



# TENANT

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## RESOURCE CENTER

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## Rental Applications and Fair Housing

### Applicable Laws

[Wisconsin Statutes ch. 704](#)

[Wisconsin Administrative Code ATCP ch. 134](#)

[Wisconsin Open Housing Law, Wisconsin Statutes 106.50](#)

[Federal Fair Housing Act](#)

[City of Madison Fair Housing Ordinance](#)

[Dane County Fair Housing Ordinance](#)

### Screening Applicants

Landlords use the application process to screen applicants. Screenings should be consistent across all applications. It is unlawful to screen applicants based on a protected class, for example race, gender, family status. Common screening criteria may include that the applicant must:

- Be at least 18 years old
- Complete the entire application
- Provide source of income information
- Have a monthly income of at least 3 times the monthly rent
- Not provide false or misleading information
- Have a satisfactory rental history for the last 2 years and provide contact information of previous landlords for a reference check
- Not have any unsatisfied money judgments
- Have an acceptable credit history

It is not required that the landlord use the above screening criteria.

## ***Credit Checks***

Landlords may run a consumer credit report on a prospective tenant and charge them the actual cost, up to \$25, for the report from a consumer reporting agency. The landlord must notify the prospective tenant of the charge and provide them a copy of the report. However, a landlord may not charge the prospective tenant for running a credit check if the tenant provides a copy of their consumer credit report and the report is less than 30 days old. The landlord can still obtain a more recent credit report but they cannot charge the tenant. ATCP 134.05(4); Wis. Stat. 704.085(1).

## ***Criminal Background Checks***

Landlords may also charge their actual costs, again up to \$25, to run a criminal background check if the prospective tenant resides outside of Wisconsin. The landlord must notify the prospective tenant about the charge and provide them a copy of the report. Wis. Stat. 704.085(2).

There is no federal, state, or local fair housing law that explicitly protects tenants with a conviction or arrest record. However, HUD released a [memo](#) in 2016 providing guidance to landlords about the potentially discriminatory impact of using criminal records to screen tenants because of the vastly disproportionate rate that Black and Latinx individuals are arrested, convicted, and incarcerated compared to white individuals. The HUD memo indicates that reliance upon conviction or arrest records can, in certain circumstances, constitute prohibited discrimination based upon race or national origin.

According to HUD's guidance, landlords **cannot** use screening practices that:

- Screen based on arrest records
  - An arrest does not mean a person engaged in a criminal act
- Prohibit all criminal convictions
  - A policy that screens for criminal convictions must be based on serving a “substantial, legitimate, nondiscriminatory interest” in protecting the safety of tenants and the property. This means the policy must consider when the conviction occurred, the type of criminal conduct and how it relates to the safety of other tenants and of the property, and what has occurred in the person's life after the conviction.
- Use criminal background checks as a way to discriminate against tenants based on their race, gender, ethnicity, or other protected class.

## **Housing Discrimination - Fair Housing Laws**

The primary federal fair housing law is the Fair Housing Act under 42 U.S.C. 3601-3619, 3631. Wisconsin has largely adopted the Fair Housing Act under the Wisconsin Open Housing Law. Wis. Stat. 106.50.

## ***Protected Classes***

A protected class is a group or category of people protected by law. The following is a chart of the protected classes under the fair housing laws applicable to Dane County residents.

<b>Protected Class</b>	<b>Federal</b>	<b>Wisconsin</b>	<b>Dane Co.</b>	<b>Madison</b>
Color	X	X	X	X
Disability (federal law uses the term handicap) (Dane County also specifically covers mental illness but mental illness is covered under disability)	X	X	X	X
Familial Status	X	X	X	X
National Origin	X	X	X	X
Race	X	X	X	X
Religion	X	X	X	X
Sex, Gender, or Gender Identity (Dane County only specifies gender and gender identity)	X	X	X	X

