



Kenosha Landlord Association

A Local Chapter of the Wisconsin Apartment Association

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To Our Members

Last month Brian Hervat and Ron Borowski presented the topic *Screening Process and Criteria*. We had a great turn out and many of you participated in the ensuing discussions, as well as expressed your interest in continuing this topic at July’s meeting. At the meeting it was suggested that members share their current screening process and criteria with the membership at the next meeting.

Therefore, at our next membership meeting, Wednesday July 16, Brian and Ron will present *Part Two of Screening Process and Criteria Workshop*. We appreciate and encourage members to bring along their screening criteria and share it with the membership. It is especially helpful for our members who are new to being landlords to hear what processes others are using.

We would like to thank Brian and Ron for agreeing to lead another discussion on these topics due to the overwhelming interest.

July Meeting: Wednesday, July 16 at the VFW, 6618 39th Avenue. Appetizers and Networking at 6:30 pm. Meeting begins promptly at 7:00 pm.

DISCLAIMER: The Kenosha Landlord Association publishes this newsletter to create awareness of issues relating to the rental housing industry. Information is compiled from a variety of sources and the views and concerns expressed by the contributors do not necessarily reflect those of the editor or the Association. When necessary, we suggest you consult an attorney.

Wisconsin Social Media Protection Act

Source: <http://milwaukeeemploymentlawyer.blogspot.com>
April 10, 2014



Wisconsin Governor Scott Walker signed the Wisconsin Social Media Protection Act (2013 Wisconsin Act 208) into law this past week, giving employees in Wisconsin more privacy in the workplace, though the legislation provides several exceptions for employers. The new law prohibits employers from doing the following:

1. Request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow observation of that account.
2. Discharge or otherwise discriminate against an employee for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the employee's personal Internet account, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.
3. Refuse to hire an applicant for employment because the applicant refused to disclose access information for, grant access to, or allow observation of the applicant's personal Internet account.

However, as stated above, the law does provide for several exceptions which does allow an employer to obtain access to an employee's social media or terminate an employee's employment for failing to provide access. Those exceptions are in the following situations:

1. Requesting or requiring an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer or in order for the employer to gain access to an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.
2. Discharging or disciplining an employee for transferring the employer's proprietary or confidential information or financial data to the employee's personal Internet account without the employer's authorization.
3. Subject to this subdivision, conducting an investigation or requiring an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer's proprietary or confidential information or financial data to the employee's personal Internet account, if the employer has reasonable cause to believe that such a transfer has occurred, or of any other alleged employment-related misconduct, violation of the law, or violation of the employer's work rules as specified in an employee handbook, if the employer has reasonable cause to believe that activity on the employee's personal Internet account relating to that misconduct or violation has occurred. In conducting an investigation or requiring an employee to cooperate in an investigation under this subdivision, an employer may require an employee to grant access to or allow observation of the employee's personal Internet account, but may not require the employee to disclose access information for that account.
4. Restricting or prohibiting an employee's access to certain Internet sites while using an electronic communications device supplied or paid for in whole or in part by the employer or while using the employer's network or other resources.
5. Complying with a duty to screen applicants for employment prior to hiring or a duty to monitor or retain employee communications that is established under state or federal laws, rules, or regulations or the rules of a self regulatory organization, as defined in 15 USC 78c (a)(26).
6. Viewing, accessing, or using information about an employee or applicant for employment that can be obtained without access information or that is available in the public domain.

Wisconsin Social Media Protection Act

7. Requesting or requiring an employee to disclose the employee's personal electronic mail address.

Then, interestingly enough, the legislation states that this law does not apply to those in the financial services industry who use the account or device to conduct business that is subject to regulation and it also does not apply to situations where the employer "inadvertently" (yes, the statute uses the term "inadvertently") accesses an employee's personal account through a system the employer pays for to monitor the network, " so long as the employer does not use that access information to access the employee's personal Internet account."

The law also provides protections for students and prospective students in the educational realm from having to disclose the same, as well as tenants in the landlord-tenant realm--both of which have exceptions as well.

