

## Rental Laws & Regulations

This document provides information about rights and responsibilities for tenants and landlords in the City of Madison. The numbers in the text refer to statutes, regulations or ordinances that are the source of the information and are listed below. This is not legal advice. Citations are for guidance and may not apply to your situation. If you have a specific legal question, you should consult an attorney or one of the groups or agencies listed.

- ✓ Wisconsin Statutes (Wis. Stats.), Chapters 704 (Tenant/Landlord), 710 (Mobile Homes) & 799 (Small Claims)
- ✓ Department of Agriculture, Trade and Consumer Protection Regulations (ATCP), Chapter 134 (Residential Rental) & 125 (Mobile Homes)
- ✓ Madison General Ordinances (MGO), Chapters 32 (Tenant/Landlord), 27 (Minimum Housing Code), and 39 (Housing Discrimination)
- ✓ Dane County Ordinances (DCO) Chapter 31 (Housing Discrimination)

## General Tips for Avoiding Rental Problems

- ✓ Keep a rental file which includes the lease, addendums, check-in/out forms, copies of letters/emails/texts to and from your landlord, housing inspection reports, notices to enter, and any documentation you have of repairs or security deposit problems.
- ✓ Request and keep a receipt for rent payments or pay by check.
- ✓ Keep notes/phone log with dates and names of any contacts with the landlord regarding problems.
- ✓ Get or put promises from the landlord in writing.
- ✓ Contact your landlord when a problem arises.

## Tenant Responsibilities

- ✓ Be aware of the terms of the lease and follow those terms.
- ✓ Pay rent on time.
- ✓ Keep the apartment in a clean, proper, and sanitary condition.
- ✓ Notify the landlord as soon as possible when a repair is needed.
- ✓ Repair or pay for the repair of damages caused by negligence or improper use.

## Application Process & Discrimination

- ✓ If the landlord denies an application, they must give the tenant written reasons for the denial by the end of the third day after the denial, unless the tenant has indicated on the application that they do not wish to receive a written explanation. **MGO 32.08(5)**
- ✓ A landlord may not deny you housing because of your sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income (including Section 8), less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, student status, refusal to disclose your social security number to the landlord, inclusion in a domestic partnership, status as a victim of domestic

violence, genetic identity, citizenship status or arrest or conviction record (exceptions: convictions for offenses requiring sex offender registration and convictions for offenses related to tenancy, some time limits may apply, check the ordinance for further explanation). **MGO 39.03(4); DCO 31.02**

- ✓ A landlord may not deny you housing based solely on your income if you can provide evidence that you have paid a similar amount in the past or of your current ability to pay. **MGO 32.12(7)**
- ✓ You cannot be denied housing because you have applied for or currently receive Section 8, and your lease cannot be terminated early because you start receiving Section 8 assistance in the middle of your tenancy. **MGO 32.12(14), (15) & 39.03(4)**
- ✓ If you pay an application fee (deposit, or earnest money) and your application is rejected or you withdraw the application before approval, the landlord must return the money at the end of the next business day. The landlord cannot hold your earnest money for more than **three days** unless you agree in writing to a longer time period not to exceed 21 days. If the application is approved, the money should be returned or applied to rent or the security deposit. If your application is approved but you do not move in, then the landlord may keep part of the fee to pay for actual costs incurred; however, the landlord must mitigate their costs. **ATCP 134.05, MGO 32.10, Wis. Stats. 704.29.**

### **Required Landlord Disclosures**

- ✓ A landlord must disclose the name, address and phone number of the person authorized to manage, collect rent and maintain the premises, and someone in Wisconsin authorized to accept legal papers and notices in writing on the lease unless the landlord lives in the building and it is four units or less. **MGO 32.08(1), ATCP 134.04(1)**
- ✓ The landlord must notify you within 10 business days if there is a change in the owner or other person authorized to accept legal notices, the name of the person who collects rent, manages or maintains the premises. **MGO 32.08(1), ATCP 134.04(1)**
- ✓ Buildings of three units or more must have emergency contact information posted in a readily accessible conspicuous place. **MGO 27.04(2)(k)**
- ✓ **Before accepting any earnest money or entering into a rental agreement, the landlord must disclose all conditions affecting habitability;** whether the apartment lacks hot/cold running water; has heating equipment that isn't safe or can't maintain heat at least 67° degrees year-round; lacks electricity or has an unsafe electrical system; has plumbing and sewage systems not in good working condition; has any other conditions that constitute a substantial health or safety hazard. **MGO 32.08(2)/ATCP 134.04(2)**
- ✓ The landlord must disclose outstanding code violations for which the landlord has actual notice, and must provide copies of any official notices regarding outstanding code violations, copies of rent abatement decisions affecting the unit or common areas, the occupancy limits, the zoning code's family definition and any off-street parking requirements. The landlord shall advise the prospective tenant in writing of the successor tenant's right to abate rent at the time the lease is signed. **MGO 32.04(7), 32.08(2), ATCP 134.04(2)**
- ✓ The landlord must disclose which utilities the tenant is responsible for. If the utilities are not separately metered the landlord must disclose how it is determined how much each tenant pays for utilities. **ATCP 134.04, MGO 32.08(2)(b)**

