law enforcement agency or the district attorney's office that a nuisance exists in the tenant's rental unit or was caused by a tenant on the landlord's property. There are two reasons the property may be deemed a nuisance for purposes of eviction. The first is the property is used to facilitate delivery, distribution, or manufacturing of a controlled substance. The second is the property is used as a meeting place of a criminal gang or used to facilitate the activities of a criminal gang. The notice must include the reason for issuing the notice and the tenant's right to contest the termination.<sup>10</sup> [s. [704.17 \(1p\) \(c\)](#), [\(2\) \(c\)](#), and [\(3\) \(b\)](#), Stats.]

## Criminal Activity

A landlord may terminate any tenancy if the tenant, a member of the tenant's household, or a guest of the tenant engages in any of the following activities:

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or persons residing in the immediate vicinity of the premises.
- Criminal activity that threatens the health or safety of the landlord, the landlord's agent, or the landlord's employee.

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<sup>9</sup> If rent is payable on a basis less than monthly under a periodic tenancy, then length of the notice must be at least equal to the rent-paying period. [s. [704.19 \(3\)](#), Stats.]

<sup>10</sup> If the tenant contests the termination of tenancy, the tenancy may only be terminated upon proof from the landlord by the greater preponderance of credible evidence of the allegation from law enforcement or district attorney's office that a nuisance exists. [s. [704.17 \(1p\) \(c\)](#), [\(2\) \(c\)](#), [\(3\) \(b\)](#), Stats.]

- Drug-related criminal activity on or near the premises.<sup>11</sup>

[s. [704.17 \(3m\) \(b\) 1.](#), Stats.]

Any type of tenancy may be terminated for criminal activity if the landlord issues the tenant a five-day notice, which must include specific information relating to the criminal activity.<sup>12</sup> It is not required that the individual is arrested or convicted of the criminal activity for that activity to be the basis of an eviction. [s. [704.17 \(3m\)](#), Stats.]

## Unsafe Housing

The safe housing statute allows either a tenant or a landlord to terminate a tenancy in certain circumstances. A tenant may terminate the tenancy if another tenant places the tenant or the tenant's child under an imminent threat of serious physical harm if the tenant or child remains on the premises. The tenant must issue the landlord notice of the termination along with a certified copy of a specific type of injunction or criminal complaint.<sup>13</sup> If a tenant vacates the premises after following the above steps, the tenant is not liable for any rent after the end of the month following the month in which the tenant provided the notice or vacated the premises, whichever is later.<sup>14</sup> [s. [704.16 \(1\)-\(2\)](#), Stats.]

A landlord may terminate the tenancy of a tenant who places another tenant or the tenant's child under an imminent threat of serious physical harm. To terminate the tenancy, the offending tenant must have committed one or more acts against another tenant or child that causes that person to face an imminent risk of serious harm, the offending tenant must be named in a specific injunction or criminal complaint, and the landlord must issue the offending tenant a five-day notice. [s. [704.16 \(3\)](#), Stats.]

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<sup>11</sup> Drug-related criminal activity means criminal activity that involves the manufacture or distribution of a controlled substance. [s. [704.17 \(3m\) \(a\) 2.](#), Stats.]

<sup>12</sup> The other requirements of the termination notice include the basis for issuing the notice, a description of the criminal activity, the date the activity took place, and the identity or description of the individuals engaging in the activity. The notice must also advise the tenant that they may seek the assistance of legal counsel, a volunteer legal clinic, or a tenant resource center in addition to the tenant's right to contest the allegations if an eviction action is filed. [s. [704.17 \(3m\) \(b\) 1.](#), Stats.]

<sup>13</sup> Specifically, the tenant must provide the landlord with a certified copy of any of the following: an injunction order protecting the tenant or child from the other person; a condition of release as required under current law ordering the person to not contact the tenant; or a criminal complaint alleging that the person sexually assaulted, stalked, or committed domestic abuse against the tenant or child. [s. [704.16 \(1\)](#) and [\(3\)](#), Stats.]

<sup>14</sup> For information on a tenant's ability to reduce rent or vacate if the premises are unlivable, see Legislative Council, [Landlord's and Tenants' Rights and Responsibilities](#), Issue Brief (January 2021).

### Summary of Minimum Termination Notices

Type of Tenancy	Non-Payment of Rent, Breach, Waste, or Lease Agreement Violation	Nuisance, Crime, or Unsafe Housing
Fixed-Term Lease for One Year or Less	First Notice: 5-day notice to vacate or remedy the violation Second Notice: 14-day notice to vacate	5-day notice to vacate
Fixed-Term Lease for More Than One Year	30-day notice to vacate or remedy the violation	5-day notice to vacate
Periodic	28-day notice to vacate <b>Or</b> First Notice: 5-day notice to vacate or remedy the violation Second Notice: 14-day notice to vacate <b>Or</b> 14-day notice to vacate	5-day notice to vacate
At-Will	28-day notice to vacate	5-day notice to vacate

## SMALL CLAIMS COURT PROCEEDINGS

The statutes require all eviction actions to be heard in small claims court, regardless of the amount of the rent and other damages claimed in the action. [s. [799.01 \(1\) \(a\)](#), Stats.] The court proceedings for a residential eviction action are generally set forth in ss. [799.40](#) to [799.45](#), Stats.

### Filing of a Complaint (Eviction Action)

If the tenant, upon receipt of a termination notice, neither remedies the violation nor vacates the premises within the time period specified in the termination notice, the landlord may file an eviction complaint, often referred to as an eviction action, with the small claims court.<sup>15</sup> [s. [799.41](#), Stats.] Generally, eviction actions must be filed in the county where the premises is located. [s. [799.11](#), Stats.]