<b>Protected Class</b>	<b>Federal</b>	<b>Wisconsin</b>	<b>Dane Co.</b>	<b>Madison</b>
Age		X	X	X
Ancestry		X	X	X
Lawful Source of Income		X	X	X
Marital Status		X	X	X
Sexual Orientation		X	X	X
Status as Victim of Domestic Abuse, Sexual Assault, and/or Stalking		X	X	X
Citizenship Status				X
Domestic Partnership Status			X	X
Receipt of Rental or Housing Assistance			X	X
Appearance and Physical Appearance			X	X

<b>Protected Class</b>	<b>Federal</b>	<b>Wisconsin</b>	<b>Dane Co.</b>	<b>Madison</b>
Student Status			X	X
Military Discharge Status and Less than Honorable Discharge			X	X
Political Beliefs			X	X
Genetic Identity			X	X
Homelessness			X	
Non-Religion or "Atheism"				X
Complaints about building code violations or participating in rent abatement				X
Tenant Union Association			X	X

## *Discrimination*

It is unlawful for a landlord to discriminate against a tenant based on a protected class. Under Wisconsin's Open Housing Law, discrimination may be:

- Refusing to rent
- Refusing to negotiate or discuss terms of a rental agreement
- Refuse to allow an inspection of a rental unit
- Charging a higher rent, or imposing stricter terms or conditions
- Advertising in a manner that indicates discrimination by preference or limitation
- Refusing to renew a lease
- Evicting a tenant
- Harassing a tenant
- Providing different privileges, services, or facilities in connection with the rental agreement
- Falsely representing the unit is unavailable for inspection or viewing
- Coercing, intimidating, threatening, or interfering with a person who has exercised their rights under a fair housing law or helped another person exercise their rights under a fair housing law
- Making a unit unavailable
- Segregating, separating, excluding, or treating tenants unequally, or making housing unavailable to a renter because of their disability, or the disability of a person residing (or intended to reside) in the unit

Wis. Stat. 106.50(2), (2r). Prohibited discrimination does not need to be the one and only reason for taking these prohibited actions to be illegal. To be illegal, the prohibited discrimination only needs to be one of the significant reasons for taking one of these prohibited actions.

However, there are exceptions, as listed under Wis. Stat. 106.50(5m):

- Elderly housing
  - It is lawful to restrict applicants based on age if operating elderly housing. Property owners must show that at least 80% of the units are occupied by at least one person who is 55 years of age or older to show they are operating elderly housing.
- Safety or damage threat
  - A landlord may deny an applicant if their tenancy would be a threat to the safety of others or result in substantial damage to the property (unless the risk can be eliminated with a reasonable accommodation). This exception does not apply to victims of domestic abuse.
- Occupancy standards

- It is not discrimination to comply with government-imposed restrictions on the maximum number of occupants permitted to live in a unit given its physical size.
- Roommates
  - Wisconsin's Open Housing Law does not apply when a person is selecting a roommate if 5 or less people live in the unit.
  - The ad for a roommate may include a restriction that they be the same sex as the tenant but the advertising may not otherwise state a preference based on a protected class.

### *Statutes of Limitations*

The statute of limitations for filing a discrimination claim under the federal Fair Housing Act is 2 years. 42 U.S.C. 3613(a). The statute of limitations under Wisconsin's, Madison's, and Dane County's fair housing laws is 1 year. Wis. Stat. 106.50(6m); MGO 39.03; DCO 31.20. The statute of limitations is the period of time a person has to file the complaint.

### **Reasonable Accommodations**

A tenant with a disability may request a reasonable accommodation to the unit, the landlord's rules, or the premises if the modification is necessary to allow them to fully use and enjoy the housing. Wis. Stat. 106.50(2r)(b)3. A reasonable accommodation is a structural change to the interior or exterior of the rental property, common area, or other part of the premises, or an exception or change to the landlord's rules, policies, or procedures.

Generally, the tenant must pay for a modification. If it is a subsidized property, the landlord must pay for the modification unless it would be an undue financial burden, a fundamental change to the program, or if the landlord can accommodate the tenant through a different modification.

A reasonable accommodation may be requested verbally or in writing, and can be submitted by the tenant or someone else on the tenant's behalf. Making the request in writing is preferable because then there is evidence that it was made and when it was made.

