

Tenant Sourcebook



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Legal Action of Wisconsin, Inc. is a non-profit law firm which exists to provide creative and effective legal representation in order to achieve justice for low-income people and others to whom it would otherwise be denied. We advocate for empowerment and systemic change to help our clients realize their basic right to a decent quality of life. We strive for active client and community participation in carrying out our mission.

For over two decades, Legal Services of Northeastern Wisconsin, Inc. published and distributed this book to provide general information to low-income tenants. In 2003, Legal Services of Northeastern Wisconsin merged with two other law firms to become Legal Action of Wisconsin, Inc.. Legal Action is primarily funded under the Legal Services Corporation Act and is not a government agency. Legal Action of Wisconsin is a law firm providing free legal assistance to low-income people in non-criminal matters. The opinions expressed in this book are those of Legal Action, and not necessarily those of any of the organizations which provide financial support to Legal Action.

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1 - Introduction

Wisconsin's landlord-tenant laws were changed significantly in 2012 and again in 2014. This information in this book only covers leases which were signed or renewed on or after March 1, 2014. If you have a current lease which was signed before March 1, 2014, and has not been renewed, you should speak with an attorney, as some of the new laws may not apply to your lease.

The fact you rent a house, apartment, room, or mobile home means you have a right to privacy and the right to be comfortable and safe in your home. There are laws and rental rules landlords must follow. State statutes, local ordinances, and common customs are all sources for rental rules.

Landlords have heavily influenced Wisconsin housing law. The result is often low-income tenants have little choice about the condition of an apartment and the terms of a lease they are told to sign. This makes it very important tenants understand what rights they do have and how to protect those rights.

As a tenant, you need to understand the landlord/tenant rules, how you can use the rules to avoid problems, and how to solve problems if they come up. This book explains your rights and what you should do to protect your rights as a tenant. It is a "source book" to help you help yourself. Keep this book as a reference.

This book is not a substitute for legal advice. Every case is different, and the information in this book deals with general guidelines that may not apply to your specific situation. If you have a legal problem with a landlord, you should speak with an attorney. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.

You should also be aware you may have special rights and remedies under other types of laws in addition to the rules discussed in this book. For some types of housing, the rules at Wisconsin Administrative Code DATCP § 134 may not apply. You should talk to an attorney if you live in one of the following housing situations:

- **Tenants in Federally subsidized, public, or low-income housing**
- **Tenants in mobile home trailer parks**
- **Housing where you do not pay rent** or where the housing is given to you by your employer to live in while you have the job.
- **Farm rentals** or housing with land used mainly for farming

2 – Subsidized, Public, and Low-Income Housing

Tenants in some types of housing have additional rights under Federal law

Many elderly and low-income people live in federally subsidized housing, public housing, or low-income housing. If you live in one of these types of housing, you have many additional rights under Federal laws. There are Federal laws that protect your right to get your rental assistance and that insure you cannot be unfairly evicted from this type of housing.

“Public Housing” is rental housing a local housing authority owns. The rules at Wis. Admin. Code DATCP § 134 **do not apply** to this kind of housing. Wis. Admin. Code DATCP § 134.01(7). Tenants in public housing do have special rights under Federal law, and they also have rights as tenants under Wisconsin law.

“Subsidized Housing” is housing a private landlord owns, but the landlord gets money or loans from the government. Subsidized housing includes many large apartment complexes as well as smaller apartment buildings and houses. It also includes housing voucher rental assistance programs your local housing authority runs. The rules at Wis. Admin. Code DATCP § 134 **do apply** to subsidized housing landlords. Tenants in subsidized housing also have special rights under Federal law.

Local or regional housing authorities run the “Housing Choice Voucher Program” (commonly referred to as the “Section 8” program), which provides rental assistance payments directly to private landlords to help eligible, low-income tenants meet their rental costs. Under this program, a tenant who has been approved for a “voucher” finds a private landlord who is willing to accept the terms of the Voucher Program and accept part of the tenant’s rent payment each month from the housing authority. Generally, Federal law does not provide a tenant in the Voucher Program with many protections greater than state law provides. Wisconsin statutes and the rules at Wis. Admin. Code DATCP § 134 **do apply** to tenants and landlords in the Voucher Program.

There are other types of low-income housing programs, such as the Low-Income Housing Tax Credit Program, programs run by the Wisconsin Housing and Economic Development Authority (WHEDA), and programs run by the Farmers Home Administration (FmHA) or the “Rural Housing and Community Development Service” (RHCDs). Tenants in these programs also have special rights.

If you are looking for an apartment and trying to get help with rental assistance or a “voucher,” or if you already get help with your rent under any of these programs, you have more rights than those discussed in this book. **If you have problems with a housing authority or any other problems relating to subsidized, public, or low-income housing speak with an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

3 – Mobile Home Parks

Tenants in mobile home parks have special rights under state law

People who rent in mobile home parks have special rights and protections as tenants under Wisconsin Law. The rules at Wis. Admin. Code DATCP § 134, protect mobile home park tenants just like other tenants. There is also a special set of laws and rules to protect tenants who live in mobile home parks. These rules include such things as the right to have a written lease for one year if you want one, and the right to have your lease renewed at the end of the year if you do not want to move. These special protections for mobile home park tenants are found at Wis. Stat. § 710.15 and at Wis. Admin. Code DATCP § 125 of the Wisconsin Administrative Code.

The special laws and rules which protect mobile home park tenants are not covered in this book

If you live in a mobile home park and are having problems with your landlord you should talk to an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.

4 – Discrimination in Renting

Illegal discrimination can happen when a landlord will not rent to you or tries to evict you because she does not like who or what you are

Housing discrimination is against Federal and state law

There is a Federal law called the “Fair Housing Act” (Title VIII of the Civil Rights Act of 1968). 42 U.S.C. 3601. It says discrimination in renting based on race, color, religion, sex, family status, or national origin is illegal. Anyone who is discriminated against can file a written complaint with the Department of Housing and Urban Development (HUD). HUD is required to investigate a complaint of discrimination and HUD can hold a hearing to decide if the law was violated. Penalties and other relief may be imposed after a hearing is held.

The Fair Housing Act also makes it illegal for landlords to discriminate against a renter because of a disability or handicap. The landlord must allow a disabled tenant to make reasonable changes inside an apartment if the renter pays for the cost of the changes. However, the landlord may require the tenant to put the apartment back in its original condition when the tenant moves out. Disabled persons must be able to access and use new apartment buildings.

Wisconsin’s laws state it is illegal to discriminate in renting or selling property on the basis of sex; marital status; sexual orientation; color; race; disability; religion; national origin; ancestry; lawful source of income; family status; age; or if you are a victim of domestic abuse, sexual assault, or stalking. Wis. Stat. § 106.50. To file a written complaint under state law, contact your nearest Job Services office to find out where the closest Equal Rights Division office is located. Your complaint of housing discrimination under state law is filed with the Equal Rights Division of the Wisconsin Department of Workforce Development.

If you feel you have been discriminated against in housing, you have the right to file a written complaint with HUD, with the state’s Equal Rights Division, with your city or county enforcement commission, or with all three. If you need help in filing complaints, or if an agency is not responding to your complaint, an attorney may be able to assist you.

In addition to these rights, you may also be able to file your own lawsuit in state or Federal court for damages and other relief. If you win, you can also be awarded court costs and reasonable attorney’s fees. Wis. Stat. §§ 100.20(5) and 814.045. **If you are discriminated against, act immediately. Your right to sue a landlord for illegal discrimination will have definite time limits under the law.**

5 – Looking for an Apartment

Shop for an apartment you can afford

Find out about the landlord before you decide to rent the apartment

Take a good “first look” at the place

Before you start looking for an apartment, you need to look at your monthly income and decide how much you can afford to pay. Your cost for an apartment will include rent, any “extra charges,” and your payment each month for utilities (water, electric, gas). Look for apartments you will be able to afford. Agreeing to rent an apartment you really cannot afford is a bad idea. **If utilities are not included in the rent, before agreeing to rent an apartment you should ask the landlord for the apartment’s “average utility cost.”** If the landlord does not know the average utility cost, the landlord can easily find out by calling the utility company. You can also find out something about the apartment’s utility costs by talking to the last tenant who lived there. If one utility meter is shared with another apartment, ask the landlord how much of the utility bill the other tenant will pay, and how much of the bill you will have to pay. Some utilities have information about the average utility cost for an address available on their website.

In deciding whether you can afford an apartment, add up the monthly rent, the monthly utility costs, and extra charges for things like parking and snow shoveling; this is the “Total Housing Cost” for the apartment. After adding up the Total Housing Cost you would have to pay each month, then see if this would leave you with enough of your income left over each month to pay for your other needs (food, clothing, transportation). If the Total Housing Cost for an apartment would not leave you with enough money each month to pay for your other needs, the apartment is not one you can afford.

Choose an apartment carefully

Even if you do not have many places to choose from, you want to find a place you can afford which will be safe and meet your needs. You should look for a place which has a responsible landlord. You should ask who you will be dealing with when you first look at the apartment. The law requires a landlord to give a tenant the name of the person who will be collecting rent and managing the building, and who will be the “contact” person for repairs or problems. Wis. Admin. Code DATCP § 134.04(1)(a)(1). The landlord must also tell you who will accept legal notice for him or her. Wis. Admin. Code DATCP § 134.04(1)(a)(2). If this information is not written down in your lease or rental agreement, ask the landlord for this information before you agree to rent the apartment.

