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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

Inside This Issue

Residential Rental Primer

There are numerous ways in which Wisconsin REALTORS® are involved in the business of renting properties. Many licensees are landlords for their own residential rental properties, some manage rental properties for other owners, and others only occasionally encounter landlord-tenant law through their listings or when completing sales transactions. In one way or another, residential rental practice touches the business practice of nearly every REALTOR®.

This *Legal Update* addresses the basics of residential rental practice, focusing on the areas most often addressed by members who call the WRA Legal Hotline. The *Update* begins with an examination of the different types of rental relationships, agreements and forms. It then reviews the role of licensed property managers and rental agents, and it also covers the tenant selection process. The process for tenant termination and eviction is detailed, followed by a review of the security deposit rules and lead-based paint (LBP) issues in rental transactions. The *Update* concludes with a section of Hotline questions and answers and rental resources for further assistance.

Rental Agreements and Relationships

In Wisconsin, a tenant may have a written or verbal lease, a periodic tenancy such as a month-to-month tenancy, or a tenancy at will, which is continued at the landlord's discretion.

What is the difference between a rental agreement and a lease?

A rental agreement is defined in Wis. Admin. Code § ATCP 134.02(10) as "an oral or written agreement, for the rental or lease of a specified dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent." A rental agreement includes a lease, but it does not include an agreement to enter into a rental agreement in the future. A rental agreement creates a tenancy interest in real estate and arises only after the parties agree on the essential terms of tenancy, including the specific dwelling unit which the tenant will occupy and the amount of rent which the tenant will pay for that dwelling unit.

Rental agreements can generally be divided into two main categories: (1) leases—those agreements for the transfer of possession of real estate for a definite period of time; and (2) informal tenancies—those agreements with no definite termination date, including periodic tenancies and tenancies at will.

Wis. Stat. § 704.01(1) defines a lease as an oral or written agreement for the transfer of possession of real property, or both real and personal property together, 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.

Can an owner have a verbal lease agreement?

A lease may be written or verbal, pro-

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vided that it is for a specified time period, for example three years, 18 months, one year, 30 weeks, etc. However, leases for longer than one year must be in writing because they are conveyances subject to the requirements specified in Wis. Stat. § 706.02 for deeds, mortgages, offers to purchase and other conveyance instruments. Agreements for informal tenancies may also be written or verbal, including month-to-month tenancies. Obviously, it is prudent to encourage the parties to always put any leases or other agreements creating tenancies in writing, as required by § RL 24.08 and Article 9 of the REALTOR® Code of Ethics.

What is the difference between a month-to-month tenancy and a lease for a term?

A person can rent property from a property owner even if there is no written or verbal lease for a fixed period of time. These indefinite tenancies generally are either (1) periodic tenancies, where the tenant pays rent on a periodic basis even though there is no lease, or (2) tenancies at will, where the tenant is in possession of the property with the permission of the owner but has no lease and pays no regular rent.

Periodic tenancies can be established for varying time period such as day-to-day, week-to-week, month-to-month, year-to-year or for any other recurring interval of time. The period is determined by the intent of the parties under the circumstances, as evidenced by the interval between rent payment due dates. For example, if Jane Doe rents a house and agrees to pay rent on the first day of every month and has no lease agreement to stay for any definite period, Jane Doe would be a month-to-month tenant. If her rent were paid on a weekly basis, she would be a week-to-week tenant. The parties also may specifically agree upon a periodic tenancy. This can be done verbally, often just by agreeing upon a particular monthly rent and rent due date or in a written rental agreement.

What is a tenancy at will?

Occasionally a person is in possession of real property with the owner's consent but without any lease and without any definite agreement for the periodic payment of rent. This is a tenancy at will. For example, a tenancy at will would be created if a father permitted his son to take possession of a farm, and the son made sporadic payments as he could on the mortgage. A tenancy at will is not transferable and ends upon the death of either party.

Rental Forms

Competent rental practice will involve the use of many different forms. The rental agreement or lease is the basic form, but rental applications, disclosure forms, LBP addenda, check-in/check-out and other forms also play important roles.

What is the difference between the WRA Residential Lease and the WRA Residential Rental Contract?

The Residential Lease is a lease form that includes some rules and regulations and was modeled after the old WB-20 Apartment Lease (DRL approval of this lease was rescinded in 1991). The Residential Rental Contract may be used for a month-to-month tenancy or for a lease. It provides for a rent discount (late fee in reverse) and has explanations of landlord-tenant law on the back. The choice between the two is one of familiarity, style and preference. Some attorneys believe that some small claims court commissioners prefer the WRA forms because they have come to be regarded as standard, familiar and capable of supporting uniform and efficient decisions.

What other forms are needed in a rental transaction?

Other than a rental agreement, the most important forms to use generally include a rental application form, a rental disclosure checklist form, a move-in/move-out report, and the LBP disclosure form (if the property is

target housing).

- A rental application provides for the systematic gathering of uniform information from all tenant applicants and addresses the credit check fee.
- A rental disclosure helps the property manager or landlord ensure that all required disclosures are made when a tenant prospect applies and that all required steps are taken when entering into a rental agreement.
- A move-in/move-out report is critical for documenting unit condition and demonstrating any subsequent damages.
- Federal law mandates that tenants be given LBP disclosures if they are renting housing built before 1978.

Additional property management forms are also available from the WRA:

Agency Agreements:

- Listing Contract for Lease of Residential Property
- Listing Contract for Lease of Commercial Property
- Property Management Agreement

Default:

- Five Day Notice to Vacate - Nuisance
- Five Day Notice to Remedy Default or Vacate Premises
- Fourteen Day Notice Terminating Tenancy
- Twenty-Eight Day Notice Terminating Tenancy
- Thirty Day Notice to Vacate for Leases of More than One Year
- Notice of Storage or Disposition of Personalty Left by Tenant

Rental Agreement:

- Rental Application
- Rental Disclosure
- Move-In/Move-Out Report
- Residential Rental Contract
- Residential Lease
- Lead Paint Addendum to Lease
- Nonstandard Rental Provisions
- Smoke Detector Notice

During Tenancy:

- Request for Maintenance/Consent to Enter
- Notice of Potential Lead-Bearing Paint Hazard
- Guarantee/Renewal/Assignment-Sublease

What are nonstandard rental provisions?

