WISCONSIN REALTORS® ASSOCIATION

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LEGAL UPDATE

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

Landlord/Tenant Legislation for 2016

Over the last several years, there have been numerous rounds of landlord-tenant legislation addressing a wide range of issues. In December 2011, there was the new Wis. Stat. § 66.0104 to prohibit local ordinances that limited a landlord's ability to consider various tenant screening criteria and practices relating to showings, future leases, security deposits, and tenant check-in and check-out forms. This legislation was reviewed on pages 7-9 of the February 2012 *Legal Update* at www.wra.org/LU1202.

Then came 2011 Wisconsin Act 143, which made numerous changes to landlord-tenant law, primarily in Wis. Stat. Chapter 704. This legislation, which went into effect March 31, 2012, was detailed in the July 2012 *Legal Update*, "Landlord Practice Pointers for 2012," at www.wra.org/LU1207. Topics addressed included information on check-in sheets, disposal of personal property left behind when tenants leave, forbidden lease provisions, damages owed to landlords when tenants hold over, timing for the return of tenant security deposits and the rules for withholding.

Next was 2013 Wisconsin Act 76, which made additional changes to the law governing the relationship between the landlord and the tenant and the rules regarding property managers. The November 2013 *Legal Update*, "Landlord/Tenant Legislation for 2014," at www.wra.org/LU1311, reviews the 61 new provisions, which for the most part went into effect March 1, 2014. Amendments to chapters 704 and 799 of the statutes were designed to speed up the eviction process and give landlords greater freedom to dispose of evicted tenants' personal property left behind and to tow illegally parked vehicles.

The February 2014 *Legal Update*, "Implementing 2014 Landlord/Tenant Legislation," at www.wra.org/LU1402, reviews the changes landlords and property managers may need to make to get the most from the new landlord-tenant legislation. This discussion includes the procedures and required notices for landlords disposing of a tenant's abandoned personal property, evicting tenants for crimes on the premises and towing illegally parked vehicles. The revisions made to the WRA Check-In Sheet, Residential Lease, Residential Rental Contract, Nonstandard Rental Provisions and Rental Disclosure Form, as well as the new Rental Agreement Notice, are explained.

This *Legal Update* covers the provisions of 2015 Wis. Act 176, at docs.legis.wisconsin.gov/2015/related/acts/176.pdf, which will be effective March 2, 2016. This legislation provides for terminating a tenancy for criminal activity or drug-related criminal activity without a right to cure, new options for terminating certain tenancies for breaches other than failure to pay rent, limitations on the authority of political subdivisions to regulate rental units and historic properties, prohibiting local governmental units from imposing real property purchase or residential

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real property occupancy requirements, trespass law, clarification for the process of towing vehicles illegally parked on private property, and preexisting sprinkler ordinances that are stricter than the multifamily dwelling code.

Criminal and Drug-related Activity

Under current law, a tenant's tenancy may be terminated by the landlord for, among other things, nonpayment of rent, committing waste, or breaching a covenant or condition of the tenant's rental agreement. In addition, the tenancy may be terminated if the property owner receives notice from a law enforcement agency or the office of the district attorney that a nuisance exists in the rental unit because the property is being used for drug-related purposes or criminal gang-related purposes.

The new provisions in Wis. Stat. § 704.17(3m) allow a property owner to terminate a tenancy without providing the tenant an opportunity to cure the breach, if a tenant, a member of the tenant's household or one of their guests engages in criminal activity under specified circumstances. The criminal activity provision also allows for the termination of a tenancy for drug-related criminal activity involving the manufacture or distribution of a controlled substance, but not for the possession or use of a controlled substance. Evictions for criminal and drug-related criminal activity will require five-day notices that include specific information describing the activity and the tenant's rights.

The new criminal activity provisions allow a landlord to now terminate a tenancy for criminal activity or drug-related criminal activity by serving the tenant, regardless if the tenant is under a lease or a month-to-month tenant, with a non-curable five-day notice. This is a very important change that allows a landlord to remove a tenant who has engaged in criminal activity in or near the premises much sooner than they were able to do under old law.

Old law: give notice and hope it doesn't happen again

Under the old law before March 2, 2016, if a month-to-month tenant discharged a firearm in the tenant's apartment or the common hallway, the landlord could give a 14-day notice that did not allow a right to cure.