Do not rent an apartment without first looking it over very carefully

You should inspect the apartment prior to signing a lease or paying any money to the potential landlord. Before you pay the potential landlord a security deposit they must tell you in writing that you have the right to inspect the apartment after you move in and notify the landlord of any preexisting damages or defects. Wis. Admin. Code DATCP § 134.06(1) Do not be afraid to try out the stove, toilet, lights, windows, heating system, water faucets, and anything else in the apartment. If there are problems with the apartment, it is best to find this out before you have agreed to rent the place and before you have paid the landlord any rent or security deposit.

Here is a short checklist of some things you should keep in mind when you are looking for a place to rent.

- plumbing works (toilets and faucets, hot water)
- ceiling solid (look for cracks, falling tiles)
- floors solid
- walls solid, no holes
- peeling paint (ask about lead paint)
- appliances work
- heating works
- outside structure seems solid
- lights work
- screens for all windows
- storm windows for all windows
- shades/curtains included
- windows all work
- any utilities shared with other tenants
- garage space/parking space included
- furniture included

Before you decide on renting an apartment, you may also want to check out the location and the neighborhood of the apartment to make sure it is where you want your family to live. Here is a list of some things you may want to check for:

- lighted streets
- schools and churches
- parks and recreation
- grocery stores
- hospitals and clinics
- police and fire
- public transportation
- pedestrian crossings
- busy streets
- railroad crossings
- noisy bars or taverns

Anything else?

After you have checked everything, ask the landlord if there is anything else you should know about the apartment. Before you agree to rent the apartment, the law requires the landlord to tell you about any serious housing code violations which the landlord knows about and which the landlord has not corrected. Wis. Stat § 704.07(2)(bm).

Landlord's Promises to Clean and Make Repairs

If you find things wrong with the apartment, or the landlord tells you of any problems with the place, before you agree to rent the apartment you should ask the landlord for a written promise to make the needed repairs or cleaning. Under Wis. Admin. Code DATCP § 134.07, all promises to make repairs before you enter into a rental agreement **must be in writing**. All promises a landlord makes - whenever they are made - must also give a date or definite time period by which the landlord will finish the repairs or cleaning. If the landlord has a good reason why he cannot finish the repairs or cleaning on time, he must give you written notice telling you the reason for the delay and telling you a new date by which he will have the cleaning or repairs done.

How do I know if a landlord is "good"?

If you think you have found an apartment you want to rent, before you sign anything, you should try to find out about the landlord. As everyone knows, there are many "good" landlords and there are also some "bad" landlords out there. But all landlords try to make you think they are "good" landlords when they want you to rent an apartment. After you agree to rent an apartment and move in, you may find out too late the landlord does not make needed repairs, does not respect your privacy and always wants to hassle you about minor things. Nobody needs the headache of a bad landlord. There are some things you can do to find out about a landlord before you agree to rent or give her any money.

How a landlord treats other tenants will tell you a lot about whether she is an honest and responsible landlord. When the landlord is not around, talk to other tenants who live in the building. If you can, talk to the tenant who last lived in the apartment. The last tenant who lived there can also tell you about any past problems with the apartment (example: bedrooms drafty in the winter). If the landlord is not a "good" landlord to other tenants, the landlord will probably treat you the same way after you rent the apartment and move in.

One way to find out about a landlord is to call the Wisconsin Department of Agriculture, Trade and Consumer Protection (1-800-422-7128). This office will be able to tell you if they have received any complaints against the landlord by former tenants. If the office of Consumer Protection has records of tenant complaints against the landlord, this may tell you something about how this landlord treats his tenants.

Another very good way to find out about a landlord is to call or visit the local office of the housing inspector or health inspector. Ask the inspector if she knows the landlord and if the apartment building or house you are looking at has ever had any housing or health code violations. The inspector may also be able to tell you if the landlord has had code violations on other buildings and whether the landlord has been good about repairing code violations. If the Inspector has had a lot of problems with the landlord, it may mean the landlord is not very responsible and he does not care about his tenants' safety. No one needs that kind of landlord.

A nice apartment may be hard to find at a price you can afford. But it is still important to try to protect yourself and get the best deal you can.

6 – Earnest Money Deposits & Credit Check Fees

If you decide on an apartment you want to rent, the landlord may have you fill out an application form and put down an “earnest money deposit”

Some landlords want an “earnest money deposit” so they will know you are serious about wanting to rent the apartment. The landlord must give you a receipt for any earnest money deposit you make. The state laws and regulations that landlords must follow in returning or keeping earnest money deposits and in charging “credit check fees” are at Wis. Admin. Code DATCP § 134.05. If a landlord does not follow these rules, you may be able to sue the landlord for double your money losses and reasonable attorney fees. Wis. Stat. §§ 100.20(5) and 814.045.

Credit Check Fees

In addition to requiring an earnest money deposit, when you fill out an application for an apartment, some landlords may charge you a fee to cover the cost of getting a credit report on you from a national credit reporting agency. The landlord can only charge you the actual cost for obtaining the credit report, but never more than \$20. Wis. Admin. Code DATCP § 134.05(4)(a). The landlord must tell you up front he will be requesting the credit report, and when he gets the report he must give you a copy of it at no additional charge. Wis. Admin. Code DATCP § 134.05(4)(a). If you already have a copy of your credit report less than 30 days old, you may give a copy to the landlord and he cannot charge you any credit check fee. Wis. Admin. Code DATCP § 134.05(4)(b). In this situation, if the landlord wishes, he can get a more current credit report on you at his own expense.

If your application for the apartment is approved, the landlord must either return to you your full earnest money deposit or apply the earnest money deposit toward either your rent or your security deposit for the apartment. Wis. Admin. Code DATCP § 134.05(2)(b). Otherwise, the landlord must return your full earnest money deposit within one (1) business day after any of the following things happen:

- The landlord rejects your application for the apartment; **or**
- It has been three (3) business days since you gave your application to the landlord and he still has not let you know if he plans to approve your application or reject it; **or**
- You withdraw your rental application before the landlord approves it and accepts you as a tenant. Wis. Admin. Code DATCP § 134.05(2)(a).

If you refuse to enter into a rental agreement with the landlord after he approves you application and offers you the apartment, the landlord may keep part or all of your earnest money deposit to cover his actual costs and damages. Wis. Admin. Code DATCP § 134.05(3)(b). The landlord may only deduct from your earnest money deposit the amount of his “actual costs and damages” your decision not to take the apartment caused. Such “costs and damages” might include the costs for re-advertising the apartment or for lost rent where the landlord tries but is not able to find another tenant to take the apartment.

7 - Rental Agreements

Understand your rental agreement

Read it carefully and know what you are agreeing to before you sign the agreement or pay any money

You will be held responsible for what you sign

Do not agree to a rental agreement requiring you to do something you cannot do

A rental agreement is a contract both you and your landlord are expected to live up to. If you sign a rental agreement but later are not able or willing to follow its terms, this would be a legal reason for the landlord to try to have a court evict you. (Example: a landlord offers you a written lease that says your rent is due on the first of each month and the lease does not say anything about giving you a “grace period” for late payments. Yet you know you cannot pay rent on the first because your benefits check usually does not come in the mail until the third of the month. Before you sign the lease, talk to the landlord about your need to have the due date for rent payments changed and have the change put in writing on the lease.)

Wisconsin law requires the landlord to let a tenant read a copy of any written lease or rental agreement before the tenant pays money or signs anything. Wis. Admin. Code DATCP § 134.03. Take advantage of this. It is very important for you to understand what rights and responsibilities you have in a rental agreement. Your landlord must give you a copy of any written lease or agreement and a copy of any “house rules.” Wis. Admin. Code DATCP § 134.03. It is very important to take the time to read everything very carefully before you sign.

“NONSTANDARD RENTAL PROVISIONS” are written rules a landlord may also want you to agree to when you enter into a lease or rental agreement. If you agree to them, it may give the landlord the right to keep your security deposit for reasons state laws do not ordinarily allow. “NONSTANDARD RENTAL PROVISIONS” may also give the landlord the right to inspect your apartment without telling you before he comes over, or the right to take your personal belongings and hold them because you are late with a rent payment. If your landlord asks you to sign or put your initials on a paper titled “NONSTANDARD RENTAL PROVISIONS,” read it over carefully and do not agree to anything you do not want.

Many landlords use form leases that are very long with a lot of small print. It can be hard to get a landlord to change the terms of a form lease. Even so, you should talk to the landlord about any terms you do not want or do not understand. **Make sure any changes to the form lease are agreed to in writing and ask for a copy.**

If your landlord is responsible and honest, he should not mind putting everything he tells you and agrees to in writing. If he will not put his promises in writing, it often means the landlord does not mean to keep his promises. **Never sign a lease or rental agreement that has written terms or rules you know you cannot live up to.** (Example #1: The lease says “no pets”, but you have a cat you are not willing to give up. Example #2: The rental agreement says you only get parking space for one car, but you have two cars and will need two parking spaces.) **Even if your landlord told you something different when you agreed to rent the apartment, the landlord may later be able to demand you follow the written rules in the lease or rental agreement.**

Tips for Reading Leases and Rental Agreements

While it is usually best to have a written rental agreement with your landlord, rental agreements and leases for less than one year do not have to be in writing. When you agree to rent an apartment but do not have the agreement or lease in writing, it is called an “oral” agreement. Oral rental agreements, just like written ones, are legal contracts.

