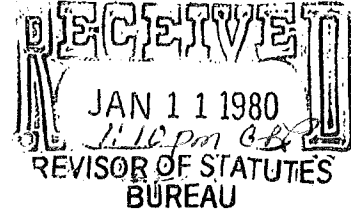


Ag 134



STATE OF WISCONSIN )  
DEPARTMENT OF AGRICULTURE, ) SS.  
TRADE & CONSUMER PROTECTION )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mary K. Ryan, Administrator, Consumer Protection Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending rules relating to trade practices and methods of competition in the rental of residential dwelling units, Wis. Adm. Code Chapter Ag 134, was duly adopted by the Department on January 10, 1980.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 10th day of January, 1980.

Mary K. Ryan, Administrator  
Consumer Protection Division

Reg 890  
Feb 80

1 ORDER OF THE DEPARTMENT OF AGRICULTURE,  
2 TRADE AND CONSUMER PROTECTION  
3 ADOPTING RULES

4 Relating to rules concerning trade practices and methods of  
5 competition in the rental of residential dwelling units.

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Analysis by the Department of Agriculture,  
Trade and Consumer Protection

Chapter Ag 134, Wis. Adm. Code, applies to business practices related to the rental of any residential dwelling in this state; except that it does not apply to certain specifically excluded arrangements, such as transient occupancy in a motel or boarding house, or residence at a public or private institution if incidental to detention or the provision of medical, educational, religious or similar services, or occupancy of premises owned and operated by a government or by a fraternal organization solely for the residence of its members, or occupancy of premises used primarily for agricultural purposes.

The rule requires that if rental agreements, rules or regulations are in writing, copies must be provided to tenants. Before entering into any rental agreement or accepting any deposit, the landlord is required to disclose:

- (a) All uncorrected housing code violations of which notice has been received from code enforcement authorities;
- (b) That the dwelling unit lacks hot and cold running water, working plumbing and sewage disposal facilities, adequate heating facilities, or a safe electrical system, or contains any other condition constituting a substantial hazard to tenant health or safety, if the landlord knows or could know on basis of reasonable inspection that any of these conditions exist; and
- (c) That charges for water, heat or electricity are not included in the rent, if such is the case. (If charges are not included in the rent, and if individual dwelling units and common areas are not separately metered, the landlord must disclose the basis on which charges for shared consumption will be allocated among individual dwelling units.)

Landlords, except in owner-occupied structures of less than 4 units, are also required to disclose in writing the address and identity of the person(s) responsible for rent receipt, management and maintenance, and for receipt of legal process.

Landlords are required to comply with repair promises, and to perform the repairs within the time period promised except where delays are unavoidable due to causes beyond the landlord's control. Repair promises made prior to the initial rental agreement must be in writing.

Written receipts must be given for all security deposits and "earnest money" deposits, and the disposition of earnest money deposits is regulated. Where a security deposit is demanded, the landlord is obligated to disclose any preexisting physical damages charged against the previous tenant's deposit, and to inform the new tenant that a record of any other preexisting damages found by the tenant may be made within no less than 7 days. Except as otherwise clearly agreed, other than in a preprinted form lease provision, security deposits may be withheld by the landlord only for certain specified reasons. Within 21 days after surrender of the premises, the landlord is required to return the tenant's security deposit, or a written accounting therefor, either in person or by mail to the tenant's last known address. (A landlord is not considered in violation of the rule solely because the postal service is unable to complete mail delivery, if such is the case.) The landlord must give the tenant a written itemized description of any claims against the deposit, along with an itemized statement of the amounts withheld for each claim; and landlords are prohibited from intentionally falsifying any claim, including any repair cost claim.

The rules prohibit certain unfair rental agreement provisions, and also prohibit certain rental practices, including the advertising or rental of condemned premises, unauthorized entry during tenancy, automatic lease renewal without notice, confiscation or prevention of access to a tenant's personal property, retaliatory eviction, and failure to deliver possession of the premises at the time agreed, except for reasons beyond the landlord's control.

