

## 704.31 LANDLORD AND TENANT

(2) The judgment shall determine the breach or default complained of, fix the amount due the landlord at such time, and state the several amounts to become due within one year from the entry thereof, and provide that unless the amount adjudged to be due from the tenant, with interest thereon as provided in the lease or by law, shall be paid to the landlord within one year from the entry thereof and the tenant shall, within such period, fully comply with the judgment requiring the tenant to make good any default in the conditions of the lease, that the tenant and those claiming under the tenant shall be forever barred and foreclosed of any title or interest in the premises described in the lease and that in default of payment thereof within one year from the entry of the judgment the tenant shall be personally liable for the amount thereof. During the one-year period ensuing the date of the entry of the judgment the possession of the demised premises shall remain in the tenant and the tenant shall receive the rents, issues and profits thereof; but if the tenant fails to comply with the terms of the judgment and the same is not fully satisfied, and refuses to surrender the possession of the demised premises at the expiration of said year, the landlord shall be entitled to a writ of assistance or execution to be issued and executed as provided by law.

(3) This section does not apply to a lease to which a local professional baseball park district created under subch. III of ch. 229, the Wisconsin Quality Home Care Authority, or the Fox River Navigational System Authority is a party.

**History:** 1993 a. 486; 1995 a. 56; 2001 a. 16; 2009 a. 28.

**704.35 Residential rental property in foreclosure.**

(1) **DUTY OF LANDLORD TO PROVIDE NOTICE OF FORECLOSURE.** If a foreclosure action has been commenced against residential rental property, during the pendency of the action and before the expiration of the redemption period, the owner of the property shall notify any prospective tenant in writing of all of the following:

(a) That a foreclosure action has been commenced against the rental property.

(b) If judgment has been entered, the date on which the redemption period expires.

(2) **RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE.** Any rental agreement entered into between the property owner and a tenant during the pendency of the foreclosure action and before the expiration of the redemption period shall include a separate written statement, signed by the tenant, that the owner has provided written notice as required under sub. (1). A rental agreement that does not include the statement signed by the tenant is voidable at the option of the tenant.

(3) **TENANT PROTECTIONS.** The protections under s. 846.35 apply to a residential tenant if a foreclosure action is or has been commenced against the real property containing the dwelling unit occupied by the tenant.

**History:** 2009 a. 2.

**704.40 Remedies available when tenancy dependent upon life of another terminates.**

(1) Any person occupying premises as tenant of the owner of a life estate or any person owning an estate for the life of another, upon cessation of the measuring life, is liable to the owner of the reversion or remainder for the reasonable rental value of the premises for any period the occupant remains in possession after termination of the life estate. Rental value as used in this section has the same meaning as rental value defined in s. 704.27.

(2) The owner of the reversion or remainder can remove the occupant in any lawful manner including eviction proceedings under ch. 799 as follows:

(a) If the occupant has no lease for a term, upon terminating the occupant's tenancy by giving notice as provided in s. 704.19;

(b) If the occupant is in possession under a lease for a term, upon termination of the lease or one year after written notice to the occupant given in the manner provided by s. 704.21 whichever

occurs first, except that a farm tenancy can be terminated only at the end of a rental year.

(3) The occupant must promptly after written demand give information as to the nature of the occupant's possession. If the occupant fails to do so, the reversioner or remainderman may treat the occupant as a tenant from month-to-month.

**History:** 1979 c. 32 s. 92 (16); 1993 a. 486.

**704.44 Rental agreement that restricts access to certain services is void.** A rental agreement is void and unenforceable if it allows a landlord in a residential tenancy to do any of the following because a tenant has contacted an entity for law enforcement services, health services, or safety services:

(1) Increase rent.

(2) Decrease services.

(3) Bring an action for possession of the premises.

(4) Refuse to renew a rental agreement.

(5) Threaten to take any action under subs. (1) to (4).