### Return Date

Once the landlord files an eviction action, the tenant must be served in accordance with small claims court procedure. [s. [799.42](#), Stats.] The served documents must include the date of the first court hearing, commonly referred to as the return date. [s. [799.12](#), Stats.] The statutes provide that eviction trials may, with the consent of all the parties and at the court’s discretion,

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<sup>15</sup> Generally, the statutes require an eviction complaint to satisfy all of the following: (a) be in writing; (b) be signed by the plaintiff or attorney; (c) identify the parties; (d) identify the premises which is the subject of the action; and (e) state the facts that authorize the removal of the tenant. [s. [799.41 \(1\)](#), Stats.] An eviction complaint form is available on the Wisconsin Court System website at: <https://www.wicourts.gov/forms1/circuit/index.htm>.

be tried on the return date. [s. [799.21 \(2\)](#), Stats.] Otherwise, the court will schedule a later hearing date to conduct the trial.<sup>16</sup>

## **Trial Scheduling Practices**

The exact scheduling procedure for the eviction trial generally depends on whether the county in which the action is filed has a circuit court commissioner for small claims court matters.

If the county has a circuit court commissioner who assists in small claims court matters, the eviction trial typically will not be held on the return date. On the return date, a court commissioner will schedule the eviction trial to be heard by a judge on a later date. Milwaukee and Brown Counties, for example, operate in this manner. If the county does not have a circuit court commissioner who assists in small claims court matters, the eviction trial is typically held on the return date. Fond du Lac County, for example, operates in this manner. Additional variation in eviction trial scheduling practices may apply. For example, Brown County orders mediation between the landlord and tenant between the return date and the trial date. Given the variation in eviction trial scheduling practices, it is important to check local county rules to determine the scheduling procedure.<sup>17</sup>

## **Small Claims Court Trial**

During the small claims court trial, whether held on the return date or on a separate trial date, a judge presides over the proceeding, unless a jury trial has been requested, and ultimately enters a judgment. If either the landlord or tenant is not present at the return date or trial date, the court may enter a default judgment against that party. [s. [799.22](#), Stats.]

If the landlord prevails at the eviction trial, the court must enter both of the following:

- A judgment, which is the official decision on the case by the small claims court.
- A writ of restitution, which authorizes the landlord to repossess the premises if the evicted tenant (referred to as the former tenant) fails to vacate.

[s. [799.44](#), Stats.]

## **Execution of the Writ of Restitution**

The landlord must deliver the writ of restitution to the county sheriff within 30 days of its issuance, along with the required fee. [ss. [799.44 \(2\)](#) and [799.45 \(1\)](#), Stats.] Only the sheriff has the authority to execute the writ of restitution.<sup>18</sup> In executing the writ of restitution, the sheriff must, within 10 days of receiving the writ, do all of the following:

- Remove from the premises the former tenant and all other persons claiming possession based on the former tenant's prior possession, using such reasonable force as is necessary.
- Remove or supervise the removal of all personal property of the former tenant, unless the landlord or their agent has informed the sheriff they will remove the personal property.

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<sup>16</sup> Any party may demand a jury trial, but that party will be subject to certain fees. If no party demands a jury trial, the right to trial by jury is waived. [s. [799.21 \(3\) \(a\)](#), Stats.]

<sup>17</sup> For further information, see State Bar of Wisconsin, [Wisconsin Circuit Court Rules](#) for a list of the court rules in each county.

<sup>18</sup> As noted above, landlords are prohibited in engaging in self-help eviction and cannot execute the writ of restitution. [s. [ATCP 134.09 \(7\)](#), Wis. Adm. Code.]



- If requested, assist the landlord in removing the personal property.
- Exercise ordinary care in the removal or supervision of the removal of all persons and or personal property, and in the handling and storage of all personal property removed.

[ss. [799.45 \(2\)](#) and [799.45 \(5\) \(a\)](#), Stats.]

If the sheriff removes personal property of the former tenant, the sheriff is authorized by statute to engage the services of movers or truckers. After personal property is removed, it must be taken to a place of safekeeping within the county by the sheriff, and the former tenant must be informed of its location within three business days. All expenses incurred for storage and other charges are the responsibility of the former tenant. Additionally, if the sheriff determines that the property to be removed has no monetary value, the sheriff may deliver the property for disposal, and must inform the former tenant of the disposal within three business days.<sup>19</sup> The notice of removal or disposal of property must be made in writing and either mailed or personally served to the last-known address of the former tenant, even if the last-known address is the location of the eviction action. [s. [799.45 \(3\)](#), Stats.]

## ADDITIONAL RESOURCES

For more information about eviction, see the following resources:

- The Wisconsin Department of Agriculture, Trade, and Consumer Protection's [Landlord Tenant Guide](#).
- The Wisconsin State Law Library's [webpage](#) on landlord-tenant law and resources.
- The Wisconsin Court System's publication [Wisconsin Guide to Small Claims Court](#) and the [forms helper for small claims court actions](#).
- The State Bar of Wisconsin's [brochure](#) on common landlord-tenant questions.
- The Tenant Resource Center's [website](#), which has information for landlords and tenants.
- Wisconsin Community Action Program is a statewide network of poverty fighting agencies, with regional agencies whom provide housing stability assistance along with other resources available on their [webpage](#).

This information memorandum was prepared by Abby Gorzlancyk, Staff Attorney, and Brady Wirkes, Legal Intern, on August 20, 2024. This information memorandum was revised on December 16, 2024.

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<sup>19</sup> The statutes do not specify how sheriffs or their deputies determine when to use movers or how to determine whether to store or dispose of property. For questions about local policies, contact the county sheriff's office.