The original 1980 residential rental practice rules in Wis. Admin. Code Chapter ATCP 134 referred to "provisions other than a form provision." The current Chapter ATCP rental rules instead employ the concept of "nonstandard rental provisions." Nonstandard rental provisions for security deposit withholding, the landlord's right of entry upon the premises, lien agreements on the tenant's personal property, and other issues may all be contained in one preprinted document. Such provisions cannot be part of a preprinted lease form or rental agreement and must be separately negotiated. The landlord must specifically identify and discuss each nonstandard rental provision with the tenant, and the tenant must separately sign or initial each such provision. If the tenant initials or signs a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed it with the tenant and that the tenant has agreed to it.

Property Managers and Rental Agents

The negotiation and signing of leases and other rental agreements triggers the requirement for licensed personnel and agency agreements properly authorizing the services provided.

Does a property manager or rental agent need to have a real estate license?

Persons who are paid or otherwise compensated to rent property and negotiate and sign leases for the owner fall within the definition of a broker under Wis. Stat. § 452.01(2). This statute states that a broker includes "any person who for another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate." This definition includes persons negotiating the terms of a rental interest in real estate. If the negotiation of lease terms or the drafting and signing of leases for another is involved, then licensure is required.

The activity of drafting, filling out and signing leases by a non-party could be deemed to be the unlicensed practice of law if the individual was not an attorney or a properly licensed real estate broker. Real estate licensees are allowed to provide limited legal services per the Wisconsin case, Reynolds v. Dinger, 14 Wis. 2d 193(1961).

No license, however, is required for the custodian, employee, rental agent or property manager who merely coordinates maintenance services, shows residential rental units to prospective tenants, gives out basic information, takes rental applications, accepts rental deposit checks, and facilitates the owner's and tenant's execution of a lease.

Does a licensed property manager or rental agent need to have an agency agreement?

Licensees who are paid to negotiate leases and provide other brokerage services for rental property owners need an appropriate agency agree-

ment giving them authority to act on behalf of the owner per Wis. Stat. § 452.135. This typically will be either a lease listing or property management agreement.

The WB-37 Exclusive Listing Contract for Lease of Real Property is a DRL-approved form that is mandatory for residential properties and optional for commercial properties. The WB-37 authorizes the broker to advertise, secure a lease and handle the rental funds. For commercial properties, licensees may use rental listing contracts drafted by a party or an attorney, provided that the name of the drafter is imprinted on the form, including the WRA's Exclusive Listing Contract for Lease of Commercial Property (on ZipForm only).

An agent who has a property listed for sale must still enter into a rental listing if the owner decides that the agent should find a tenant for the property. An exclusive right to sell listing like the WB-1 residential listing contract does not give a licensee the authority to rent the property, and the WB-37 does not give the broker the right to sell the property. Listing a residential property both for sale and lease simultaneously requires both a WB-1 and a WB-37.

The WB-37 and a property management agreement will usually overlap to the extent that they both authorize the agent to advertise vacancies, take tenant applications, qualify and approve tenants, receive earnest money and security deposits, execute leases on behalf of the owner, and collect rents. A property management agreement will also typically require the broker to perform management and maintenance duties in addition to the task of leasing the rental units. In other words, the duties assumed by a broker under a rental listing are typically a subset of the more extensive duties assumed by a licensed property manager.

Licensees may use the WRA Property Management Agreement or property management agreements prepared by the broker, the broker's attorney, or the owner. See Legal Update 01.02 [https://www.wra.org/legal/legal_updates/2001/lu0102.asp] for further discussion of lease listing and property management forms.

Tenant Selection

The rental process generally begins with the selection of tenants. Uniform, consistent procedures are necessary to avoid any allegations of fair housing law violations.

What is the safest way to select tenants?

The key to tenant screening is to be consistent and fair. Landlords and property managers typically screen prospective tenants with respect to their income, credit, references, and eviction records, using a written tenant application form. Some landlords also do criminal background checks. The landlord or property manager should have predetermined consistent standards in each of these categories that are applied fairly to all. It may be beneficial to provide these standards, in writing, to all applicants. All prospects must be screened in a fair and nondiscriminatory manner to avoid accusations of fair housing discrimination. Any time an applicant is rejected based upon an immutable characteristic or an intuitive judgment, there will be a risk of a fair housing complaint.

Each applicant should be showed all available units and offered the same conditions and services. The landlord should contact every prospect's references or none at all, and require the same deposits, check-in/check-out procedures, lease agreements, and rent payment procedures for all—do not change policy on a whim based upon an individual situation. Prudent practice dictates that applications should be processed in the order in which they are received, and the first qualified applicant should be accepted.

Credit Reports

If credit reports are obtained about some applicants, they should be obtained for all. A landlord may charge an applicant up to $20 to cover the landlord's actual cost of obtaining a credit report if the information is coming from an accredited national credit-reporting agency. The landlord must provide the applicant with a copy of the report and may not charge an applicant who provides the landlord with a credit report that is less than 30 days old.

The landlord or property manager must tell the applicant if a rejection is based upon information from a credit report, but cannot disclose any of the information from the credit report to the applicant—the applicant should be directed to contact the credit bureau directly. The applicant has the right to contact the credit bureau and have any inaccurate information corrected within 60 days. In all other cases, the landlord is not required to give any reasons for rejecting an applicant. It may be helpful, however, to at least indicate the category of screening criteria that caused the rejection.

Checking References

The most helpful references are often previous landlords, previous employers and co-workers. The biggest advantage comes when owners can call prior landlords because the current landlord often will not disclose derogatory information if he or she really wants to be rid of the tenant. Pertinent questions to ask address whether the rent was paid on a timely basis, whether there were deductions from the security deposit, and whether the landlord want this person as a tenant again.

Criminal Background Checks

If criminal background checks are to be performed for potential tenants, this must be done in a consistent and uniform way for all applicants. A systematic process and written records

kept in the files for a couple of years is recommended. Landlords and property managers may wish to check the Wisconsin Circuit Court Access Web site at http://wcca.wicourts.gov/index.xsl. Users of this site should be aware that often a person may be initially charged with one crime and be found guilty of a lesser crime or an ordinance violation. Owners and property managers must also recognize that this site pertains only to the court records from Wisconsin. Another site would be needed to check the background of a person from out of state.