- ✓ If a landlord knows that a foreclosure has begun on the property they must disclose that to you. **Wis. Stat. 704.35(1)**

## Rental Agreements (Leases)

- ✓ Once signed, the lease binds all parties.--There is no “back-out period”. To modify a written lease agreement, all parties must agree to the changes in writing.
- ✓ Many written leases require that each resident is responsible for meeting all the terms of the rental agreement even if the other residents do not do so. This is called “joint and several liability”.
- ✓ Be careful in your roommate choices, you can be held responsible for their lease violations.
- ✓ Oral agreements are legal if for one year or less, but you may have trouble enforcing the terms of an oral agreement unless you have proof of the agreement. **Write a letter to the landlord with your understanding of the agreement if you have trouble getting it in writing. Make sure to keep a copy. Wis. Stats. 704.03(1)**
- ✓ Periodic tenancies (commonly referred to as “month-to-month” leases) are those where the rental agreement doesn’t specify beginning or end dates and with the “period” being the time interval between the rent payments. For example, if you pay monthly, this is the period of your agreement. The lease can change after any period if you are given sufficient written notice (for month-to-month tenants at least 28 days) prior to the next time rent is due. If you intend to move out and have a month-to-month lease, you must provide at least 28 days written notice to terminate the agreement. **Wis. Stats. 704.01(2), 704.19(3), 704.21(2)**

## Copies of Rental Agreements & Receipts

- ✓ You must be allowed to inspect the rental agreements and any rules and regulations that apply before you are asked to sign the agreement or pay any fees, and you must be given a copy at the time of agreement. **MGO 32.06(1), ATCP 134.03(1)**
- ✓ **The landlord is required to provide receipts for all rent payments made in cash and for earnest money and security deposits unless paid by check that has a notation with the purpose of the check. MGO 32.06(3), ATCP 134.03(2)**
- ✓ Any promise to clean, repair or make improvements must be in writing with a specific date of completion with a copy given to the tenant. **MGO 32.09(1), (2), ATCP 134.07(2)**

## Illegal Rental Agreement Clauses

The lease cannot:

- ✓ Require you to pay the landlord’s attorney and legal fees. A judge may order you to pay these fees after a trial. **MGO 32.11(3)/ATCP 134.08(3)**
- ✓ Allow your landlord to go to court as your representative and admit your guilt in the landlord’s dispute with you. **MGO 32.11(4), ATCP 134.08(4)**

- ✓ Require you to pay rent before the date it is regularly due. **MGO 32.11(2), ATCP 134.08(2)**
- ✓ Waive the landlord's duty to deliver the rental unit in a fit or habitable condition and/or to maintain the premises during the tenancy. **MGO 32.11(7), ATCP 134.08(7)**
- ✓ Authorize eviction other than by a judicial eviction procedure. **MGO 32.11(1), ATCP 134.08(1)**
- ✓ Relieve the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. **MGO 32.11(5), ATCP 134.08(5)**
- ✓ Require you to accept liability for personal injury arising from causes clearly beyond your control as a tenant. **MGO 32.11(6), ATCP 134.08(6)**
- ✓ Contain a provision that, if enforced, would violate the law. **MGO 32.11(8)**
- ✓ Require you to pay the cost of carpet cleaning or shampooing unless there is damage beyond "normal wear and tear". **MGO 32.11(9)**

### Safety Issues

- ✓ If the building has two or more apartments that are accessed from a common area, the exterior door, doors leading to basements, basement laundries and any storage areas must be locked at all times, and your residence must have a doorbell or buzzer system to alert you when you have guests. **MGO 27.05(2)(h)**
- ✓ All rental units are to have smoke alarms installed and maintained in each bedroom or in every sleeping area, and within 6 feet of each door leading to a bedroom or sleeping area, and on each floor of the building. Smoke detectors must be hard wired or have 10 year lithium batteries. The landlord is responsible for installing the smoke alarms, tenants are responsible for maintaining the alarms and notifying the landlord if an alarm becomes inoperable. Tenants are not to tamper with, remove, alter, damage, or make the smoke alarm inoperable. Both the landlord and tenant must sign a document relating to the installation, operation and maintenance of smoke alarms, and the landlord must provide fire safety information to tenants. **MGO 34.907, 32.06(4)**
- ✓ **Add language about carbon monoxide detectors, door locks, and tenants ability to change the locks to protect their safety?**