The problem with oral agreements is if you and your landlord later disagree about the rental terms that were agreed on; then you will not have anything in writing the landlord signed to prove you are right. (Example: you make an oral agreement with your landlord that your rent is not due until the 5th of each month, but later your landlord claims you agreed to pay your rent by the 1st. Because you did not get your rental agreement in writing, it will be harder for you to prove your landlord is wrong.) With a written rental agreement, you can prove you are right because the written words in the agreement show exactly what you and your landlord agreed to when you first rented the apartment.

Read everything

Ask about unclear words or duties that are in the papers the landlord wants you to sign. Do not sign papers with blanks to be filled in later.

Before you sign the rental agreement or give the landlord any money

- Know the length of the lease term (if any) and how to renew and terminate the lease.
- Know what you are expected to do while you live there and what the landlord will take care of doing. (For example, who will do the snow shoveling, lawn mowing, and repair of appliances. What jobs or repairs will you be expected to do yourself? Will you be expected to pay extra to have them done by the landlord?)
- Know all “house rules”, for parking, trash pick-up, pets, noise, guests, and subletting
- Make sure your lease or rental agreement says you have paid your security deposit and how much you have paid.

If you have an oral agreement, check with your landlord on the same things you would look for in a written lease or written agreement. **If the landlord makes any promises to make repairs, or adds any terms or rules, get them in writing.**

A landlord must tell you these things before you sign the rental agreement

- **Serious Code Violations.** If the apartment has code violations which present a significant threat to a prospective tenant's health or safety and the landlord has actual knowledge of the code violations, then the landlord must tell you about the code violations before the landlord accepts any money from you. Wis. Stat. § 704.07(2)(bm).
- **Utilities.** The landlord is required to tell you of any charges which will not be included in rent, such as water, heat or electricity. If you will be sharing one utility meter with other tenants, the landlord must tell you what part of the utility bill you will have to pay. Where two or more apartments share a utility on one meter, the law requires the landlord to put that "jointly metered" utility in the landlord's name and not in the name of a tenant. Wis. Admin. Code DATCP § 134.04(3).
- **Agents.** If the landlord owns and lives in your apartment building and there are less than four apartments in the building, the landlord must tell you who you are supposed to pay rent to, who you should call for needed repairs, who the actual owner of the apartment building is and the person(s) the landlord has authorized to accept for him any notices or legal papers. Wis. Admin. Code DATCP § 134.04(1).

Rental agreements cannot have any of the following provisions

- Any provision which would allow the landlord to increase rent, decrease services, start an eviction action, refuse to renew a rental agreement, threaten to do any of the above if a tenant contacts an entity for law enforcement services, health services, or safety services. Wis. Stat. § 704.44(1m)
- Allow the landlord to lock you out or force you out of your apartment unless the landlord first files an eviction lawsuit against you in small claims court and wins a judgment for your eviction. Wis. Stat. § 704.44(2m).
- Provides for an acceleration of rent payments if the tenant breaches their lease or otherwise waives the landlord's duty to mitigate damages. Wis. Stat. § 704.44(3m).
- Requires you to pay the landlord's attorneys fees if your landlord ever does take you to court. Wis. Stat. § 704.44(4m).
- Allows the landlord to confess judgment against the tenant. Wis. Stat. § 704.44(5m).
- Allow the landlord to get out of her responsibility for property damage or personal injury caused by the landlord's own carelessness or fault. Wis. Stat. § 704.44(6).
- Hold a tenant responsible for personal injuries which occur in the apartment when they are clearly beyond the tenant's control. Wis. Stat. § 704.44(7)(a).
- Hold you responsible for property damage caused by natural disasters or other people who are not your guests. Wis. Stat. § 704.44(7)(b).
- Allow the landlord to get out of her duty to keep your apartment safe and fit to live in. Wis. Stat. § 704.44(8).
- Allows the landlord to terminate the 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 s. 950.02 (4), of that crime. Wis. Stat. § 704.44(9).

If your rental agreement has any of these provisions, your rental agreement may be void and unenforceable. Wis. Stat. § 704.44. **If your lease has any of these prohibited provisions, you should talk to an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

Most rental agreements must have the following provision

If your lease allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property, then your lease must have the following language:

NOTICE OF DOMESTIC ABUSE PROTECTIONS

(1) As provided in section 106.50 (5m) (dm) of the Wisconsin statutes, a tenant has a defense to an eviction action if the tenant can prove that the landlord knew, or should have known, the tenant is a victim of domestic abuse, sexual assault, or stalking and that the eviction action is based on conduct related to domestic abuse, sexual assault, or stalking committed by either of the following:

(a) A person who was not the tenant's invited guest.

(b) A person who was the tenant's invited guest, but the tenant has done either of the following:

1. Sought an injunction barring the person from the premises.

2. Provided a written statement to the landlord stating that the person will no longer be an invited guest of the tenant and the tenant has not subsequently invited the person to be the tenant's guest.

(2) A tenant who is a victim of domestic abuse, sexual assault, or stalking may have the right to terminate the rental agreement in certain limited situations, as provided in section 704.16 of the Wisconsin statutes. If the tenant has safety concerns, the tenant should contact a local victim service provider or law enforcement agency.

(3) A tenant is advised that this notice is only a summary of the tenant's rights and the specific language of the statutes governs in all instances.

If your lease allows your landlord to terminate tenancy for a crime, but does not include this language, your lease may be void and unenforceable. Wis. Stat. §§ 704.44(10), 704.44.

Check-In Sheet

Your landlord is required to provide you with a check-in sheet when you move into your apartment. You have seven days to make any notes on the check-in sheet which the landlord may have overlooked and return it to the landlord. Write down a list of everything you find wrong with the apartment when you moved in. Be sure to list even very small “damages”, like the number of nail holes in each wall, dents in the kitchen floor and chipped paint on the baseboards. After you have finished your list, sign and date it. Make a copy of your check-in list for yourself and then give the original list to your landlord. It is best to either have your landlord sign and date your copy to show he received the original or, if you cannot get your landlord to sign your copy, mail the list to her by certified mail. Wis. Stat. § 704.08.

If the Landlord Sells the Residence

If your landlord sells the apartment or house you rent while you are still living there, your old agreement (whether oral or written) is still good, unless you want a new one. Wis. Stat. § 704.09. The new owner cannot charge a higher rent or force you to make a new agreement until your old one expires. The law is different with leases that are for more than one year, but most tenants usually do not have leases that run for more than a year at a time.

If the Property Goes Into Foreclosure

If the property you live in is being foreclosed upon, this likely means your landlord has stopped making payments on their mortgage. The holder of the mortgage (the “plaintiff” in a foreclosure action, which is usually a bank or a trust) will then file a foreclosure action in the courts asking for the property back or to be sold. You should speak with an attorney for advice if the property you rent is going through a foreclosure action. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.

8 – Should I Buy Renter’s Insurance?

If your personal belongings are lost, stolen or damaged while you are renting an apartment, the landlord will not be responsible to pay for your losses unless it was the landlord’s fault. If you lose your things in a fire, the landlord would only have to pay for your losses if it is proved the fire was his fault. (Example: a fire might be a landlord’s fault if she did not have working smoke detectors in the building, or if it can be proven the fire was caused by an unsafe electric system.) Losses of your property that natural disasters (floods, tornadoes) cause will almost never be the landlord’s responsibility.

Renters’ insurance is a way you can protect yourself from the risk of having to pay out of your own pocket for repairs or replacement of your personal property. Renters’ insurance does not cost very much and it is worth looking into, especially if you have belongings that would be expensive to repair or replace.

9 – Keep Copies of Everything for Your Records

**Keep copies of your rental agreement,
all notices and letters, and all receipts**

**If disagreements come up, you may need
your records to prove you are right**

You should get a folder or large envelope and keep in it all of your receipts; your copy of your lease or rental agreement; a copy of the “house rules” and a copy of any “NONSTANDARD RENTAL PROVISIONS;” and copies of all letters, inspection check lists, and notices you sent your landlord or that your landlord has sent you. If you ever need them, you will then have all of your receipts and papers to show everything that happened and all of the payments you made since the day you first agreed to rent the apartment. **If you ever have a disagreement with your landlord or if you ever have to go to court against your landlord, having copies of all your papers and receipts will be very important.**

Pay your rent by check or money order

If you pay your rent by check or money order, be sure to write on the check or money order what the payment is for. (Example: if you are paying rent for the month of January 2015 by check, write on the check “January 2015 rent paid in full”.) This is especially important if you and your landlord disagree over the amount you should pay, or if you have decided to pay something less than the full rent which was agreed on when you entered into your rental agreement. If you have a disagreement with your landlord over how much rent you are legally responsible to pay, you should send the landlord a letter along with your rent check explaining why you believe the amount on the check is all you owe. If the landlord then goes ahead and cashes your rent payment check on which you have written “rent paid in full”, then the landlord should not be able to later say you paid less than you owe.