Owners can refuse to rent to an applicant if the conviction record of the applicant or a member of his or her household shows a history or current activity involving the disturbance of neighbors, destruction of property, or violence to people or property. Conviction information would substantiate that the applicant posed a direct threat to the safety of other tenants, thus allowing the owner to refuse the applicant under Wis. Stat. § 106.50(5m)(d).

Earnest Money Deposit

The "earnest money deposit" is the money a prospective tenant gives to the landlord to have the tenant's application considered and/or to preserve the applicant's ability to enter into a rental agreement in the future. This deposit must be returned to the applicant, by the end of the next business day if the landlord rejects the rental application, if the prospective tenant withdraws the application before the landlord has approved it, or if the landlord does not approve the application by the end of the third business day following receipt, or by a later date agreed to by the applicant in writing (not more than 21 days).

Termination of Tenancies

Tenancies may terminate for many different reasons and in many different ways. A lease will naturally terminate of its own accord when the termination date arrives. A tenant may move out before the term of his or her tenancy has concluded or the parties may mutually agree to an early tenancy termination. Either party may give a termination notice to terminate a periodic tenancy, which by definition has no definite termination date. In many cases, however, the tenancy ends because the tenant has breached his or her rental obligation. Tenant defaults fall into one of two categories: failure to timely pay rent, and all other defaults.

Terminating Tenancies for Failure to Pay Rent When Due

Landlords are unfortunately too familiar with the typical scenario. The tenant was behind on rent and the landlord gave the tenant a five-day notice, but the tenant does not seem to be paying or moving. The landlord wonders if he or she gave the correct notice and fulfilled the applicable requirements before starting eviction proceedings. The answer depends upon the type of tenancy involved.

Periodic Tenants (Month-to-Month, etc.)—Five-day Notice (Wis. Stat. § 704.17(1)(a))

If a month-to-month or week-to-week tenant fails to pay rent, the landlord may give the tenant a notice of at least five days to pay the delinquent rent or vacate the premises. If the tenant fails to pay within the five-day period specified by the notice, the tenancy is terminated and the landlord may commence eviction proceedings in small claims court if the tenant does not move out.

Month-to-Month Tenants—14-day Notice (Wis. Stat. § 704.17(1)(a))

As an alternative, if a month-to-month tenant is in default in the payment of rent, the landlord may terminate the tenancy by giving the tenant at least 14 days' notice to vacate the premises. For month-to-month tenants, a 14-day notice may be given instead of a five-day notice, and there is no requirement that the landlord try a five-day notice first. Under this provision, the tenant cannot cure the default by paying the delinquent rent. The landlord may commence eviction proceedings in small claims court if the tenant does not move out.

Periodic Tenancies-28-day Notice (Wis. Stat. § 704.19)

If the tenant does not pay rent on time or commits another breach, a landlord may chose to terminate a periodic tenancy using a 28-day notice. Either the landlord or the tenant may terminate a periodic tenancy or a tenancy at will, without stating any reason, by giving written notice that meets the requirements of Wis. Stat. § 704.19. At least 28 days' advance notice is required for most tenancies, and the termination date set in the notice must coincide with the end of the rent-paying period.

For example, if Jane rents on a month-to-month basis and pays her rent, in advance, on the first day of each calendar month, her rental period would end with the last day of the calendar month. If the landlord gives Jane notice on January 2 to terminate her tenancy on January 31, the notice is valid. If the landlord gives notice on January 15, the notice is valid but not effective until February 28 because the termination date must fall on the last day of the rent-paying period.

Lease for One Year or Less and Year-to-Year Tenants—Five-Day and 14-Day Notices (Wis. Stat. § 704.17(2)(a))

If a tenant under a written or verbal lease for one year or less, or a year-to-year tenant, fails to pay rent when due, the landlord may give the tenant a notice of at least five days to pay or vacate the premises. As with the month-to-month tenant, if the tenant fails to pay within the notice period, his or her tenancy is terminated and the landlord may evict the tenant if the tenant does not move out.

But what if the tenant pays the delinquent rent within the five days and then soon defaults again? If the sec-

ond rent payment default occurs within a year of the first payment default, the landlord can give the tenant a 14-day notice to vacate the premises. The tenancy is terminated at the end of the notice period with no chance for the tenant to cure the delinquency by paying the delinquent rent a second time.

Lease for More than One Year—30-Day Notice (Wis. Stat. § 704.17(3)(a))

If a tenant under a lease for more than one year fails to pay rent when due, the landlord may give the tenant a 30-day notice (at least 30 days) to pay the delinquent rent. If the tenant fails to pay within the notice period, the tenancy is terminated and the landlord may evict the tenant if the tenant does not move out.

Action for Delinquent Rent

The landlord may instead start a lawsuit for the amount of the delinquent rent due without seeking to terminate the tenancy or evict the tenant. The landlord may not, however, seize any of the tenant's personal property or belongings and withhold them from the tenant until the rent is paid.

Terminating Tenancies for Other Violations.

The tenant, of course, has other obligations other than simply paying the rent on time. Tenants must refrain from committing waste (unreasonable conduct causing damage to the premises), and must comply with any other terms and conditions of the tenant's rental agreement or lease. The tenant's rental agreement may require that the tenant use the premises only for lawful, residential purposes; not make excessive noise or unduly disturb the neighbors; obey all lawful orders, rules, and regulations of all governmental authorities; keep the premises clean and in as good repair as at the beginning of the lease term; make minor repairs such as replacing of smoke detector batteries, light bulbs, fuses, and washers; and follow the landlord's other rules and regulations. The other typical situation facing landlords is when a tenant breaches the rental agreement, for example, by acquiring a pet in violation of the rules. The landlord's options are similar to those available when the tenant does not pay the rent.

Month-to-Month Tenants—14-day Notice (Wis. Stat. § 704.17(1)(b))

If a month-to-month tenant commits a breach other than not paying rent, the landlord may terminate the tenancy by giving the tenant at least 14 days' notice to vacate the premises. This notice terminates the tenancy and the landlord may commence eviction proceedings in small claims court if the tenant does not move out.

