



**EVICTION
NOTICE**

Eviction in the Age of Coronavirus

Marquette University Law School
MVLC Brown Bag CLE

March 11, 2021

Meet Your Trainer



← Raphael Ramos, Director, Eviction Defense Project – Milwaukee

- ▶ Legal Action of Wisconsin – Non-profit law firm, providing civil legal aid to low-income individuals since 1968
- ▶ Eviction Defense Project – Free civil legal aid for tenants facing eviction
 - ▶ Located in Milwaukee County Courthouse in Room 411.
 - ▶ Available Mondays, Thursdays, and certain Wednesdays and Fridays.
 - ▶ First come, first served. Tenants should come at 12:00pm.



Housekeeping

- ▶ Questions Welcome!
 - ▶ Submit questions via chat
- ▶ Training is focused on MVLC clinic setting

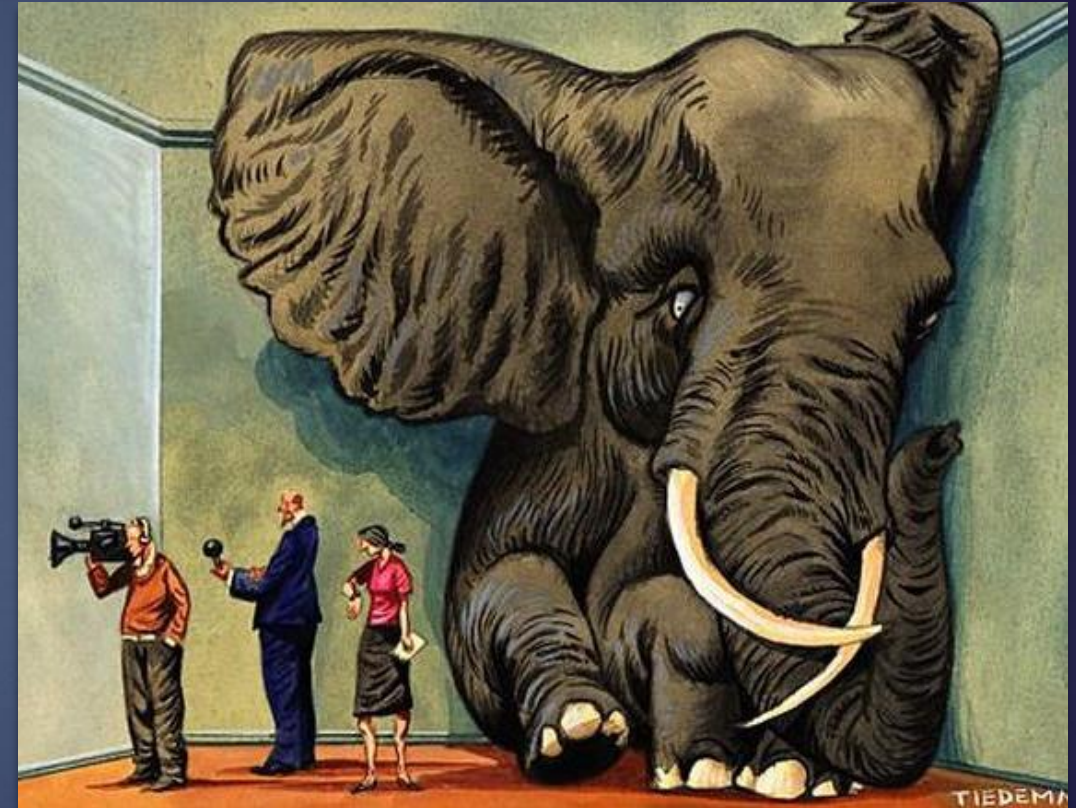


What assistance can you provide at the clinic?