However, if the tenant was under a lease for one year or less, the best the landlord could do was to give a five-day notice to remedy the default or vacate the premises. This was true in all cases where the tenant committed waste or a material violation of the tenant's property maintenance duties under Wis. Stat. § 704.07(3) or breached any covenant or condition of the tenant's lease (except for nonpayment of rent), including conduct that would be considered criminal.

Thus the landlord and all of the other tenants in the building, as well as property management workers, were left to hope that the discharge was only an accident and wouldn't happen again. All that the property owner could do was give notice and explain to the other tenants that this was the best that could be done until it happens again. The tenant was deemed to have cured the criminal activity merely by not doing it again during the five days. This is not very satisfactory when the health, safety and very lives of everyone in the vicinity possibly are at risk. The landlord had to wait until the tenant misbehaved again. Specifically, if within one year from the giving of any such five-day notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease (except for nonpayment of rent), the

landlord can then give a 14-day notice to vacate. That is not very helpful if the gun discharges again and someone is shot. At least the tenant did not have to repeat the same exact conduct a second time as any breach of the lease or related misconduct will do. If there are no more incidences within the one year, the landlord was back to square one and a five-day notice if the tenant behaved for 12 months after the first five-day notice was given.

It would seem that certain conduct is too serious to address in this manner, such as criminal conduct. The new Wis. Stat. § 704.17(3m) goes a long way toward addressing that need.

Criminal activity

The new law pertains to criminal conduct, but not to all conduct that a person might believe falls within that category. Criminal conduct would relate to conduct that is a crime. Wis. Stat. § 939.12 defines a crime as "conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime." Taking all conduct that would be a felony or a misdemeanor under state law, the new § 704.17(3m) narrows this further. That statute says that criminal activity that serves as the basis for a termination of tenancy with no opportunity to cure is limited to certain categories of criminal behavior. They include:

- Any criminal activity that threatens the health or safety of the other tenants or the right to peaceful enjoyment of the premises by other tenants.
- Any criminal activity that threatens the health or safety of persons residing in the immediate vicinity of the premises, or the right to peaceful enjoyment of their residences by persons residing in the immediate vicinity.
- Any criminal activity that threatens the health or safety of the landlord or an agent or employee of the landlord.
- Any drug-related criminal activity on or near the premises.

Drug-related criminal activity is defined within the new § 704.17(3m) to refer to activity involving the manufacture or distribution of a controlled substance as that term is defined in Wis. Stat. § 961.01(4). Use and possession are not included. It also does not include the manufacture, possession, or use of a controlled substance that is prescribed by a physician for the use of a disabled person and that is manufactured by,

used by, or in the possession of the disabled person or in the possession of the disabled person's personal care worker or other caregiver. Drug dealing is one of the crimes a landlord can evict for under the new provision, but simple possession or use of drugs is not.

REALTOR® Practice Tip

Under the new law, the result would not be the same as was the case in *Milwaukee City Housing Authority v. Cobb* wherein a resident of federally subsidized housing was evicted for the mere use of marijuana. No five-day opportunity to cure was required because federal law was found to preempt state law. Read the case at www.wicourts.gov/sc/opinions/13/pdf/13-2207.pdf and a summary on pages 7-8 of the January 2016 *Legal Update*, "Winter 2016 Case Law Update," at www.wra.org/LU1601. A landlord will not be able to use a criminal activity no-cure five-day notice for a tenant who is smoking marijuana in his apartment unless it is federal housing.

Another significant point is that the statute refers to criminal conduct. It is not necessary that the person committing the criminal conduct or the drug-related criminal conduct be arrested for or convicted with regard to the conduct. An arrest may not be immediately forthcoming and it certainly can take months or years before there might be a conviction, which would defeat the intent of the legislation to provide a means to quickly remove certain tenants who have demonstrated by current behavior that they pose a legitimate threat to others or to property. The tricky part for landlords is that if the tenant contests the termination of tenancy and goes to court then the landlord will need to prove the criminal activity allegations in the notice by the greater preponderance of credible evidence.

