



TENANT

RESOURCE CENTER

Rental Agreements

Applicable Laws

The primary sources of law applicable to rental agreements for a Dane County tenant are [Wisconsin Statutes ch. 704](#) and [Wisconsin Administrative Code ATCP ch. 134](#) (part of Wisconsin's consumer protection regulations). If a mobile home lease, additional laws apply. See the guidance for mobile homes.

NOTE: Any tenant who suffers a pecuniary loss because of a violation of ATCP ch. 134 is entitled to double the pecuniary loss plus costs, including attorneys fees. [Wis. Stat. 100.20\(5\)](#). (Pecuniary loss is loss of money or something having monetary value.)

There are also federal laws and local laws that come up in specific contexts, such as federally subsidized housing and claims of discrimination.

Definitions

Rental agreement: An oral or written agreement between a landlord and tenant, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. Includes a lease. Does not include an agreement to enter into a rental agreement in the future.

Lease: An agreement, whether oral or written, for transfer or possession of real property or both real and personal property, *for a definite period of time*. A lease must have a specific start and end date. **NOTE:** A lease for more than 1 year must be in writing.

Term tenant: A tenant who lives in a unit under a lease that has a specific, defined starting and end date and requires payments on a regular basis.

Periodic tenant: A tenant who lives in a unit without a valid lease and pays rent on a periodic basis. A periodic tenancy has a specific start date but no specific end date. It includes day-to-day, week-to-week, month-to-month, year-to-year, or other intervals of time. The interval of time is generally shown by the dates on which the tenant pays rent.

Tenant at will: A tenant living in a unit without a valid lease and does not pay rent on a regular basis. This is usually an arrangement with friends or relatives. Tenants at will do NOT include individuals living in the unit as part of an employment contract or rent to own arrangements.

Sub-tenant: Generally, when a new tenant, who was not on the original lease, moves into the unit under an agreement with the original tenant who moves out. In this case, the original tenant becomes a sublettor and the new tenant is the sublessee, and the original tenant (the sublettor) is still obligated to comply with the original lease. The original lease may provide that rent is \$750/month. The sublease agreement (written or verbal) may require only \$500/month from the new tenant (the sublessee). The original tenant-sublettor is still required to make sure rent in the total amount of \$750/mo is paid.

Alternatively, the landlord could terminate the original lease and sign a new lease with a new tenant. Or they could add the new tenant to the original lease through an amendment.

Joint and several liability: When two or more individuals are jointly and severally liable (e.g. to pay the rent, cover damages, agree to not have any pets in the apartment), each individual is independently liable for the full amount owed, the damages, or for breaking the contract.

For example: Four friends move into an apartment together, each signing the lease to pay \$1000/month. Friend #1 loses her job and can't cover her \$250 share of the monthly rent. Her roommates must come up with the total rent owed. The landlord is owed \$1000 and it doesn't matter under the lease how the tenants come up with the rent. If they all move out and break their lease, the landlord can collect damages from them collectively for the total amount owed or just seek rent from one of the tenants. If the landlord is found to be owed \$2000, it may be that Friend #1 pays \$0, Friend #2 who has a high-paying job pays \$1000, Friend#3 pays \$300, and Friend #4 pays the remaining \$700 with a loan from their mom.

Who is a Tenant?

The landlord tenant rules in ATCP 134 apply to most residential units. However, there are 7 exceptions listed in ATCP ch. 134.01. Situations when the rules under ATCP 134 do not apply are:

- Units providing services.
 - When a person lives in a unit operated by a public or private institution and the person lives there to receive medical, educational, counseling, religious, or similar services. The housing in this situation is incidental to the educational, counseling, medical, or other services.
- Fraternities and sororities.
 - When a member of a fraternal or social organization lives in a unit operated by that membership organization. However, a non-member renting a room from the membership organization may be a tenant.
- Contracts for sale.
 - When a person is living in a unit under a rent to own arrangement.
- Hotels, motels, boarding houses, rooming houses, or similar lodging when the person is staying for less than 60 days **and** is traveling away from their permanent place of residence.
- Free units for landlord employees.
 - When a person lives in the unit free of charge as part of the employment arrangement to maintain or operate the premises.
- Commercial agriculture.
 - When a person does commercial agricultural work and lives on the premises where they are working.
- Government units.
 - When a person lives in a unit owned and operated by the government (e.g. military base). This does **not** include subsidized housing (e.g. Section 8 and Section 42 housing).

Is There an Agreement?

There is a rental agreement once the tenant and landlord agree to the *essential terms of tenancy*, including total rent amount and space to be rented. ATCP 134.02(10). This follows general contract law principles.