**History:** 2007 a. 184.

**704.45 Retaliatory conduct in residential tenancies prohibited.**

(1) Except as provided in sub. (2), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:

(a) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(b) Complaining to the landlord about a violation of s. 704.07 or a local housing code applicable to the premises.

(c) Exercising a legal right relating to residential tenancies.

(2) Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (1).

(3) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

**History:** 1981 c. 286.

**704.50 Disclosure duty; immunity for providing notice about the sex offender registry.**

(1) Except as provided in sub. (2), a landlord or his or her agent has no duty to disclose to any person in connection with the rental of real property any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(2) If, in connection with the rental of real property, a person requests of a landlord or his or her agent information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the landlord or agent has a duty to disclose such information, if the landlord or agent has actual knowledge of the information.

(3) Notwithstanding sub. (2), the landlord or agent is immune from liability for any act or omission related to the disclosure of information under sub. (2) if the landlord or agent in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

**History:** 1999 a. 89.

**704.90 Self-service storage facilities.** (1) **DEFINITIONS.** In this section:

(a) “Default” means the lessee fails to pay rent or other charges due under a rental agreement for a period of 7 consecutive days after the due date under the rental agreement.

(am) “Last-known address” means the address provided by a lessee to an operator in the most recent rental agreement between the lessee and the operator or the address provided by a lessee to an operator in a written notice of a change of address, whichever address is provided later.

(b) “Leased space” means space located within a self-service storage facility that a lessee is entitled to use for the storage of personal property on a self-service basis pursuant to a rental agreement and that is not rented or provided to the lessee in conjunction with property for residential use by the lessee.

(c) “Lessee” means a person entitled to the use of a leased space, to the exclusion of others, under a rental agreement, or the person’s sublessee, successor or assign.

(d) “Operator” means the owner, lessor or sublessor of a self-service storage facility, an agent of any of them or any other person who is authorized by the owner, lessor or sublessor to manage the self-service storage facility or to receive rent from a lessee under a rental agreement.

(e) “Personal property” means movable property not affixed to land, including goods, wares, merchandise, motor vehicles, watercraft, household items and furnishings.

(f) “Rental agreement” means a lease or agreement between a lessee and an operator that establishes or modifies any provisions concerning the use of a leased space, including who is entitled to the use of the leased space.

(g) “Self-service storage facility” means real property containing leased spaces but does not include a warehouse or other facility if the operator of the warehouse or facility issues a warehouse receipt, bill of lading or other document of title for personal property stored in the leased spaces.

**(2) USE OF LEASED SPACE.** (a) An operator may not knowingly permit a leased space to be used for residential purposes.

(b) A lessee may not use a leased space for residential purposes.

**(2m) WRITTEN RENTAL AGREEMENT.** Every rental agreement shall be in writing and shall contain a provision allowing the lessee to specify the name and last-known address of a person who, in addition to the lessee, the operator is required to notify under sub. (5) (b) 1.

**(3) LIEN AND NOTICE IN RENTAL AGREEMENT.** (a) An operator has a lien on all personal property stored in a leased space for rent and other charges related to the personal property, including expenses necessary to the preservation, removal, storage, preparation for sale and sale of the personal property. The lien attaches as of the first day the personal property is stored in the leased space and is superior to any other lien on or security interest in the personal property except for a statutory lien or a security interest that is perfected by filing prior to the first day the personal property is stored in the leased space, a security interest in a vehicle perfected under ch. 342 or a security interest in a boat perfected under ch. 30.

(b) A rental agreement shall state in boldface type that the operator has a lien on personal property stored in a leased space and that the operator may satisfy the lien by selling the personal property, as provided in this section, if the lessee defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

**(4) CARE AND CUSTODY.** Except as provided in the rental agreement and in this section, a lessee has exclusive care, custody and control of personal property stored in the lessee’s leased space.

