

"Upon Expiration of Their Lease, My Former Tenant Has Left Furnishings and Other Personal Property in the Leased Premises. Do I Have the Right to Keep This Stuff?"

The answer depends on a few factors. Many leases will have a provision indicating that upon lease termination any personal property not removed by the tenant shall become the property of the landlord. Absent such a turnover provision, a landlord's right to this property is governed by Wisconsin Statutes Section 704.05. Assuming there was no turnover provision in the lease, Section 704.05 allows a landlord two options: (1) store the abandoned property and reserve for themselves a lien for the actual and reasonable cost of removal and storage of the property, or (2) give the tenant notice of landlord's intent to dispose of the property by sale or other appropriate means if the property is not repossessed by tenant. It is important to note that under option 1 the landlord cannot include as part of the lien the cost of any damage to the premises or past or future rents. Similarly, under option 2, the landlord is allowed to only deduct the costs for the sale and costs incurred under option 1. The remaining proceeds must be sent to the Wisconsin Department of Administration for deposit in the appropriation that provides housing assistance for the homeless.

Not surprisingly, the above options are generally not that appealing to a landlord. Moreover, in the event a lender or another secured party had a perfected security interest in the tenant's personal property, even a turnover provision would not trump the lender's interest. For example—in the scenario whereby a lender would have a perfected security interest in the tenant's personal property—the lease would expire, the tenant would leave behind property and a lender would contact the landlord demanding rights to the personal property being kept on the landlord's property. A turnover provision in the lease would be of little value to a landlord since the personal property would be "turned-over" to a landlord subject to the security interest of the tenant's lender. Accordingly, the landlord is in the difficult position of having to coordinate with the lender to allow them access to the leased premises to collect the tenant's abandoned property. A host of issues could arise for the landlord in this situation, depending upon the ability a landlord has to allow the property to be removed, whether a new tenant is occupying the space and using the property, or how long the landlord can allow the space to

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remain empty pending the lender repossessing the property. Section 704.05 does allow the landlord to charge the lender for the actual and reasonable cost of removal (if done by the landlord) and storage. However, the landlord would not receive any other compensation for time and expense, nor the rental value of the premises in the event it is being held vacant.

Fortunately, the prudent landlord can better protect its interests in a tenant's abandoned personal property by drafting its leases to not only include a turnover provision as indicated above, but to also provide the landlord with a lien against the tenant's personal property along with the right to file its own financing statements against the personal property in order to secure rental payments and any other amounts that may become due and owing under the lease. Upon the perfection of this security interest through the filing of a valid financing statement with the Wisconsin Department of Financial Institutions, the landlord will have the ability to use proceeds from a sale of the abandoned property to cover rent and other costs owing under the lease.

Filing a financing statement will also provide notice to any subsequent lender or secured party who may take a security interest in the tenant's property. Such notice will allow the landlord the opportunity to more effectively dictate the timing of any removal or repossession of a tenant's personal property by a lender and also payment to the landlord for rental during this removal time in exchange for the landlord subordinating its interest in the property.

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