

Chapter K

Housing

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This chapter contains sections on four housing-related topics: housing assistance, housing discrimination, residential landlord-tenant law, and residential real estate law.

The section on **housing assistance** describes financial assistance available through various government programs to subsidize the cost of housing. The key federal agency involved in housing is the U.S. Department of Housing and Urban Development (HUD). The Division of Housing and Community Development (DHCD) in the Department of Commerce and the Wisconsin Housing and Economic Development Authority (WHEDA) have primary roles at the state level in administering housing assistance for low- and moderate-income families. In addition, the state Department of Veterans Affairs (DVA) provides help for homeless veterans and administers two home loan programs for eligible veterans. The Department of Administration (DOA) administers energy assistance, weatherization, and lead abatement programs.

The section on **housing discrimination** discusses the law, often referred to as “fair housing” law, that prohibits discrimination in connection with real estate sale or rental. HUD administers the federal Fair Housing Act. The Wisconsin fair housing law is administered at the state level primarily by the Department of Workforce Development’s (DWD’s) Equal Rights Division. In addition, local government and organizations such as the Milwaukee Fair Housing Council play an important role in providing fair housing services.

The section on **residential landlord-tenant law** describes the law governing the rental of property which is administered at the state level primarily by the Department of Agriculture, Trade and Consumer Protection’s (DATCP’s) Division of Consumer Protection.

The section on **residential real estate law** provides an overview of the law governing the sale of homes and the operation of condominiums.

Housing Assistance

HUD Programs

This section on housing assistance is organized in five parts, addressing the programs administered by HUD, DHCD, WHEDA, DVA, and DOA.

HUD supports homeownership by low- and moderate-income families through the Federal Housing Administration's (FHA's) extensive **mortgage insurance program**. HUD/FHA insures mortgages against loss, thus encouraging lenders to make loans to people who might not otherwise be able to meet the larger down payment requirements or higher interest rates that would be required in the absence of mortgage insurance.

Foreclosure Counseling Agencies. HUD sponsors housing counseling agencies that can provide advice on avoiding foreclosure as well as advice on buying a home, renting, defaults, credit issues, and reverse mortgages. A list of HUD-approved counseling agencies located in Wisconsin can be found at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=W1>.

"HOPE for Homeowners" Foreclosure Assistance Program. On October 1, 2008, HUD began a new program under which HUD will refinance mortgages for borrowers who are having difficulty making their payments, but can afford a new loan insured by HUD/FHA. This program, scheduled to expire on September 20, 2010, gives qualified borrowers adjusted loan terms. Information is available at <http://www.hud.gov/hopeforhomeowners/index.cfm>.

HUD supports homeownership by low- and moderate-income families through HUD/FHA's extensive mortgage insurance program. HUD also provides rental housing assistance.

HUD's Public Housing Program. In addition to the HUD rental assistance programs administered by WHEDA and DHCD, described below, HUD's public housing program provides public housing at affordable rents for eligible low-income families, the elderly, and persons with disabilities. Local housing agencies receive HUD funds to manage the housing and determine applicant eligibility based on income limits developed by HUD.

HUD's Housing Choice Voucher Program. The HUD housing choice voucher program, formerly known as Section 8, also provides assistance to low-income renters and first-time home buyers. To be eligible for the program, a renter must have income below 50% of an area's median income. Under the program, participants must contribute 30% of their adjusted monthly income for rent. The program then issues a voucher for the difference between the participant's contribution and the area's fair market rent. Participants are responsible for rent in excess of the fair market rent.

Housing choice vouchers may be issued on a tenant or a project basis. A project-based voucher subsidizes a particular project and stays with the project. Tenant-based vouchers stay with tenants as they move and may be used so long as a landlord accepts them.

Local public housing agencies (PHAs) administer the housing choice voucher program. A list of all PHAs in Wisconsin and links to their websites may be found at <http://www.hud.gov/offices/pih/pha/contacts/states/wi.cfm>. Recently, the program was modified to allow local agencies to include first-time home buyers in the voucher program. However, additional eligibility requirements must be met and local agencies are not mandated to include homeowners in their programs.

DHCD-Administered Programs

DHCD has primary responsibility for most of the housing grant and loan programs administered by the state. The majority of these programs provide state funding or federal HUD funding for housing through local organizations and housing authorities. Expenditure information on the DHCD-administered programs listed below is available in the Legislative Fiscal Bureau's Informational Paper, *State Housing Programs* (#89), discussed in item 4. on the last page of this chapter under "Additional References."