REALTOR® Practice Tip

For many landlords, this is unchartered territory, and consultation with an attorney is recommended. An attorney can provide suggestions about what information, evidence and documentation should be collected if the landlord intends to give a tenant notice to vacate based on criminal activity. In other words, the landlord will be wise if he or she is substantially ready to prove the criminal activity that occurred that is motivating the landlord to take this action. Personal safety concerns may also be present in some circumstances.

In addition, the new criminal activity provision is not limited to conduct by the tenant: it also applies to conduct by a member of the tenant's household, a guest of the tenant or an invitee of the tenant. In general terms, an invitee would be a person who is a member of the public invited upon the premises for a specific purpose such as to conduct business. Guest suggests a more social relationship. This new statute has not yet been interpreted by the courts, so the courts may create other interpretations of these terms. The new statute does point out that a tenant who is the victim of criminal activity cannot be evicted under the new no-cure process. Wisconsin protections for domestic abuse victims remain in place.

The new provision can be applied to any conduct occurring on or after March 2, 2016.

Five-day notice for criminal activity

The landlord may give the tenant a five-day criminal activity notice which terminates the tenancy in five days without allowing any opportunity to "fix the problem." The landlord's notice must explain why the landlord is giving the notice. Specifically, the notice must include:

1. A description of the criminal activity or drug-related criminal activity.
2. The date on which the activity took place.
3. The identity or description of the individual(s) engaged in the activity.

The notice must also advise the tenant:

1. That he or she can may seek the assistance of legal counsel, a volunteer legal clinic, or a tenant resource center.
2. That he or she has the right to contest the allegations in the notice before a court commissioner or judge if an eviction action is filed.

If the notice does not contain the aforementioned disclosures and the required detail in the criminal activity description, there is a strong likelihood that any eviction action based on the notice could end up being dismissed.

REALTOR® Practice Tips

Landlords should be careful that this notice is completed by stating facts without any subjective commentary or embellishment. Again the advice of an attorney will be instructive.

Look for a new form from the WRA for the five-day notice to vacate based upon allegations of criminal activity and as well as a new provision in rules section of the WRA Residential Lease prohibiting criminal activity.

Finally, under Wis. Stat. § 704.17(5)(b), any provisions for termination based upon criminal activity in leases or rental agreements entered into or renewed on or after March 2, 2016, are invalid if they are contrary to the new § 704.17(3m). The new § 704.17(3m) process applies only to criminal activities or drug-related criminal activities committed on or after March 2, 2016.

Another point to note is that Wis. Stat. § 704.44, which lists the "Deadly Sins," was not changed. Wis. Stat. § 704.44, entitled "Residential rental agreement that contains certain provisions is void," includes prohibited rental agreement provisions that cause the entire rental agreement to become null and void and unenforceable. For example, a lease that says the tenant can be evicted by changing the locks or that the tenant must pay the landlord's attorney's fees if the parties have a legal dispute is null and void.

Among the list of prohibited rental agreement provisions, § 704.44 indicates that a residential rental agreement is void and unenforceable if it contains a provision that "allows the landlord to terminate a tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim, as defined in § 950.02(4), of that crime."

REALTOR® Practice Tips

Landlords must be especially careful when contemplating a five-day notice for criminal activity when the tenant or someone else residing in the premises may have been a victim of the criminal activity. A victim cannot be evicted.

Under Wis. Stat. § 704.44(10), a rental agreement is void and unenforceable if it allows the landlord to terminate the tenancy of a tenant for the commission of a crime in relation to the property and it does not include the notice regarding domestic abuse protections now required by Wis. Stat. § 704.14.

REALTOR® Practice Tip

REALTORS® should make sure that all of their rental agreements include the § 704.14 Notice of Domestic Abuse Protections and that none of the "Deadly Sin" items in § 704.44 are in any rental agreements.

MORE INFORMATION

See pages 4-5 of the November 2013 *Legal Update*, "Landlord/Tenant Legislation for 2014," at www.wra.org/LU1311 for more information.

Termination of Tenancy Notices

Under prior law, the choices as far as the notices that a landlord could give a tenant varied based upon whether the default involved nonpayment of rent or was a non-rent default, and whether it was a month-to-month tenancy or a one-year lease.

Old law: notices for month-to-month tenancies

For a month-to-month tenant who is late with the rent, a landlord could choose between a five-day notice to pay rent or vacate or a 14-day notice to vacate – while the rent was in default.