Disagreements over the amount of rent owed often come up when the landlord has added on “late charges” or a tenant withholds part of a rent payment because the landlord has not done what was needed to keep the apartment fit to live in. See Chapter 13. Be sure to keep your canceled checks or check carbons so you can prove when you paid and how much you paid, what each payment was for, and that the landlord accepted the check or money order as “payment in full”.

If a landlord claims you missed a rent payment, a court might end up evicting you if you do not have a canceled check or written receipt to prove the rent was paid. If a landlord claims you damaged the apartment, and you do not have a copy of your move-in check list, you may be unable to prove the damage was already there when you first rented the apartment. **For your own protection, keep copies of everything.**

10 – Your Security Deposit: How To Protect it Before You Move Out

**Most landlords want a security deposit for “insurance”
The security deposit is *your* money
There are steps you should take when you move in and
before you move out to make sure you get it back**

Landlords almost always ask for a “security deposit” before you move in. The security deposit is money the landlord holds as “insurance” against you if you damage the property or miss a rent payment. However, some landlords will try to keep your security deposit after you move even when you did not do any damage and you paid all your rent. If a landlord tries to keep your security deposit, there are rules she must follow. See Chapter 11.

Protect your security deposit from the start

Even if you think your landlord seems reasonable and honest, you may find out he is not as nice as you thought once you have moved out and it is time for her to give you back your security deposit. A few landlords even seem to think the security deposit is really their money, not yours. So it is very important you take certain steps to protect your right to the return of your full security deposit.

Things you should do when you move in to protect your security deposit

- **Check-in sheet** Your landlord is required to provide you with a check-in sheet when you move into your apartment. You have seven days to make any notes on the check-in sheet which the landlord may have overlooked and return it to the landlord. Write down a list of everything you find wrong with the apartment when you moved in. Be sure to list even very small “damages”, like the number of nail holes in each wall, dents in the kitchen floor and chipped paint on the baseboards. After you have finished your list, sign and date it. Make a copy of your check-in list for yourself and then give the original list to your landlord. It is best to either have your landlord sign and date your copy to show he received the original or, if you cannot get your landlord to sign your copy, mail the list to her by certified mail. Wis. Stat. § 704.08.
- If you have a written lease or rental agreement, make sure it says you have already paid your deposit and how much you paid.
- Have the landlord give you a written receipt when you pay your deposit.
- Ask the landlord if any money was taken out of the last tenant’s security deposit. If you ask for it, the landlord must give you a complete list of any damages which were charged against the last tenant’s deposit. Wis. Admin. Code DATCP § 134.06(1)(b).
- If you can, use checks or money orders for any payments you make to your landlord. Ask your landlord to give you a written receipt for each rent payment and for any other money you pay her. Keep copies of everything, especially your receipts. See Chapter 8.

Things you should do before you move out to protect your security deposit

- Mail or deliver to your landlord a written notice telling him the date you will move out and giving him your new address. Keep a copy for your own records. If you send the notice to your landlord by mail, using certified mail is a good idea because you will then have proof from the Post Office of the date your landlord received your notice.
- Do a complete move-out inspection and make a move-out checklist for the apartment. Get out your copy of the inspection checklist you did when you first moved in and do another inspection, writing down everything that is damaged or wrong with the apartment. Ask your landlord to do the move-out inspection with you, and have the landlord sign and date your move-out inspection checklist. If the landlord cannot or will not do a move-out inspection with you, do the move-out inspection with a friend or neighbor present who will sign and date your checklist as a witness. Keep your move-out checklist for your records.
- Take photographs of the whole apartment and keep the photos for your records. If you do not have a camera that takes clear pictures indoors, try to borrow one. Friends, neighbors and people you work with also make very good witnesses who could testify for you in court if necessary.

If the landlord has told you she may withhold some of your security deposit, or if you have a feeling the landlord may say you did some damages as an excuse to keep your security deposit, be ready to prove the landlord is wrong. A complete move-in checklist and move-out checklist, photos of the apartment the way it was when you moved out and witnesses who saw your apartment will give you a strong case against any landlord who tries to keep your security deposit for “damages” you did not cause.

11 – Your Security Deposit: Getting It Back After You Move

Wisconsin's laws on security deposits were significantly revised in 2012 and 2014, and you speak with an attorney if you believe your landlord has wrongfully withheld your security deposit.

When does the landlord have to return your security deposit?

When your landlord has to return your security deposit depends on when you move from your apartment. Your lease may be different than what the law requires and may contain different deadlines. If your lease has provisions which are different than the provisions discussed below, you should consult with an attorney to determine when your landlord is required to return your security deposit.

- **If you move out on the day your lease ends.** Your landlord has twenty-one (21) days after that date to return your security deposit. Wis. Stat. § 704.28(4)(a). If your landlord is withholding any portion of your security deposit they must also provide you with a written description of the reasons they are withholding the deposit. Wis. Admin. Code DATCP § 134.06(4).
- **If you move out or are evicted before your lease ends and your landlord does not re-rent your apartment before your lease ends.** Your landlord has twenty-one (21) days from the date your lease ends to return your security deposit. Wis. Stat. § 704.28(4)(b). If your landlord is withholding any portion of your security deposit they must also provide you with a written description of the reasons they are withholding the deposit. Wis. Admin. Code DATCP § 134.06(4).
- **If you move out or are evicted before your lease ends and your landlord does re-rent your apartment before your lease ends.** Your landlord has twenty-one (21) days from the date the new tenant's lease starts to return your security deposit. Wis. Stat. § 704.28(4)(b). If your landlord is withholding any portion of your security deposit they must also provide you with a written description of the reasons they are withholding the deposit. Wis. Admin. Code DATCP § 134.06(4).
- **If you move out or are evicted after your lease ends.** Your landlord has twenty-one (21) days from the date the landlord learns you have moved out to return your security deposit. Wis. Stat. § 704.28(4)(c). If your landlord is withholding any portion of your security deposit they must also provide you with a written description of the reasons they are withholding the deposit. Wis. Admin. Code DATCP § 134.06(4).

What can the landlord deduct from your security deposit?

The law says there are only certain reasons why your landlord can legally keep your security deposit:

- **Damages you or your guests caused to the apartment.** The damages must be something more serious than just ordinary “wear and tear”. The landlord cannot keep your security deposit to pay for damages caused by someone who was not your guest. Wis. Stat. §§ 704.28(1)(a) and 704.28(3).
- **Unpaid rent that you still owe the landlord under your lease or rental agreement.** If you were evicted, moved out without giving your landlord advance written notice, or if you moved out before your lease was up (that is, if you “break your lease”), then the landlord may be able to charge you for unpaid rent that comes due after you moved. However, the landlord can charge you for rent after you move only if it is rent you were still responsible for under the terms of your rental agreement and only if the landlord has tried to re-rent the apartment but was not able to find a new tenant to move in. Wis. Stat. § 704.28(1)(b)
- **Some kinds of utility bills left unpaid when you moved.** A landlord can only do this if the utility is government-owned (example: city-owned water and sewer utilities), or if the bill for the utility was in the landlord’s name and your rental agreement says the utility is not included in your rent and you are required to pay the landlord directly for the utility service. A landlord cannot legally keep your security deposit just because you have an unpaid utility bill in your own name. As long as the bill is in your name and is with a utility company not run by the city or government, the landlord cannot keep part of your security deposit just because you still owe something on the bill when you move out. Wis. Stat. §§ 704.28(1)(c) and 704.28(1)(d)
- **Unpaid mobile home parking fees** a city or county has assessed against the mobile home tenant, if the tenant does not pay the fees and if the city or county then holds the landlord responsible for payment of the fees. Wis. Stat. § 704.28(1)(e)
- **Other “nonstandard” reasons you agree to in writing when you first enter into your rental agreement.** The above reasons for keeping a security deposit are “standard” reasons the law allows. If you agree with the landlord there will be other reasons he may keep your security deposit when you move out, then the landlord must write down the other reasons on a separate paper titled “NONSTANDARD RENTAL PROVISIONS”. The landlord must point out and discuss with you each of the “nonstandard provisions.” The landlord must give you a copy of the “NONSTANDARD RENTAL PROVISIONS” before you sign a lease or agree to rent the apartment. The landlord may ask you to write your initials beside each of the nonstandard provisions. Once you have initialed them, the landlord can use that paper to show he discussed each of them with you and you have agreed to these “other reasons” the landlord may keep your security deposit. Do not agree to any “nonstandard provision” you do not understand or do not want. Wis. Stat. §§ 704.28(1)(f) and 704.28(2).

Returning the keys

It is always a good idea to return the apartment keys to the landlord because it shows you have given up control of the apartment to the landlord and you are no longer living in or using the apartment. If you are unable to meet with the landlord to return the keys (example: the landlord will not come over to meet with you on the day you move out to do a move-out inspection), then you should tell the landlord *in writing* you will be leaving the keys on the kitchen counter and locking the apartment door behind you when you leave. If you give the landlord your new address when you move out, he must deliver or mail to you the security deposit or the written statement about your security deposit to your new address. If you did not give the landlord your new address when you moved, the landlord must deliver or mail your security deposit or the statement to your last known address, even if it is the address of the apartment you just moved out of. If you gave the post office a change of address card, the post office should forward to your new address any mail sent to you at your old address. Be sure to check with the post office to determine how long they will forward your mail.