The Department of Commerce website lists all foreclosure resources available through the state and HUD at <http://commerce.wi.gov/cd/CD-index-individuals.htm>.

The Department of Commerce also prepares a comprehensive five-year state housing strategy plan, as required under federal law and s. 560.9802, Stats., that also serves as the state's application to HUD for key federal program funds. More information on this important plan, referred to as the **State of Wisconsin Consolidated Plan** and prepared in coordination with other state and local housing community development agencies, is provided in item 2. on the last page of this chapter under "Additional References."

DHCD-Administered Housing Programs Financed With State Funds. Housing programs financed with state funds include:

- The Homeless Prevention Program (HPP), formerly HODAP, provides funds for short-term rental assistance.
- The Interest Bearing Real Estate Trust Account (IBRETA) program. This program is funded from earnings on interest-bearing real estate common trust accounts into which real estate brokers and salespersons deposit down payments, earnest money, and similar types of real estate payments. Interest or dividends from IBRETA accounts are sent to the state to provide funds for programs serving homeless individuals and families.
- The Transitional Housing Grant program, which provides competitive grants to organizations and county or municipal governments for the provision of transitional housing and associated supportive services for the homeless, to facilitate transition to self-sufficiency.
- The State Shelter Subsidy Grant program, which gives formula-based grants to support homeless shelter facilities and services for homeless persons to recipients including nonprofit organizations, federally recognized American Indian tribes or bands, housing and community development authorities, and county or municipal governments.
- The Wisconsin Fresh Start program. This program replicates a City of Madison program designed to provide at-risk young people with education, employment skills, and career direction leading to economic self-sufficiency. The work component of this program includes new construction or rehabilitation of housing into well-built, affordable dwellings for low- and moderate-income residents.
- The Housing Cost Reduction Initiative provides direct financial assistance to reduce the housing costs of low- and moderate-income households. Funds may be used for assistance for eligible home buyers and eligible homeowners facing foreclosure. Funds are awarded to local governments, tribes, and organizations.

DHCD-Administered Housing Programs Financed With HUD HOME Funds.

HUD provides funding for the Home Investment Partnerships program, generally referred to as the HOME program. (This HOME program is separate from WHEDA's home ownership mortgage loan program, described below, which uses the same HOME acronym, but is funded with the money WHEDA raises by selling mortgage revenue bonds.) The federally funded HOME program comprises various initiatives that primarily help households having incomes no greater than 80% of county me-

dian income, although this threshold drops to 60% for rental rehabilitation and home rental housing development programs for most assisted households. These initiatives include the following:

- The Home Homebuyer and Rehabilitation (HHR) program provides grants to local organizations assisting qualified low-income home buyers and landlords. Assistance funded by the program includes subsidization of housing rehabilitation expenses, acquisition costs such as down payments and closing costs, or construction expenses for single-family, owner-occupied dwellings. The program also provides grants and low-interest loans for repairs to rental units that are leased at or below fair market rental levels to low-income persons.
- The HOME Rental Housing Development program funds projects leading to additional rental units for low-income households, either through new construction or by the acquisition and rehabilitation of existing properties. Awards are made to community housing development organizations that sponsor the developments. Funds are also set aside for WHEDA to piggyback with low-income housing tax credits and multifamily programs.
- The HOME Tenant Based Rental Assistance program provides funds through local governments, housing authorities, and nonprofit organizations for rental assistance and support services coordinated by the participating agency, to help homeless persons and to prevent homelessness.

DHCD-Administered Housing Programs Financed With Other Federal Funds.

In addition to administering the HUD-funded HOME program, DHCD administers various other programs funded with federal dollars. These include the following:

- The Emergency Shelter Grant program, under which DHCD distributes federal grants for emergency shelters, homeless prevention programs, and services for homeless persons to eligible applicants such as cities, counties, tribal agencies, and private, nonprofit agencies.
- The Critical Assistance program provides financial assistance to reduce the housing costs of low- and moderate-income households. Grant awards may be used to provide rental assistance and assistance with mortgage payments, property taxes, and utility arrearages to avoid foreclosure.
- The housing component of the federal small cities Community Development Block Grants (CDBG) program provides funds for grants to local governments for housing programs which principally benefit low- and moderate-income households. The goal of the program is to upgrade the quality and expand the supply of decent, safe, and sanitary housing for low- and moderate-income households.
- The Housing Opportunities for Persons with AIDS program, which helps persons affected by AIDS/HIV and their families develop long-term strategies for meeting their housing needs and preventing homelessness.
- The Projects for Assistance in Transition from Homelessness provides funds to local agencies to serve individuals with serious mental illnesses who are homeless.