- ▶ Identify where they are in the process
- ▶ Advice
- ▶ Draft documents (answers, motions to reopen or seal, correspondence, etc.)
- ▶ Referrals
- ▶ Expectation Management

Representing Landlords – My POV

- ▶ Sometimes eviction may be the only realistic path forward
 - ▶ Want LLs to make sure they are doing things correctly
 - ▶ Make sure that they are complying with all requirements for eviction
- ▶ There are many options available to address LL/Tenant disputes before resorting to eviction.
 - ▶ Mediate Milwaukee – neutral mediators who have successfully helped LLs and tenants resolve issues outside the courtroom
 - ▶ Rental Housing Resource Center – renthelpmke.com
 - ▶ Financial Aid – Community Advocates, SDC, WERA (WISCAP WERA website)



Why do Evictions Happen?

1. Inability to Pay / Poverty / COVID
2. Communication Breakdowns
3. Turbulent Relationship
4. Children
5. Conditions / Legal Framework
6. Eviction



Impacts of Eviction

- ▶ Displacement and Homelessness
- ▶ Education – Absences due to instability or school changes due to relocation
- ▶ Employment - Risk of losing current job due to housing instability, relocation, transportation, etc.
- ▶ Health
 - ▶ Direct correlation between ER visits for children and housing instability
 - ▶ Conditions (worsened by cycle of eviction) like lack of heat, mold, infestations, etc. lead to health issues
 - ▶ Mental Health (perceptions of procedural fairness)
- ▶ COVID-19

Impacts of Eviction

- ▶ CCAP is publicly accessible (LLs use it to review)
- ▶ Eviction is the modern day scarlet letter and negatively impacts long-term housing options
- ▶ From actual landlord application site: “No Prior Evictions, No Exceptions”
- ▶ Record impacts eligibility for subsidized housing

Eviction in Normal Times

- ▶ How many evictions in City of Milwaukee per year?
 - ▶ 13,687 in 2019; 13,865 in 2018; 14,008 in 2017; 13,097 in 2016
- ▶ How often are landlords represented by counsel?
 - ▶ On average, more than 50% of landlords are represented by an attorney
- ▶ How many tenants had representation?
 - ▶ Less than 1% of tenants in eviction filings, 112 out of 13,457, were represented by counsel in 2016
- ▶ Based on census numbers, approximately 33,000 people were impacted by eviction filings in a normal year
- ▶ It's a national problem, but Milwaukee's is worse (Eviction Lab)

Eviction in the Age of COVID (2020)

- ▶ City of Milwaukee Filings – 9,044 (down by more than 4,000 from 2019)
 - ▶ Of those filings, 2,559 have resulted in eviction judgments (down more than 50% from 2019)
- ▶ Fewer cases filed, fewer cases decided
 - ▶ Many cases still pending due to adjournments
 - ▶ A lot of people facing the threat of eviction