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1 Pursuant to the authority vested in the State of Wisconsin  
 2 Department of Agriculture, Trade and Consumer Protection by  
 3 section 100.20(2), Stats., the State of Wisconsin Department of  
 4 Agriculture, Trade and Consumer Protection hereby adopts rules as  
 5 follows:

6 Chapter Ag 134, Wis. Adm. Code, is adopted to read:

7 CHAPTER AG 134

8 RESIDENTIAL RENTAL PRACTICES

9 134.01 Scope and Application of Rules. This chapter is  
 10 adopted under authority of s. 100.20, Stats., and applies to the  
 11 rental of dwelling units located in this state. It does not apply  
 12 to the rental or occupancy of dwelling units:

1 (1) Operated by an institution, public or private, if  
2 incidental to detention or the provision of medical, geriatric,  
3 educational, counseling, religious or similar services;

4 (2) Operated by a fraternal or social organization for the  
5 benefit of its members only;

6 (3) Under a contract of sale, if the occupant is the  
7 purchaser or a person who succeeds to the purchaser's interest;

8 (4) In a hotel, motel, boarding house, lodging house or  
9 other similar premises on a transient basis;

10 (5) Furnished free of charge, or free of charge to employees  
11 conditioned upon employment in and about the premises;

12 (6) Under a rental agreement covering premises used by the  
13 occupant primarily for agricultural purposes;

14 (7) Owned and operated by government, or a subdivision or  
15 agency of government.

16 134.02 Definitions. (1) "Building and housing codes" means  
17 laws, ordinances, or governmental regulations concerning the  
18 construction, maintenance, habitability, operation, occupancy, use  
19 or appearance of any premises or dwelling unit.

20 (2) "Dwelling unit" means a structure or that part of a  
21 structure that is primarily used as a home, residence, or place of  
22 abode. The term includes a mobile home or mobile home site as  
23 defined in section Ag 125.01(1) and (2), Wis. Adm. Code.

24 (3) "Earnest money deposit" means the total of any payments  
25 or deposits, however denominated or described, given by a  
26 prospective tenant to a landlord in return for the option of  
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1 entering into a rental agreement in the future, or for having a  
2 rental application considered by the landlord.

3 (4) "Form provision" means a written rule, regulation, or  
4 rental or contract provision that has not been specifically and  
5 separately negotiated and agreed to by the tenant in writing. Any  
6 provision appearing as part of a preprinted form is rebuttably  
7 presumed to be a form provision.

8 (5) "Landlord" means the owner or lessor of a dwelling unit  
9 under any rental agreement, and any agent acting on the owner's or  
10 lessor's behalf. The term includes sublessors, other than persons  
11 subleasing individual units occupied by them.

12 (6) "Lease" means a lease as defined in s. 704.01(1), Stats.

13 (7) "Owner" means one or more persons, jointly or severally,  
14 vested with all or part of the legal title to the premises or all  
15 or part of the beneficial ownership and right to present use and  
16 enjoyment of the premises. The term includes a mortgagee in  
17 possession.

18 (8) "Person" means an individual, partnership, corporation,  
19 association, estate, trust, and any other legal or business  
20 entity.

21 (9) "Premises" means a dwelling unit and the structure of  
22 which it is a part and all appurtenances, grounds, areas,  
23 furnishings and facilities held out for the use or enjoyment of  
24 the tenant or tenants generally.

25 (10) "Rental agreement" means any agreement, whether written  
26 or oral, for the rental or lease of a dwelling unit or premises,  
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1 and includes contracts or rules and regulations which are  
2 incidental to, or adopted pursuant to a rental agreement.

3 (11) "Security deposit" means the total of all payments and  
4 deposits given by a tenant to the landlord as security for the  
5 performance of the tenant's obligations, and includes all rent  
6 payments in excess of 1 month's prepaid rent.