**WHEDA-
Administered
Programs**

The state Legislature created WHEDA's predecessor, the Wisconsin Housing Finance Authority, in the early 1970s to support housing for low- to moderate-income Wisconsin households. In 1983, its mission broadened to include financing of economic and agricultural development, and its name changed to WHEDA to reflect this expanded mission. WHEDA sells mortgage revenue bonds to finance housing

development and provide mortgage loans through participating banks, savings and loans, mortgage bankers, and other types of lenders for low- and moderate-income households at below-market interest rates. WHEDA can market its tax-exempt bonds at relatively low-interest rates and thereby reduce its cost of borrowing.

The Wisconsin Constitution does not explicitly authorize the state to incur debt by selling mortgage revenue bonds to finance private housing. [Wis. Const., art. VIII, s. 7.] To avoid the issue of whether the Constitution prohibits the state from selling such bonds, the Legislature created the Authority so that it is not a state agency and its operating budget is not included in the state budget. Instead, WHEDA's operating budget is financed primarily from interest earnings on loans it makes, from its investments, and from administrative fees it assesses. The Wisconsin Supreme Court agreed that the Authority is not a state agency and held that the state does not have an enforceable legal obligation to back its bonds. [*State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391 (1973).]

Although the state is not legally obligated to back WHEDA's bonds, WHEDA is statutorily required to establish a capital reserve fund to meet debt service requirements on its bonds and notes, in case of default. Moreover, if WHEDA's capital reserve fund should experience a deficit, WHEDA is statutorily required to certify to DOA, the Governor, and the Joint Committee on Finance the amount required to restore the fund to the level necessary to meet debt service costs. The Joint Committee on Finance is then required by statute to introduce a bill appropriating the certified amount to WHEDA. Although the Legislature is not obligated to approve the appropriation, according to statute: "Recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that, if ever called upon to do so, it shall make such appropriation." [s. 234.15 (4), Stats.]

WHEDA is a Wisconsin public corporation and has a board of directors consisting of 12 members: the Secretaries of Administration and Commerce or their designees, four legislative members representing the majority and minority party in each house, and six public members appointed by the Governor with the advice and consent of the Senate for staggered four-year terms, one of whom is selected by the Governor to serve as chairperson for a one-year term. The board meets monthly to fulfill such responsibilities as authorizing bond issues, approving WHEDA's annual budget, and setting policy for WHEDA and its staff.

WHEDA's key programs are described below, organized by funding source. Most of WHEDA's program funding comes from money raised by selling bonds and notes. Additional programs are funded from money in excess of WHEDA's operating costs and statutorily required reserves (the excess is referred to as "surplus" reserves). A third category comprises two federally funded programs that WHEDA administers on behalf of the state. Expenditure information on the WHEDA-administered programs listed below is available in the Legislative Fiscal Bureau's Informational Paper, *Wisconsin Housing and Economic Development Authority* (#88), discussed in item 4. on the last page of this chapter under "Additional References."

WHEDA Housing Programs Funded From Bond Revenues. Key programs funded from revenue raised by WHEDA's sale of bonds and notes include:

- WHEDA Advantage Home Loan program, which provides mortgage loans to qualified first-time low- and moderate-income home buyers. The program also provides loans for major rehabilitation of a home.
- WHEDA's Home Improvement Loan program, which provides home improvement loans to low- and moderate-income households at below-market rates to improve home energy efficiency.

- WHEDA's Multifamily Loan Fund, which provides financing for the development of multifamily housing for low- and moderate-income persons.

WHEDA Housing Programs Funded From Surplus Reserves. WHEDA is statutorily required to deposit any assets in excess of its operating costs and required reserves into an unencumbered general reserve fund. Programs funded primarily from this surplus fund include the following:

- Multifamily housing programs, which use a multifamily housing revolving loan fund to provide capital for developing and preserving multifamily housing for low-income persons, homeless persons, or persons with special needs.
- The WHEDA Foundation Grant program, under which grants are provided by the foundation, a nonprofit corporation, to nonprofit organizations and local governments for improving housing opportunities for low- and moderate-income persons, elderly persons, disabled persons, and persons in crisis.
- WHEDA's Lease-Purchase program, under which nonprofit organizations, public housing authorities, and government agencies use loan funds to purchase or construct homes for low-income households that the lessees have an option to purchase within three years of leasing.
- The HOME Plus program, which offers loans at a fixed interest rate in amounts up to \$10,000 for a 15-year term to buy properties at least 10 years old. Initial draw on the credit line for meeting down payment and closing costs cannot exceed 5% of the home's purchase price.
- The Property Tax Deferral Loan program, under which low-income elderly homeowners are able to convert home equity into income to pay property taxes. A more complete discussion of this program can be found in the Legislative Fiscal Bureau's Informational Paper, *Property Tax Deferral Loan Program* (#26), at <http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.