Before you move out

At least three or four days before you move, you should send your landlord a letter telling him the date of your final move-out, inviting him to come over on that date to walk through the apartment with you and do a final move-out inspection, and telling him you want to return the apartment keys at that time. To be able to prove the date your landlord first learned the date you moved out, you can send the landlord a letter by certified mail, telling him the date of your move out. The post office will later give you a receipt showing the date your letter was delivered to the landlord. Be sure to keep both the certified mail receipt and a copy of your letter to the landlord.

What happens if my landlord does not follow the law?

If a landlord does not follow the rules on the return of security deposits, you may be able sue your landlord for double the amount of your security deposit or double the amount of the security deposit which has been wrongfully withheld. **Since the laws on security deposits changed in 2012 and 2014, you seek the advice of an attorney. If you cannot afford an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

Rent Absconding: Moving out when you are behind on rent

If your landlord claims you are behind in rent, or if for some reason you cannot make your rent payments, and you decide to move out, **leave a forwarding address.** If you are behind in your rent and you “skip out” on your landlord, within five (5) days after you move you should send her a letter by certified mail stating your new address. There may be criminal penalties for “rent absconding” (taking off and leaving rent owing), but not if you can show you sent your new address to the landlord within five days. Wis. Stat. § 943.215. The possible criminal penalties for rent absconding would also not apply when a tenant can show her security deposit was enough to cover all unpaid rent and damages that were left owing when she moved out. **To avoid any risk, if you move out with rent owing it just makes sense to send your landlord your new address by certified mail no later than five (5) days after you move.**

12 – Landlord Entry, Your Personal Possessions, and Noisy Neighbors

Your landlord must respect your right to privacy
Your apartment is your home
You have the right to peace and quiet in your home
A landlord can never take your things unless you move out
or are evicted and leave your things behind

Landlord Entry

A landlord does not have the right to enter your apartment at any time. Your landlord must respect your privacy. There are rules landlords must follow before they can come into your apartment. The landlord must give you twelve (12) hours advance notice before she enters your apartment. Unless you agreed to other reasons the landlord may enter your apartment and you agreed to those reasons in writing as “NONSTANDARD RENTAL PROVISIONS” at the time you signed your lease or rental agreement, the landlord can enter your apartment only for health/building inspections, for needed repairs, or to show the apartment to new tenants. Only if there is an emergency in the apartment can the landlord come in without giving you twelve (12) hours advance notice. Wis. Admin. Code DATCP § 134.09(2). If there is not an emergency, if the landlord has not given you at least twelve (12) hours advance notice, and if you did not agree to a “NONSTANDARD RENTAL PROVISION” that allows the landlord to come on less than 12 hours advance notice, then the landlord can only come in your apartment if you agree to let him come in. **A landlord may never come into your apartment without first knocking or calling out he is coming in.**

Personal Property

A landlord cannot legally take your personal possessions just because she owns the building or because you are behind in rent. A landlord cannot lock you out of your home for not paying rent. See Chapter 15. **If a landlord locks you out or takes your property, you should immediately seek the advice of an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

When you move out you should not leave any personal property behind. If you do, the landlord will sell your things and then you may never get them back. Even if you are evicted and you do not yet have a new place to move into, you should act quickly to get all your possessions out of the apartment. If you do not have a new place yet, you should move your things out and store them yourself. A friend’s garage or basement might be a place you could store your things for a little while until you can move into a new place. Self-service storage lockers can be rented by the month and do not cost very much. As long as you get your possessions out of the apartment then the landlord will have no way and no legal right to take your things.

There are two ways a landlord may legally take your personal belongings

- The first is where you agreed to a “NONSTANDARD RENTAL PROVISION” at the time you first signed your lease, and that “NONSTANDARD RENTAL PROVISION” includes a “lien agreement” between you and the landlord that gives the landlord permission to take and hold your personal property until you have paid up on late rent you owe or the costs of repairing damages you caused to the apartment. Wis. Admin. Code DATCP § 134.09(4)(b).
- The only other time a landlord can legally take your possessions is if you move out of the apartment or are evicted and leave your things behind. Unless your lease says otherwise, your landlord can do whatever they want with any any personal property you leave behind when you move. If you leave your things behind, the landlord can sell them, keep them, or throw them away. Wis. Stat. § 704.05(5).

Noisy Neighbors

You have a right to quiet enjoyment of your apartment. If the landlord’s other tenants are too noisy, you should talk to the other tenants about it. If this does not work, you should then talk to the landlord. If the noise does not stop, calling the police may be a good way to get your noisy neighbors to quiet down. If none of this works, you should write a letter to your landlord, explaining how bad the noise problem is, telling him everything you have done to try to solve the noise problem and explaining to the landlord that if he does not take steps right away to stop the on-going noise problem you will be forced to move out.

Your landlord must protect your “right to quiet enjoyment.” If the landlord refuses to take steps to stop the noise problem, you may be able to move out without owing further rent under your lease or rental agreement. Before deciding whether to move out, a few days after you send the landlord your letter telling him of the problem you should get back to the landlord to find out what steps he will take to stop the noise. If the landlord will not or cannot solve the noise problem, your only alternative may be to move. **Before you move, talk to an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

If you have a month-to-month rental agreement and you want to move, you can always do so by simply giving your landlord a written 28-day advance notice. See Chapter 16. If you have a lease, moving out before the lease is up could be more complicated. **Before deciding to break your lease and move out, it very important to get legal advice from an attorney based on the particular facts of your situation.**

13 – Unsafe Conditions in the Apartment & Repairs

The general rule is if repairs are needed, your landlord should do it

The landlord has to give you an apartment that is safe and fit to live in

Getting your landlord to make repairs

If there are things in your apartment that need to be repaired or you think may be unsafe, talk to your landlord about it. Unless you caused the problem, or unless it is the kind of problem that does not violate a local housing code and will not cost very much to repair (example: a loose door handle), then the landlord must fix it and pay for the repair costs.

Talk to your landlord, and hopefully he will do what is needed to fix the problem right away. If you have already talked to your landlord but he is not taking steps to fix the problem, you may want to call your City Housing Inspector. Making a complaint to local housing inspection officials is the best step to take if your landlord will not fix a problem that makes your apartment unhealthy or unsafe. If you do not have a city housing inspector where you live, you should call the County “Health Nurse” or the County Zoning Department for an inspection of your apartment.

Building and Housing Codes are laws with hundreds of rules landlords must follow to give their tenant’s safe and decent housing. It is against the law for a landlord to try to raise your rent or make you move because you complained to local officials about needed repairs or because you asked the Housing Inspector to inspect your apartment. Wis. Stat. § 704.45.

When you call a housing inspector, explain the problems you are having and set up a time for the inspector to come and look at your apartment. When the inspector comes, point out the problems you know of. For example, if the toilet leaks when flushed, when the inspector comes over flush it so she can see the problem. If you have cockroaches that only come out at night, put out a roach trap and then show the roaches to the inspector when she is there. Ask the inspector to do a complete inspection of your apartment and of the “common areas” you share with other tenants (building stairs and hallways, basements, and porches all tenants use are examples of “common areas”).

After the inspection is done, the inspector will later write up a report on your apartment. If there are housing code violations, the inspector will send your landlord written orders to repair the problems. Get a copy of the inspector’s report and orders and keep them for your records. If your landlord does not follow the inspector’s orders and make the repairs, the inspector’s office can take your landlord to court and he may have to pay a fine (or even be put in jail in some situations). Stay in touch with the inspector to make sure your landlord is making all necessary repairs and following the inspector’s orders.

Wisconsin law does not give a tenant the right to make repairs on her own and then deduct the repair cost from the rent payment, unless the landlord has first agreed to let the tenant do this. Get any agreement you make with your landlord in writing, signed and dated, and keep a copy for your records.

You have the right to a decent, safe apartment from the time you first agree to rent the apartment until the day your lease or rental agreement ends. The landlord must give you an apartment that is fit for you and your family to live in. The landlord must make any repairs needed to keep your apartment safe and fit to live in for as long as you rent it. An apartment that is “unfit” to live in is sometimes called “uninhabitable” or “untenantable.”

If the landlord does not keep your apartment in a condition that is safe and fit to live in, the landlord has broken the terms of your lease or rental agreement. If the landlord does not quickly repair the serious problems with the apartment, or if they are the kind of serious problems that cannot be repaired quickly, then you have the legal right to move out and not pay any more rent from the day you leave. Wis. Stat. § 704.07(4).

When is an apartment “unfit to live in”? The answer will depend on the facts of your case. **Before deciding on your own to go ahead and move out, it is usually best to talk to an attorney for advice. If there are serious problems with your apartment you believe no one should have to put up with, you should contact an attorney. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

If fire, flood or natural disaster seriously has damaged your apartment, it is probably not fit to live in and you can legally move out and not have to pay any more rent. Even if the landlord quickly starts rebuilding or making repairs, it would most likely be too hard for you to keep living there while the rebuilding and repairs are going on.