Lease for One Year or Less and Year-to-Year Tenants—Five-Day and 14-Day Notices (Wis. Stat. § 704.17(2)(b))

If a tenant who is under a written or verbal lease for one year or less, or a year-to-year tenant, commits a breach other than not paying rent, the landlord may give the tenant a notice of at least five days to remedy the default or vacate the premises. If the tenant fails to remedy the default within the notice period, his or her tenancy is terminated and the landlord may commence eviction proceedings in small claims court if the tenant does not move out. The tenant is considered to be complying with the notice if the tenant promptly proceeds with due diligence to take reasonable steps to remedy the default, or makes a reasonable bona fide offer to pay damages to the landlord, if damages constitute adequate protection for the landlord.

If the tenant remedies the default within the five days and then defaults again within a year of the first default, the landlord can give the tenant a 14-day notice to vacate the premises. Note that the second breach need not be related to the first one. For example, the first default may be a loud party and the second one an unauthorized pet. The tenancy is terminated at the end of the notice period with no chance for the tenant to cure by remedying the breach.

Lease for More Than One Year—30-Day Notice (Wis. Stat. § 704.17(3)(a))

If a tenant under a lease for more than one year commits a breach other than not paying rent, the landlord may give the tenant a 30-day notice (at least 30 days) to remedy the default or vacate the premises. If the tenant fails to remedy the default within the notice period, his or her tenancy is terminated and the landlord may evict the tenant if the tenant does not move out. The tenant is deemed to be complying with the notice if the tenant promptly proceeds with due diligence to take reasonable steps to remedy the default, or makes a reasonable bona fide offer to pay damages to the landlord, if damages constitute adequate protection for the landlord.

Tenant Nuisances Related to Drugs and Gangs—Five-Day Notice (Wis. Stat. § 704.17 (1)(c), (2)(c), & (3)(b))

A landlord may evict any tenant upon at least five day's notice if the landlord receives written notice from a local law enforcement agency that the property is being used for the manufacture or distribution of drugs or is a meeting place of a criminal gang. The notice must state the basis for the notice and advise the tenant of his or her right to contest the termination of tenancy in the eviction action. If the termination is contested, the landlord may have to establish, by the greater preponderance of the credible evidence, that the drug or gang house allegations described in the notice from the law enforcement agency is true. It is crucial for the landlord to fully cooperate and work with local law enforcement officials.

Notice Content

All notices given by a landlord to a

tenant should contain: (1) the tenant's name; (2) the address or description of the premises, (3) a specific description of the tenant's inappropriate conduct that is in violation of the rental agreement (nonpayment of rent, loud party, etc.) including the date and the amount of rent; (4) reference to the provision in rental agreement or in the landlord's rules and regulations that has been violated; (5) a specific description of what action is needed to cure or remedy the default; and (6) the deadline for performance of the curative action. The time frames given in the statutes, for example, five days or 14 days, are minimums, so the landlord may give the tenant a longer time period in which to perform. It may also be helpful to advise the tenant that moving out does not relieve the tenant from his or her responsibilities under the rental agreement or lease, that he or she may be liable for additional rent, and that failure to cure or move out will result in the landlord filing an eviction action in small claims court.

Manner of Giving Notices

The notices must be given in one of the ways specified in Wis. Stat. § 704.21. When a landlord serves a termination notice upon a tenant, this must be done in one of five ways.

1. Personally giving the notice to the party or leaving it in the tenant's unit with a competent family member who is at least 14 years old and who is informed of the contents of the notice; or
2. Leaving the notice with a person apparently in charge or occupying the premises in addition to mailing a copy of the notice to the tenant's last known address.
3. If the first two methods of giving notice fail after reasonable diligence, by posting a copy of the notice in a conspicuous place at the premises, and mailing a copy to the tenant's last known address. It is not clear what is necessary to achieve "reasonable diligence," although one try may often not be enough.
4. Mailing a copy of the notice by registered or certified mail to the tenant's last known address.
5. Using the methods for service of process (eg. serving a summons and complaints to start a lawsuit) per Wis. Stat. § 801.11. If this is done by the sheriff's office, it has the advantages of an official appearance and impartial proof that the notice was served and on what date.

Curing the Default

If the tenant has been served with a notice requiring the tenant to cure a default (such as paying rent) or quit the premises by a specified date, the tenant generally has three choices: (1) remedy the default (pay the rent) and stay in the unit, (2) move out, or (3) fail to remedy the default and remain in the unit. If the tenant remedies the default or moves out, the matter is concluded. If the tenant moves out, the landlord generally must mitigate damages by attempting to re-rent the unit.

If the notice specifies a default other than the nonpayment of rent, it may be more difficult to determine if the tenant has complied with the notice and cured the default. The tenant must promptly take reasonable steps to remedy the default or offer to pay the landlord reasonable damages for the breach. For example, if the notice states that the default was a loud party, the tenant may simply have no more loud parties. If the default is that the tenant has an unauthorized person living in the unit, it may be difficult to determine whether that additional person has in fact moved out without constant monitoring.

What must a landlord do to commence eviction proceedings?

If the tenant does not pay the rent, remedy the default, or voluntarily move out by the deadline set in the notice, the landlord must file eviction proceedings in small claims court in order to remove the tenant from the premises. An eviction action may be filed by a person entitled to the possession of real property (the landlord) to remove a person not entitled to possession or occupancy of that property (the tenant whose tenancy has been terminated).

The landlord, or the landlord's attorney or employee, begins the eviction by going to the courthouse in the county where the rental property is located. In the office of the small claims clerk of court, the landlord may fill out a Summons and Complaint form, pay a filing fee, and pay to have the summons and complaint served on the tenant. The summons indicates that the tenant must appear in small claims court at a specific date and time. This first meeting or hearing is often referred to as a joinder conference. The purpose of the joinder is to decide whether the matter can be settled and, if not, whether there is a viable issue for trial.

If the tenant fails to appear, the landlord can be awarded a judgment and a writ of restitution if the landlord can prove that the summons was properly served on the tenant. If the tenant appears, the judge or court commissioner will determine whether the tenant has any defenses to the eviction. If the tenant does, a trial may immediately be scheduled for a later date. However, the small claims court may grant judgment to the tenant, if there is some fatal deficiency in the process, or to the landlord, if the tenant has no defense and there is no question of fact. The judge or court commissioner may also proceed to hear the matter immediately if the parties consent.

If the judge rules in favor of the landlord, the judge will order the tenant evicted. The landlord must purchase a Writ of Restitution that legally restores possession of the unit to the landlord and take it to the sheriff within 30 days of issuance. The sher-

iff will remove the tenant and/or the tenant's property from the premises.