Federally Funded Programs That WHEDA Administers on Behalf of the State. WHEDA administers the following two federally funded housing programs on behalf of the state:

- The Low-Income Housing Tax Credit program, under which WHEDA distributes the state's annual allocation of federal tax credits to qualifying low-income rental units to support the development or rehabilitation of affordable rental housing.
- The HUD Housing Choice Voucher program, described under HUD programs above, under which WHEDA acts on behalf of the state to distribute rental vouchers for low-income Wisconsin households in communities that do not have local housing agencies.

DVA- Administered Loan Programs

DVA's Veterans Assistance Program (VAP) helps homeless veterans and those at-risk of becoming homeless with services including job training, education, counseling, and drug and alcohol abuse treatment. Information on this program is available at: http://dva.state.wi.us/Ben_homeless.asp.

In addition, DVA administers two home loan programs for veterans who are residents of Wisconsin. Unremarried spouses of deceased veterans who were eligible may also qualify. Subject to funding availability, DVA's Primary Mortgage Home Loan program provides loans to qualifying state veterans to purchase or construct a home. More information on this program is available at: http://dva.state.wi.us/Ben_mortgageloans.asp.

DVA’s Home Improvement Loan program provides loans to qualifying state veterans for property alterations, repairs, or improvements. Eligible veterans can borrow up to 90% of their home equity at rates as low as 5.85%. Additional information on this program is available at: http://dva.state.wi.us/Ben_improvementloans.asp.

**DOA-
Administered
Programs**

DOA’s Division of Energy Services administers Wisconsin’s Home Energy Assistance program, Weatherization Assistance program, and other related energy assistance programs for persons with low incomes, as well as a Lead Abatement program. Information on these programs can be found at: <http://www.homeenergyplus.wi.gov/>.

Housing Discrimination

HUD’s Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. Fair housing law also exists on the state level. DWD’s Equal Rights Division has primary responsibility for administering and enforcing Wisconsin’s fair housing law.

The federal Fair Housing Act and Wisconsin’s fair housing law prohibit discrimination in housing. HUD’s Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. DWD’s Equal Rights Division has primary responsibility for administering and enforcing Wisconsin’s fair housing law. DWD also provides technical assistance regarding fair housing to local government and private nonprofit organizations.

Federal Law. The Fair Housing Act is Title VIII of the Civil Rights Act of 1968, and is codified at 42 U.S.C. s. 3601, *et seq.* The traditional grounds for discrimination prohibited by the federal Fair Housing Act passed in 1968 are those of race or color, national origin, religion, and sex. Disability and familial status were added to these grounds by the Fair Housing Amendments Act of 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a “protected class” of persons--persons with that characteristic who are protected by the law from discrimination based on that characteristic.

**Prohibited
Grounds for
Discrimination**

With respect to disability, the amended Fair Housing Act prohibits refusal of reasonable modifications or accommodations to persons with disabilities and requires certain multifamily dwellings to be designed and constructed as accessible housing.

With respect to familial status, the amended Fair Housing Act includes prohibitions on discrimination based on characteristics such as being pregnant or having children under the age of 18 living with parents or legal custodians. However, if a building qualifies as housing for older persons, it is exempt from the prohibition against familial status discrimination. Also, a family with “too many” people may be turned away if a reasonable government requirement limits the number of occupants for the dwelling unit.

Wisconsin Law. Wisconsin’s fair housing law, also known as the “open housing law,” prohibits discrimination based on a wider range of characteristics than does the federal law: sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age, or ancestry. [s. 106.50, Stats.] The five characteristics that are not protected from discrimination under federal law, but are protected under state law, are: age, ancestry, lawful source of income, marital status, and sexual orientation.

**Prohibited
Actions**

Sales and Rentals. Actions generally prohibited by fair housing law, if based on the characteristics described above as prohibited grounds for discrimination, include:

- Refusing to rent, sell, or negotiate for housing.
- Making housing unavailable.