If the month-to-month tenant committed another type of breach or violation, then the landlord could only give a 14-day notice to vacate. This would be in situations where the tenant commits waste, violates certain statutory tenant duties regarding maintenance of the premises (Wis. Stat. § 704.07), or breaches a condition of the lease, other than by failing to pay rent. It was basically an all-or-nothing situation without any opportunity to give the tenant a clear message that the activity was not to be tolerated but also the chance to correct the situation and not risk eviction. Not all landlords want to terminate the tenancy of a month-to-month tenant who commits a non-rent breach. For example, if the tenant holds a loud party, the landlord may just want to serve a five-day notice, effectively sending a strong message telling him to not do it again.

Old law: notices for year leases

With a tenant under a lease for one year or less, it was a different story. If the tenant failed to pay rent, the landlord could give a five-day notice to pay rent or vacate the premises. If the tenant rectifies the first rent situation but is in default with rent again within one year of the prior default for which the five-day notice was given, then the landlord may give a 14-day notice to vacate and the tenancy is terminated if the notice is given while the tenant is in default the second time.

If the tenant committed another type of breach or violation, that is, if the tenant commits waste, violates certain statutory tenant duties regarding maintenance of the premises (Wis. Stat. § 704.07), or breaches a condition of the lease, other than by failing to pay rent, the landlord can give a five-day notice for the tenant to remedy the default or vacate the premises. A tenant is deemed to be complying with the notice if, promptly upon receipt of such notice, the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach. If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a 14-day notice to vacate before the tenant remedies that breach.

The new legislation creates the option for the landlord to provide a month-to-month tenant with an opportunity to cure specified types of breaches within five days of providing notice about the breach instead of either ignoring the situation or evicting the tenant.

Five-day notices for non-rent breaches in month-to-month tenancies

Under the new legislation, Wis. Stat. § 704.17(1)(b) has been substantially revised to give the landlord of a month-to-month tenant the choice of giving the tenant who has committed a breach a five-day notice to remedy the default or vacate, or a 14-day notice terminating the tenancy. The new legislation adds a right to cure five-day notice option for month-to-month tenants with non-rent breaches where no right to cure existed before. This change benefits both landlords and tenant because the tenants won't have to face possible eviction for lesser defaults or breaches. Now, for example, when a tenant violates the rental agreement by having an unauthorized pet, the landlord can give a five-day notice and the tenant can remove the pet and avoid eviction, which is certainly a better result for both sides instead of just evicting the tenant. The tenant can correct his or her mistake and not lose the apartment.

14-day notice for non-rent breaches tenants with leases for one year or less

A small change was made to Wis. Stat. § 704.17(2)(b) with regard to a landlord giving a notice to a tenant under a lease for a second non-rent breach within one year. Under the old law, a landlord had to serve the 14-day notice before the tenant remedied the breach. Technically speaking this meant that if a landlord wanted to serve a 14-day notice on a tenant holding a loud party, that notice had to be served before the party was over. Or if the tenant was smoking in a nonsmoking building, the landlord had to serve the 14-day notice prior to the tenant finishing his cigarette. This legislation eliminates the condition that the landlord provide the subsequent 14-day notice to vacate before the tenant remedies the breach.

Restrictions on Local Regulation of Rental Property

The new legislation adds additional prohibitions regarding local ordinances that impose unnecessary requirements or limits on landlords. Specifically new subsections have been added to Wis. Stat. § 66.0104(2) which sets boundaries on the types of ordinances that a city, village, town or county may enact or enforce with regard to landlords and rental properties.

Inspections and inspection fees

Ordinances regarding inspections of rental properties and rental units are addressed in the new § 66.0104(2)(e). Local ordinances cannot require rental property inspections of residential or commercial properties unless there has been a complaint made by any person about the property, the inspection is part of a program of regularly scheduled inspections conducted in compliance with municipal inspection warrant requirements, or the inspection is required under state or federal law.

With regard to the fees charged for authorized inspections of residential rental properties, the amount of the inspection fee must be uniform for all residential rental inspections, and the fee must be charged at the time that the inspection is actually performed. Any fee charged for a subsequent re-inspection of a residential rental property may not be more than twice the fee charged for an initial re-inspection.