The agreement may be verbal **BUT** a rental agreement for more than 1 year must be in writing for the terms to be enforceable. Wis. Stat. 704.03(1).

- If a tenant starts living in a unit with an unenforceable lease for more than a year and pays rent on a periodic basis, it becomes a periodic tenancy on the basis on

which rent was paid (generally monthly). If agricultural, it becomes a year term notwithstanding when rent is paid. Wis. Stat. 704.03(2).

Basic terms that *should* be included in a rental agreement (see below for mandatory disclosures)

- Parties
 - The agreement should include the name of the all the adults who will be living in the unit
 - Children may also be included but they are not tenants or parties to the agreement (except under extraordinary circumstances where a minor is able to contract for their basic needs)
- Address of premises being rented
- Rent amount
- Late fees and any other fees charged
 - **NOTE:** Under ATCP 134.09(8):
 - Landlords cannot charge a late fee unless it is included in the rental agreement
 - Before charging a late rent fee, all rent prepayments must be applied to offset the amount of rent owed
 - Landlords may not charge late fees for non-payment of a late fee
- Type of tenancy and, if a term lease, the rental term
- If a term lease:
 - The rental term and what happens at the end of the term, e.g. automatic renewal, reversion to a periodic tenancy
- Security deposit
 - This should include what will be charged against the security deposit
- Promises to clean, repair, or improve the property
- Whether subletting is permitted and if so, if advance consent is required
- Disposal of property left by the tenant
- Landlord's right to enter
- Maintenance requirements
- Requirement that property be used for residential purposes only

NOTE: If the rental agreement does not include a joint and several liability clause, an argument may be made that the agreement was that each tenant is liable only for their share of the rent, damages that each tenant caused, etc.

If the rental agreement does not include language covering one of the basic terms above, the statutory default terms apply. If there is no statutory default, the landlord or tenant may not be able to enforce the provision *unless* they have agreed to this in practice.

Nonstandard Rental Provisions

A landlord may add to a rental agreement nonstandard rental provisions. If included, it must: (1) be separate from the rest of the agreement, (2) titled NONSTANDARD RENTAL PROVISIONS, and (3) the landlord must separately review each non-standard provision with the tenant. The tenant's initial or signature next to each provision constitutes sufficient proof that the landlord met this requirement.

Wisconsin law requires a nonstandard rental provision for any of the following terms to be enforceable:

- Deductions from a security deposit for charges or fees other than damage, waste, neglect, unpaid rent or utilities, or other charges otherwise allowed. Wis. Stat. 704.28; ATCP 134.06(3)(b).
 - These charges may not include normal wear and tear, or other damages that a tenant cannot reasonably be expected to cover.
- Waiving advance notice of landlord's entry. ATCP 134.09(2)(c).
 - The provision must still require entry at reasonable times, and the landlord still must knock or otherwise announce and identify themselves.
- Allowing the landlord to take the tenant's personal property under a lien agreement. Wis. Stat. 704.11; ATCP 134.09(4)(b).

Mandatory Disclosures

In addition to the basic terms above, there are certain disclosures the landlord must make to the tenant:

- A landlord must disclose in writing who receives rent and who maintains the premises, and the tenant must be able to reach these people relatively easily. The landlord must also disclose in writing the owner authorized to accept legal papers – this address must be in Wisconsin and not a PO Box and the landlord must notify of any changes within 10 days. ATCP 134.04(1).
 - This requirement does not apply to owner-occupied building with 4 or fewer units.
- A landlord must disclose, before entering into an agreement or accepting any funds, any un-corrected code violations the landlord knows about, that affect the tenant's unit or a common area, and that pose a *significant threat to the tenant's health or safety*. Wis. Stat. 704.07(2)(bm); ATCP 134.04(2)(a).
 - **NOTE:** Landlords are prohibited from renting condemned properties. ATCP 134.09(1).