- Setting different terms, conditions, or privileges for sale or rental of a dwelling.
- Providing different housing services or facilities.
- Falsely denying that housing is available for inspection, sale, or rental.
- Persuading owners to sell or rent for profit by making representations regarding the entry or prospective entry into the neighborhood of a protected class of persons (blockbusting).
- Denying anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

Mortgage Lending. In addition, fair housing law generally prohibits the following actions related to mortgage lending based on the characteristics described above as prohibited grounds for discrimination:

- Refusal to make a mortgage loan.
- Refusal to provide information regarding loans.
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees.
- Discrimination in appraising property.
- Refusal to purchase a loan.
- Setting different terms or conditions for purchasing a loan.

Advertising. The Fair Housing Act prohibits advertising or making any statement that indicates a limitation or preference based on race or color, national origin, religion, sex, disability, or familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Interference With Exercise of Rights. Finally, it is illegal under the Fair Housing Act to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Covered Housing and Accessibility Requirements

Covered Housing. The federal Fair Housing Act covers most housing, but generally excludes single-family housing sold or rented without the use of a broker, as well as owner-occupied buildings with no more than four units.

Unlike federal law, Wisconsin's fair housing law covers single-family residences that are owner-occupied. According to the governing statute: "The legislature finds that the sale...of single-family residences constitute a significant portion of the housing business in this state and should be regulated." [s. 106.50 (1), Stats.]

Accessibility Requirements. The Fair Housing Act imposes accessibility requirements on buildings with four or more units ready for first occupancy after March 13, 1991. These requirements depend on whether such multifamily dwellings have an elevator, as follows:

- If they have an elevator: public and common areas must be accessible to persons with disabilities; doors and hallways must be wide enough for wheelchairs; and all units must have an accessible route into and through the unit, accessible light switches, electrical outlets, thermostats, and other environ-

mental controls, reinforced bathroom walls to allow later installation of grab bars, and kitchens and bathrooms that can be used by people in wheelchairs.

- If they do not have an elevator: the above standards apply to ground floor units, rather than to all units.

Enforcement and Complaints

Fair housing law is enforced primarily in response to complaints initiated by individuals who feel that they have been unfairly discriminated against in their search for housing. Complaints may be filed under federal or state law, as described below. Some areas of the state are served by a fair housing council, an organization that can help persons understand their rights under the law and the options they have to pursue a complaint.

Complaints Filed Under Federal Law. A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding. A benefit of the first option described below is that the federal government pays for the proceeding if HUD does not dismiss the complaint, whereas a person choosing the second option does so at his or her own expense.

- A person may file a complaint with HUD no later than one year after the alleged discrimination occurred. HUD will then investigate the claim and determine whether it finds reasonable cause to believe that discrimination occurred. If HUD does not find such reasonable cause, it will dismiss the complaint. If HUD does find reasonable cause to believe that discrimination occurred, it will issue a charge on behalf of the person who filed the complaint (the complainant), and the complainant will not have to pay the costs of pursuing a legal remedy. Either the complainant or the person who is accused of discrimination (the respondent) can then choose to proceed in federal court or in an administrative hearing conducted by a HUD administrative law judge.
- A person may file a civil action at his or her expense in federal district court or state court no later than two years after the alleged discrimination occurred. This option is only available if an administrative law judge has not yet started a hearing.

If the first option described above is chosen and HUD conducts the administrative hearing, HUD attorneys will litigate the case on behalf of the complainant, although the complainant can intervene in the case and be represented by his or her own attorney. If the administrative law judge decides that discrimination occurred, the respondent may be ordered to do any of the following:

- Compensate the complainant for actual damages, including humiliation, and pain and suffering.
- Provide injunctive or other equitable relief, for example, to make the housing available.
- Pay the federal government a civil penalty to vindicate the public interest.
- Pay reasonable attorney's fees and costs.

If one of the parties chooses federal court instead of an administrative hearing after HUD finds reasonable cause to believe that discrimination occurred, the U.S. Attorney General will file a suit in federal district court and litigate it on behalf of the complainant. One possible reason for choosing federal court is that, in addition to ordering the damages that an administrative law judge could order in an administrative hearing to compensate the complainant, a federal court can award punitive

damages to the complainant--i.e., damages intended to punish and deter discrimination.

A person may file a complaint with HUD by any of the methods listed on the HUD website at: <http://www.hud.gov/complaints/housediscrim.cfm>.