7 (12) "Tenant" means a person occupying, or entitled to  
8 present or future occupancy of a dwelling unit under a rental  
9 agreement, and includes persons occupying dwelling units under  
10 periodic tenancies and tenancies at will. The term applies to  
11 persons holding over after termination of tenancy until removed  
12 from the dwelling unit by sheriff's execution of a judicial writ  
13 of restitution issued under s. 299.44, Stats. It also applies to  
14 persons entitled to the return of a security deposit, or an  
15 accounting for the security deposit.

16 (13) "Tenancy" means occupancy, or a right to present  
17 occupancy under a rental agreement, and includes periodic  
18 tenancies and tenancies at will. The term does not include the  
19 occupancy of a dwelling unit without consent of the landlord  
20 after expiration of a lease or termination of tenancy under  
21 Ch. 704, Stats.

22 134.03 Rental Documents; Deposit Receipts. (1) COPIES OF  
23 RENTAL AGREEMENTS, RULES AND REGULATIONS. Rental agreements and  
24 rules and regulations established by the landlord, if in writing,  
25 shall be furnished to prospective tenants for their inspection  
26 before a rental agreement is entered into, and before  
27 any earnest money or security deposit is accepted from the

1 prospective tenant. Copies shall be given to the tenant at the  
2 time of agreement.

3 (2) RECEIPTS FOR TENANT DEPOSITS. Immediately upon accepting  
4 any earnest money or security deposit, the landlord shall provide  
5 the tenant or prospective tenant with a written receipt for the  
6 deposit, stating the nature of the deposit and its amount. A  
7 receipt is not required where payment is made by check bearing a  
8 notation describing the purpose for which it was given, unless  
9 requested by the tenant.

10 134.04 Disclosure Requirements. (1) IDENTIFICATION OF  
11 LANDLORD OR AUTHORIZED AGENTS. (a) The landlord shall, except as  
12 provided under par. (c), disclose to the tenant in writing, at or  
13 before the time a rental agreement is entered into, the name and  
14 address of:

15 1. The person or persons authorized to collect or receive  
16 rent and manage and maintain the premises, and who can readily be  
17 contacted by the tenant; and

18 2. The owner of the premises or other person authorized to  
19 accept service of legal process and other notices and demands on  
20 behalf of the owner. The address disclosed under this subdivision  
21 shall be an address within the state at which service of process  
22 can be made in person.

23 (b) The landlord and any successor of the landlord shall  
24 keep tenants informed of any changes in the information required  
25 under par. (a).

26 (c) This subsection does not apply to an owner-occupied  
27 structure containing no more than 4 dwelling units.

1 (2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY.

2 Before entering into a rental agreement or accepting any earnest  
3 money or security deposit from the prospective tenant, the  
4 landlord shall disclose to the prospective tenant:

5 (a) All uncorrected building and housing code violations of  
6 which the landlord has received notice from code enforcement  
7 authorities, and which affect the individual dwelling unit and  
8 common areas of the premises. Disclosure shall be made by  
9 exhibiting to the prospective tenant those portions of the  
10 building and housing code notices or orders which have not been  
11 fully complied with. Code violations shall not be considered  
12 corrected until their correction has been reported to code  
13 enforcement authorities.

14 (b) The following conditions affecting habitability, the  
15 existence of which the landlord knows or could know on basis of  
16 reasonable inspection, whether or not notice has been received  
17 from code enforcement authorities:

18 1. The dwelling unit lacks hot and cold running water,  
19 plumbing or sewage disposal facilities in good operating  
20 condition.

21 2. Heating facilities serving the dwelling unit are not in  
22 safe operating condition, or are not capable of maintaining a  
23 temperature in the dwelling unit of at least 67°F (19°C) during  
24 all seasons of the year in which the dwelling unit may be  
25 occupied.

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1           3. The dwelling unit is not served by electricity, or the  
2 electrical wiring, outlets, fixtures or other components of the  
3 electrical system are not in safe operating condition.

4           4. Any structural or other conditions in the dwelling unit or  
5 premises which constitute a substantial hazard to the health or  
6 safety of the tenant, or create an unreasonable risk of personal  
7 injury as a result of any reasonably foreseeable use of the  
8 premises other than negligent use or abuse of the premises by the  
9 tenant.