- Under ATCP 134.02(2)(b), a landlord must disclose, before entering into agreement or accepting any funds, the following conditions affecting habitability that the landlord knows about *or could reasonably know about*:
 - No hot or cold water
 - Heat is not safe or is not capable of keeping unit at least 67
 - There is no electricity or the electrical system is not safe
 - Any structural or other conditions that constitute a substantial hazard to the health or safety of tenant or create an unreasonable risk of injury
 - Plumbing is not in good operating condition
 - Sewage is not in good operating condition
- A landlord must disclose, before entering into agreement or accepting any funds, the utilities the tenant is responsible for paying. ATCP 134.04(3).
- A landlord must provide to a tenant a check-in sheet that the tenant may use to make comments, if any, about the condition of the unit. Wis. Stat. 704.08.
 - Tenant must be given 7 days from start of occupancy to return the check-in sheet
 - Does not apply to plot of land for a manufactured or mobile home
- The agreement must include the Notice of Domestic Abuse Protections. Wis. Stat. 704.14.
 - If the lease allows for eviction for criminal conduct and does not include the Notice of Domestic Abuse Protections, the entire lease is void and unenforceable. (See below on Void and Unenforceable Leases.)
- Landlords are required to give tenants notice reminding them of an automatic renewal or extension. This notice must be given between 15-30 days prior to the deadline for notifying the landlord. Wis. Stat. 704.15.
 - This applies even if the lease includes a term requiring the tenant to give the landlord notice of renewal 60 days, for example, in advance of the lease expiration.
- If a tenant requests information about whether a particular person is required to be registered as a sex offender, the landlord must provide that information **if** they have actual knowledge about the information or the landlord may provide to the tenant in writing how to contact the [Department of Corrections](#) (required to provide internet site and phone number) to get information about the sex offender registry. Wis. Stat. 704.50.
 - Landlords are NOT obligated to search for, keep records on, or disclose information about individuals on the sex offender registry
- If the unit is in Madison, MGO 34.907 requires the landlord and tenant to sign the [Smoke Alarm Requirements for Owners and Tenants](#)

- Under federal laws, a landlord must provide disclosure of information on lead-based paint and the EPA-approved pamphlet.
 - This requirement does not apply to:
 - Housing built after 1978.
 - Efficiencies, lofts, and dorms (zero bedroom housing)
 - Leases for less than 100 days
 - Housing for the elderly unless children under 6 live in the unit
 - Housing for individuals with disabilities unless children under 6 live in the unit
- If a HUD subsidized property, the landlord must include the required [Violence Against Women Act notices](#).
 - **NOTE:** Any resident who is eligible for the rent subsidy at move-in may continue to receive VAWA protections as long as they reside at the property, regardless of income increases at a later date.
 - **NOTE:** Landlords are also required to include the Notice of Occupancy Rights (form HUD-5380) and Certification Form (form HUD-5382) with the first notice of eviction or termination of assistance.

Changes to the Rental Agreement

Generally, the landlord and tenant cannot change the provisions in a term lease (e.g. the amount of rent) during the term of the lease. Instead, the landlord and tenant must wait until the lease term ends to make changes for any changes that would be included in a new term.

However, with a periodic tenancy, the landlord must give at least 28 days' notice of any changes to the agreement if the tenant is paying rent on at least a monthly basis. If the tenant is paying rent on a less than monthly basis, notice must be at least equal to the rent-paying period. Wis. Stat. 704.19(3).

Void and Unenforceable Rental Agreements

Generally, unenforceable terms in a lease can be severed from the lease, leaving the rest of the lease enforceable. Wis. Stat. 704.02. However, if a lease includes any of the following terms, the entire lease is void and unenforceable under Wis. Stat. 704.44 and ATCP 134.08:

- Allows the landlord to do any of the following because tenant contacted law enforcement, or safety or health services:
 - Increase rent
 - Decrease services
 - Bring an eviction action
 - Refuse to renew lease
 - Threaten to take any of the above actions
- Authorizes eviction other than by the judicial process under Wisconsin Statutes chs. 704 & 799.
- Speeds up rent payment if the tenant breaks a rule, or in any way waives the landlord's obligation to mitigate damages if the tenant moves out early.
- Requires the tenant to pay attorney fees or costs the landlord incurs in legal action under the lease.
 - An example of unlawful language: *In the event that Landlord shall be obliged to commence legal action in order to enforce the terms and conditions of any portion of this lease and amendment, the tenant shall be liable to Landlord for all Landlord's costs, disbursements and expenses incurred including, without limitation, reasonable attorney fees incurred.*
 - A landlord may be awarded fees and costs by a court.
- Authorizes the landlord to enter judgment against the tenant ("confess judgment").
- Provides that the landlord is not liable for property damage or injuries due to the landlord's negligence or wrongdoing.
- Imposes liability on the tenant for:
 - Personal injuries caused by things the tenant clearly had no control over
 - Property damage caused by natural disasters or by an individual other than tenant (or a guest of tenant or someone invited to the unit or property by tenant)
- Waives the landlord's obligation to provide a fit and habitable unit and to maintain the unit.
- Allows the landlord to terminate the lease based solely on commission of crime if the tenant (or someone who lawfully lives with the tenant) is a victim of the crime.

- Allows the landlord to terminate the lease for criminal conduct and the term does not include the domestic abuse notice required under Wis. Stat. 704.14.

NOTE: If the lease is void and unenforceable, the lease reverts to a statutory month-to-month tenancy. However, a tenant could choose to rely on an unenforceable lease. In that case, the landlord must comply with all the terms of the lease *except* for those terms that are prohibited.