



# TENANT RESOURCE CENTER



## Wisconsin Law Changes – 3/2/16 2015 Wis. Act 176



### 1. Terminating a tenancy for criminal activity or “drug-related criminal activity.”

Landlords can serve a 5-day no-cure eviction notice if the tenant, a member of the tenant’s household, or any of their guests or other invitees, engages in:

- criminal activity that threatens the health or safety of other tenants, or people residing in the “immediate vicinity” of the premises, or the landlord or their agent or employee; or
- criminal activity that threatens the right to peaceful enjoyment of other tenants or people residing in the “immediate vicinity” of the premises; or
- “drug-related criminal activity” on or near the premises. [Wis. Stat. 704.17\(3m\)\(b\)](#), [2015 Wis. Act 176, Section 25](#)

“Drug-related criminal activity” is the manufacturing or distribution of a controlled substance that is not prescribed by a doctor for medical use by a disabled person. The disabled person can manufacture, use or possess this controlled substance and it can be in the possession of their personal caregiver or worker. [Wis. Stats. 704.17\(3m\)\(a\)1. & 2.](#), [2015 Wis. Act 176, Section 25](#)

The 5-day no-cure notice must:

- require the tenant to vacate on or before a date at least 5 days after the giving of the notice,
- state the reason for eviction,
- include:
  - a description of the criminal activity or “drug-related criminal activity”
  - the date it took place
  - the identity or description of the individual(s) who engaged in the activity,
- advise tenant she/he may seek assistance of legal counsel, a volunteer legal clinic, or “a tenant resource center,” and
- state that the tenant has the right to contest the allegations in the notice before a court commissioner or judge if an eviction is filed. [Wis. Stat. 704.17\(3m\)\(b\)1.](#), [2015 Wis. Act 176, Section 25](#)

If the tenant contests the eviction, the tenancy may not be terminated without proof by the landlord by the greater preponderance of the credible evidence of the allegations. [Wis. Stat. 704.17\(3m\)\(b\)1.](#), [2015 Wis. Act 176, Section 25](#)

The person engaging in the alleged criminal activity or “drug-related criminal activity” does not have to have been arrested or convicted for this activity in order for the landlord to issue a 5-day no-cure notice for a crime. [Wis. Stat. 704.17\(3m\)\(b\)2.](#), [2015 Wis. Act 176, Section 25](#)

Clarifies month-to-month tenancies and tenancies-at-will can be terminated, before the end of the rental period, for criminal or “drug-related criminal activity” with a 5-day no-cure notice. [Wis. Stat. 704.19\(2\)\(b\)2.](#), [2015 Wis. Act 176, Section 28](#)

This process cannot be used against the person who was the victim of the crime. [Wis. Stat. 704.17\(3m\)\(c\)](#), [2015 Wis. Act 176, Section 25](#)

#### NOTES:

- If leases contain provisions that conflict with this law, the lease provisions are invalid unless it is a lease longer than a year. [Wis. Stats. 704.17\(5\)\(a\) & \(b\)](#), [2015 Wis. Act 176, Sections 26 & 27](#)
- The laws about criminal activity and “drug-related criminal activity” in [Wis. Stats. 704.17\(3m\)](#) and [704.19\(2\)\(b\)2.](#) went into effect on March 2, 2016. [2015 Wis Act 176, Section 44, subsection 1](#)
- The laws about leases and language related to criminal activity in [Wis. Stat. 704.17\(5\)\(b\)](#) went into effect for all leases entered into or renewed as of March 2, 2016. [2015 Wis Act 176, Section 44, subsection 2](#)
- [Wis. Stat. 704.44](#) language that makes a lease void and unenforceable was not changed. Leases that contain these provisions would be void and unenforceable:
  - (9) Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim, as defined in s. [950.02 \(4\)](#), of that crime.
  - (10) Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice required under s. [704.14](#).