If the apartment has been posted or “red-tagged” by the Fire Department or Housing Inspector, you should move out as soon as possible. You will know if this has happened because the inspector will put a sign on the door to the apartment. The sign will say the property has been “condemned” or that it is “unfit for human occupancy.” Call the inspector’s office for more information if you find one of these signs on your apartment door. Get a copy of any reports or orders the inspector has for the apartment. **You should also talk to an attorney for advice. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

If you have lost running water, electricity or heat to the apartment because of something the landlord did or did not do, you should call or write the landlord at once to tell her of the problem. If the landlord does not quickly get the utility service working again, you can move on out and not have to pay anymore rent. **Again, it is best to talk to an attorney for advice before you go ahead and move. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.** See Chapter 15 of this book on “Utility Shut Offs” if you think your landlord may have turned off your utilities to make you leave.

Whether or not you should wait to move out and give your landlord a chance to repair the problem can depend on how bad the problem is. If there is something wrong with your apartment that is dangerous to your health or safety, it is probably best you pack your things and go ahead and move out. You do not have to give your landlord time to fix the problem before you move if staying in the apartment would be a danger to your health or safety. Reasons you should move out as soon as you can might include things like unsafe carbon monoxide levels in the apartment or dangerous structural problems with the apartment that could cause serious injury (Example: the ceiling is sagging and ready to fall in because of water damage). Call the local housing inspector if you think there is such a problem with your apartment. Write the landlord a letter when you move out to tell her the reason you had to leave the apartment. Keep copies for your records so you can later prove the reason you left and why you could not stay in the apartment any longer.

Withholding part of your rent

If your apartment is unfit to live in but you cannot move or do not want to move out, the law gives you the right to hold back a part, but not all, of your rent payments until the problems are fixed. While the law says you can pay less than your full rent if you are staying in an unfit apartment, how much rent you should withhold until the problem is repaired is something you should first discuss with an attorney before you decide. The landlord must be given notice of the repairs needed and of your intent to withhold partial rent if repairs are not completed. **Do not stop or delay making full rent payments unless you first talk with an attorney for legal advice.**

Not paying some or all of your rent may make sense in some situations, but holding back some or all of your rent payments to force the landlord to make repairs just does not work in many cases. **There is always the risk of eviction if you do not pay the full rent on time. Before you reduce your rent payment, talk to an attorney for legal advice. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

14 – Termination Notices and Eviction

You can only be evicted if you lose an eviction lawsuit in small claims court

Before the landlord can start an eviction lawsuit, the landlord must first give you a written notice “terminating your tenancy” and give you time to move

When your landlord wants you to move out, he must follow certain rules. First, the landlord must give you a letter or a written notice telling you to move out by a certain date. If you do not move, then the landlord must start an eviction lawsuit against you in Small Claims Court. Before you can be “evicted” (before you can be forced to move out), you first have to be served with a Small Claims Summons and Complaint and given a chance to come to court and tell your side of the story. It is illegal for a landlord to lock you out or force you out of your apartment. Wis. Admin. Code DATCP § 134.09(7). It is against the law for a landlord to try to evict you for an unlawful reason such as your reporting a code violation, complaining to the police, or because you joined a tenants’ union. Wis. Admin. Code DATCP § 134.09(6)

There are laws which say what kind of letter or notice a landlord has to give you before he can start an eviction lawsuit. The type of notice your landlord must give you before he starts an eviction lawsuit will depend on both the type of rental agreement you have and on why your landlord wants you to leave. The landlord’s letter or notice is called a “Notice Terminating Tenancy.” These are the types of notice your landlord may be able to legally give you.

- **You rent month-to-month and your landlord wants you to leave**

Your tenancy is terminated if the landlord gives you a notice at least 28 days in advance telling you to move out before the first day of your next rent-paying month.

- **You have a month-to-month rental agreement and you are behind in rent.**

Your tenancy is terminated if the landlord gives you a “pay or quit notice” telling you have at least five (5) days to either pay the rent or move on out, and you do not pay the back rent within the five days. If the landlord does not want to give you a chance to pay the rent, he can instead give you a “14 day notice”, telling you to move out in 14 days. Wis. Stat. § 704.17(1)(a).

- **You rent month-to-month and you have broken a rule that is not about rent.**

The landlord can give you a “14-day notice” that tells you your tenancy is terminated and that you have to move out in 14 days. Wis. Stat. § 704.17(1)(b).

- **You have a lease for one year or less and you are behind in your rent payment or you have broken some important term of your lease agreement.**

If it is the first time this has happened within the last year you have lived in the apartment, the landlord must give you a 5-day “pay or quit” notice or a 5-day “quit or correct” notice (telling you to either start following the lease rule or move out). If it is the second time you have not paid your rent on time or the second time that you broke some other lease rule within the last twelve (12) months, then the landlord can give you a 14-day notice

terminating your tenancy. A landlord can give you a 14-day notice because of a late payment of rent only if you were late with your rent once before in the last twelve (12) months, and only if the landlord gave you a 5-day “pay or quit” notice the first time you were late with your rent payment. A landlord cannot give you a 14-day notice for late rent where the 5-day notice he gave you sometime before in the last twelve months was because you broke some other type of lease rule. Wis. Stat. § 704.17(2)(a) & (b).

- **You have a written lease for a period of more than one year and you have missed a rent payment, damaged the premises or broken some other term of the lease agreement.**

Unless your written lease says something different, then the landlord must give you a 30-day notice that gives you thirty (30) days to either pay the back rent or correct the other lease violations, or else move out. Wis. Stat. § 704.17(3)(a) & (b).

- **You have a rental agreement or a lease for any length of time and your landlord gets a written notice from a law enforcement agency stating your apartment is being used as a “drug house” (a place for making, selling or delivering illegal drugs) or as a meeting place for “criminal gangs.”**

The landlord may give you a 5-day “quit” notice that terminates your tenancy in five (5) days without providing time to fix the problem. The landlord’s 5-day “quit” notice must tell you why the landlord is giving you the notice and that you have the right to fight the eviction at a hearing in Small Claims Court. At the Small Claims eviction hearing, before you can be evicted, the landlord must prove in court the truth of what the police are saying about a “drug house” or “criminal gangs” in your apartment. Wis. Stat. §§ 704.17(1)(c), 704(2)(c) & 704.17(3)(b).

- **You have a rental agreement or a lease for any length of time and your landlord believes you pose a serious threat to another tenant in your apartment or apartment complex and you have an injunction against you from another tenant or child of a tenant, or there is any court order in a criminal case prohibiting you from having contact with another tenant.**

The landlord may give you a 5-day “quit” notice that terminates your tenancy in five (5) days without any chance to stop the activity. The landlord’s 5-day “quit” notice must tell you why the landlord is giving you the notice and that you have the right to fight the eviction at a hearing in Small Claims Court. At the Small Claims eviction hearing, before you can be evicted, the landlord must prove by the greater preponderance of the evidence the allegations the landlord has made. Wis. Stat. § 704.16(3).

Service the Notice Terminating Tenancy

The landlord must give you the “notice terminating tenancy” in one of the following ways:

- Give the notice to you personally, or give it to a family member at least 14 years of age and tell the family member what the notice says.
- Give a copy to an adult person in charge of the premises of your apartment and send a copy to your last known address.
- If the landlord has tried to “serve” the notice under (1) or (2) but he cannot find you or another adult in your home to give the notice to, then the landlord can tape or tack the notice on your house or apartment; if the landlord does this, she must also mail a copy to your last known address. The landlord must do both, called “tack and mail”.
- Mail a copy of the notice to you by registered or certified mail to your last known address.
- Have the Sheriff’s Department or a private process server give you the notice, in the same way that court papers are served. Wis. Stat. § 704.21(1).

If you will be late with your rent or if some other problem has come up, you should talk to your landlord about it before she sends you a notice. You should act immediately if you get an eviction notice. The first thing you should do is contact your landlord to try and work out the problem. If you have not paid or cannot pay your rent on time, you should talk to your landlord and explain that you will be late and why. If you are waiting for a welfare, social security, or other government check, try to have your caseworker call your landlord. If the landlord knows you are doing everything you can to get the rent money together, the landlord is more likely to give you some extra time and hold off on sending you a notice. It is still up to your landlord whether to let you pay late.

If the landlord agrees to accept your late rent payment after he has given you a 14-day notice or after five days have passed since he gave you a 5-day “pay or quit” notice, then before you give the landlord any money ask him to sign an agreement saying that he has agreed to cancel the notice he gave you and to let you keep renting the apartment. This is very important because a landlord can still evict you when you paid your rent but did not pay your rent on time. Even if you pay your full rent after the termination notice expires, the landlord can still sue you for eviction. Wis. Stat. § 799.40(1m).

If the landlord has given you the proper notice and you do not move out, then and only then can the landlord sue you in Small Claims Court to have you evicted. In addition to suing to have you evicted, the landlord can also sue you for back rent you owe and for **double the daily rent after the date the notice told you to be out by**. Wis. Stat. § 704.27. **It is important to act immediately if you get such a notice. Talk to an attorney for legal advice. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible help.**

If the Property Goes Into Foreclosure

See page 12, regarding foreclosures. **You should speak with an attorney for advice if the property you rent is going through a foreclosure action. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

What happens if my landlord goes ahead with an eviction lawsuit?