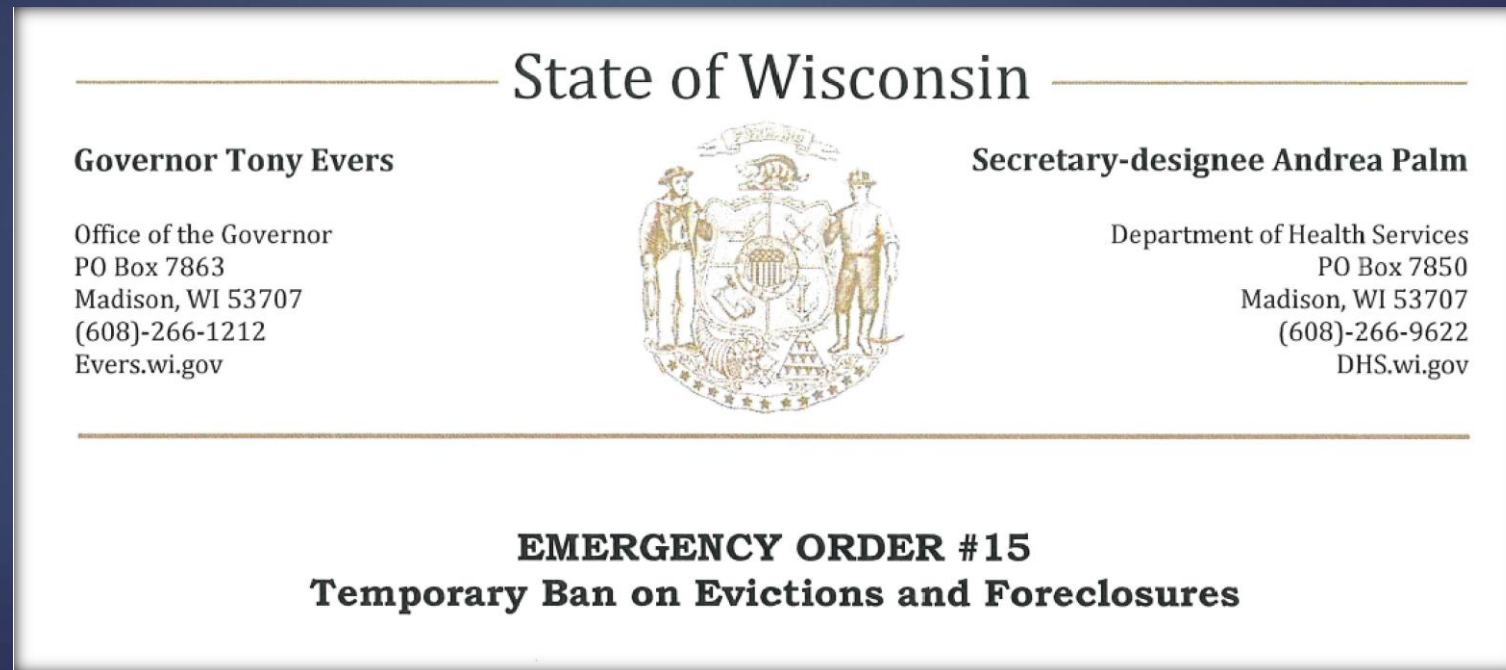


How Did We Get Here?

- ▶ Underlying Eviction Crisis
- ▶ Availability of Resources
- ▶ Collaboration Between Landlords and Tenants
- ▶ Eviction Moratoria

Emergency Order 15

- ▶ Governor Evers issued Emergency Order 15 on March 27, 2020
- ▶ EO 15 was effective through May 26, 2020



Emergency Order 15 – Eviction Moratorium

- ▶ Prohibited landlords from filing eviction actions
- ▶ Prohibited landlords from giving notice terminating tenancy
- ▶ Prohibited landlords from giving a writ to the Sheriff for execution (and prohibited Sheriff from executing writs in their possession)
- ▶ Extremely effective in minimizing evictions – 83 evictions filed in total in April and May

STATE OF WISCONSIN, CIRCUIT COURT, Milwaukee COUNTY For Official Use

Plaintiff: (Name [first, middle, last], Address, City, State, Zip)
Demandante: (Nombre [primero, segundo, apellido], domicilio, ciudad, estado, código postal)

... attached for additional plaintiffs
Ver adjunto para otros demandantes

...-vs---contra-...
To: Defendant (Name [first, middle, last], Address, City, State, Zip)
Para: Demandado (Nombre [primero, segundo, apellido], domicilio, ciudad, estado, código postal)

... attached for additional defendants
Ver adjunto para otros demandados

If you are a person with a disability, you may request a reasonable accommodation due to your disability to participate in the court process. Please call (414) 985-5757 at least 10 working days prior to the court date. Please note that the court does not provide transportation. If you are a person with a disability, you may request a reasonable accommodation due to your disability to participate in the court process. Please call (414) 985-5757 at least 10 días hábiles antes de la fecha de la corte. Por favor, note que el tribunal no proporciona transporte.

Case No. _____
Número de caso _____

Claim for money (\$10,000 or less)
Reclamo de dinero (\$10,000 o menos)

Return of property (replevin)
Devolución de propiedad (Reivindicación de cosas muebles)

Eviction (Desalojo)
Desalojo por ejecución de hipoteca

Arbitration award
Sentencia de arbitraje

Return of earnest money
Devolución de señal

Tort/Personal injury (\$5,000 or less)
Agravio/Daños Corporales (\$5,000 o menos)

This form does not replace the need for an interpreter, any colloquial use of law, or the responsibility of counsel to ensure that persons with limited English proficiency fully comprehend their rights and obligations. Este formulario no sustituye el uso de un intérprete, ni los coloquios judiciales en español, ni tampoco sustituye la responsabilidad del tribunal y los abogados de asegurarse de que las personas cuya lengua materna no es el idioma inglés entiendan sus derechos y obligaciones.

