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Disposing of Tenants' Personal Property and Fixtures

After eviction or abandonment, commercial tenants often leave behind personal property and trade fixtures. What may a landlord do with this stuff?

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Personal Property

Lien to Secure Payment of Rent

In the olden days, the landlord had a lien against the tenant's personal property to secure the tenant's obligations under the lease. This allowed the landlord to seize the tenant's personal property left on the premises, sell it, and use the proceeds to pay off the tenant's debt. In Wisconsin, landlords do not automatically have this right. But if the tenant has specifically granted the landlord a lien to secure the tenant's payment of rent, either in the lease or in a separate document, then the lien is effective.

Lien to Secure Payment of Storage Charges

Even if the landlord does not have a lien in the tenant's personal property to secure the payment of rent, it has a lien against the personal property to secure the landlord's actual and reasonable costs of removing and storing the personal property. The landlord must notify the tenant and give the tenant the opportunity to remove the property. The landlord may condition the tenant's right to remove on the tenant's paying the landlord for the reasonable costs of removal, storage, or disposition of the property. The landlord may not, however, condition the tenant's right to remove on the tenant's paying back rent or paying for damage to the leased premises.

If the landlord disposes of the property by foreclosing the lien or at a private sale, the landlord may use the proceeds for the landlord's reasonable storage costs and for the costs of sale, but must deliver the balance to the State of Wisconsin Department of Administration. The landlord's storage lien has priority over any other ownership or security interest by a third party.

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Tenant's Trade Fixtures

To determine who owns the tenant's trade fixtures, the landlord should first check the lease. Some leases require that the trade fixtures automatically become part of the premises once the lease ends; some allow the tenant to remove the trade fixtures at the tenant's cost if the tenant repairs the damage caused by the removal; and some allow the tenant to remove the fixtures at the end of the lease term, but only if the tenant is not in default under the lease. If the lease is silent, Wisconsin law allows the tenant to remove any fixtures installed by the tenant if the tenant restores the premises to their condition prior to the installation (or pays the landlord the cost of restoration).

Banks that lend money to tenants often take a security interest in the tenant's property. The more careful banks require that the landlord waive its rights to the trade fixtures as a condition to making the loan. If the landlord grants such a waiver to the bank, then the bank's rights to the tenant's fixtures will be superior to those of the landlord, and the bank will be able to remove the fixtures.

If the landlord has not waived its rights, the bank will generally have a superior interest in the fixtures only if:

- the loan proceeds were used to purchase the equipment;
- the bank's security interest arose before the equipment was physically attached to the real estate; and
- the bank has filed a Uniform Commercial Code financing statement with the Wisconsin Department of Financial Institutions before the equipment is physically attached to the real estate, or within 20 days afterward.

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