10           (3) UTILITY CHARGES. If charges for water, heat or  
11 electricity are not included in the rent, the landlord shall  
12 disclose this fact to the tenant before entering into a rental  
13 agreement or accepting any earnest money or security deposit from  
14 the prospective tenant. If individual dwelling units and common  
15 areas are not separately metered, and if the charges are not  
16 included in the rent, the landlord shall disclose the basis on  
17 which charges for utility services will be allocated among  
18 individual dwelling units.

19           134.05 Earnest Money Deposits. (1) REFUND OR CREDIT OF  
20 EARNEST MONEY DEPOSIT. (a) If a rental application is rejected  
21 by the landlord, the entire amount of any earnest money deposit  
22 shall be immediately refunded to the prospective tenant.

23           (b) If a rental agreement is entered into, the entire amount  
24 of any earnest money deposit shall be applied toward the payment  
25 of rent or a security deposit, or returned to the tenant.

26           (2) LIMITATIONS ON EARNEST MONEY WITHHOLDING. (a) No  
27 portion of an earnest money deposit may be permanently withheld by

1 a landlord in excess of actual costs and damages incurred because  
2 of the failure of a prospective tenant to enter into a rental  
3 agreement. Deposits may not be permanently withheld as  
4 compensation for lost rents unless the landlord has made  
5 reasonable efforts to mitigate the rental loss in accordance with  
6 s. 704.29, Stats.

7 (b) Upon request by any person giving an earnest money  
8 deposit, the landlord shall provide that person with a written  
9 statement accounting for all amounts permanently withheld from the  
10 deposit.

11 134.06 Security Deposits. (1) CHECK-IN PROCEDURES;  
12 PRE-EXISTING DAMAGES. Whenever a security deposit is required,  
13 the landlord shall:

14 (a) Upon acceptance of the deposit, inform the tenant that  
15 the tenant may inspect the dwelling unit and notify the landlord  
16 of any damages or defects which existed before the beginning of  
17 tenancy. The tenant shall be given at least 7 days after the  
18 beginning of tenancy for the inspection and notification.

19 (b) Furnish the tenant with a written itemized description  
20 of any physical damages or defects for which deductions from the  
21 previous tenant's security deposit were made. The description  
22 shall be furnished to the new tenant before a security deposit is  
23 accepted, or at the same time the previous tenant is notified of  
24 security deposit deductions under sub. (4), whichever occurs  
25 later. If damages or defects have been repaired by the landlord,  
26 this may be noted in connection with the damage description.  
27 Disclosure of the previous tenant's identity, or the amounts

1 withheld from the previous tenant's security deposit, is not  
2 required.

3 (2) RETURN OF SECURITY DEPOSITS. The landlord shall, within  
4 21 days after surrender of the premises, return all security  
5 deposits less any amounts withheld by the landlord. Deposits  
6 shall be returned in person, or by mail to the last known address  
7 of the tenant.

8 (3) LIMITATIONS ON SECURITY DEPOSIT WITHHOLDING. (a)  
9 Except for other reasons clearly agreed upon in writing at the  
10 time the rental agreement is entered into, other than in a form  
11 provision, security deposits may be withheld only for tenant  
12 damage, waste or neglect of the premises, or the nonpayment of:

13 1. Rent for which the tenant is legally responsible,  
14 subject to s. 704.29, Stats.

15 2. Actual amounts owed for utility service provided by the  
16 landlord under terms of the rental agreement and not included in  
17 the rent.

18 3. Actual amounts owed by the tenant for direct utility  
19 service provided by a government-owned utility, to the extent that  
20 the landlord becomes liable for the tenant's nonpayment.

21 4. Mobile home parking fees assessed against the tenant by  
22 a local unit of government under s. 66.058(3), Stats., to the  
23 extent that the landlord becomes liable for the tenant's  
24 nonpayment.

25 (b) Nothing in this subsection shall be construed as  
26 authorizing any withholding for normal wear and tear or other  
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1 damages or losses for which the tenant is not otherwise  
2 responsible under applicable law.