Enforcement will be handled by the Equal Rights Division ("ERD"), which is the Wisconsin administrative agency typically associated with enforcing the Wisconsin Fair Employment Act ("WFEA"). However, the penalties for a violation found under this Act are rather weak as a person found to have violated this law "may be required to forfeit not more than \$1,000." The word "may" is emphasized because it's not mandatory (the word "shall" is used to require such a fine). If an employee is discharged, or otherwise discriminated against in violation of this law, or an applicant not hired in violation of the law or a student is expelled, suspended or otherwise penalized in violation of this law, a complaint may be filed and it will be handled like a discrimination complaint with the ERD with the remedy being the same remedy afforded in discrimination cases: make-whole. The same for violations in the landlord-tenant relationship if a violation is found.

As is the case with any new law, it'll be interesting to see this law enforced and litigated. Either way, it is good to see Wisconsin keep ahead of trends in the law as technology always presents unique challenges for the law. As of last year, only 13 states had similar laws with only another 25 states merely considering such legislation.



**Landlord/Crime Free
Multi-Housing Rental Seminar
September 9th & 11th 6pm to 10pm
This is a two day class and you will be re-
quired to attend both days.**

Location: Boys and Girls Club
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Act 76 – Wisconsin’s New Landlord Tenant Law

Part 6: Alternative Disposition of Property During Eviction

Source: Tristan R. Pettit, Esq. Date: June 9, 2014

Act 76, has **amended sec. 799.45 Wis. Stats.**, and created new options for a landlord to dispose of a tenant’s abandoned personal property after the writ has been executed by the Sheriff and the rental unit has been returned to the landlord’s possession.

Under the old law, if the rental property was located in a county with a population greater than 500,000 people, a landlord was required to hire a moving company to remove any of the tenant’s property that was determined to be of value. Under the old law, if the rental property was located in a county of less than 500,00 people, a landlord could remove the tenant’s abandoned property of value himself but was required to post a bond before doing so, which could be very expensive.

With the passage of Wisconsin’s new Landlord-Tenant law, Act 76, a landlord can now remove any of the tenant’s abandoned property himself, regardless of the size of the county in which the rental property is located, once the Sheriff has executed the writ and the rental property has been returned to the possession of the landlord, and assuming the landlord has complied with the other requirements of **sec. 705.05(5), Wis. Stats.**

Many landlords — as well as the press reporting on the new law — misunderstood the new law and believed that a landlord was no longer required to involve the Sheriff in the eviction. That is not the case. Act 76 did not remove the requirement of involving the Sheriff. The Sheriff must still be hired to remove a tenant that has not voluntarily surrendered the rental unit and the Sheriff is still necessary to return the rental property to the possession of the landlord.

What Act 76 did was remove the requirement that a moving company be used in larger counties and remove the requirement that a landlord post a bond in smaller counties with regard to the removal and disposal of any belonging left by the tenant.

Under the new law a landlord now has three options to choose from when hiring the Sheriff to forcibly remove a tenant and return the rental unit to the possession of the landlord.

1. The landlord can choose to operate under the old law — and most of my clients are electing to do this — and still involve and pay for a moving company. The Sheriff will then remove any tenant still on the premises and return the rental property to the landlord. The moving company will then remove any tenant property of value left behind and take it to a storage facility. The Sheriff will remain at the rental property until the moving company has completed its work.
2. The landlord can choose to hire the Sheriff only. Under this scenario, the Sheriff will remove any tenant still on the premises and return the rental property to the landlord. The Sheriff will then leave. The landlord can then dispose of any tenant property left behind as set forth in **sec. 705.05 (5), Wis. Stats. (assuming the landlord has the required language in his rental agreement allowing him to dispose of the abandoned property — see sec. 704.05(5)(bf) — and abides by the exceptions to the disposal rules — see sec. 704.05(5)(am) and (b).**
3. The landlord can opt to hire the Sheriff only but also elect to have the Sheriff stick around while the landlord disposes of the tenant’s property (assuming the landlord has the required language in his rental agreement allowing him to dispose of the abandoned property — see sec. 704.05(5)(bf) — and abides by the exceptions to the disposal rules — see sec. 704.05(5)(am) and (b). This option allows the landlord a greater sense of security as the Sheriff will still be present should the tenant decide to visit. Please be aware however that under this option the Sheriff may have certain requirements that must be followed by the landlord, such as requiring the landlord to have a certain number of people assisting him with the removal of the tenant’s property, so that the Sheriff is not sitting around for hours waiting for a single landlord to remove and dispose of a tenant’s belongings.