If your landlord attempts to have you evicted in court, you will be served with a small claims court Summons and Complaint. This court paper is usually all on one page. The Summons will tell you when, where and how you can appear at court to fight the eviction. The Complaint should give a clear statement of the landlord's reasons for wanting you evicted. **If you have not already talked to an attorney, you should do so right away after you get the Summons and Complaint.**

If the landlord agrees to drop ("dismiss") the eviction if you pay the rent, get it in writing and signed by the landlord before you pay. Unless you have a written agreement signed by the landlord that you can show the judge in your eviction case, you could still end up being evicted.

A written agreement to dismiss the eviction will protect you from a dishonest landlord who tells you he will drop the eviction but later pretends he made no agreement to drop the eviction. Some landlords will make promises as a way to get you to pay them money, but then go ahead and try to have you evicted after you have paid. **If a landlord will not agree in writing to dismiss his eviction action, do not pay the landlord anything.**

What if I lose in court and get "evicted"?

If you have not moved out and if you lose the eviction lawsuit in court, an "eviction judgment" will then be entered against you by the Court and the judge will sign a "Writ of Restitution" that goes to the sheriff's department. If you do not move out within a few days after the eviction judgment has been entered by the Court, the sheriff will come over to your apartment to "execute the writ." If you are still in the apartment, the sheriff's officers will order you to leave immediately. If you refuse to leave or if you try to stop the sheriff's officers from moving your stuff, you can be arrested and taken to jail. If you are evicted, your landlord may request that your personal property may be stored. Your landlord may also decide to remove or store your personal property. Your landlord may also decide to simply dispose of your personal property. Wis. Stat. § 799.45.

If you have already gone to court on your own and lost, it is still a good idea to talk to an attorney right away for legal advice. Where a landlord has not followed the law, it is sometimes possible to get eviction judgments re-opened. The procedures and time frames for "executing the writ" are not the same in every county. **If you cannot afford to pay an attorney for advice, call the nearest office of Legal Action of Wisconsin, Inc. for possible help.**

Remember, a landlord cannot evict you unless he has first given you the right kind of "notice terminating tenancy." A landlord can never evict you, raise your rent, shut off utilities, decrease services, refuse to renew your lease, or make threats to do any of these things, for reasons that are against the law or to get back at you for reporting unsafe housing conditions to the housing inspector or other local officials.

15 – Lock-outs, Open-ups, and Shut-offs

Your landlord cannot “take the law into his own hands” when he wants you to move out and “self-help evict” you from your apartment

Some landlords do not want to wait to evict a tenant by going to small claims court. Instead, they use “self-help” eviction to force the tenant to leave the apartment. Three favorite “self-help” methods some landlords use are the “lock-out”, the “open-up”, and “utility shut-offs.” Wis. Admin. Code DATCP § 134.09(7)

A “lock-out” happens when the landlord changes all the outside locks when no one is home, so you cannot get back into your apartment.

An “open-up” is the opposite of the lock-out. The landlord comes in and removes the apartment’s doors and/or windows. Because the tenant’s belongings are at risk of theft, and because the tenant’s apartment cannot be heated, the tenant has no choice except to move out.

In a “utility shut-off” the landlord shuts off all electricity, water and/or heat to the apartment, as a way to force the tenant to move out.

All of these “self-help evictions” are illegal in Wisconsin. Wis. Admin. Code § 134.09(7). If your landlord does any of these things or tells you he will if you do not get out, call an attorney. If your landlord does try to “self-help evict” you from your apartment, you may be able to file a civil suit against your landlord. You may be able to win the double the costs and expenses you had because of your landlord’s illegal action, plus an award of reasonable attorney’s fees to pay your attorney for all the time he spent on your case. Wis. Stat. §§ 100.20(5) and 814.045. Keep track of all your expenses when you have been forced out (food or clothes you had to buy while you were locked out, restaurant bills, motel bills, etc.), and keep notes of what is said between you and your landlord and of the dates and times of everything that happens.

Your local police or sheriff’s department may also be helpful in getting the landlord to stop trying to force you out of your apartment without first going to small claims court. But sometimes the police will say these are “civil matters” which they cannot or will not help with. **Even if the police help you get back in your apartment, you should still call an attorney for advice. If you cannot afford to pay an attorney for advice, call Legal Action of Wisconsin, Inc. for possible assistance.**

16 – The Notices You Should Give When You Decide To Move

You should give your landlord proper notice if you decide to end your rental agreement

If you decide to end your tenancy, you should give your landlord a written notice ahead of time. This is important so your landlord will not be able to charge you for rent *after* the month you move out. It is also very important as a way to protect your right to the return of your security deposit. See Chapters 10 and 11.

Giving the landlord your notice

Keep a copy of any notice you give to the landlord. You can give notice to your landlord in one of the following ways:

- Hand a copy in person to the landlord, manager, or collector of rent, or leave a copy with a member of the landlord’s family at least 14 years of age, telling the family member what the notice says.
- Hand a copy in person to an adult person in charge of the regular business place of the landlord or collector of rents.
- Mail a copy by certified or registered mail to the last known address of the landlord, manager, or collector of rents.
- Have the notice served on your landlord like you would with court papers. This is done by the sheriff’s office or by a private process server. Wis. Stat. § 704.21(2).

What if a landlord agrees I can move before my rental agreement is over?

There are different notices you need to use to legally end your rental agreement, depending on the type of rental agreement you have and on the reason you want to move out. But if you and your landlord agree in writing to end your rental agreement or lease, no additional notice is needed: your rental agreement is legally ended on the date your written agreement with the landlord says it ends. These types of agreements are sometimes called “Mutual Rescission” agreements, and means you and your landlord are both agreeing to cancel the rental agreement or lease. If you do not have a written “recision” agreement signed by your landlord, letting you out of your rental agreement, then before you move out you should give your landlord written notice that you plan to do so. **If you are not sure that you have the legal right to go ahead and move out, talk to an attorney for advice. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

What should my notice to the landlord say?

The kind of notice you will need to give your landlord will depend on the kind of rental agreement you have and your reason for leaving. These different kinds of notices are outlined below. Remember: your notice to the landlord must *always* be in writing to be legal. Your “notice” does not have to be complicated, and can be a regular letter addressed to your landlord. Some sample letters for terminating a tenancy are provided at the back of this book. To be legal, your notice should say clearly what you mean. A legal termination notice might simply say:

“Dear (landlord): As allowed under state law and the terms of our rental agreement, I am ending my tenancy and I will be moving out of and surrendering to you the apartment at (address of the old apartment) at (time) on (date).

Sincerely, (your name)”

The kind of notice you must give the landlord - and how far ahead of time you must give it to the landlord - will most often depend on the kind of rental agreement or lease you have. In some situations, such as where you need to move because the apartment has been destroyed or is no longer fit to live in, the kind of notice you need to give your landlord can depend on how bad the problem is that has caused you to move and whether the landlord is taking steps to quickly repair the problem.

You have a week-to-week rental agreement and you want to move

Written notice at least 7 days before the end of the rent-paying week. Example: if your weekly rent is due on Monday, you must give your 7-day notice by the Monday before you want to move, or else you might be responsible for the next week’s rent.

You have a month-to-month rental agreement and you want to move

Written notice at least 28 days *before* the last day of your rent-paying month. Example: You rent on a monthly basis and pay rent on the 1st of each month, and you want to move out on June 30th. You need to give the landlord your written notice by no later than June 2nd, which is 28 days before the end of the last rent-paying month you want to stay there.

You need to move because your apartment is damaged or is unfit to live in

See Chapter 13 of this book on “Repairs, Unsafe and Unfit Conditions”, and talk to an attorney for advice.

You have a written lease

Read the Lease. No notice is legally required to be given the landlord if you move out on the last day of the lease term, however, most written lease require some notice to the landlord before you move out. Most form leases will have an “automatic renewal clause” that requires the tenant to give as much as sixty or more days advance written notice if the tenant decides to move out at the end of the lease. **If after reading your lease you are not sure what to do, talk to an attorney for advice.**

You or your children face serious physical harm from another person

If you face serious physical harm from another person, you may be able to terminate your rental agreement early. In order for you to be able to terminate your rental agreement early in this situation these two factors must apply: you or your child faces an imminent threat of serious physical harm from another person if you continue to reside in your apartment; **AND** you can provide your landlord with a certified copy of one of the following things:

- You have a domestic abuse injunction against the person who poses serious physical harm; or
- You have a child abuse injunction protecting your child from the person who poses serious physical harm; or
- You have a harassment injunction based on a sexual assault or stalking allegation against the person who poses serious physical harm; or
- The person who poses serious physical harm has a bail condition ordering them not to contact you; or
- A criminal complaint alleging the person who poses serious physical harm has sexually assaulted you or your child; or
- A criminal complaint alleging the person who poses serious physical harm has stalked you or your child; or
- A criminal complaint alleging the person who poses serious physical harm has been arrested for committing domestic abuse.

If this situation applies to you, you need to provide your landlord with a written notice and a certified copy of one of the above documents. If you have provided this notice properly, you should only be liable for rent for the month you give your landlord the notice and for the following month's rent. Wis. Stat. § 704.16. If your landlord refuses to comply with this provision, there may be additional remedies available to you under Wisconsin's housing discrimination laws, as it is now illegal for a landlord to discriminate against a tenant because the tenant is a victim of victim of domestic abuse, sexual assault, or stalking. Wis. Stat. § 106.50. **These provisions allowing for a tenant facing serious physical harm to break their lease are relatively new provisions of the law and you should speak with an attorney for advice about giving your landlord notice in these circumstances. If you cannot afford to pay an attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

Subletting

A sublease ("subletting") is a written agreement between you and another person for that person to live in your apartment and pay the rent under your lease.