**(4b) LATE FEE.** (a) The operator may charge a reasonable late fee for each month a lessee does not pay rent by 5 weekdays after

the rent is due if the amount of the late fee is contained in the rental agreement.

(b) A late fee of \$20 or 20 percent of the monthly rental amount, whichever is greater, is presumed reasonable. An operator may charge a higher late fee but has the burden of proof that the higher late fee is reasonable.

**(4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION.** A lessee who defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement is subject to the procedures and remedies in subs. (4r) to (9) and (12).

**(4r) DENIAL OF ACCESS; REMOVAL AND STORAGE.** (a) If a lessee defaults, an operator may deny the lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a).

(b) After the termination, by expiration or otherwise, of a rental agreement for the use of a leased space by a lessee, an operator may remove personal property remaining in the leased space and store the personal property at another site within or outside the self-service storage facility or the operator may continue to store the personal property in the leased space, and the operator may deny the former lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a). The operator may charge a reasonable rent for storage of the personal property, whether at another site or in the leased space. A former lessee who fails to pay the rent is subject to all procedures and remedies set forth in this section for default.

**(5) REDEMPTION AND NOTICE OF OPPORTUNITY TO REDEEM.** (a) At any time prior to sale under sub. (6), a lessee may redeem personal property by paying the operator any rent and other charges due. Upon receipt of such payment, the operator shall return the personal property, and thereafter the operator shall have no liability to any person with respect to such personal property.

(b) An operator may not sell personal property under sub. (6) unless the operator first delivers the following 2 notices:

1. A first notice sent by regular mail to the last-known address of the lessee and the person, if any, specified in the rental agreement under sub. (2m) containing all of the following:

a. Notification that the lessee is in default or has failed to pay rent for the storage of personal property abandoned after the termination of the rental agreement or both.

b. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

c. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

d. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

2. A 2nd notice sent by certified mail to the last-known address of the lessee containing all of the following:

a. A statement that the operator has a lien on personal property stored in a leased space.

ag. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

am. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

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b. An itemized statement of the operator's claim for rent and other charges due as of the date of the notice and of additional rent and other charges that will become due prior to sale and the dates when they will become due.

c. A demand for payment of the rent and other charges due within a time period not sooner than 14 days after the date of the notice.

d. A statement that unless the rent and other charges are paid within the time period under subd. 2. c., the personal property will be sold, a specification of the date, time and place of sale and a statement that if the property is sold the operator shall apply the proceeds of the sale first to satisfy the lien and shall report and deliver any balance to the state treasurer as provided under ch. 177.

e. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

**(6) SALE, NOTICE OF SALE AND PROCEEDS OF SALE.** (a) After the expiration of the time period given in the 2nd notice under sub. (5) (b) 2. c., an operator may sell personal property that was stored in a lessee's leased space to satisfy the lien under sub. (3) (a) in the manner set forth in pars. (b) and (c) if all of the following conditions are met:

2. The operator has complied with the notice requirements under sub. (5) (b).

3. The lessee has failed to redeem the personal property under sub. (5) (a) within the time period specified in the notice under sub. (5) (b) 2. c.

4. An advertisement of the sale is published once a week for 2 consecutive weeks in a newspaper of general circulation where the self-service storage facility is located.

5. The advertisement under subd. 4. contains all of the following:

a. A brief and general description of the personal property reasonably adequate to permit its identification, as provided in the notices under sub. (5) (b).

b. The address of the self-service storage facility, the number, if any, of the space where the personal property is located and the name of the lessee.

6. The sale takes place not sooner than 15 days after the first publication under subd. 4.

7. The sale is conducted in a commercially reasonable manner and conforms to the terms of the notices under sub. (5) (b).

8. The sale is held at the self-service storage facility or at the nearest suitable place to the place where the personal property is stored.

(b) The operator shall apply the proceeds of the sale first to satisfy the lien under sub. (3) (a). The operator shall report and deliver any balance to the state treasurer as provided under ch. 177.

