

Chapter ATCP 134

RESIDENTIAL RENTAL PRACTICES

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Note: Chapter Ag 134 was renumbered chapter ATCP 134 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 134.01 Scope and application. This chapter is adopted under authority of s. 100.20, Stats. This chapter applies to the rental of dwelling units located in this state, but does not apply to the rental or occupancy of any of the following:

(1) A dwelling unit operated by a public or private institution if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services.

(2) A dwelling unit occupied by a member of a fraternal or social organization which operates that dwelling unit.

(3) A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest.

(4) A dwelling unit, such as a dwelling unit in a hotel, motel or boarding house, that is being rented only by tourist or transient occupants.

(5) A dwelling unit which the landlord provides free of charge to any person, or which the landlord provides as consideration to a person whom the landlord currently employs to operate or maintain the premises.

(6) A dwelling unit occupied by a tenant who is engaged in commercial agricultural operations on the premises.

(7) A dwelling unit owned and operated by government, or a subdivision or agency of government.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (intro.), (1) to (6), Register, December, 1998, No. 516, eff. 1-1-99; am. (7), Register, June, 1999, No. 522, eff. 7-1-99.

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

(1m) "Consumer credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. ATCP 125.01 (1) and (7).

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord. "Earnest money deposit" does not include a fee which a landlord charges for a credit check in compliance with s. ATCP 134.05 (3).

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

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

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

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

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

(10) "Rental agreement" means an oral or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

Note: By approving an individual as a prospective tenant, a landlord does not necessarily enter into a "rental agreement" with that individual, or vice-versa. A "rental agreement" (creating a tenancy interest in real estate) arises only after the parties agree on the essential terms of tenancy, including the specific dwelling unit which the tenant will occupy and the amount of rent which the tenant will pay for that dwelling unit.

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

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriff's execution of a judicial writ of restitution issued under s. 799.44, Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

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

(14) "Tourist or transient occupants" means tourists or other persons who occupy a dwelling unit for less than 60 days while traveling away from their permanent place of residence.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (2), Register, February, 1987, No. 374, eff. 3-1-87; correction in (12) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1993, No. 448; cr. (1m), (1r) and (14), am. (3) and (10), r. (4), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.03 Rental agreements and receipts.

(1) COPIES OF RENTAL AGREEMENTS, RULES. Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection

before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

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

(b) If a tenant pays rent in cash, the landlord upon receiving the cash payment shall provide the tenant with a written receipt stating the nature and amount of the payment. A landlord is not required to provide a receipt for rent payments made by check.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; renum. (2) to be (2) (a), cr. (2) (b), Register, December, 1998, No. 516, eff. 1-1-99.

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

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

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

(b) A landlord shall keep tenants informed of changes, if any, in the information required under par. (a). The landlord shall mail or deliver written notice of each change within 10 business days after the change occurs.

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

(2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:

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

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

1. The dwelling unit lacks hot or cold running water.
2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature, in all living areas of the dwelling unit, of at least 67° F (19° C) during all seasons of the year in which the dwelling unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.
3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.
4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

5. The dwelling unit is not served by plumbing facilities in good operating condition.

6. The dwelling unit is not served by sewage disposal facilities in good operating condition.

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

Note: A sample form which landlords may use to make the disclosures required under s. ATCP 134.04 is contained in the department publication, "Landlords and Tenants — The Wisconsin Way." You may obtain a copy of this publication by calling the department's toll-free Consumer Hotline, 1-800-422-7128, or by sending a written request to:

Division of Trade and Consumer Protection
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 P.O. Box 8911
 Madison, WI 53708-8911

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (1) (b), (2) (b) 1. and 2., cr. (2) (b) 5. and 6., Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.05 Earnest money deposits and credit check fees. (1) ACCEPTING AN EARNEST MONEY DEPOSIT. A landlord may not accept an earnest money deposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which that applicant is being considered for tenancy.

Note: A credit check fee authorized under sub. (4) is not an "earnest money deposit" or a "security deposit." See definition of "earnest money deposit" under s. ATCP 134.02(3).

(2) REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT. (a) A landlord who receives an earnest money deposit from a rental applicant shall send the full deposit to the applicant by first-class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:

1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.
2. The applicant withdraws the rental application before the landlord accepts that application.
3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.

(b) A landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:

1. Apply the earnest money deposit as rent or as a security deposit.
2. Return the earnest money deposit to the tenant.

(c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under par. (a) or (b) merely by accepting a partial payment or credit of that amount.

(3) WITHHOLDING AN EARNEST MONEY DEPOSIT. (a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.

(b) A landlord may withhold from an earnest money deposit, under par. (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into a rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

Note: See *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security

deposits. The same method of computing a tenant's damages may apply to violations related to earnest money deposits.

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to \$20, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests a consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

Note: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; reprinted to correct error in (1) (a), Register, March, 1984, No.339; r. and recr., Register, December, 1998, No 516, eff. 1-1-99.

ATCP 134.06 Security deposits. (1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES. (a) Before a landlord accepts a security deposit, or converts an earnest money deposit to a security deposit under s. ATCP 134.05, the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified deadline date which is not less than 7 days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any pre-existing damages or defects.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(b) If a tenant makes a request under par. (a) 2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired. The landlord shall provide the list within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(2) RETURNING SECURITY DEPOSITS. (a) Within 21 days after a tenant surrenders the rental premises, the landlord shall deliver or mail to the tenant the full amount of any security deposit held by the landlord, less any amounts properly withheld by the landlord under sub. (3).