SUMMONS CITACIÓN

To the Defendant(s):
Para el/los demandado/s:
You are being summoned as described below. If you wish to dispute this matter, you must appear in court at the time and place stated.
Lo están demandando como se indica abajo. Si desea disputar este asunto, debe comparecer en la corte en el tiempo y lugar establecidos.

AND/OR
Y/O (El Actuario del Juzgado)

You must file a written answer to the summons with a copy to the plaintiff or plaintiff's attorney on or before the date stated.
Debe presentar una respuesta y adjuntar una copia al demandante o al abogado del demandante o con anterioridad a ellas.

If you do not appear or answer, the plaintiff may win this case and a judgment entered for what the plaintiff is asking.
Si no comparece ni responde, el demandante puede ganar esta causa y se puede dictar un fallo a favor de lo que el demandante esté solicitando.

Clerk/Attorney Signature Firma del Actuario de Juzgado/Abogado
John Bauett

Milwaukee County Courthouse
901 N Ninth Street, Room 400
Milwaukee, WI 53233

Date Summons Issued Fecha de emisión de la citación
Date Summons Mailed Fecha en la que se envió la citación

Emergency Order 15 – Exceptions to Ban



- ▶ Situations involving threat of serious physical harm (required affidavit)
- ▶ Evictions of holdover tenants under Wis. Stat. 704.25

CARES Act – Eviction Moratorium

- ▶ Section 4024 of the CARES Act imposed restrictions on what landlords could do to terminate tenancies and file eviction
- ▶ The CARES Act was enacted March 27, 2020, and was effective through July 25, 2020

One Hundred Sixteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday,
the third day of January, two thousand and twenty*

An Act

To amend the Internal Revenue Code of 1986 to repeal the excise tax on high cost employer-sponsored health coverage.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”.

CARES Act – Moratorium on Filing

- ▶ Prohibited landlords of covered dwellings from filing eviction actions for nonpayment of rent or other fees or charges
- ▶ Landlords of covered dwellings could not late fees or penalties in relation to nonpayment of rent