In Milwaukee County, when the sheriff executes a writ to evict a tenant, the sheriff removes the tenant's property and takes it to a place of safekeeping. The sheriff notifies the former tenant where the property is being kept and of the tenant's right to obtain possession of the goods after the tenant pays the costs of moving and storing the property.

In other Wisconsin counties, however, the landlord has the option to remove and store the tenant's property him or herself when the sheriff executes the writ of restitution. If the landlord does not pursue this option, he or she must deposit the cost of moving the tenant's property that would be charged by a local moving company. In all cases, the sheriff must supervise the removal of the property from the premises. The landlord or the landlord's agent must exercise ordinary care in removing the tenant's property, have warehouse or other receipts issued in the tenant's name for the property, and obtain a bond or insurance policy to pay the tenant and indemnify the sheriff for any damages. If the sheriff determines that the property to be removed from the premises is without monetary value, the sheriff may allow the landlord or the landlord's agent to deliver the property to some appropriate place established for the collection, storage, and disposal of refuse, and the sheriff will notify the tenant of the place to which the goods have been delivered.

The landlord may also sue for money damages at the same time that the eviction complaint is filed. After the eviction is completed the landlord goes back to the small claims court and asks for a second hearing on damages. The landlord may sue for unpaid rent, damage to the property, and double the daily rent for every day the tenant continued to occupy the premises after the date on the termination notice. The landlord may also sue to recover court costs and the costs of the eviction.

Lockouts are illegal in Wisconsin residential tenancies. The landlord can't lock the tenant out of the premises, order the tenant to leave, remove the tenant's personal property, or shut off the utilities.

Security Deposits

Security deposits must be held in a proper trust account or owner's account and must be returned in strict conformance with the residential rental practice rules.

Where should a licensee hold residential rental property security deposits?

Rental application deposits, security deposits and rent may be deposited into one of the following three accounts, regardless of whether the owner is a third-party owner or a real estate licensee:

1. A traditional noninterest bearing trust account—in other words, the regular trust account with which licensees are historically familiar.

2. An interest-bearing trust account if the broker obtains the written consent of the parties for whom the funds are being held. This authorization must specify how and to whom the interest will be paid. No interest may be paid to or provided in any way for the benefit of the broker. This type of account will be needed for brokers in communities that require that interest be paid on security deposits.

3. The rental owner's account. An owner's account is an account maintained by the rental property owner for the deposit and disbursement of the owner's funds. A broker may deposit rental application deposits, security deposits and rent into the owner's account as long as these checks are payable to the one or more of the owners or to the owner's account. The broker may be designated as a signatory on the owner's account and authorized by the owner in writing to make disbursements from the account.

What are the rules for returning the security deposit when a tenancy ends?

The landlord must return the tenant's security deposit and/or a statement of the amounts withheld from the security deposit within 21 days of the tenant's surrender of the premises. Wis. Admin. Code § ATCP 134.06 defines "surrender" of the premises as the last day of the tenancy per the rental agreement, subject to certain exceptions. If the tenant vacates before the last day of the tenancy, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing. If the tenant vacates the premises after the last day of the tenancy, surrender occurs when the landlord learns that the tenant has vacated. If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

A check for a returned security deposit must be made payable to all tenants who are parties to the rental agreement. If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit or withholding statement to the tenant's last known address (typically the rental unit itself).

A rent payment in excess of one month's prepaid rent is considered a security deposit. A landlord may collect more than one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the land-

lord must treat that excess as a security deposit.

A landlord may withhold from security deposits for tenant damage, waste or neglect, nonpayment of rent, nonpayment of utility charges the tenant owes under the rental agreement for utility service provided by the landlord, nonpayment of direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment, or for other lawful reasons designated in nonstandard rental provisions. A detailed statement of claims must be given with a return of any security deposit balance owed within 21 days after the tenant surrenders the premises. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim. The code does not allow for withholding for normal wear and tear, so any damage claimed by a landlord must be beyond the range of normal wear and tear. A landlord cannot charge a tenant for routine painting or carpet cleaning where there is no unusual damage caused by tenant abuse.

Intentional misrepresentation or the falsification of a claim against a security deposit or any other failure to comply with the rule is a violation of Wis. Stats. § 100.20(5), which allows for the recovery of double damages, costs, and attorney fees.

Have the rules for carpet cleaning costs changed?

In 1999 the Department of Agriculture, Trade, and Consumer Protection (DATCP) legal staff indicated the following to the WRA: "It is not illegal per se for the landlord and tenant to agree that the tenant will clean the carpet or pay for the carpet to be cleaned at the end of the lease term. However, the landlord may not withhold the charges for such carpet cleaning from the tenant's security deposit, unless the tenant committed 'damage, waste or neglect.' Therefore, if the tenant does not clean the carpet at the end of the lease and there is only normal wear and tear on the carpet, the landlord's remedy for this breach is to seek damages through small claims court."

In 2001 the Wisconsin attorney general's office issued an informal opinion to DATCP evaluating the carpet cleaning issue with an eye toward Wis. Stat. § 704.07. That statute provides that it is a landlord's duty to keep the premises in a reasonable state of repair. The opinion interprets this duty to include routine carpet cleaning at the end of a tenancy. § 704.07(1) also states, "An agreement to waive the requirements of this section in a residential tenancy is void." Thus, the opinion concludes, any agreement that waives the landlord's duty to perform routine carpet cleaning at the end of a tenancy or attempts to shift this duty to the tenant is void.

This informal attorney general's opinion has no precedential value and is strongly disputed by many, but it does sound a warning to landlords whose leases require tenants to clean the carpet or pay for carpet cleaning at the end of the tenancy. Landlords who want to be certain that their leases will withstand any legal challenge from tenants or DATCP may find it advisable to remove all provisions making tenants responsible for performing routine carpet cleaning or paying for routine carpet cleaning at the conclusion of the tenancy.

Must the tenant be paid interest on security deposits?

A landlord must pay interest on tenant security deposits only if required by local ordinance. For example, in the cities of Madison and Fitchburg, landlords must provide interest on security deposits if the deposit is more than one-half of one month's rent. For example, if rent is $500 per month, the security deposit must be over $250 for the tenant to receive interest.