Note: A rent payment in excess of one month's prepaid rent is considered a "security deposit" as defined under s. ATCP 134.02 (11). This chapter does not prevent a landlord from collecting more than one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the landlord must treat that excess as a "security deposit" under sub. (2).

Note: See *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits and earnest money deposits.

(b) A tenant surrenders the premises under par. (a) on the last day of tenancy provided under the rental agreement, except that:

1. If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.

2. If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.

3. If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

(c) If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

(d) If a landlord returns a security deposit in the form of a check, draft or money order, the landlord shall make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless the tenants designate a payee in writing.

(e) A tenant does not waive his or her right to the full amount owed under par. (a) merely by accepting a partial payment of that amount.

(3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS. (a) A landlord may withhold from a tenant's security deposit only for the following:

1. Tenant damage, waste or neglect of the premises.

2. Unpaid rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

3. Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

4. Payment which the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

5. Unpaid mobile home parking fees which a local unit of government has assessed against the tenant under s. 66.0435 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

6. Other reasons authorized in the rental agreement according to par. (b).

(b) A rental agreement may include one or more nonstandard rental provisions which authorize a landlord to withhold from a tenant's security deposit for reasons not identified under par. (a). The landlord shall include the nonstandard provisions, if any, in a separate written document entitled "**NONSTANDARD RENTAL PROVISIONS**" which the landlord provides to the tenant. The landlord shall specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre-printed.

(c) This subsection does not authorize a landlord to withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Note: For example, a landlord may not withhold from tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse.

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

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

(5) TENANT FAILURE TO LEAVE FORWARDING ADDRESS. A landlord who has otherwise complied with this section shall not be considered in violation solely because the postal service has been unable to complete mail delivery to the person addressed. This

subsection does not affect any other rights that a tenant may have under law to the return of a security deposit.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; r. and rec. (1) to (3), Register, December, 1998, No. 516, eff. 1-1-99; correction in (1) (a) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522; **correction in (3) (a) 5. made under s. 13.93 (2m) (b) 7., Stats.**

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

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

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

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

ATCP 134.08 Prohibited rental agreement provisions. No rental agreement may:

(1) Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799, Stats.

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

(3) Require payment, by the tenant, of attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent the recovery of costs or attorney's fees by a landlord or tenant pursuant to a court order under ch. 799 or 814, Stats.

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

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

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

(a) Personal injury arising from causes clearly beyond the tenant's control.

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

(7) Waive any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; correction in (1) and (3) made under s. 13.93 (2m), (b) 7., Stats., Register, August, 1990, No. 416; am. (7), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.09 Prohibited practices. (1) ADVERTISING OR RENTAL OF CONDEMNED PREMISES. No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze,

or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.

(2) UNAUTHORIZED ENTRY. (a) Except as provided under par. (b) or (c), no landlord may do any of the following:

1. Enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

2. Enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry, consents to a shorter time period.

(b) Paragraph (a) does not apply to an entry if any of the following applies:

1. The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.

2. A health or safety emergency exists.

3. The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

(c) A rental agreement may include a nonstandard rental provision authorizing a landlord to enter a tenant's dwelling unit at reasonable times, under circumstances not authorized under par. (a) or (b). The landlord shall include the nonstandard provision, if any, in a separate written document entitled "**NONSTANDARD RENTAL PROVISIONS**" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials the nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre-printed.

(d) No landlord may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, and identifying himself or herself upon request.

Note: For example, a landlord may announce his or her presence by knocking or ringing the doorbell. If anyone is present in the dwelling unit, the landlord must then identify himself or herself upon request.

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

(4) CONFISCATING PERSONAL PROPERTY. (a) No landlord may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property, except as authorized under s. 704.05 (5), Stats., or a written lien agreement between the landlord and tenant.

(b) A lien agreement under par. (a), if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the lien agreement in a separate written document entitled "**NONSTANDARD RENTAL PROVISIONS**" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the lien agreement with the tenant before the tenant enters into any rental agreement with the landlord. The lien agreement is not effective unless signed or initialed by the tenant.

Note: See s. 704.11, Stats.

(5) RETALIATORY EVICTION. No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the

dwelling unit, in retaliation against a tenant because the tenant has:

- (a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or
- (b) Joined or attempted to organize a tenant's union or association; or
- (c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

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

(7) SELF-HELP EVICTION. No landlord may exclude, forcibly evict or constructively evict a tenant from a dwelling unit, other than by an eviction procedure specified under ch. 799, Stats.

(8) LATE RENT FEES AND PENALTIES. (a) No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.

(b) Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant.

(c) No landlord may charge any tenant a fee or penalty for non-payment of a late rent fee or late rent penalty.

(9) MISREPRESENTATIONS. (a) No landlord may do any of the

following for the purpose of inducing any person to enter into a rental agreement:

- 1. Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.
- 2. Misrepresent the amount of rent or non-rent charges to be paid by the tenant.
- 3. Fail to disclose, in connection with any representation of rent amount, the existence of any non-rent charges which will increase the total amount payable by the tenant during tenancy.

(b) No landlord may misrepresent to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Note: Paragraph (b) prohibits "bait and switch" rental practices by landlords. See also s. 100.18(9), Stats.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (2) and (4), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.10 Effect of rules on local ordinances.

(1) This chapter does not prohibit or nullify any local government ordinance with which it is not in direct conflict as provided in sub. (2).

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

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

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.