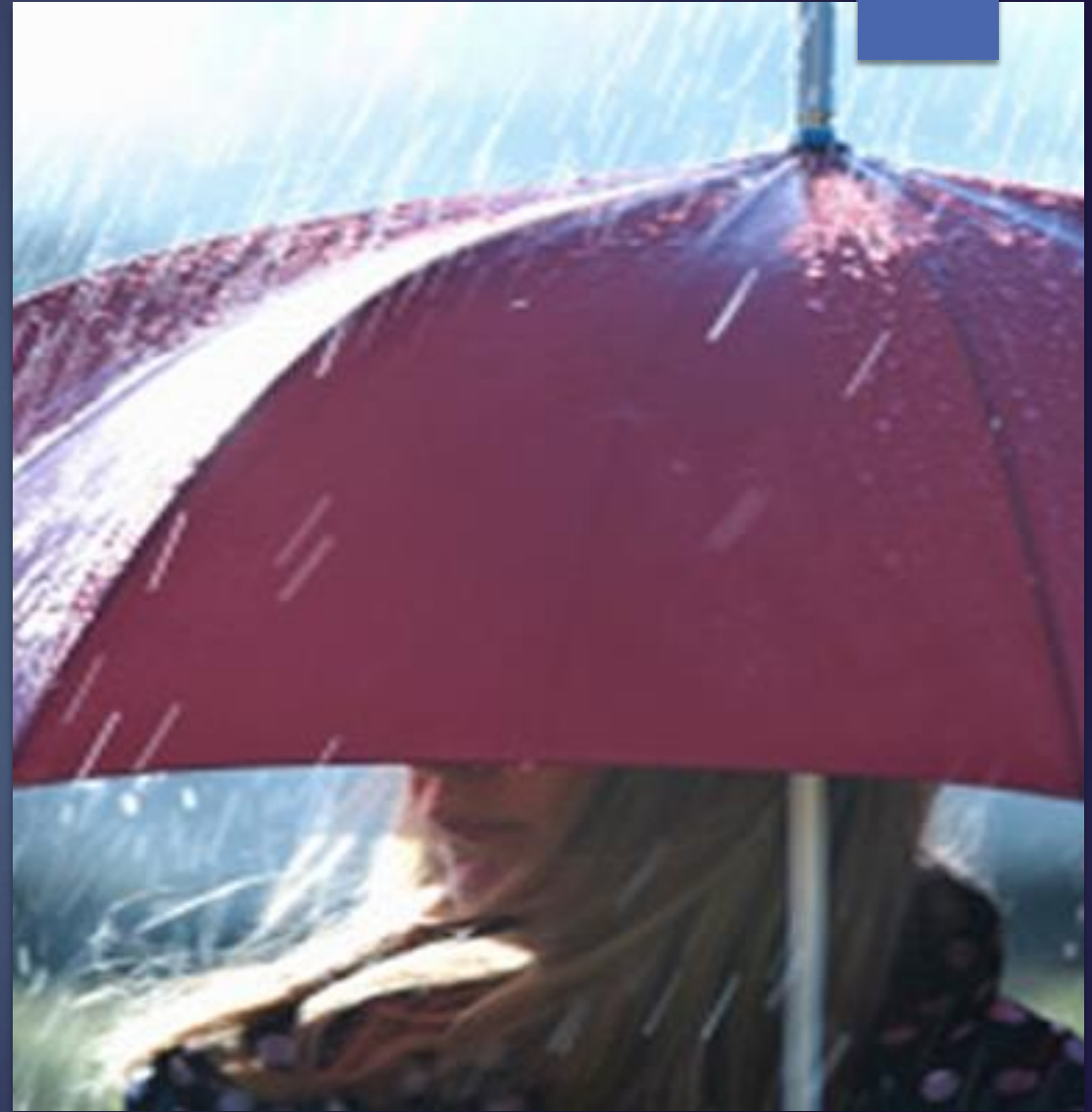
CARES Act – Moratorium on Notices

- ▶ Landlord of a covered dwelling could not “require the tenant to vacate the covered dwelling” without 30 days notice
- ▶ Landlords could not issue 30 day notice until after July 25, 2020 (filing on August 25)
- ▶ Note that unlike the filing moratorium:
 - ▶ The 30-day notice requirement on notices was **not** restricted to circumstances involving nonpayment of rent
 - ▶ The 30-day notice requirement did not have a sunset provision, so it should still apply to covered persons



CARES Act - Coverage

- ▶ The protections afforded by the CARES Act apply to “Covered Dwellings”
 - ▶ Dwellings that are occupied by a tenant under a lease or State law **AND**
 - ▶ Are on a “Covered Property”
- ▶ Covered Properties
 - ▶ Properties covered by a housing program of the Violence Against Women Act (VAWA) – This includes public housing, Section 8 housing, low-income tax credit housing, and more
 - ▶ Properties under the rural housing voucher program; or
 - ▶ Properties with a federally backed mortgage or federally backed multifamily mortgage loan
 - ▶ Tools to lookup covered property status:
https://www.tenantresourcecenter.org/cares_act_and_evictions



CDC Eviction Moratorium

- ▶ On Sept. 4, 2020, CDC issued an order temporarily halting evictions in the United States
 - ▶ Initially set to expire Dec. 31, 2020 the 2021 Consolidated Appropriations Act extended it through January 31, 2021.
- ▶ On January 29, 2021, CDC issued a new order extending the eviction moratorium through March 31, 2021



CENTERS FOR DISEASE
CONTROL AND PREVENTION

Purpose of the Order:

- ▶ Mitigate the spread of COVID-19 within congregate or shared living settings or through unsheltered homelessness
- ▶ Mitigate the further spread of COVID-19 from one state or territory into any other state or territory
- ▶ Support response efforts to COVID-19 at the Federal, state, local, territorial, and tribal levels

WHY?
ARE WE DOING
THIS!