Complaints Filed Under Wisconsin Law. A person alleging a violation under Wisconsin's fair housing law [s. 106.50, Stats.] may file a complaint with the DWD's Equal Rights Division no later than one year after the alleged discrimination occurred. The Equal Rights Division will investigate the claim. Unlike HUD at the federal level, which need only find **reasonable** cause to believe that discrimination occurred, the Equal Rights Division must find **probable** cause to believe that discrimination occurred before it can issue a charge on behalf of the complainant. If it finds such probable cause, at that point either the complainant or the respondent can choose to have the charge decided in a civil action filed by the complainant in circuit court, or have the complaint decided after a hearing held by an administrative law judge of the Equal Rights Division.

One possible reason for choosing to file in circuit court is that a court can award a type of remedy to the complainant (punitive damages, described above under federal law) beyond those that can be awarded by the administrative law judge of the DWD's Equal Rights Division.

Information on how to file a fair housing complaint with the DWD's Equal Rights Division, as well as the discrimination complaint form for doing so, is available at the following website: http://www.dwd.state.wi.us/er/discrimination_civil_rights/open_housing_law.htm.

Metropolitan Milwaukee Fair Housing Council. A fair housing council is an organization that helps persons understand their rights under the fair housing law and the different options they have to pursue a complaint. Fair housing councils may also conduct investigations using "testing," a method of investigating complaints that compares treatment of various persons seeking housing to determine whether differences in treatment are occurring which may constitute discrimination. Such testing has the potential to yield significant evidence in later administrative hearings or court proceedings. A fair housing council may also refer persons to attorneys experienced in fair housing issues and, in some cases, can itself be a plaintiff.

In Wisconsin, the Metropolitan Milwaukee Fair Housing Council, Inc. (MMFHC) can provide information on whether a particular area of the state is served by a fair housing council. Its telephone number is 414-278-1240 and it has an Internet site at <http://www.fairhousingwisconsin.com> that includes links to the Fair Housing Center of Northeast Wisconsin and the Fair Housing Center of Greater Madison. The latter can be reached at 608-257-0853.

Wisconsin's DATCP has responsibility for promulgating and administering the main body of rules relating to landlord-tenant law, codified at ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices).

Residential Landlord-Tenant Law

Residential landlord-tenant law is a mix of statutes, rules promulgated by state agencies, and common law (law derived from court decisions on individual cases). Chapter 704, Stats., sets forth the main part of Wisconsin statutory law governing landlord and tenant relationships. Wisconsin's DATCP has responsibility for promulgating and administering the main body of rules relating to landlord-tenant law, codified in ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices).

**Rental
Agreements**

Rental agreements generally fall into two categories: (1) those with no fixed termination date; and (2) "leases," defined by statute as agreements for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date, or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. Tenants who do not have a lease, but have rental agreements to pay rent on a periodic basis, are generally referred to as "periodic tenants." Tenants with rental agreements who do not have a lease and do not pay rent on a periodic basis are referred to as "tenants at will." [s. 704.01, Stats.]

Rental Agreements Sometimes Override Statutory Provisions. The express terms of a written rental agreement often prevail over statutory provisions intended to serve as default protections, i.e., provisions to be triggered in the absence of a written rental agreement. The notice requirements for termination of leases for less than a year's duration, described below, are an example of statutory provisions that can be preempted by clear and convincing proof that the parties expressly agreed otherwise. However, certain rental agreements are prohibited, as listed under s. ATCP 134.08, Wis. Adm. Code, such as an agreement to evict a tenant by other than the judicial eviction procedures provided under ch. 799, Stats.

Landlord Disclosure Duties. Under s. ATCP 134.04, Wis. Adm. Code, landlords must disclose housing code violations of which they have been notified, but have not corrected. They also must disclose structural defects, a lack of hot or cold running water, serious plumbing or electrical problems, if the heating unit cannot maintain a temperature of at least 67 degrees, if the tenant is required to pay utilities, and how utility charges will be divided if the dwelling is one of several and not individually metered.

Leases Must Be in Writing. Under s. 704.03, Stats., if a lease is for more than one year, it is only enforceable if it is in writing and meets the formal requirements of s. 706.02, Stats., for conveyance of real property. In addition, to be enforceable, a written lease must either: (1) set forth the amount of rent or other consideration, the time of commencement and expiration of the lease, and a reasonably definite description of the premises; or (2) be signed by the landlord and the tenant and set forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises, and establish the commencement date of the lease.

If a lease is for a year or less, it does not have to be in writing, but it is nevertheless generally advisable to have a written agreement to avoid misunderstandings. In addition, written agreements can sometimes override statutory requirements where oral agreements may not. For example, a written agreement is more likely to constitute the "clear and convincing proof" required to override the statutory requirement for terminating periodic tenancies and tenancies at will. [s. 704.19, Stats.]