(c) A purchaser in good faith of personal property sold takes the personal property free and clear of any rights of any person against whom the lien under sub. (3) (a) was valid and any rights of any other lienholder, regardless of any noncompliance with the requirements of this section by any person.

**(7) NOTICE; PRESUMPTION OF DELIVERY.** Notice by mailing under sub. (5) (b) is presumed delivered if deposited with the U.S. postal service, properly addressed to the last-known address of the lessee or person specified in the rental agreement under sub. (2m) with postage prepaid.

**(8) SUPPLEMENTAL NATURE OF SECTION.** This section does not impair or affect in any way the right of parties to create liens by special contract or agreement, nor does it impair or affect any lien

not arising under this section, whether the other lien is statutory or of any other nature.

**(9) RULES.** The department of agriculture, trade and consumer protection may promulgate rules necessary to carry out the purposes of this section.

**(10) PENALTIES.** (a) Except as provided in par. (b), any person who violates this section or any rule promulgated under this section may be required to forfeit not more than \$1,000 for the first offense and may be required to forfeit not more than \$3,000 for the 2nd or any later offense within a year. Each day of continued violation constitutes a separate offense. The period shall be measured by using the dates of the offenses which resulted in convictions.

(b) Paragraph (a) does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(c) Forfeitures under par. (a) shall be enforced by action on behalf of the state by the department of justice or by the district attorney of the county where the violation occurs.

**(11) DUTIES OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION.** (a) Except as provided in par. (c), the department of agriculture, trade and consumer protection shall investigate alleged violations of this section and rules promulgated under sub. (9). To facilitate its investigations, the department may subpoena persons and records and may enforce compliance with the subpoenas as provided in s. 885.12.

(b) Except as provided in par. (a), the department may, on behalf of the state, bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or any rule promulgated under sub. (9).

(c) This subsection does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

**(12) RIGHT TO ACTION FOR VIOLATION.** In addition to the remedies otherwise provided by law, any person injured by a violation of this section or any rule promulgated under sub. (9) may bring a civil action to recover damages together with costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1), and any equitable relief as may be determined by the court.

**History:** 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461.

"Any person injured" in sub. (12) is not limited to a "lessee" as defined in sub. (1) (c). This section protects the interests in personal property of persons who are authorized to store their property in a leased space pursuant to the rental agreement, whether or not they are lessees. *Cook v. Public Storage, Inc.* 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07-2077.

To construe "the address provided by a lessee to an operator in the most recent rental agreement" in sub. (1) (am), to mean the correct address actually provided by a lessee in an information form is more reasonable than to construe it to mean the incorrect address that the operator transferred to the rental agreement. It is more reasonable to place the responsibility on the operator to accurately transfer the address to the rental agreement than on the lessee to catch the operator's mistake. *Cook v. Public Storage, Inc.* 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07-2077.

"Provided by a lessee" in the definition of "last-known address" in sub. (1) (am), does not expressly require that the lessee provide the address in person. It is more reasonable to construe "the address provided by a lessee" to include an address provided by a person acting on behalf of the lessee who the operator knows is acting on the lessee's behalf than it is to restrict it to the lessee himself or herself. *Cook v. Public Storage, Inc.* 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07-2077.

While excess proceeds from sales under sub. (6) are presumed abandoned, nothing in ch. 177 suggests that this presumption may not be overcome. Nothing suggests that the holder may continue to hold the excess proceeds even if the person whose property was sold presents himself or herself in person to the holder or otherwise contacts the holder. *Cook v. Public Storage, Inc.* 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07-2077.

The attorney fees provision in sub. (12) is the incentive for private parties to bring actions to enforce this section. It is unreasonable to read this section to permit a contract provision to eliminate or reduce reasonable attorney fees. The same conclusion applies with respect to compensatory damages. A contract provision preventing punitive damages was against public policy. *Cook v. Public Storage, Inc.* 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07-2077.