3 (4) SECURITY DEPOSIT WITHHOLDING; STATEMENT OF CLAIMS. (a)  
4 If any portion of a security deposit is withheld by a landlord,  
5 the landlord shall, within the time period and in the manner  
6 specified under sub. (2), deliver or mail to the tenant a written  
7 statement accounting for all amounts withheld. The statement  
8 shall describe each item of physical damages or other claim made  
9 against the security deposit, and the amount withheld as  
10 reasonable compensation for each item or claim.

11 (b) No landlord may intentionally misrepresent or falsify  
12 any claim against a security deposit, including the cost of  
13 repairs, or withhold any portion of a security deposit pursuant to  
14 an intentionally falsified claim.

15 (5) TENANT FAILURE TO LEAVE FORWARDING ADDRESS. A landlord  
16 who has otherwise complied with this section shall not be  
17 considered in violation solely because the postal service has been  
18 unable to complete mail delivery to the person addressed. This  
19 subsection does not affect any other rights that a tenant may have  
20 under law to the return of a security deposit.

21 134.07 Promises to Repair. (1) DATE OF COMPLETION. Every  
22 promise or representation made by a landlord to a tenant or  
23 prospective tenant to the effect that the dwelling unit or any  
24 other portion of the premises, including furnishings or  
25 facilities, will be cleaned, repaired or otherwise improved by the  
26 landlord shall specify the date or time period on or within which  
27 the cleaning, repairs or improvements are to be completed.

1           (2) INITIAL PROMISES IN WRITING. All promises made before  
2 the initial rental agreement shall be in writing with a copy  
3 furnished to the tenant.

4           (3) PERFORMANCE; UNAVOIDABLE DELAYS. No landlord shall fail  
5 to complete the promised cleaning, repairs or improvements on the  
6 date or within the time period represented under sub. (1), unless  
7 the delay is for reason of labor stoppage, unavailability of  
8 supplies or materials, unavoidable casualties, or other causes  
9 beyond the landlord's control. The landlord shall give timely  
10 notice to the tenant of reasons beyond the landlord's control for  
11 any delay in performance, and stating when the cleaning, repairs  
12 or improvements will be completed.

13           134.08 Prohibited Rental Agreement Provisions. No rental  
14 agreement may:

15           (1) Authorize the eviction or exclusion of a tenant from the  
16 premises, other than by judicial eviction procedures as provided  
17 under ch. 299, Stats.

18           (2) Provide for an acceleration of rent payments in the  
19 event of tenant default or breach of obligations under the rental  
20 agreement, or otherwise purport to waive the landlord's obligation  
21 to mitigate damages as provided under s. 704.29, Stats.

22           (3) Require payment, by the tenant, of attorney's fees or  
23 costs incurred by the landlord in any legal action or dispute  
24 arising under the rental agreement. This does not prevent the  
25 recovery of costs or attorney's fees by a landlord or tenant  
26 pursuant to a court order under chs. 299 or 814, Stats.

27

1           (4) Authorize the landlord or any agent of the landlord to  
2 confess judgment against the tenant in any action arising under  
3 the rental agreement.

4           (5) Relieve, or purport to relieve the landlord from  
5 liability for property damage or personal injury caused by  
6 negligent acts or omissions of the landlord. This does not affect  
7 ordinary maintenance obligations assumed by a tenant under a  
8 rental agreement, in accordance with sub. (7) and  
9 s. 704.07, Stats.

10          (6) Impose, or purport to impose liability on a tenant for:

11           1. Personal injury arising from causes clearly beyond the  
12 tenant's control.

13           2. Property damage caused by natural disasters, or by  
14 persons other than the tenant or the tenant's guests or invitees.  
15 This does not affect ordinary maintenance obligations assumed by a  
16 tenant under the rental agreement, in accordance with sub. (7) and  
17 s. 704.07, Stats.

18          (7) Provide, by means of a form provision, for the waiver of  
19 any statutory or other legal obligation on the part of the  
20 landlord to deliver the premises in a fit or habitable condition,  
21 or maintain the premises during tenancy.