Lead-Based Paint Disclosures

Landlords and property managers should never lose sight of LBP responsibilities, including the duty to test for LBP and giving federally-mandated LBP disclosures to tenants.

Do landlords have a duty to test for LBP?

In Antwaun A. v. Heritage Mutual Insurance Co., 228 Wis. 2d 44, 62, 596 N.W.2d 456 (1999), the Wisconsin Supreme Court held that landlords have a common law duty to test for LBP whenever they know, or in the use of ordinary care should know, that there is peeling, flaking or chipping paint in a residential rental property constructed before 1978. If testing confirms the presence of LBP, the owner has a duty under general common-law negligence law to either warn other persons of a defect or harmful condition or to correct the condition, as is reasonable under the circumstances.

Licensees serving as property managers should share information regarding the Antwaun A. case and the federal LBP law with landlord clients, and urge them to consult with their own legal counsel regarding their testing and disclosure duties, and also the appropriate LBP reduction or abatement procedures to follow if deteriorated LBP is present. Property managers may wish to have legal counsel review their management contracts to determine whether they risk any liability if the owner refuses to test deteriorating paint in pre-1978 properties.

As most REALTORS® know, the federal LBP law requires all sellers and landlords to disclose all known LBP, including all testing results, whenever a pre-1978 residential rental property is rented or sold. When working in rental transaction involving residen-

tial rental property built before 1978, agents will need to treat any observed chipping, peeling, or flaking paint in target housing rental properties as potential material adverse facts, and disclose the same in writing to the parties if the owner fails to at least disclose the deteriorating paint.

When does the federal LBP disclosure rule apply in rental transactions?

The federal LBP disclosure rule applies to leases of target housing. A lease, for the purposes of this law, is a transaction where the tenant or lessee enters into an agreement with the landlord or lessor to lease, rent or sublease target housing. Subleases are also included so that the subtenant or sublessee also receives the LBP disclosures and information. Verbal rental agreements and periodic tenancies such as a month-to-month tenancy are also included.

The federal LBP disclosure rule applies to target housing: housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or expects to reside in such housing), and except for any 0-bedroom dwellings such as lofts, efficiencies, and studio apartments. The rule also does not apply to leases for 100 days or less, such as vacation homes or short-term rentals, and rental housing that has been inspected by a certified inspector and found to be free of LBP, that is, free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5 percent by weight.

LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come to the attention of the landlord. In situations with no formal renewal process involved, such as a month-to-month holdover after the expiration of a one-year lease term, renewal shall be interpreted to occur at the point where the parties agree to a significant change in the terms of the lease such as a rent rate adjustment.

What is the duty of rental agents and property managers as far as compliance of the owner?

Agents must ensure that:

- Landlords are made aware of their obligations under the federal LBP disclosure rule.
- Landlords disclose the proper information to tenants. The agent is responsible if the landlord fails to comply, however, an agent is not responsible for information withheld by the landlord.
- Leases contain the appropriate notification and disclosure language and proper signatures.

How do you handle LBP disclosures in a rental transaction?

Property owners who rent out target housing must:

- Disclose all known LBP in the home and provide any available reports on LBP in the housing to tenants.
- Give tenants the EPA-approved LBP pamphlet, "Protect Your Family from Lead in Your Home."
- Include certain warning language in the lease as well as signed statements from all parties verifying that all requirements were completed, typically by attaching a LBP addendum such as the WRA's Addendum L.
- Retain signed acknowledgments for three years, as proof of compliance.

The federal LBP disclosure rules do not specify exactly when in the transaction the landlord must make his or her LBP disclosures, but identify the latest point at which full disclosure must occur: before the tenant becomes obligated under the lease. The rules distinctly state that if any of the required disclosure activities occur after the tenant has submitted a lease proposal or signed the lease, the landlord must complete the required disclosure activities prior to accepting the lease, and allow the tenant an opportunity to review the information and possibly amend the lease.

LBP Rental Checklist for Property Managers

1. Determine if the property is target housing.
2. Look for painted surfaces in bad condition while inspecting the property. Peeling, chipping or cracking paint and lead dust is a hazard if the paint is lead-based and must be disclosed as potential material adverse facts if the landlord does not disclose on Addendum L.
3. Advise the landlord of his or her obligations under the LBP rules.
4. Ask the landlord if he or she has any knowledge of LBP on the property. For owners of multi-unit buildings, this includes LBP in common areas like hallways and lobbies as well as the units being rented. If the rental agent has advised the landlord of his or her obligations under the federal LBP rules, the agent will not be held liable for any LBP information the landlord did not share with the rental agent.
5. Obtain copies of any available LBP records pertaining to the property
6. Have the landlord complete and sign Addendum L. A property manager can complete Addendum L for the owner, provided that the property manager is properly authorized such as in the property management agreement.
7. The rental agent signs Addendum L.
8. Give the tenant the EPA's pamphlet entitled "Protect Your Family From Lead in Your Home," which may be ordered from the WRA at http://www.wra.org/products/other/default.asp, or obtained from

the EPA at http://www.epa.gov/opptintr/lead/leadprot.htm.

9. Give the tenant Addendum L and copies of the landlord's LBP reports and records. It is permissible to provide tenants with a photocopy of the original Addendum L executed by the landlord.

10. Landlords and agents are required to retain a copy of the completed lease or LBP lease addendum for three years after the commencement of the lease term.

Wisconsin Asbestos and Lead Page

The primary source for almost everything property owners need to know when seeking a lead-safe certificate is the Wisconsin Department of Health and Family Services' (DHFS) Asbestos and Lead page: http://www.dhfs.state.wi.us/dph_boh/Asbestos_Lead/index.htm. The page includes the registry of lead-free and lead-safe properties and a great deal of LBP information including the Wisconsin Statutes (Wis. Stat. §§ 254.11-254.30) and Wisconsin Administrative Code rules (Chapter HFS 163) that govern the registry process, a list of Wisconsin labs accredited for LBP analysis, the forms needed to apply for registration and to use once a property is in the registry, a listing by city and by county of certified lead investigators and certified abatement contractors, summaries of the lead-free and lead-safe certificate process, a listing of local health departments, and information about certified workers. For a summary of the procedure for applying for a lead-safe certificate, go to the WRA's *Legal Update 02.08*, which is available online at http://www.wra.org/Legal/Legal_Updates/2002/lu0208.asp.