Prohibited Lease Terms. A rental agreement may not do any of the following:

- Authorize the landlord to evict a tenant, except by the eviction procedure prescribed under ch. 799, Stats.
- Accelerate rent payment obligations when a tenant fails to pay rent, or waive the landlord's obligation to mitigate damages by rerenting.
- Require a tenant to pay the landlord's attorneys fees.
- Relieve the landlord from liability for the landlord's negligent acts or omissions, or impose liability on a tenant for damages outside the tenant's control.

- Waive the landlord's maintenance obligations under ch. 704, Stats., or under other applicable law.

Notice to Terminate a Tenancy. In the absence of a written rental agreement, if the tenant has not moved out, a landlord or a tenant who wants to terminate the tenancy generally must give written notice at least 28 days before the end of the rent-paying period. As an exception, if the rent-paying period under a periodic tenancy is less than monthly, either a landlord or tenant can terminate by giving written notice at least as much in advance of the requested termination as the length of the rent-paying period. [s. 704.19, Stats.]

Tenant Breaches and Evictions

Tenant Nonpayment of Rent. If rent has not been paid on time, and was paid on a month-to-month basis, the landlord has two options for giving notice to terminate the tenancy: the landlord can either give the tenant a notice to pay or leave within five days, or the landlord can give the tenant notice to leave within 14 days. Whereas a five-day notice gives the tenant the right to pay and continue to stay on the premises, a 14-day notice does not. [s. 704.17, Stats.] Subject to notice requirements, death of a tenant, or mobilization of a reserve component military member can entitle the tenant to break a lease.

Tenant Refusal to Leave. If a tenant fails to pay rent or otherwise breaches the rental agreement, and fails to leave after receiving either the five-day “pay or leave” notice or the 14-day “leave” notice described above, a landlord can begin eviction proceedings, as set forth under ch. 799, Stats. These judicial eviction procedures must be followed by the landlord and no rental agreement may authorize the eviction of a tenant from the premises by means other than the judicial eviction procedures under ch. 799, Stats. These require that a landlord produce two documents. First, the landlord needs a summons, which requires that the tenant appear in court on a specific date and at a specific time. Second, the landlord needs a complaint, which essentially outlines the landlord’s claim. Copies of the completed papers must be left with the court and served on the tenant.

Security Deposits and Landlord Breaches

A landlord can require a tenant to pay a security deposit as protection, in case the tenant fails to live up to his or her obligations under the rental agreement, for example, by damaging the landlord’s property or failing to pay rent. A security deposit includes all rent payments in excess of one month’s prepaid rent. In general, there is no limit on the amount of a security deposit that a landlord can require under state law. Section ATCP 134.06, Wis. Adm. Code, is the primary rule administered by DATCP relating to security deposits.

Return of Security Deposit. If a landlord requires a security deposit, a tenant has at least seven days from the start of tenancy to inspect the premises and notify the landlord of any defects, so as to avoid being unfairly charged for defects. Also, the tenant has at least seven days from the start of tenancy to request a list of damages charged to the previous tenant.

A landlord may withhold some or all of a tenant’s security deposit, at the end of a tenancy, to pay for any of the following:

- Repairs resulting from damage beyond ordinary wear and tear.
- Waste or neglect of the premises.
- Nonpayment of rent.
- Nonpayment of amounts owed for utility service provided by the landlord but not included in the rent.

- Nonpayment of utility service provided by a government-owned utility to the extent that the landlord becomes liable for the tenant's nonpayment.

The landlord must return a tenant's security deposit within 21 days after a tenant surrenders the rental premises, unless the landlord gives the tenant a written reason for withholding some or all of the security deposit. However, the landlord is not in violation if the tenant has not provided the landlord with a forwarding address and, therefore, does not receive the written explanation.

Tenant Legal Action. If a landlord does not comply with the requirements for withholding security deposits, or otherwise violates the requirements for residential rental practices set forth in ch. ATCP 134, Wis. Adm. Code, a tenant may be able to start an action in small claims court. A tenant who suffers a monetary loss because of the violation may sue the violator directly under s. 100.20 (5), Stats., which allows such a tenant to recover twice the amount of any actual monetary loss, together with court costs and reasonable attorney fees.

DATCP has information on its consumer protection website addressing tenants' rights and responsibilities. In addition, a tenant can file a complaint online against his or her landlord with DATCP.