### Check-in and Check-out Forms

- ✓ The landlord must provide you with a Check-in/Check-out form before you move in. **(CITE)**
- ✓ The landlord must give not less than seven (7) days after moving in to note anything that was dirty, damaged, broken or missing when you moved in. **(CITE)**
- ✓ Return the completed form to the landlord. If you want items repaired, make a separate request. **(CITE)**
- ✓ If the landlord fails to provide you with a Check-in form at the start of the tenancy, or fails to provide a Check-out form at the end, they cannot withhold money for the damages or cleaning from your security deposit when you leave. **(CITE)**
- ✓ The landlord must inform you that you may request a written list and/or the photographs taken of the physical damages charged to the previous tenant's security deposit. **MGO 32.07(5), 32.07(6), ATCP 134.06(1)**

## Tenant's Right to Privacy & Exclusive Possession

- ✓ A landlord cannot change the locks on your apartment as a means of forcing you to move or to limit your access to the premises. (MGO 32.05(1)(a), ATCP 134.09(7)) A landlord cannot confiscate any of your property unless they have a lien that you agreed to in a “non-standard rental provision”. MGO 32.05(1)(c), MGO 32.12(3), ATCP 134.09(4)
- ✓ A landlord cannot enter your apartment without either your permission on a case by case basis or giving you 24 hours notice to show the apartment or for repairs. Emergencies are an exception to this rule. MGO 32.05(1)(d)
- ✓ A landlord cannot show the apartment for re-rental until 1/4 of the lease term has passed, unless you have given written consent or your lease is less than 9 months or a summons and complaint for eviction has been filed. MGO 32.12(8)
- ✓ A landlord cannot seek to rent the apartment to future renters before 1/4 of the lease term has passed, unless they have notified you of an earlier date in a non-standard rental provision form. MGO 32.12(9)
- ✓ A landlord may regulate guests by stating a guest policy in the lease. They may not prohibit all guests. MGO 32.05(1)(g)
- ✓ A notice by the landlord to show your apartment cannot cover more than three (3) consecutive days or more than three (3) hours a day and must note the specific times of entry. MGO 32.05(1)(e)
- ✓ A landlord must knock and identify themselves before entering your apartment. MGO 32.05(1)(f), ATCP 134.09(2)(d)

## Repairs

- ✓ If repairs are needed, contact your landlord and give them a reasonable time to fix the problem. If they do not fix the problem, call the Building Inspector at (608)266-4551.
- ✓ If your landlord fails to repair or properly maintain your apartment or fails to comply with an order of the Building Inspection Division, you may be entitled to abate/reduce part of your rent. Do not withhold rent for repair problems without first contacting Building Inspection or one or more of the agencies listed in this brochure for advice or assistance. MGO 32.04, Wis. Stats. 704.07(4)
- ✓ If the building owner has failed to comply with orders to make repairs from the Building Inspection Division, a tenant may arrange for repairs to be made to the unit and subtract that amount from their rent. The tenant must give official notice to the landlord that they intend to use these self-help procedures at least ten days prior to commencing repairs. Qualified professionals, as required by law, must do repairs and the cost of repairs may be deducted from rent. This self-help repair procedure can be used in conjunction with rent abatement. MGO 32.17(2)

## Late Fees

- ✓ Late fees must be in writing and must be in the lease. ATCP 134.09(8)(a)
- ✓ A landlord cannot require you to pay late fees of more than 5% of a month's rent. MGO 32.12(11)

- ✓ A landlord cannot charge a late fee for failure to pay a late fee. All payments shall be applied to rent before being applied to a late fee. **ATCP 134.09(8)(b), MGO 32.12(11)**

## **Retaliation**

- ✓ A landlord cannot evict you or threaten to do so, because you have contacted the Building Inspection Division, asserted a right under state or local law, filed a complaint with Consumer Protection or Building Inspection, started a lawsuit or joined a tenant's union, neighborhood watch or neighborhood association. Actions by the landlord are presumed retaliatory if taken within 6 months of a tenant taking one or more of these actions, unless the landlord can prove otherwise. **MGO 32.15, 32.12(4), Wis. Stats. 704.45, ATCP 134.09(5)**