REALTOR® Resource Page—Lead-Based Paint

This resource page emphasizes the importance of REALTOR® members recognizing the complexity of LBP issues and how they impact their business. This resource page includes *Legal Updates* and Hottips relating to this topic, a link the DHFS Asbestos and Lead page, LBP forms, guidelines for homeowner and contractor lead-safe work practices, Wisconsin LBP litigation, Wisconsin LBP statutes and rules, the federal LBP disclosure and renovation rules, and information about the training and certification of LBP personnel. All of these links can be found at http://www.wra.org/LBP.

Legal Hotline Questions & Answers

The following landlord-tenant questions were recently asked of the Legal Hotline:

Tenant Selection

A property management department is attempting to find a tenant for a townhouse. Two groups have submitted applications. The first is a group of unrelated people (two men and one woman), all in their early 20s. None have any rental history. Two have jobs and generally good credit. The second group is a family with a good history and credit. The owner prefers to rent to the family. The unrelated group had their application in first and are suggesting that if they don't get the unit, it is because of some form of discrimination. Does the owner and the property manager have any liability if the owner chooses the family?

The property manager and the owner may potentially be liable for violation of fair housing laws or ordinances if it appears that the choice of tenants is based upon a reason related to a protected class. For example, if the family is selected, it may appear that there is a preference for families and against single people.

Service Animals

Must tenants be allowed to have their pets and service animals? The landlord realizes he has to permit dogs if a tenant's health situation requires one. The landlord has a letter from a tenant, who has not had a dog before and whose daughter lives with her and is mentally handicapped, stating that it has been suggested by her doctor that it may be beneficial for the daughter to have a dog. The landlord has no problem with this, however, can the landlord limit the breed of dog?

Wis. Stat. § 106.50(2r)(bm) addresses animals assisting persons with disabilities and provides:

> "1. If an individual's vision, hearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:
>
> > "a. Upon request, the individual shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.
> >
> > "b. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.
>
> "2. Subdivision 1. does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses."

It is also illegal under Wis. Stat. § 106(5m)(2r)(b)4 to discriminate against persons with disabilities by refusing to make reasonable accommodations in rules, policies, practices or services that are associated with the housing, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy

housing, unless the accommodation would impose an undue hardship on the owner of the housing.

Under federal law pertaining to reasonable accommodations, if the person with disabilities offers documentation that he or she has a physical or psychiatric disability that substantially limits a major life activity and that because of the person's disability a companion animal is necessary to enable the person to equally enjoy the unit, the companion animal must be allowed. This requires documentation of the both the disability and the need for the accommodation.

Late Fees

What is the distinction between late fees for late payment and discounts for early payment?

Discounts for early payment is a device that originated at a time when DATCP policy provided that late fees violated the provisions of § ATCP 134.08(2). Over the years that position has changed and late fees are permitted.

§ ATCP 134.09(8) now provides that no landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement. Before charging a late rent fee or late rent penalty to a tenant, a landlord must apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant. No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

Unauthorized Occupants

What should a property manager or landlord do when persons who are not on the lease are living in a unit?

Unauthorized persons permanently living in a unit are not temporary guests. This will be a violation of the provisions or rules in most rental agreements. Accordingly, the landlord or property manager may issue a five-day, 14-day or 30-day notice, depending upon the type of tenancy. The tenants will then have to remove the unauthorized occupants or move out. Unfortunately it is very difficult to monitor the occupants of a rental unit. If the unauthorized persons continue to reside in the unit, the landlord or property manager may consider eviction. Another solution may be to approach the tenants to see whether a new rental agreement should be executed including all occupants as tenants.

One Tenant Moves Out

What is the best way to handle the situation where only one of a group of tenants moves out?

The best response is to terminate the existing rental agreement, return the security deposit and write a new lease with the remaining tenants who will then make a new security deposit. One way to prevent this problem when the tenants are a group of unrelated individuals, such is usually the case in student housing, is to use a separate lease or rental agreement for each person. The landlord or proerty manager may also suggest that the roommates enter into a roommate agreements that addresses issues such as the payment of the rent, telephone bill, utility bills, cable bill, security deposit, household duties, guests and parties.

Landlord Entry

How does a landlord enter a rental unit for a showing or a maintenance inspection?

Once a tenant moves into an apartment, landlords have limited rights to enter the apartment. Wis. Stat. § 704.05(2) establishes the tenant's right to exclusive possession of the premises. This statute requires landlords to give advance notice of entry which may then be conducted at reasonable times to inspect the premises, make repairs, or show the property to prospective tenants or purchasers. In the City of Madison and City of Fitchburg, landlords must give notice of entry at least 24 hours in advance. In those communities without applicable ordinances, landlords must give notice of entry at least 12 hours in advance per Wis. Adm. Code § ATCP 134.09(2). The notice may be verbal or written, but it is arguably preferable to give written notice to tenants and keep a copy of all entry notices for the file.

Landlords may enter a rented apartment only at reasonable times. Early morning and late evening entry is arguably not reasonable. Entry during the normal business hours of 8:00 a.m. to 5:00 p.m. should usually be reasonable. It may be best to spend a few minutes trying to work out an entry time that both the landlord and the tenant agree is reasonable. No landlord may enter a dwelling without first announcing his or her presence (by knocking or ringing the doorbell) and identifying himself or herself to anyone present in the dwelling.

Advance notice is not required if the tenant requests or consents to a proposed entry at a specified time, a health or safety emergency exists, the tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage, or entry is authorized in writing in nonstandard rental provisions.

If a tenant is uncooperative and fails to follow this process, the landlord may give the tenant a five-day notice (or other notice, depending upon the type of tenancy) for the tenant's breach of the rental agreement or lease terms. Most preprinted rental agreement forms include the landlord's right to enter the premises.

Military Service

A landlord has several tenants who have been deployed to active duty. Where does the landlord stand regarding the leases for these tenants? Do the tenants still have to honor them or can they just be let out?

As reservists and members of the National Guard serve in active duty, the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) affords them and their dependents protection with respect to their civilian obligations.

SSCRA postpones or suspends certain civil obligations to enable active service members to devote full attention to duty and to account for the diminished income that many may encounter during military service. The protection begins on the date of entering active duty and ends within 30 to 90 days after discharge from active duty.