Legal Reasons To Deny A Rental Applicant

Source: Tristan R. Pettit, Esq. On August 4, 2009

Landlords often feel as if they are not allowed to reject any applicant that is a member of a protected class. The important thing to remember is that you are legally allowed to deny rental to a member of a protected class as long as the reason you are denying them rental is not because they are a member of a protected class. This is a subtle distinction but a very important one. If you keep this distinction in mind during your screening process I think you will feel less “hamstrung” in general and hopefully more confident that you are not running afoul of the law.

Here are some examples of acceptable reasons to deny an applicant rental, which do not violate fair housing laws at the federal, state or local level (at least not in the city of Milwaukee):

1. The person smokes.
2. The person wants to keep a pet (not to be confused with a service animal or a comfort animal, both of which are not pets).
3. The applicant has insufficient income (income is defined broadly and includes more than just a salary from a job)
4. The person’s income cannot be verified.
5. The applicant has been arrested and/or charged with a crime.
6. The person has been convicted of a crime.
7. The individual has been sued for owing someone money.
8. The applicant has a money judgment against them.
9. The person does not have a prior rental history (1st time renters are not protected).
10. The applicant has a poor rental history.
11. They do not provide complete answers on the application.
12. The applicant provided false information on the application.
13. Prior landlords had negative comments about the applicant and would not rent to them again.
14. The person has poor or no credit history.
15. They have only been employed for a short period of time at their current job (I prefer to see at least 6 months – 1 year of employment at their current job so that I know there is some stability in their source of income).
16. The individual has filed bankruptcy in the past.
17. They have a foreclosure on their record.

These are just 17 of the many legal reasons that a landlord may deny a person’s rental application even if the applicant is a member of a protected class. As long as you are rejecting an applicant for a reason other than the person being a member of a protected class — such as for the reasons set forth above — you are not violating the fair housing laws.

To protect yourself further, I strongly suggest that rental property owners and management companies utilize written screening criteria which sets forth the minimum standards that must be met for an applicant to be accepted, or to put it another way, what will cause you to deny an applicant.

What Are The Protected Classes?

Source: Tristan R. Pettit, Esq. On July 10, 2009

The Federal law (which starts at 42 U.S.C. 3601 et. seq.) has 7 protected classes which are:

1. Race
2. Color
3. National Origin
4. Sex
5. Religion
6. Familial Status
7. Handicap

Wisconsin law (which is found at §106.50(1), Wis. Stats) also includes the above 7 protected classes plus adds an additional 5 more, which include:

1. Marital Status
2. Sexual Orientation
3. Lawful Source of Income
4. Ancestry
5. Age (18 years and older)

It is important for managers and owners to also check their local municipal ordinances as well as because there are some municipalities that have added additional protected classes. The city of Madison for instance also treats convicted criminals, students, and a person's physical appearance as additional protected classes. You can read more about the City of Madison municipal code – Ch. 32 entitled Landlord and Tenant [here](#). So if you make a housing decision based on a person's membership in a protected class you may have discriminated against them. Discrimination in housing covers a wide range of activities such as: refusing to rent to, refusing to discuss rental terms with, refusing to allow the inspection of rental housing, refusing to renew a lease, causing the eviction of, misrepresenting the availability of rental housing, applying different terms or standards, and engaging in harassment, intimidation, or coercion of. There are many more but you get the general idea.

It is important to remember that a landlord does not need to have the intent to discriminate in order to be found to have engaged in discrimination. Also be aware that most insurance policies do not cover an owner's or manager's discriminatory acts.

Remember that just because someone is a member of a protected class does not mean that you cannot deny them rental or evict them. It only becomes discrimination if you do the above because they are members of a protected class. So if you are denying a person rental or filing an eviction action against an individual for reasons other than their protected class status then you are not discriminating against them. For example, if a person does not meet your screening criteria because they have been evicted in the past, have no prior rental history, or their gross monthly income is not 3 times the monthly rent (or some other legal screening criteria that you have in place) then it is not discrimination to deny that person rental even though they may also be a member of a protected class.

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The remaining letters spell an Abraham Lincoln quotation.

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Kenosha Landlord Association

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Next Meeting

VFW

66 18-39th Ave

On our regular
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July 16, 2014

7:00 P.M. for meeting

Appetizers & Networking at 6:30 pm Meeting at 7 pm

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