

Disclosure of Building Code Violations

Before renting the landlord must tell the tenant about **uncorrected building code violations that they have actual knowledge of and which present a significant threat to the prospective tenant's health or safety (Wis. Stat. 704.07). (3/31/12)**

NOTE: If it is a building code violation, it is probably considered a significant threat to the tenant's health or safety and should be disclosed.

ATCP 134.02 and Madison and Fitchburg General Ordinances also require the landlord to disclose the following conditions to all tenants in Wisconsin:

- Lack of hot or cold running water
- Lack of plumbing or sewage disposal facilities in good working order
- Heating facilities that are not in safe working order or are not capable of maintaining a temperature in the dwelling unit of at least 67°F (in all seasons)
- Wiring, outlets, fixtures or other parts of the electrical system that are not in safe operating condition
- Lack of electricity to the unit
- Any structural or other conditions in the dwelling unit that are a substantial health and safety hazard.

NOTE: SB 466 (2011 Wis Act 143) only changed the language about required disclosures in Wis. Stats. 704.07. It is unclear how and whether this changed the disclosure requirements in ATCP 134 and how that impacts local ordinances, if at all. However, the items noted above clearly present a threat to the tenant's health and safety and should be disclosed. If not, the tenant could sue for misrepresentation including double damages, court costs and reasonable attorney fees under ATCP 134.09(9).

In the City of Madison the landlord must also disclose the tenant's right to abate rent (reduce rent payments to enforce the completion of inspector-mandated repairs), off-street parking requirements, and occupancy standards (how many people can live in an apartment) (MGO 32.08(2)). Violations of Madison's disclosure requirements can carry a fine. If the landlord won't make repairs, the tenant should call the Building Inspector. See our "Repairs" brochure for more information.

NOTE: We believe these extra protections in Madison still apply because they do not conflict with ATCP 134.

Promises to Repair

When a landlord promises to make repairs before you sign your lease/move in, they must put them in writing. Consumer Protection can help you if they are not completed on time. Call (800) 422-7128 or visit their website at www.datcp.wi.gov. For more information see the Tenant Resource Center's brochure on "Repairs," visit our website, or contact our office.

Lead Paint Requirements

According to the Department of Housing and Urban Development (HUD), a landlord must disclose that a dwelling built or remodeled before 1978 may contain lead paint. Call HUD at (414) 297-1493 or the Tenant Resource Center if you suspect a lead paint problem.

Sex Offenders

If a tenant requests information about sex offenders in writing, the landlord should inform them to get information from the sex offender registry or the Department of Corrections. Landlords are not obligated to keep or disclose this information themselves.

Earnest Money

After disclosing the required information (see previous sections) landlords are allowed to accept "earnest money," sometimes called an application fee, money down, or "hold" money. Earnest money includes ALL money (other than the actual cost of a credit check) which the tenant pays to the landlord before they sign a lease (ATCP 134.02(3)).

Earnest money is refundable except for the actual cost of a credit check. (Credit bureaus charge about \$8 for a report.) Tenants can avoid this fee if they provide their own copy of a credit report less than 30 days old (ATCP 134.05(4)). **City of Madison tenants cannot be required to pay the cost of a credit check. (2/21/11)**

After the disclosures, here are the three things that a landlord can do with the earnest money:

1. If the landlord accepts you as a tenant and you sign a lease, the landlord must either return the earnest money, apply it to the security deposit, or apply it to your first month's rent (ATCP 134.05(2)).
2. If your application is denied, or if you withdraw the application before being accepted/denied (which you should always do in writing), the landlord must return the earnest money by the end of the next business day, unless you gave written permission for them to retain it for up to 21 days (ATCP 134.05(2)(a)3).
3. If you are accepted but don't want the apartment, the landlord can deduct for the actual costs of re-renting the apartment (eg. advertising). They must return the rest of the earnest money to you within three business days, unless you gave written permission to retain it for up to 21 days (ATCP 134.05).

For more information on what to do when moving into an apartment, check our brochure on "Moving Out of One Apartment Into Another," visit our website, or contact our office to speak with a housing counselor.

Illegal Lease Clauses

Be aware of lease clauses that are illegal. The landlord cannot charge for normal wear and tear or "liquidated damages" (random fees) even if you agree to them in your lease. There is a short list of rules which can make the entire lease void and unenforceable, at the tenant's discretion:

- Allowing a landlord to increase rent, decrease services, bring an action for eviction, refuse to renew, or to threaten any of these actions because a tenant has contacted law enforcement or emergency services for their safety (Wis. Stat. 704.44(1m)).
- Evicting in any other way besides by state law (see our "Eviction" brochure) (Wis. Stat. 704.44(2m)).
- Speeding up rent payments for breaking the lease (Wis. Stat. 704.44(3m)).
- Requiring tenant to pay landlord attorneys fees or costs for defending your rights (Wis. Stat. 704.44(4m)).
- Allowing the landlord to "confess judgment" for the tenant for any action in the rental agreement (Wis. Stat. 704.44(5m)).
- Excusing the landlord for liability for property damage or personal injury due to negligent acts or omissions by the landlord (Wis. Stat. 704.44(6)).
- Imposing liability on the tenant for personal injury arising from causes beyond their control, property damage caused by natural disasters, or by persons other than the tenant or their guests (Wis. Stat. 704.44(7)).
- Waiving responsibility for landlord to provide premises in habitable condition or maintain the property (Wis. Stat. 704.44(8)).
- Allowing the landlord to terminate the tenancy if a crime is committed in or on the rental property, even if tenant could not have reasonably prevented the crime (Wis. Stat. 704.44(9)).

