

# Wisconsin's New Omnibus Law Regarding Real Property Leases

On March 21, 2012, Wisconsin Governor Scott Walker signed new legislation that significantly affects many different aspects of existing leasing laws in Wisconsin. While proponents of the new law have argued that it provides common sense changes intended to reduce landlord and tenant conflicts, opponents have argued that the new law eliminates various rights and protections offered to residential tenants, and have characterized it as the "Slumlord Bill." Although most of the debate surrounding the new legislation has understandably focused on the effect the new law will have on residential tenants, the new law contains provisions that also impact commercial leases.

In an effort to alert both our landlord and tenant clients to the changes brought about by this new law, Reinhart's Leasing Team has prepared the following summary of the more significant changes instituted by the enactment of this new law. In the upcoming weeks, Reinhart's Leasing Team will examine many of these developments in greater detail in order to explain the effects that these new provisions are likely to have on both tenants and landlords in Wisconsin.

- **Prohibition on Local Eviction Moratoriums**. Local governments may no longer enact or enforce ordinances that place a moratorium on landlord-pursued eviction actions. *This restriction applies to both residential and commercial properties.*
- **Disposition of Personal Property Left Behind by Tenants**. In the absence of a written agreement to the contrary, most personal property left behind by a tenant is generally presumed to be abandoned and may be disposed of by a landlord in its own discretion provided that the landlord has provided written notice to the tenant that it does not intend to store any personal property left behind by the tenant. Note, there are some limited exceptions made to this general presumption for particular types of personal property and special types of leased facilities, such as self-storage units and situations involving a known claim by third party lien holders. *This general presumption applies to both residential and commercial properties.*
- **Disclosure of Code Violations**. Before entering into a lease or accepting a deposit from a tenant, landlords must disclose any building or housing code violations of which they are aware that pose a significant threat to health or

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safety, and that have not been corrected. *This disclosure requirement always applies to landlords of residential properties. It also applies to landlords of commercial properties unless there is a contrary provision set forth in the lease or some other written document signed by both parties.*

- **Security Deposits.** The new law incorporates the existing administrative code section governing the return of security deposits into the Wisconsin Statutes as a new section 704.28. *As drafted, however, section 704.28 seemingly applies to both residential and commercial leases.* As a result, landlords in commercial leases will now have to adhere to the same strict rules and guidelines governing the use and disposition of security deposits. If, for example, a landlord in a commercial lease wanted to withhold funds from the security deposit as compensation for something other than back rent, unpaid utility or permit fees, or damage caused by the tenant, the landlord would need to provide a specific list of such other reasons for withholding the tenant's deposit in a separate written document entitled "Nonstandard Rental Provisions." Similarly, section 704.28 appears to require all landlords, including landlords of commercial properties, to return any unused portion of a tenant's security deposit within 21 days of the tenant's departure.
- **Information Check-In Sheet.** A landlord of a residential property must provide to a new tenant a standardized information check-in sheet upon occupancy. The check-in sheet must contain an itemized description of the condition of the premises at the time of check-in. The tenant then has seven days from the date of initial occupancy to complete the check-in sheet and return it to the landlord. This process is not required to be repeated upon renewal of a rental agreement. *This restriction applies only to residential leases.*
- **Holdover Damages.** The new law tightened up the language governing holdover damages by making it clear that landlords shall receive at least twice the rental value of the premises in the event that a tenant holds over beyond the expiration or earlier termination of its lease. *This provision applies to both residential and commercial leases.*
- **Acceptance of Rent Does Not Terminate Eviction Action.** The new law states that an eviction action against a tenant for failure to pay rent may not be dismissed solely because the landlord accepts past-due rent after the lease has been terminated. *This provision applies to both residential and commercial leases.*
- **Provisions That Cause a Residential Rental Agreement to be**

**Unenforceable.** The new law adopted the existing list of prohibited rental agreement provisions for residential leases set forth in ATCP 134.08 of the Wisconsin Administrative Code. It also expanded this list to prohibit any lease provision that would allow a landlord to terminate if a crime is committed within the premises. Following the passage of the new law, a residential lease is void if it does any one or more of the following:

- Authorizes eviction or exclusion of the tenant other than by the judicial eviction procedures set forth in the Wisconsin Statutes;
- Provides for an acceleration of rent payments in the event of a tenant default or other breach of the rental agreement;
- Waives the landlord's statutory obligation to mitigate damages;
- Requires the tenant to pay the landlord's legal fees in disputes arising out of the lease;
- Authorizes the landlord to confess judgment against the tenant in any action arising under the lease;
- Relieves the landlord from liability for property damage or personal injury caused by the landlord's negligent acts or omissions;
- Imposes liability on the tenant for personal injury arising from causes beyond the tenant's control;
- Imposes liability on the tenant for damages caused by natural causes or by persons other than the renters or guests of the renters;
- Waives the landlord's obligation to deliver and maintain the leased premises in a fit or habitable condition; and
- Allows the landlord to terminate the lease if a crime is committed in or on the rental property.

[Reinhart's Leasing Team](#) will be providing more detailed updates regarding several of the provisions described above in the upcoming weeks. In the meantime, please do not hesitate to contact any member of our Leasing Team or your Reinhart attorney with specific questions regarding these provisions and the new law.



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