**2. Personal property of a “trespasser” on residential property (different definition from criminal trespasser).**

“Trespasser” is a person who is not a tenant and enters or remains in residential property without the consent of the landlord or a person lawfully on the property. [Wis. Stat. 704.055\(1\)](#), [2015 Wis. Act 176, Section 21](#)

**Note:** [Wis. Stat. 704.05\(5\)](#) still covers property left by a tenant who leaves or is evicted.

If trespassers have left or have been removed from the property, landlords have to hold the property of a “trespasser” for 7 days from the date on which the landlord finds the property. After that, landlords can presume the “trespasser” has abandoned the property and can get rid of it in any way they find “appropriate,” within their sole discretion, unless the “trespasser” requests the property in writing before the landlord disposes of it. [Wis. Stat 704.055\(2\)\(a\)](#), [2015 Wis. Act 176, Section 21](#)

If the landlord gets rid of the property via private or public sale, the landlord *may* send the proceeds of the sale (minus any costs of the sale and storage costs) to the Department of Administration for homeless programs. [Wis. Stat. 704.055\(2\)\(b\)](#), [2015 Wis. Act 176, Section 21](#)

**Note:** All money received from interest on real estate trust accounts, and all money received under [704.05\(5\)](#) and [704.055\(2\)\(b\)](#) which are proceeds from sales of property left behind, will be used for grants to agencies and shelter facilities for homeless individuals. [Wis. Stat. 20.505\(7\)\(h\)](#), [2015 Wis. Act 176, Section 1](#)

Creditors and other third-parties with an ownership or financing interest in the property (liens, etc.) may claim the property at any time before the landlord disposes of it or contracts to dispose of it, if the third party pays the landlord’s expenses for disposing of the property. [Wis. Stat. 704.055\(3\)](#), [2015 Wis. Act 176, Section 21](#)

**3. Other changes to criminal “trespassing” laws.**

Law enforcement agencies must have a written policy regarding investigations for criminal trespass violations. If an officer has probable cause to arrest a person for criminal trespass to a property, the officer must remove that person. [Wis. Stat. 175.403\(2\)](#), [2015 Wis. Act 176, Section 17](#)

The definition of criminal trespass to a property has been changed to not only include someone who “intentionally enters” a dwelling, but also to include someone who “remains” in the dwelling without permission of another person who is lawfully on the property. If no person is lawfully on the property, then the “owner” determines if the person has consent to enter the dwelling. To qualify as criminal trespass, the law also requires a person to not only be there without permission, but to be creating a disturbance or breach of peace. This is a class A misdemeanor (fine up to \$10,000 or 9 months in jail). [Wis. Stat. 943.014\(2\)](#). They also added a definition of a “dwelling,” which is a structure or part of a structure that is used or intended to be used as a home or residence by one or more people, regardless of whether it is currently occupied by a resident. [Wis. Stat. 943.14\(1\)](#), [2015 Wis. Act 176, Section 42](#)

**Note:** This trespassing law is used by police at their discretion, in addition to, or in place of, a municipal ticket; or if/when they choose not to or don’t have a local trespass ticket that meets these specific circumstances; or if there are multiple violations or other aggravating factors. It may also be used by district attorneys when making charging decisions.

**4. Terminating a periodic tenancy for breaches other than failure to pay rent.**

For month to month tenants, the tenancy can be terminated if the landlord does any of the following:

- gives a 5-day notice with option to cure and the tenant fails to comply with the notice. The tenant is considered to be complying with the 5-day notice if: the tenant takes “reasonable steps” to remedy the default; or, if a payment of damages is appropriate protection for the landlord, the tenant makes a reasonable offer to pay the landlord for the lease violation. If within one year the tenant has another non-rent violation of the lease, the landlord can serve a 14-day non-cure notice requiring the tenant to leave within 14 days. [Wis. Stat. 704.17\(1\)\(b\)1.](#), [2015 Wis. Act 176, Section 23](#)
- gives the tenant a 14-day notice requiring the tenant to vacate (same as current law). [Wis. Stat. 704.17\(1\)\(b\)2.](#), [2015 Wis. Act 176, Section 22](#)

**Note:** This makes the month-to-month eviction process the same as the existing process for tenants with a term lease that is a year or less.

For leases that are one year or less and year-to-year tenancies, the process remains the same. An exception is that for the second non-rent violation of the lease within one year, the landlord may give the 14-day notice at any time. They are no longer required to give the notice “prior to the tenant’s remedying the waste or breach.” [Wis. Stat. 704.17\(2\)\(b\)](#), [2015 Wis. Act 176, Section 24](#)

**5. Pre-empting local laws about building inspections.**

No city, town, village, or county may pass an ordinance that requires:

- Regularly scheduled inspections of (commercial or residential) rental units. In order to inspect a rental property or unit, there must be a complaint by any person. [Wis. Stat. 66.0104\(2\)\(e\)1.](#), [2015 Wis. Act 176, Section 8](#)
- Charging a fee for additional inspections for the *residential* property that is more than twice the cost of the initial inspection. [Wis. Stat. 66.0104\(2\)\(e\)3.](#), [2015 Wis. Act 176, Section 8](#)
- Charging a fee for conducting an inspection of a *residential* rental property unless all of the following are satisfied:
  - the fee is the same for all residential rental inspections, and
  - the fee is charged when the inspection is actually performed. [Wis. Stat. 66.0104\(2\)\(e\)2.](#), [2015 Wis. Act 176, Section 8](#)

**6. Pre-empting local laws requiring rental property and/or owner/manager licensing, registration or certification.**

No city, town, village, or county may pass an ordinance that:

- Requires a (commercial or residential) rental property to be certified, registered or licensed. However, they can require a rental *unit* be registered if the registration consists only of: providing the name of the owner, authorized person to contact, and their contact information (address and telephone number). [Wis. Stat. 66.0104\(2\)\(e\)4.](#), [2015 Wis. Act 176, Section 8](#)
- Requires a *residential* rental property owner to register/obtain a license to own or manage residential rental property *unless*:
  - it applies uniformly to all residential rental properties, including owner-occupied rental property, and
  - it only requires information about the name of the landlord, the contact person, and their contact information (address and phone number). [Wis. Stat. 66.0104\(2\)\(g\).](#), [2015 Wis. Act 176, Section 10](#)

**7. Pre-empting local laws about occupancy and tenant transfer fees.**

No city, town, village, or county may pass an ordinance that requires an occupancy or tenant transfer fee on a rental unit. [Wis. Stat. 66.0104\(2\)\(f\).](#), [2015 Wis. Act 176, Section 9](#)

**8. Pre-empting local laws building codes about fire safety.**

Removes the provision that allowed cities, counties, villages or towns that had a pre-existing sprinkler ordinance to allow them to stay in effect. [Wis. Stat. 66.1019\(3\).](#), [2015 Wis. Act 176, Section 13 & 14](#)

If a city, village or town has a contract with a multifamily housing owner that is not consistent with the state sprinkler laws or an order from the Department of Safety and Professional Services, the owner can waive that provision of the contract and, if waived, the lease is void and unenforceable. [Wis. Stat. 101.02\(7m\).](#), [2015 Wis. Act 176, Section 15](#)

**9. Municipal utilities not required to offer tenants a deferred payment agreement.**

Municipal utility companies (electric, water, phone, cable, etc.) do not have to offer tenants a deferred payment schedule. The utility companies do not need approval from the Public Service Commission to offer plans, and the Public Service Commission cannot disapprove of utility companies not offering payment plans. [Wis. Stat. 66.0809\(9\).](#), [2015 Wis. Act 176, Section 12](#)

**10. Changes to the towing on private property laws.**

If a landlord or any private property owner has properly posted signs or gets a ticket issued, an unauthorized vehicle can be immediately towed, at the vehicle owner's expense, without the towing company actually contacting the law enforcement agency about the make, model, vehicle identification number and registration plate number of the vehicle and the location to which it will be removed. The towing company only needs to make a "good faith effort" to contact the law enforcement agency, except in Milwaukee (city of the 1<sup>st</sup> class) where they are required to notify, not just make a "good faith effort." [Wis. Stat. 349.13\(3m\)\(dr\)2.](#), [2015 Wis. Act 176, Section 18](#)

The Department of Transportation will need to issue new rules about the fees that can be charged for removal and storage of the vehicle and towing, but only when no citation has been issued. If the property is properly posted with signs, the fees will not be determined by the department. [Wis. Stat. 349.13\(3m\)\(e\)1. & 3.](#), [2015 Wis. Act 176, Section 19 & 20](#)

**11. Allowing non-lawyers to represent landlords in municipal court cases involving an LLC (limited liability company).**

If the defendant in a case is a limited liability corporation, the defendant appears "in person" if the person who appears is:

- a member of the LLC, or
- the agent for the LLC, or
- and authorized employee of the defendant, or
- an agent of the member, or
- an authorized employee of the agent. [Wis. Stat. 800.035\(1\).](#), [2015 Wis. Act 176, Section 41](#)

**12. Other items in this bill.**

- Historic preservation. [2015 Wis. Act 176, Sections 2 – 7M](#)
- Real estate law regarding prohibition on imposing time-of-sale, purchase or occupancy requirements. [2015 Wis. Act 176, Sections 29 – 30](#)

[www.tenantresourcecenter.org](http://www.tenantresourcecenter.org)

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