This measure will put an end to the escalating fee scheme previously found in some communities and allow fees only when there is an actual, physical inspection of the property. In some cases the fees doubled every 30 days until they were six times the original fee, plus often there was no actual inspection associated with the fee. Mounting fees on properties make it harder for a financially stressed owner to keep the property and for someone to purchase an abandoned or foreclosed property and put it back in service.

Rental property certification, registration and licensing

The new § 66.0104(2)(e) also addresses rental property registrations. Specifically, no city, village, town or county may enact or enforce an ordinance that requires that a rental property or rental unit be certified, registered or licensed, except that an ordinance may require that a rental unit be registered if the registration only requires the owner's name, the name of a contact person, and an address and telephone number at which the contact person may be reached.

Rental property owner certification, registration and licensing

Wis. Stat. § 66.0104(2)(g) indicates that no municipal ordinance may require a residential rental property owner to register or obtain a certification or license related to owning or managing residential rental property, unless the requirement applies uniformly to all residential rental property owners, including owners of owner-occupied rental property. Ordinances requiring registration of landlords also are permissible when the registration only requires the name of the landlord and an authorized contact person along with an address and telephone

number where the contact person may be reached.

Fee for occupancy or transfer of tenancy

Wis. Stat. § 66.0104(2)(f) prohibits the imposition of an occupancy or transfer of tenancy fee on a rental unit.

Local Regulation of Historic Property

The new legislation modifies the historic preservation power of counties, towns and cities by adding a requirement that these local units of government hold a public hearing before designating a historic landmark or establishing a new historic district and that they notify any affected owner of the property subject to the proposed landmark designation or historic district.

In the past, municipalities were allowed, as an exercise of zoning and police powers, to regulate any place, structure or object with a special character, historic interest, aesthetic interest or other significant value via historic preservation ordinances. The municipality could create a landmarks commission to designate historic landmarks and establish historic districts. The ordinances enacted could regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district along with the character of the district.

The municipalities continue to have these powers, subject to some additional conditions. Before the county, city or town designates a historic landmark or establishes a historic district, it must hold a public hearing. If the proposal is to designate a place, structure or object as a historic landmark or establish a historic district that includes a place, structure, or object, the municipality must mail notice of the proposal and the time and place of the public hearing to affected property owners. A property owner will also have the right to appeal a decision by the landmarks commission to the county board of supervisors, town board or common council, as the case may be. Such bodies may overturn a decision of a landmarks commission by majority vote.

This process is found in Wis. Stat. § 62.23(7)(em) with regard to cities, Wis. Stat. § 60.64 with regard to towns and Wis. Stat. § 59.69(4m) with regard to counties. The modified process gives property owners the opportunity to have a voice and express concerns and reservations to the appropriate bodies rather than allowing landmark commissions to act unilaterally in imposing the honor, as well as the additional responsibilities and costs that come with a historic designation.

ⓘ MORE INFORMATION

See the historic preservation resources on the Wisconsin Historical Society website at www.wisconsinhistory.org and "Myths and Facts: Wisconsin's Historic Rehabilitation Tax Credit Program," in the May 2015 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/May15/HTC.

Time of Sale Includes Time of Purchase

Under a new law that went into effect in July 2015, local units of government are prohibited from requiring inspections, property improvements or repairs, or payment of related fees at the time of sale or transfer of title. A time of sale (TOS) requirement under Wis. Stat. § 706.22 is an obligation that must be performed prior to a closing when a property is sold. Prior to the new law, TOS requirements served as a source of frustration for sellers and others involved in real estate transactions. TOS requirements often create confusing and complex hurdles resulting in delayed closings and additional costs.

Even after the enactment of the 2015 TOS prohibitions, however, some communities asserted that the new law only applied to sellers — not to purchasers or new owners upon occupancy who the communities claimed could still be targeted with inspections, repairs and fees. These communities believed they had found an apparent loophole. However, 2015 Wis. Act 176 addresses more than landlord-tenant law. It also includes sections that tighten up this perceived loophole in the TOS statute. The provisions added to Wis. Stat. § 706.22 make it clear that "time of sale" also means "time of purchase." The time of sale restrictions apply to buyers and the time of occupancy as well as to sellers and the time of sale or property transfer. Wis. Stat. § 706.22 is now a prohibition on the imposition of TOS, purchase or occupancy requirements.

