



Unauthorized Occupants of a Dwelling

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Recent news stories have highlighted other states' laws that grant an unauthorized occupant, sometimes referred to as a "squatter," tenant rights after occupying a dwelling for a certain amount of time, typically 30 days. This has generated interest in an unauthorized occupant's tenant and property rights in Wisconsin.

Under Wisconsin law, an unauthorized occupant cannot obtain tenant rights solely by occupying a dwelling for a certain amount of time. This means that the mere act of occupying a dwelling does not confer the protections of the eviction process to an unauthorized occupant; instead, the dwelling owner may ask law enforcement to remove the unauthorized occupant as a trespasser.

However, an authorized occupant who is removed as a trespasser is distinguishable from two other situations where an authorized occupant does have certain property and tenant rights. First, if the occupant was a legal tenant who stayed beyond the end of the lease, often referred to as a holdover tenant, that occupant retains the legal protections afforded by the eviction process and cannot be summarily removed as a trespasser. Second, if an occupant actually possesses the dwelling continuously for 20 years, along with fulfilling other statutory requirements, that occupant may have a legal claim for title to the dwelling under the doctrine of adverse possession.

This issue brief summarizes criminal trespass to a dwelling by an unauthorized occupant and then provides information on tenant rights, holdover tenants, and adverse possession.

CRIMINAL TRESPASS TO A DWELLING

Wisconsin statutes define criminal trespass to a dwelling as intentionally entering or remaining in the dwelling of another, without the consent of a person lawfully on the premises or the owner of the property, under circumstances that tend to create or provoke a breach of the peace.¹ A person who commits criminal trespass to a dwelling is guilty of a Class A misdemeanor, which is punishable by a fine not exceeding \$10,000, imprisonment not exceeding nine months, or both.²

Wisconsin statutes authorize the removal and arrest of a suspected trespasser to a dwelling. First, law enforcement agencies must have written policies that require an officer to remove a person from a dwelling when the officer has probable cause to arrest the person for violating criminal trespass to a dwelling.³ Second, law enforcement may arrest a person without a warrant if there are reasonable grounds to believe the person is committing or has committed a crime.⁴ Therefore, if law enforcement has probable cause to believe that an unauthorized occupant has committed criminal trespass to a dwelling, the officer has authority to remove and arrest the unauthorized occupant.

However, if a trespasser is removed and leaves personal property behind, the dwelling owner must hold the personal property for seven days from the date on which the dwelling owner discovers the personal property.⁵ After the seven days has passed, the dwelling owner may presume that the property is abandoned and may dispose of the property at their discretion. If the dwelling owner receives a request to return the personal property before it is disposed of, the dwelling owner must promptly return the personal property. Also, if the dwelling owner disposes of the abandoned personal property by private or public sale, the dwelling owner may send any proceeds of the sale minus the cost of the sale and any storage costs to the state for deposit in an appropriation for grants to agencies and shelter facilities for the homeless.⁶

TENANT RIGHTS AND HOLDOVER TENANTS

Generally, an unauthorized occupant does not have tenant rights. In order to obtain tenant rights in Wisconsin, the prospective tenant must generally enter into an agreement with the property owner to become a tenant. The lease agreement can be oral or written, but must be in writing if the lease agreement duration is more than one year.⁷ Thus, an unauthorized occupant who has not entered into a lease agreement with the dwelling owner is not considered to be a tenant and does not have tenant rights under Wisconsin law.

A tenant, including a holdover tenant, cannot be removed or arrested for criminal trespass to a dwelling. A holdover tenant, sometimes referred to as a tenant at sufferance, is an individual who was an authorized tenant but stayed beyond the end of a lease without extending the lease agreement or properly paying rent. A holdover tenant retains the legal protections afforded through eviction even though the person is no longer an authorized tenant, and the landlord can recover any damages caused by the holdover.⁸ Therefore, a holdover tenant maintains the legal protections afforded by the eviction process instead of being subject to removal and arrest for criminal trespass to a dwelling.

ADVERSE POSSESSION

An unauthorized occupant may obtain title to property through the doctrine of adverse possession.⁹ Adverse possession is a legal doctrine the U.S. colonies borrowed from England and exists in all 50 states today. The elements of adverse possession in Wisconsin include the following: (1) actual possession; (2) hostile use; (3) open and notorious use; (4) exclusive use of the property; and (5) use of the property for the statutory period, typically 20 years.¹⁰

In order for an unauthorized occupant to obtain legal title to a dwelling, the occupant must meet all of the elements of adverse possession and then commence a court action to quiet title before they would obtain any property rights. In practice, adverse possession is fact-dependent, difficult to resolve, and not commonly used. However, it could be possible for an unauthorized occupant to move into a property, actually possess the property continuously for 20 years, file a court action, and win title to the property.

¹ s. [943.14\(2\)](#), Stats.

² s. [939.51\(3\)\(a\)](#), Stats.

³ s. [175.403](#), Stats.

⁴ s. [968.07\(1\)\(d\)](#), Stats. While probable cause for an arrest without a warrant requires that an officer have more than a mere suspicion, the officer does not need the same quantum of evidence necessary for conviction, but information that would lead a reasonable officer to believe that guilt is more than a possibility. [s. [968.07\(Notes\)](#), Stats.; *State v. DiMaggio*, 49 Wis.2d 565 (1971).]

⁵ s. [704.055\(2\)\(a\)](#), Stats.

⁶ ss. [704.055\(2\)\(b\)](#) and s. [20.505\(7\)\(h\)](#), Stats.

⁷ A lease is defined in statute as an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. [s. [704.01\(1\)](#), Stats.] Wisconsin statutes also provide that a lease for more than a year is not enforceable unless it is in writing, along with other requirements. [s. [704.03\(1\)](#), Stats.]

⁸ If a tenant holds over after expiration of a lease, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for holding over. [s. [704.23](#), Stats.]

⁹ s. [893.25](#), Stats. For more information on adverse possession, see Legislative Council, [Adverse Possession](#), Information Memorandum (July 2017).

¹⁰ If the claim for adverse possession is not found on a written instrument, the required time period for use of the property is 20 years. [s. [893.25\(1\)](#), Stats.] If the claim for adverse possession is based on title to real estate, the time period for use is instead 10 years. [s. [893.26](#), Stats.] If the claim for adverse possession is based on the payment of taxes and title to the real estate, the time period for use is instead 10 years. [s. [893.27](#), Stats.]