Under a sublease, you are still responsible to the landlord. If the other person does not pay the rent under your lease while they are living in your apartment, you might have to. The only way to avoid this problem is to get the landlord to agree to a new lease for the new tenant and to let you out of your old lease. If the landlord does this, get your security deposit back.

Most of the time you will need the landlord's permission in writing before you sublet your apartment. If you want to sublet your apartment, speak to your landlord first. You may want to contact an attorney for advice.

17 – Small Claims Court

In some cases, you can represent yourself in small claims court in disputes with your landlord, but it is still best to get legal advice before you go to court on your own

Most lawsuits between landlords and tenants are in Small Claims Court. Eviction actions and most lawsuits for \$10,000 or less are all handled in Small Claims Court.

Small Claims Court is informal. While it is always best to have an attorney, you do not have to be represented by an attorney in Small Claims Court. You can start a small claims action and present your case on your own to the judge or court commissioner who then reaches a decision. **Even if you are not represented by an attorney, it is always best to talk to an attorney for legal advice before you start a small claims lawsuit or go to court on your own. If you cannot afford a private attorney, call the nearest office of Legal Action of Wisconsin, Inc. for possible assistance.**

The Steps to Take

Go to the Clerk of Courts in the Courthouse for the county where the landlord lives or where the property is located. The clerk can give you information about the rules and procedures for Small Claims Court. The Clerk will give you a form to state your complaint and set the date for the first court appearance. The first court appearance is called the “return date.” You will pay a filing fee and service fee to the clerk when you file your complaint. These fees can be waived if you are unable to afford them or if you receive SSI, Medical Assistance, Food Share, or other public benefits. A summons with a copy of the complaint will be sent by the clerk to the landlord, telling the landlord to appear in court on the “return date”. Appear in court on the return date. If either party misses this first court date, the judge or court commissioner may dismiss the case or enter a judgment against the person who did not show up.

Preparing Your Case

Get all papers together: the lease, receipts, canceled checks, move-in and move-out checklists, lists, any eviction or termination notices, and any letters sent between you and your landlord. If a housing code official inspected your apartment bring a copy of the inspector’s report. Have two extra copies of each document with you when you go to court. (You will need to give one copy to the judge or court commissioner and one copy to the landlord or his attorney there in court.)

Talk to your witnesses to make sure they are willing to come to court and to make sure that what they will say in court will help you prove your case.

Bring any photos you may have of damages, unsafe or unfit conditions, or whatever else is important to help prove your case.

Court Procedure

The exact procedure and small claims process often varies from county to county. This information is a general outline of the process. Many counties have local court rules that can differ from this general outline. As always it is important to speak with an attorney before proceeding in court on your own. In most counties, you will not need to bring your witnesses to the first court appearance (the “return date”), but you should bring along your papers and photos. Check with the clerk, however, to see if you should bring witnesses to the return date. At the “return date” the judge or court commissioner decides whether there is a “real” disagreement between the parties and, if so, schedules a later hearing or trial date for the parties to come to court and each party present their side of the case.

In many counties, the judge or court commissioner will tell the parties they have to go to “mediation” to try to work out a settlement. If you do not go to at least the first mediation session, the court may dismiss your claims and throw out your case. But when you go to mediation, you do not have to agree to anything you do not want. If no agreement is reached in mediation, your case will go back to the court (probably on a later date) for a hearing before the judge or court commissioner. Sometimes the judge or court commissioner will try to get the parties to negotiate an agreeable settlement. Before trial, the judge or court commissioner may talk to the parties about the case and let the parties know how strong she thinks their legal claims defenses are. What the judge may think about your legal claims can be important, and you may want to consider the judge’s comments carefully in deciding whether or not to make or accept a settlement offer. If there is a hearing before the court commissioner and if either party does not like the court commissioner’s decision, then either party can ask for a trial before a judge or a jury. The time deadline to do so is usually ten (10) days, and the court commissioner or the clerk of courts office will have the forms needed for requesting a trial.

If you win in small claims court, you will receive a “judgment” for the amount of money your landlord owes you, plus the court costs. You may “docket” the judgment by paying a small fee to the Clerk of Court. A docketed judgment becomes a lien against real estate owned by the landlord in the county of docketing. A judgment may be docketed with the clerk of courts in each county where the landlord owns some property.

After you win a judgment, you will still have to “enforce” (or collect) your “money judgment.” The landlord will be required to complete and send to you a form disclosing all of his income and assets within fifteen days after the judgment is entered in writing in the clerk of courts office. The first thing to do is simply write your landlord and demand payment of the amount of the judgment. If your landlord does not voluntarily pay you, you may need to start another court proceeding to collect the judgment. If your landlord has a wage-paying job, you may be able to “garnish” his wages. Garnishment forms and instructions are available at the clerk of courts office. The remedies available to you in collecting your judgment may also include attaching your landlord’s bank account or personal property. You may need the assistance of an attorney at this point. Except for wage garnishment forms, there is no requirement under Wisconsin law for the court personnel to assist you with enforcing your money judgment.

18 – Tenant Organizing

Tenants can work together to protect their rights and improve their living conditions

If you have ever been a tenant acting all alone trying to get the landlord to make repairs or to give you proper notice before coming into your apartment, you may have felt pretty frustrated and powerless. The plain fact is that one landlord almost always has more power than one tenant.

In many places in Wisconsin and around the country, tenants have been working to form tenants' organizations or unions. They have found that by working together in these kinds of groups, they have been able to get much more done than they could have acting by themselves. These tenants' groups have been able to make a real difference in their apartment complexes and homes. Repairs get done; unneeded inspections can be stopped; unreasonable "house rules" and lease terms that tenants do not like can be changed after negotiations with the landlord. Some tenants groups work to get better playground equipment for their children, to form babysitting cooperatives and to make their housing safe and secure for their families.

A helpful resource for more information on tenant unions is the Tenant Resource Center in Madison. This organization is willing to assist any group of tenants in Wisconsin in getting information about the landlord/tenant relationship. It is also willing to assist tenants in getting their own organization or union started. The Center has several publications available which might be helpful. For assistance, they can be reached at (608) 257-0006 or (877) 238-7368.

Sometimes tenants are afraid to get involved in such a group because they are afraid that they will be evicted. State and Federal law makes it illegal for a tenant to be evicted just because she belongs to a tenants' organization or union. This is an important protection for tenants.

Organizing a tenants' organization or union is hard work. But it is also lots of fun, a good way to get to know your neighbors and a good way to get what you want and deserve from your landlord.

19 – Help List

Legal Action of Wisconsin, Inc.

Milwaukee Office (414) 278-7722/ (888) 278-0633

230 West Wells Street, Room 800

Milwaukee, WI 53203-1866

Serving Milwaukee and Waukesha Counties

Madison Office (608) 256-3304/ (800) 362-3904

31 South Mills Street

Madison, WI 53715

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Racine Office (262) 635-8836/ (800) 242-5840

4900 Spring Street, Suite 100

Racine, WI 53406

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Green Bay, WI 54303

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www.legalaction.org

Wisconsin Judicare, Inc.

Wisconsin Judicare, Inc. Office (715) 842-1681/(800) 472-1638

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www.judicare.org

State Bar of Wisconsin Attorney Referral Service

(800) 362-9082

Referral to private attorneys

www.legalexplorer.com

State Agencies, Community Resources, and Online Resources

Wisconsin Department of Agriculture, Trade, and Consumer Protection

2811 Agriculture Dr. 200

Madison, WI 53708-8911

(608) 224-4960

Consumer Protection Hotline: (800) 422-7128

Information on tenant's rights and filing a consumer complaint

www.privacy.wi.gov

Wisconsin Department of Workforce Development-Equal Rights Division

Madison Office

210 E. Washington Ave., Room A300

Madison, WI 53703

(608) 266-6860

Investigation of discrimination complaints and enforcement of fair housing laws

www.dwd.state.wi.us

Milwaukee Office

819 N. 6th St., Room 723

Milwaukee, WI 53203

(414) 227-4384

Wisconsin Court System

General website

www.wicourts.gov

Wisconsin Circuit Court Access

www.wcca.wicourts.gov

U.S. Department of Housing and Urban Development

www.hud.gov

Fair Housing Council

Madison Office

600 Williamson St., Ste. L4

Madison, WI 53703

(608) 257-0853

Milwaukee Office

600 E. Mason St., Ste. 401

Milwaukee, WI 53202

(414) 278-1240

NE Wisconsin Office

4650 W. Spencer St, Ste. 15

Appleton, WI 54914

(920) 530-4620

Statewide Complaint Intake Hotline: (877) 647-3247

Advice with discrimination complaints

www.fairhousingwisconsin.com

Tenant Resource Center

1202 Williamson Street, Suite A

Madison, WI 53703

(608) 257-0006/ (877) 238-7368

Free counseling for tenants and landlords

www.tenantresourcecenter.org



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