DATCP's consumer protection website is:
<http://www.datcp.state.wi.us/core/consumerprotection/consumerprotection.jsp>.

Additional assistance in dealing with landlord problems is available to tenants from local groups and from DATCP. One example of a local group is the Tenant Resource Center, a nonprofit organization with a small staff located in Madison that relies primarily on volunteers to provide housing counseling. The Tenant Resource Center home page provides information and links for tenants and landlords in Wisconsin: <http://www.tenantresourcecenter.org>.

DATCP has information on its consumer protection website addressing tenants' rights and responsibilities. In addition, a tenant can file a complaint online against his or her landlord with DATCP. DATCP's consumer protection website is: <http://www.datcp.state.wi.us/core/consumerprotection/consumerprotection.jsp>. More housing-related information is available at: <http://www.datcp.state.wi.us/cp/consumerinfo/cp/top-complaints/tenants.jsp>.

Residential Real Estate Law

Statutory provisions governing residential real estate practice are set forth in ch. 452, Stats. This chapter requires all real estate brokers and salespersons to be licensed by the Department of Regulation and Licensing. The chapter also specifies various duties of brokers and real estate salespeople with respect to buyers and sellers of homes.

Duty of Owners of Residential Real Estate Have to Disclose Defects to Buyers. Chapter 709, Stats., governs disclosures by owners of residential real estate. Although there are some exceptions, owners selling residential property are generally required to disclose "defects" in the property that adversely impact its value or structural integrity or that pose a health or safety risk. This disclosure must be made within 10 days of a buyer's acceptance. Chapter 709, Stats., provides a mandated form containing queries relating to 27 types of possible "defects" that must be disclosed. Examples of the types of defects that must be disclosed include defects in the roof, electrical system or plumbing, seepage in the basement, boundary or lot line disputes, the presence of asbestos, current or previous termite or carpenter ant infestations, and the designation of the property as a historical building.

Disclosure Duties of Real Estate Brokers. Although ch. 709, Stats., places much of the burden of disclosure duties on sellers, brokers still have a common law duty not to mislead or deceive buyers. Under s. 452.133 (1), Stats., a broker must disclose to each party all "material adverse facts" that the broker knows and that the other party does not know or cannot discover through reasonably vigilant observa-

The Department of Regulation and Licensing has an informative brochure entitled "Your Rights When Buying or Selling a Home." It may be found at <http://drl.wi.gov/dept/savvy.htm>.

tion, unless the disclosure of a material adverse fact is prohibited by law (for example, the seller's minimum sale price may be a disclosure prohibited by law).

Condominiums. Wisconsin statutory law governing condominiums is set forth in ch. 703, Stats. The law requires every condominium development to establish a condominium association with a board of directors and sets forth the powers of a condominium association. The law authorizes an association to collect assessments from unit owners for common expenses. The law requires each condominium to establish bylaws covering certain topics such as governance of the condominium, the conduct of association meetings, the collection of assessments from unit owners, and the powers of the board of directors.

Manufactured Homes. Section 710.15, Stats., provides special protection to owners of manufactured homes ("mobile homes") who rent sites in manufactured home parks ("mobile home parks"). The owner of the rental site cannot require the manufactured home owner to move from the site solely due to the age of the home or its sale. Tenancy can only be terminated for good cause, and leases must be at least a year unless the manufactured home owner consents to a shorter term. The statutes and DATCP regulations specify additional protections as well.

Additional References

1. **DHCD's** Internet site is <http://www.commerce.wi.gov/cd/cd-boh-Home.html>. A useful **guide identifying public sources of housing financial and informational assistance** is available by clicking on the "general housing information" link at DHCD's Internet site.
2. The **State of Wisconsin Consolidated Plan** for the State's Housing and Community Development Needs ("Consolidated Plan") serves as the state's application to HUD for key federal program funds, as well as a plan for distributing federal and state dollars to a variety of housing, community, and economic development programs. The Department of Commerce takes the lead in its development and has issued the **2005-2009 Consolidated Plan**. Details on the plan are available at <http://commerce.wi.gov/cd/CD-Consolidated-Plan.html>.
3. **WHEDA's** Internet site is <http://www.wheda.com/>.
4. At the beginning of each legislative session, the Legislative Fiscal Bureau prepares Informational Papers that describe various state programs. Two papers related to housing assistance were published in January 2005: *Wisconsin Housing and Economic Development Authority* (#88) and *State Housing Programs* (#89). The informational Papers are available at <http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.

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