NOTE: Your landlord cannot terminate your lease without your consent if it contains an illegal provision. Also, your landlord need not have acted (or tried to act) on the illegal provision(s). The provisions are illegal on their own.

For more information and lease screenings, please consult with a Tenant Resource Center housing counselor.

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DANE COUNTY



Madison



COMMUNITY SHARES OF WISCONSIN

Special thanks to the **Dane County Bar Association** and **Area Agency on Aging of Dane County (Leck Grant)** for their generous support in updating these materials!

The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.

Preparing to Rent

MAIN OFFICE
(Located in the Social Justice Center, Suite 102)
1202 Williamson Street, Madison, WI 53703
Monday – Friday, 9AM-6PM
Housing Questions: (608) 257-0006
Toll-Free: (877) 238-RENT (7368)
asktrc@tenantresourcecenter.org
En Español: (608) 237-8913
Hmoob: (608) 257-0143
Mediation: (608) 257-2799
Business: (608) 257-0143 | Fax: (608) 286-0804

CAMPUS OFFICE
(Located in the Student Activity Center, 3rd Floor)
333 East Campus Mall, Madison, WI 53703
Hours vary, please check the website!
Phone: (608) 561-3727
uw@tenantresourcecenter.org

HOUSING HELP DESK
(Located in the Dane County Job Center, Room 2)
1819 Aberg Avenue, Madison, WI 53704
Monday – Friday, 10AM-2PM
Phone: (608) 242-7406 | Fax: (608) 242-7490
hhd@tenantresourcecenter.org

Visit us at tenantresourcecenter.org!
Follow us on   and !

If you need an interpreter, materials in alternative formats, or other accommodations, call our administrative line at (608) 257-0143.

NOTE: 2011 Wisconsin Acts 108 and 143 (formerly SB 107 and SB 466) changed many laws. Act 108 (Dane County/Madison and Fitchburg) went into effect on 12/21/11 and Act 143 (statewide) went into effect on 3/31/12. These changes are indicated in **bold** and ~~strike through~~ and apply to leases signed **or** some events that happened after that date.

Choosing the Right Landlord

It is customary for landlords to check the background of prospective tenants. It is equally important for tenants to check out the landlord. This research can be quick and can save tenants the expense and inconvenience of settling disputes that could have been avoided.

Current Tenants

If you only check one resource, it should be the current tenants. You may want to visit by yourself. Explain that you are considering renting and would like information about the landlord and the building. Many tenants are willing to talk for a few minutes. Ask questions such as:

- Does the landlord respond quickly when repairs are reported? Were promised repairs completed on time?
- What happens if you pay the rent late?
- Is the landlord pleasant and professional?
- Does the landlord keep common areas (yards, laundry rooms, hallways) in good condition? Are there major repair problems in the building? Does the heat work and do the appliances work properly? Are there pests?
- Are there noise or safety problems in the building or the neighborhood?
- Is proper notice given before the landlord enters?
- Why is the current tenant leaving?

Small Claims Court Records

It is easy to check small claims court records. You can find out any court cases your landlord might have through CCAP. Make sure you check the name of the landlord or management company that is listed for the address on the city assessor's website. Records are available on the CCAP website: wcca.wicourts.gov. The case files will tell who is suing whom, for what, and who won the case. For more information, go to the court in person and ask the clerk to pull all the all of the cases your potential landlord has been involved in during the last few years.

When you check the court records, take into account the number of apartments the landlord/management company controls. If you find that the landlord has a disproportionately high number of tenant/landlord cases, or if you are surprised by the reasons tenants are suing them, then it may be wise to look for another apartment.

Consumer Protection

Call the Department of Agriculture, Trade and Consumer Protection at (800) 422-7128 to ask if any complaints have

been filed against the landlord. You can find out the number of complaints which have been filed against the landlord, the dates they were filed, and the way in which the complaints were resolved. Again, remember to consider how many apartments the landlord owns or manages. You can also go to the agency and see the actual complaints.

Building Inspection Records

Many towns and cities in Wisconsin have building inspectors. Most inspectors keep written records every time they inspect an apartment and these records are public. You can ask to see the records for addresses you are considering. Focus on recent records, such as reports within the past five years. The records should show that the inspector has visited the apartment and what repairs the landlord was ordered to make. Check to see how soon the repairs were finished. Also check to make sure it is still the same landlord who owns the building. Remember, retaliation against tenants who contact inspectors is prohibited by statute and by Consumer Protection. Buildings that inspectors have visited several times recently are probably not being maintained well. You can also avoid landlords who do not make repairs even after being ordered to do so by the building inspector.