A local government may still require homeowners to maintain their property to certain standards, but these requirements must be imposed on a uniform, routine basis to all similarly situated property owners and not targeted at property owners in the middle of real estate transactions or other property transfers.

What is a TOS requirement now?

A TOS requirement is an obligation that must be performed prior to closing when a property is sold or prior to the time a property is occupied, or within a certain period of time after selling, purchasing or taking title or occupancy of a property. A TOS requirement essentially is a condition of closing or occupancy imposed by local government. For example, a TOS requirement may be a city requirement that the property must be inspected by a city inspector and noted items repaired before the property can be sold or occupied, or a community requirement that a property owner pave a gravel driveway before the property can be sold. Failure to comply can bring heavy fines or other consequences.

What is the new law?

- Newly created Wis. Stat. § 706.22 stops local governments, such as cities, villages, counties or towns, from creating or enforcing requirements tied to sale, purchase or taking occupancy of property.
- The newly crafted § 706.22 bars local government from restricting an owner from selling, transferring title, refinancing, purchasing, taking title, or taking occupancy of property transferred by requiring compliance with an ordinance or paying a related fee associated with the TOS.
- The prohibition applies to requirements imposed before, at the time of, or within a certain period of time after a sale, transfer of title, refinancing, purchase, taking title or taking occupancy.
- TOS requirements related to the following are banned: inspections, improvements or repairs; removing junk or debris; mowing or pruning; performance of maintenance or upkeep activities; weatherproofing; upgrading electrical systems; replacing or installing fixtures or other items; and actions relating

to compliance with building codes or other property condition standards.

- Existing TOS requirements are unenforceable; new TOS requirements are illegal.
- Statewide requirements may still be imposed.

When do restrictions on the local TOS requirements go in effect?

The initial restrictions on local TOS requirements went into effect on July 14, 2015, while the provisions confirming that the restrictions are also applicable to the time of occupancy and to buyers of real property went into effect on March 2, 2016. Beginning on these dates, local governments may no longer enforce new or preexisting TOS requirements.

What should REALTORS® do if local government continues to enforce a TOS requirement after the effective date of the new law?

REALTORS® should inform officials about the revised Wis. Stat. § 706.22 prohibiting the enforcement of local TOS requirements, both new and preexisting, and provide them with a copy of the law. Note: Any disputes regarding the applicability of a TOS requirement to a specific transaction should be referred to independent legal counsel.

MORE INFORMATION

"Time of Sale Requirements: Coming to a Community Near You?" in the October 2014 *Wisconsin Real Estate Magazine*: www.wra.org/WREM/Oct14/TOS; Wis. Stat. § 706.22: docs.legis.wisconsin.gov/statutes/statutes/706/22; 2015 Wis. Act 176, sections 29-40: docs.legis.wisconsin.gov/2015/related/acts/176 and TOS handout/resource page: www.wra.org/TimeofSaleQA.

Trespass Law

The legislation modifies Wis. Stat. § 943.14(2) to provide that a criminal trespass to a dwelling occurs if a person intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace. Thus a trespasser is not a tenant and not there with the consent of the landlord or the tenant. If a person enters a dwelling that is another's residence, without consent, this section is violated. This prohibition applies to a home or residence regardless of whether someone is currently living there. This is a Class A misdemeanor with a potential fine of up to $10,000, up to nine months in jail, or both.

In Wisconsin, a person can commit a breach of the peace or disorderly conduct in different ways. Anything from yelling to using obscenities to making excessive noise can be considered disorderly conduct, also called "disturbing the peace," or "breach of the peace." Such behaviors are likely to upset, anger or annoy others. Under Wisconsin's laws, a person commits the crime of disorderly conduct by engaging in violent, abusive, indecent or unreasonably loud conduct that tends to disturb or provoke others. For example, yelling curse words at a police officer during an argument could be considered disorderly conduct. Getting into a screaming fight with a roommate that causes neighbors to call police could also be considered disorderly conduct. While it is not clear if the courts will interpret a breach of the peace to be substantially the same as disorderly conduct, these examples give the flavor of what may need to be involved in a criminal trespass violation.