An active service member may terminate a residential, professional, business or agricultural lease if the lease was entered into by the service member before he or she started active duty and the service member or his or her dependents have occupied the leased premises for residential, professional, business or agricultural purposes. To terminate a lease, the service member must deliver written notice to the landlord after the service member's call to active duty or receipt of orders for active duty. For month-to-month rentals, the termination notice operates in a manner similar to the way a 28-day notice works under Wisconsin law. The notice is effective 30 days after the date on which the next rental payment is due, following the date that the notice of termination is delivered. For example, if the rent is due on the first day of the month, and a termination notice is mailed on Oct. 1, then the next rental payment is due and payable on Nov. 1. The effective date of the lease termination is 30 days after that date—on Dec. 1.

For all other leases, the lease termination is effective on the last day of the month following the month in which the written notice is delivered. For example, if proper notice of termination is given on Sept. 20, the effective date of termination would be Oct. 31. The service member is required to pay rent through the effective day of the lease termination. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. Security deposits must be returned to the service member upon termination of the lease.

Additionally, landlords cannot, without court permission, evict the dependents of an active service member from rented housing where the rent does not exceed $1,200 per month. The court may delay such proceedings for up to three months.

For additional information, go to http://www.wra.org/legal/wr_articles/wr1001_legal.htm#lm3 and the Web sites listed therein.

Smoke Detectors

Who is responsible for smoke detector maintenance and changing the batteries?

Wis. Stat. § 101.145 provides that the owner of a residential apartment building must install and maintain a functional smoke detector in the basement and at the head of any stairway on each floor level of the building and shall install a functional smoke detector either in each sleeping area of each unit or elsewhere in the unit within six feet of each sleeping area and not in a kitchen. All smoke detectors shall be approved by Underwriters laboratory.

The building owner must maintain any such smoke detector that is located in a common area. The tenant or occupant of a residential unit must maintain any smoke detector in that unit, except when a tenant or occupant (who is not an owner), or an authorized government officer, agent or employee gives the owner written notice that a smoke detector in the unit is not functional. The owner must then perform any maintenance necessary to make that smoke detector functional within five days of the owner's receipt of the notice. Maintenance includes the furnishing of replacement batteries.

Smokers

Can a landlord deny residence to tenants who smoke if the building is not designated as non-smoking?Can the "smoker's question" be posed on a rental application?

Smokers are not a protected class so a landlord may create a non-smoking building and select tenants accordingly. The landlord cannot, however, impose smoking restrictions on existing tenants in the middle of their tenancies—only upon the beginning of a new tenancy or renewal period.

Incarcerated Tenant

The tenant has a lease and is current on rent. However, the police have asked the landlord if they can go into the property to confiscate evidence because tenant has been arrested for dealing drugs. The tenants' girlfriend, who is not on the lease, has voluntarily gone into the property and removed the tenant's personal property. Does the landlord have the right to change the locks and remove the tenant's personal property?

If this is not a drug house eviction situation, the landlord cannot evict the tenant unless the tenant is in breach of the lease. The tenant still has the right to the rental unit and it may not be wise to assume that the girlfriend's removal of his personal property constitutes his surrender of the premises. The girlfriend is not a tenant and it is not known what authority, if any, she has to officially act on behalf of the incarcerated tenant.

At such time as there may be a breach, the landlord must follow the procedures for an eviction in the Wisconsin Statutes and give a notice terminating the tenancy for a failure to timely pay rent or for another tenant breach, as described in Wis. Stat. § 704.17. Self-help remedies such as changing the locks are illegal.

Penalties and Damages

What can happen if a tenant files a consumer complaint with DATCP against a landlord or property manager for violating DATCP Chapter 134?

Chapter ATCP 134 was enacted pursuant to Wis. Stat. § 100.20 as a prohibition against unfair trade practices, so the consequences for violating a Chapter ATCP 134 rule can be fairly severe. If DATCP brings enforcement actions, violations can result in a civil forfeiture ranging from $100 to $10,000 per violation or criminal

penalties ranging from $25 to $5,000 per violation and/or a year in jail. DATCP may also seek an injunction prohibiting future violations and an order that the violator repay any monetary losses incurred by others as a result of the violation.

Other potential penalties impact the relationship between the landlord and the tenant. For example, when a landlord accepts earnest money or a security deposit from a prospective tenant without having first furnished the rental agreement or lease, and any written rules and regulations, to the prospective tenant for his or her inspection, the rental agreement will be void and unenforceable under § ATCP 134.03(1) and Wis. Stat. § 100.20(5). Landlords who have leases containing provisions that violate Wis. Admin. Code § ATCP 134.08 should not expect to be able to enforce those leases against their tenants. The Wisconsin Supreme Court held in Bairl v. McTaggart, 2001 WI 107 that a landlord cannot enforce a lease that contains a provision illegal under § ATCP 134.08(3) against the tenant.

In addition, a tenant may also file a lawsuit in court if a violation of the Chapter ATCP rules results in a monetary loss or damages. If the tenant wins, the tenant may recover double the amount of the loss plus reasonable attorneys fees under Wis. Stat. § 100.20(5). A series of recent cases has sustained the § 100.20(5) double damages recovery provision, awarded tenants their reasonable attorney fees when they sue to recover improperly withheld security deposits, and permitted landlords to counterclaim for actual damages caused by tenants. The tenant can recover double the security deposit if the landlord does not comply with § ATCP 134.06, even where the damages caused by tenant far exceeded the amount of the security deposit.

Statutes and Rules

Where can a landlord or property manager find the landlord-tenant statutes and rules?

The Wisconsin Statutes chapter 704 addresses landlord-tenant issues and may be found at http://www.legis.state.wi.us/statutes/Stat0704.pdf. The Residential Rental Practice rules are found in Chapter ATCP of the Wisconsin Administrative Code rules and may be accessed at http://www.legis.state.wi.us/rsb/code/atcp/atcp134.pdf. In addition, the Wisconsin fair housing law is found in Wis. Stat. § 106.50—see http://www.legis.state.wi.us/statutes/Stat0106.pdf. All of these may also be located by using the WRA online code book at http://www.wra.org/Legal/Code_Book/default.asp.

Rental Resources

For additional rental resources, visit the WRA Rental Property page at www.wra.org/Rental.

The WRA's Lead-Based Paint Resource Page is found at www.wra.org/LeadBasedPaint.