22          134.09 Prohibited Practices. (1) ADVERTISING OR RENTAL OF  
23 CONDEMNED PREMISES. No landlord may rent or advertise for rent  
24 any premises which have been placarded and condemned for human  
25 habitation, or on which a notice of intent to placard and condemn,  
26 or an order to raze, or to rehabilitate or raze, or any similar  
27 order has been received under state or local laws or ordinances,

1 until and unless all repairs required to bring the property into  
2 compliance with the laws or ordinances have been completed.

3 (2) UNAUTHORIZED ENTRY. No landlord may enter a dwelling  
4 unit during tenancy except to inspect the premises, make repairs,  
5 or show the premises to prospective tenants or purchasers, as  
6 authorized under s. 704.05(2), Stats. Entry may not be made  
7 except upon advance notice and at reasonable times. Advance  
8 notice means at least 12 hours advance notice unless the tenant,  
9 upon being notified of the proposed entry, consents to a shorter  
10 time period. This subsection does not apply to situations where  
11 the tenant requests or consents to a proposed entry at a specified  
12 time, a health or safety emergency exists, the tenant is absent  
13 and the landlord reasonably believes that entry is necessary to  
14 protect the premises from damage, or entry is otherwise authorized  
15 in writing other than in a form provision.

16 (3) AUTOMATIC LEASE RENEWAL WITHOUT NOTICE. No landlord  
17 shall enforce, or attempt to enforce, an automatic renewal or  
18 extension provision in any lease unless, as provided under  
19 s. 704.15, Stats., the tenant was given separate written notice of  
20 the pending automatic renewal or extension at least 15 days, but  
21 no more than 30 days before its stated effective date.

22 (4) CONFISCATION OF PERSONAL PROPERTY. No landlord shall  
23 seize or hold a tenant's personal property, or otherwise prevent  
24 the tenant from having access to or removing the tenant's personal  
25 property, except as authorized under s. 704.05(5), Stats., or a  
26 lien agreement entered into in writing other than in a form  
27 provision.

1 (5) RETALIATORY EVICTION. No landlord shall terminate a  
2 tenancy or give notice preventing the automatic renewal of a  
3 lease, or constructively evict a tenant by any means including the  
4 termination or substantial reduction of heat, water or electricity  
5 to the dwelling unit, in retaliation against a tenant because the  
6 tenant has:

7 (a) Reported a violation of this chapter or a building or  
8 housing code to any governmental authority, or filed suit alleging  
9 such violation; or

10 (b) Joined or attempted to organize a tenants' union or  
11 association; or

12 (c) Asserted, or attempted to assert any right specifically  
13 accorded to tenants under state or local law.

14 (6) FAILURE TO DELIVER POSSESSION. No landlord shall fail  
15 to deliver possession of the dwelling unit to the tenant at the  
16 time agreed upon in the rental agreement, except where the  
17 landlord is unable to deliver possession because of circumstances  
18 beyond the landlord's control.

19 134.10 Effect of Rules on Local Ordinances. (1) This  
20 chapter does not prohibit or nullify any local government  
21 ordinance with which it is not in direct conflict as provided in  
22 sub. (2).

23 (2) In the event of any direct conflict between this chapter  
24 and any local government ordinance, such that compliance with one  
25 can only be achieved by violating the other, this chapter shall be  
26 controlling.

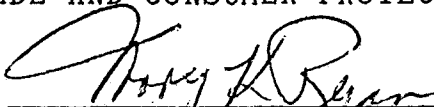


1 (3) Compliance with local government ordinances shall not  
2 relieve any person from the duty of complying with this chapter.

3 The rules contained in this order shall take effect on May 1,  
4 1980, pursuant to authority granted by s. 227.026(1)(b), Stats.

5 Dated: January 10, 1980.

6  
7 STATE OF WISCONSIN  
8 DEPARTMENT OF AGRICULTURE,  
9 TRADE AND CONSUMER PROTECTION

10 By   
11 Mary K. Ryan Administrator  
12 CONSUMER PROTECTION DIVISION  
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