Zoning Records

When you check inspection records it is a good idea to check zoning. In most towns and cities, building and zoning inspectors share the same office. Give the zoning staff the address of the apartment and ask how the building is zoned. You may find that no more than two or three unrelated persons can live in the building, which may come as a shock if you were planning to move in with some friends. You might also find out that your prospective "3-bedroom" apartment only has 2 legal bedrooms. In the City of Madison, if a co-tenant is forced to vacate by an inspector because of zoning or occupancy limits that were not disclosed to the tenants, they may be able to break the lease without any consequences (MGO 32.08(2)(d)). Call the Tenant Resource Center or your local building inspector for more information.

Police Records

Call your local police department and ask for a printout of all police calls to your prospective building. You may have to go in person and/or pay a small fee. If there is a police officer assigned to the neighborhood, talk to them about the area. You should also talk to neighbors about the police in the neighborhood. If the landlord or manager has a criminal record, you may want to consider that this person will have a key to your home. Just as the landlord probably looked up your conviction record on CCAP, you might want to do the same for your landlord or property manager.

What the Landlord Must Disclose

Landlords must provide full disclosure of certain information to applicants prior to accepting any money. This is required so tenants can decide if they are interested. Landlords are also required to include written information on leases so tenants know the conditions of the unit and whom to contact if there are problems.

Tenants' Copies of Agreements

Tenants must be allowed to inspect copies of all written agreements and rules before they pay any money to the landlord or make any rental agreement. After a tenant signs a lease, the tenant must receive a copy of the signed lease (ATCP 134.03(1)). If you request one from the landlord and they do not respond, you may make a complaint to Consumer Protection at (800) 422-7128.

Note: With the passage of the new laws it has become extremely important that you read your lease before signing. Just because a landlord puts something in the lease does not mean it is legal. In fact, if the landlord puts certain illegal clauses in a lease, it could make the whole lease invalid. See our brochure "Ending a Lease" for more information.

Disclosure of Owner/Manager Information

Landlords must give the following information to tenants in writing when (or before) a rental agreement is made:

- Name and address of the person who collects the rent
- Name of the person who manages the building
- Name and address of the repair contact person. The tenant must be able to contact that person easily.
- The owner or other person authorized to accept legal papers and other notices (must be in Wisconsin and a street address, not a PO box) (ATCP 134.04(1)).

Landlords who live in and manage buildings with four or fewer units do not have to provide owner/manager information in writing since it is assumed they will manage the building and accept legal papers (ATCP 134.04(1)(c)). Within 10 days, tenants must be notified of any change in the name or the address of the owner or manager, the maintenance contact person, and the person who accepts legal papers (ATCP 134.04(1)(b)). In Madison they must also disclose the phone number for each person above (MGO 32.08(1)).

If the landlord fails to provide this information:

- Contact the city assessor/treasurer or county register of deeds and find out who owns the property and where that person lives.
- Look up that person's office and home number in case you need to reach the landlord in an emergency.
- Send any rent or repair requests to the address of the owner, along with a request for missing information. Keep dated copies of all your written requests.

- Mail the rent payment at the post office and get a "certificate of mailing" (cheaper and faster than registered mail) or "delivery verification" to verify delivery. If there are no more problems, you may not need future receipts, but keep copies of each payment, the letters you send and any receipts.
- Tenants may also file a complaint with Consumer Protection at (800) 422-7128.

Utility Disclosure Information

Before making a rental agreement or accepting any money from the tenant, the landlord must tell the tenant what utilities are not included in the rent. The landlord must also tell the tenant if the tenant will be paying for any utilities in common areas of the apartment building including hallways, yards, parking lots, and laundry rooms. If the apartments do not have separate utility meters, the landlord must disclose this and what method is used to determine how much each renter will pay (ATCP 134.04(3)). If the landlord informs the tenant that the tenant will be paying for a shared meter, the tenant could negotiate a fairer arrangement (perhaps paying a portion equal to the number of people in each unit). Have the landlord sign the agreement and make sure to keep a copy for yourself.

If the utility information was not disclosed:

Call the local utility company for assistance.

A service person from the utility can visit the unit to determine what services you should pay for. If you find out you are paying for someone else's utilities, ask the utility company for a copy of previous bills and estimate the amount the landlord should refund to you. The utility company can help with estimates.

Inform the Landlord

Tenants who find out they have a shared meter which was not disclosed to them should write a letter to the landlord requesting a refund and give the landlord a deadline (10 days to two weeks).

Remedies if the landlord does not respond:

- If you and your landlord are unable to come to an agreement, out-of-court mediation may be helpful. In Dane County, call **the Housing Mediation Service** at (608) 257-2799 or see our brochure "Housing Mediation Service (Dane County)." If you live outside of Dane County, contact **the Wisconsin Association of Mediators:** (608) 848-1970 or www.wamediators.org.
- File a complaint with **Consumer Protection:** (800) 422-7128 or www.datcp.wi.gov.
- Sue in **Small Claims Court** for mandatory double damages plus fees (Wis. Stat. 100.20(5)).