## **Subletting and Breaking a Lease**

- ✓ Most leases require the permission of the landlord prior to subletting. If you sublet part of your apartment, or the entire apartment, you are still responsible for all terms of the original agreement, unless all parties (including the landlord) agree in writing to terminate the lease or change any other terms. Sublet agreements should always be put in writing. **Wis. Stat. 704.09(1)**
- ✓ If you need to break your lease, and choose not to sublet, the landlord is responsible for finding a new tenant if you stop paying your rent. **The landlord must take the same or similar actions to find a replacement as they did to find you.** However, you will be responsible for the rent owed until a new tenant is found. **Wis. Stat. 704.29**
- ✓ The landlord must notify you if the property is in foreclosure. **If the landlord fails to do so, the tenant has the choice to void the lease or you should be able to stay until the end of your lease, unless special circumstances apply. Wis. Stat. 704.35(1) & (2)** and the federal "Protecting Tenants at Foreclosure Act", Public Law 111-22 sec. 701 – 704 (2009), applies to all foreclosure sales after the law was signed on May 20, 2009 until December 31, **2012.**

## **Eviction**

- ✓ The first step in the eviction process is for the landlord to give you written notice of the lease violation. The notices will vary depending upon your type of lease, the type of violation and previous violation notices you have received. Generally, a tenant with a year-long lease will have the right to fix the problem the first time and stay in the apartment. If you get one of these notices contact the landlord right away and try to fix the problem. **Wis. Stats. 704.17**
- ✓ Your landlord cannot force you to leave the apartment without an eviction order from a judge. **ATCP 134.08(1), 134.09(7)**
- ✓ You have the right to appear in small claims court to contest the eviction notice. The landlord must prove to the court that you have violated the lease and that they are entitled to evict you.



- ✓ If you are evicted by a judge, or if a default judgment is issued because you did not appear in court, the Sheriff is the only person who can remove you from the unit. The Sheriff will give you a date and time to be out by or they will remove. This forced removal can be very costly and you can be held responsible for all the costs of moving and storing your property as well as additional unpaid rent if you get evicted. The landlord has the duty to minimize these costs by trying to re-rent the apartment. **Wis. Stats. 704.29, 799.44**
- ✓ Any actions taken by the landlord other than the eviction process required by state law might be an illegal eviction. Actions such as turning off heat, electricity or water, removing doors or windows or other actions that make it impossible to live in the unit are prohibited by Madison General Ordinances and Wisconsin law. Madison Ordinances also prohibit a landlord **form** threatening to take any of these actions. **ATCP 134.09(5), (7), MGO 32.12(5)**

### **Lease Expiration & Automatic Renewal**

- ✓ Your lease may have an automatic renewal clause; however, your landlord cannot enforce such a clause unless they give you a separate written notice of the pending automatic renewal or extension at least 15 days, but not more than 30 days before its stated effective date. **ATCP 134.09(3), Wis. Stats. 704.15, MGO 32.12(2)**
- ✓ If you “hold over”, or stay beyond the expiration date of a valid termination notice or expiration of a lease, the landlord may sue you in court for damages. A judge may order you to pay a minimum of double the daily rent to the landlord for each day you stay in the apartment after the notice to vacate or the expiration of your lease. **Wis. Stats. 704.25(1), 704.27**

### **Security Deposits**

- ✓ The security deposit cannot exceed one month’s rent. **MGO 32.07(2)(b)**
- ✓ If your security deposit exceeds one-half month’s rent, you are due simple interest (rent credit) at the rate set by the Wisconsin Department of Financial Institutions, Division of Banking from the day it is paid until it is returned to you. This rate changes on a yearly basis. (<http://www.cityofmadison.com/BI/documents/WIFDIIntRate2011.pdf>) **MGO 32.07(3)**
- ✓ Landlords cannot increase or institute a security deposit during the term of the lease or with a new, renewed or amended lease with the original tenants. **MGO 32.07(2)(b)**
- ✓ Your security deposit or partial deposit with a written itemized statement showing the specific reasons for any deductions (including receipts, estimates for repairs and wages and hours worked) must be mailed within 21 days of surrendering the premises. **MGO 32.07(7), ATCP 134.06(2)(a), (4)**
- ✓ If your full security deposit is not returned, the landlord must include with the itemized statement a notice that the tenant will be provided a copy of the photos documenting the damage if requested by the tenant within 30 days. **MGO 32.07(7)**
- ✓ If you move out early, and if you want your security deposit back within 21 days of the date you move out, then you must notify the landlord in writing of that date. If you don’t

notify the landlord, they can return your deposit up to 21 days after the end of the lease. **ATCP 134.06(2)(b)**

- ✓ The landlord can't hold security deposits for both the primary tenant and someone subletting from the tenant, unless the total is less than one month's rent. **MGO 32.07(2)(d)**
- ✓ Routine painting or carpet cleaning, if there is no unusual damage caused by tenant abuse, **cannot** be deducted from security deposit. **MGO 32.07(14), ATCP 134.06(3)(c)**
- ✓ Cashing a check for partial payment does not mean you waive your rights to seek the full amount owed. **MGO 32.07(7)(d), ATCP 134.06(2)(e)**
- ✓ Remember to provide a forwarding address for your security deposit. **ATCP 134.06(5)**