If the disability is apparent, a landlord may not request any disability related information. But if the disability is not apparent, a landlord may request information from the tenant that (1) is necessary to verify the applicant has a disability, (2) describes the accommodation, and (3) identifies the relationship between the disability and the accommodation.

Landlords must keep the tenant's or applicant's disability related information confidential.

The tenant is responsible for maintenance of a modification that is for the tenant's exclusive use (e.g. a bathtub grab bar; lowering countertops to accommodate a wheelchair in the unit's kitchen). The landlord is responsible for any modification made to a common area or other public area of the premises (e.g. an assigned parking spot close to the tenant's unit; a wheelchair ramp to the building).

A landlord may choose, if reasonable, to require the tenant to restore the unit to its original condition when they move out. It is not reasonable to do so if the modification is a universal design that does not decrease anyone else's access.

### ***Reasonable Accommodations: Animals***

Under state and federal law, people with disabilities are allowed to have a service and companion animal in rental units where they would otherwise be prohibited. Wis. Stat. 106.50(2r); ADA Title II Regulations. These animals are not considered pets.

A *service animal* is an animal trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, mental, sensory, intellectual, or psychiatric disability. An *emotional support animal*, also called a companion animal or assistance animal, is an animal that provides emotional support, well-being, comfort, or companionship, but that has not necessarily had specific training or certification.

If a tenant requests to have a service or companion animal as an accommodation, the landlord may request documentation that the tenant has a disability and the disability-related need for the animal, **unless** the disability is apparent.

Wisconsin law also allows landlords to require that the documentation related to the disability-related need for an emotional support animal to come from a licensed health professional, defined as "a physical, psychologist, social worker, or other health professional" who is licensed or certified in Wisconsin and is acting within the scope of their license or certification. Wis. Stat. 106.50(2r)(br)2. **NOTE:** This state law likely does not comply with federal law. Landlords who impose this stricter requirement for documentation from a specific type of professional licensed in Wisconsin may be liable for violating federal law.

A landlord can deny a request to keep a service or companion animal for limited reasons. Those are:

- The tenant is not disabled, does not have a disability-related need for the animal, or fails to provide the necessary documentation.
- Allowing the animal would impose an undue financial burden on the landlord or would fundamentally alter the nature of the services provided by the landlord.
- The specific animal poses a direct threat to a person's health or safety that cannot be reduced or eliminated by another reasonable accommodation.
- The specific animal would cause substantial physical damage to the property that cannot be reduced or eliminated by another reasonable accommodation.
  - For example: A landlord cannot deny a request based on a concern or fear about damage based on the animal's breed but could deny a request if there is evidence that the specific animal has caused significant damage.

It is discrimination for a landlord to do any of the following based on the tenant having a service or companion animal:

- Refuse to rent to the tenant
- Evict the tenant
- Require the tenant to pay additional rent or a fee related to the animal (this means a landlord may not charge a pet fee for keeping a service or companion animal)
- Harass the tenant

## Occupancy Standards

Occupancy standards are laws that define the number of people who can live in a unit. There is no federal regulation on occupancy standards but state and local laws may apply.

Wisconsin law requires that sleeping areas in apartments include 400 cubic feet for each occupant over 12 years old and 200 cubic feet for each occupant under 12 years old. SPS 379.09. Sleeping areas include any space with an adequate fire escape. Local zoning codes may also regulate occupancy requirements in a rental unit.

Landlords can create their own occupancy requirements for their units but only if those requirements do not violate any occupancy or zoning laws. A landlord may require more space per tenant than the occupancy limits but may not apply those requirements in a way that is discriminatory or retaliatory. For example, a landlord may be able to restrict renting their 2-bedroom unit to a maximum of 4 adults. But they cannot restrict the 4 adults based on protected classes, such as by advertising that only married couples may live in the unit. They also cannot use that requirement to limit a family with children from living in the unit. For example, if the bedrooms are large enough to meet occupancy laws, two adults and three children could live in the unit.