Under the new Wis. Stat. § 175.403, law enforcement agencies are required to establish written policies regarding the investigation of trespass complaints. Such policies shall require that a law enforcement officer who has probable cause to arrest a person for criminal trespass will remove the person from the dwelling. Again, this situation is to be one tending to create or provoke a breach of the peace.

In addition, a new Wis. Stat. § 704.055 allows a property owner to dispose of any personal property left by a former trespasser who leaves the premises or is removed if the return of the property is not requested by the former trespasser during the seven days after its discovery by the property owner. After the seven days have passed, the landlord may presume that the former trespasser has abandoned the personal property and dispose of it in any manner that the landlord determines is appropriate. A landlord must promptly return the property to the former trespasser if he or she requests its return prior to disposal.

Local Automatic Sprinkler Ordinances

Under Wis. Stat. § 101.02(7m), the Department of Safety and Professional Services (DSPS) administers the multifamily dwelling code, including requirements concerning automatic sprinklers. A city, village or town may not enact or enforce an ordinance that does not conform to the multifamily dwelling code or that is contrary to an order of the DSPS enforcing the multifamily dwelling code. Previously there had been certain preexisting sprinkler ordinances that were stricter than the multifamily dwelling code that were allowed to remain in effect. The legislation amended this section to remove the exception for preexisting

stricter sprinkler ordinances, which was believed to impact only Fitchburg. The amended statute also provides that any provision of a contract between a city, village or town and a multifamily property owner that requires the property owner to comply with the stricter requirements is unenforceable.

Towing Charges

Under the prior version of § 349.13(3m), before any vehicle is removed from private property by a towing service, the towing service must notify the local law enforcement agency of the make, model, vehicle identification number, and registration plate number of the vehicle and the location to which the vehicle will be removed. A towing service that fails to comply with this requirement may not collect any charges for the removal and storage of the vehicle. This legislation amends Wis. Stat. § 349.13(3m) to provide that a towing service that makes a good faith effort to comply with the notification requirement may collect charges for the removal and storage of the vehicle, except that a towing service operating in a 1st class city, such as Milwaukee, may not collect any charges for the removal or storage of an illegally parked vehicle unless the towing service has actually notified law enforcement.

The legislation also clarifies that the Department of Transportation rules establishing reasonable charges for removal of vehicles from private property apply only when the property was properly posted and no citation was issued before the vehicle was removed.

Municipal Utilities

2015 Wis. Act 176 clarifies that a decision by a municipal utility — such as electric or water — related to customer deferred payment agreements is not subject to review by the Public Service Commission (PSC). A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement. A determination by a municipal utility to offer or not offer a deferred payment agreement does not require approval by the PSC, and the PSC cannot disapprove by not offering the plans. The provision is found in Wis. Stat. § 66.0809(9).

LLC Appearance in Municipal Court

Wis. Stat. § 800.035(1) was amended to say that if a defendant in municipal court is a limited liability company (LLC), the LLC will be deemed to have appeared in person if the LLC appearance is by a member of the LLC, an agent of the LLC, an authorized employee of the LLC, an agent of a member of the LLC, or an authorized employee of the agent. For example, if a defendant LLC is a landlord, then the agent of the LLC may be a property manager and an authorized employee of the agent could be a property management employee.

WRA Form Revisions

Due to the revisions to the provisions governing the giving of notices, most WRA landlord tenant forms are being updated. Look for revisions to the following forms, as well as the tips for usage.

Revised forms:

- WRA-NRL Residential Lease (includes rules prohibiting criminal activity)
- WRA-COSD Check-Out Report/Security Deposit Withholding (enhanced instructions and usage pointers)
- WRA-5DRV Five Day Notice — Remedy Default or Vacate Premises
- WRA-5DVN Five Day Notice to Vacate — Nuisance or Threat of Harm
- WRA-14DN Fourteen Day Terminating Tenancy
- WRA-28DN Twenty Eight Day Notice Terminating Tenancy (for month-to-month)
- WRA-30DN Thirty Day Notice for Leases of More Than One Year

New forms:

- Five Day Notice to Vacate — Criminal Activity
- WRA Giving Notice Using WRA Landlord/Tenant Forms (on website only)

ⓘ MORE INFORMATION

More rental resources are found at www.wra.org/rental.

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