What's prohibited?

- ▶ Any action by a landlord to remove or cause the removal of a covered person from a residential property

Residential property

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- ▶ Yes - any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes
- ▶ No - hotel rooms, motel rooms, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.
- ▶ See Wisconsin Admin. Code ATCP s. 134.01(4) & 134.02(14)

"Covered Person"

ANY TENANT WHO PROVIDES A DECLARATION, SIGNED UNDER PENALTY OF PERJURY, TO THEIR LANDLORD.

There's a form for that:

- ▶ Available at: https://www.cdc.gov/coronavirus/2019-ncov/downloads/EvictionDeclare_d508.pdf
- ▶ Not required
- ▶ Can be in another language
- ▶ Must include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration.
- ▶ Must be signed
- ▶ Does not have to be notarized

Declaring that:

1. The individual has used **best efforts to obtain all available government assistance** for rent or housing;
2. The individual either (i) expects to earn no more than **\$99,000 in annual income** for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
3. The individual is **unable to pay the full rent** or make a full housing payment **due to substantial loss of household income**, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses
4. The individual is using **best efforts to make timely partial payments** that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
5. **Eviction would likely render the individual homeless**— or force the individual to move into and live in close quarters in a new congregate or shared living setting— because the individual has no other available housing options.

Does the moratorium apply to 28-day notices?

- ▶ Our position is **YES!**
- ▶ There are exceptions to the eviction ban listed in the order, and a 28-day non-renewal does not meet any of those exceptions.
- ▶ **Only exceptions:**
 - 1) engaging in **criminal activity** while on the premises;
 - 2) **threatening the health or safety** of other residents;
 - 3) damaging or posing an immediate and significant risk of **damage to property**;
 - 4) **violating any applicable building code**, health ordinance, or similar regulation relating to health and safety; or
 - 5) **violating any other contractual obligation** of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).

Legal Authority for the Order

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- ▶ Order issued under the authority of section 361 of the Public Health Service Act, codified at 42 C.F.R. 70.2
- ▶ HHS Secretary is authorized to take measures to prevent the spread of disease in the event of inadequate local control
- ▶ Challenges to Order
 - ▶ E.D. in Texas ruled the Order unconstitutional (did not issue injunction)
 - ▶ Federal Court in Cleveland ruled that CDC did not have authority to issue the Order (did not issue an injunction)
 - ▶ Other past cases have ruled that the Order was valid



RENTAL HOUSING

RESOURCE CENTER

- ▶ renthelpmke.com
- ▶ 728 N. James Lovell St.
Milwaukee, WI 53233
- ▶ 414.895.RENT
- ▶ Provides resources for tenants and landlords
- ▶ Partnership between numerous area stakeholders from tenant and landlord organizations





Building Blocks of LL/Tenant Law

- ▶ Wis. Stat. Ch. 704 – Housing Statutes
- ▶ ATCP Ch. 134 – Housing Regulations
- ▶ Wis. Stat. Ch. 799 – Small Claims Procedure
- ▶ Contract Law

Basic LL Duties & Prohibitions

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Duties

- ▶ Disclosures
- ▶ Repairs
- ▶ 12-Hr Notice for Entry
- ▶ Return Security Deposit/
Statement of Claims

Prohibitions

- ▶ Self-Help Eviction
- ▶ Retaliation
- ▶ Misrepresentation
- ▶ Late Fees w/o Agreement
- ▶ Certain Lease Provisions

Photo: Ali Goldstein/Netflix
(<https://www.vulture.com/2019/02/one-day-at-a-time-recap-season-3-episode-4-hermanos.html>)

Prohibited Rental Agreement Provisions

- ▶ Retaliation
- ▶ Self-Help Eviction
- ▶ Rent Acceleration
- ▶ Attorney Fees
- ▶ Negligence Immunity
- ▶ Tenant Liability
- ▶ Waiver of Habitability Requirement



Housing Conditions & Rent Abatement

If conditions in the rental unit are hazardous to a tenant's health & safety, the tenant has two options:

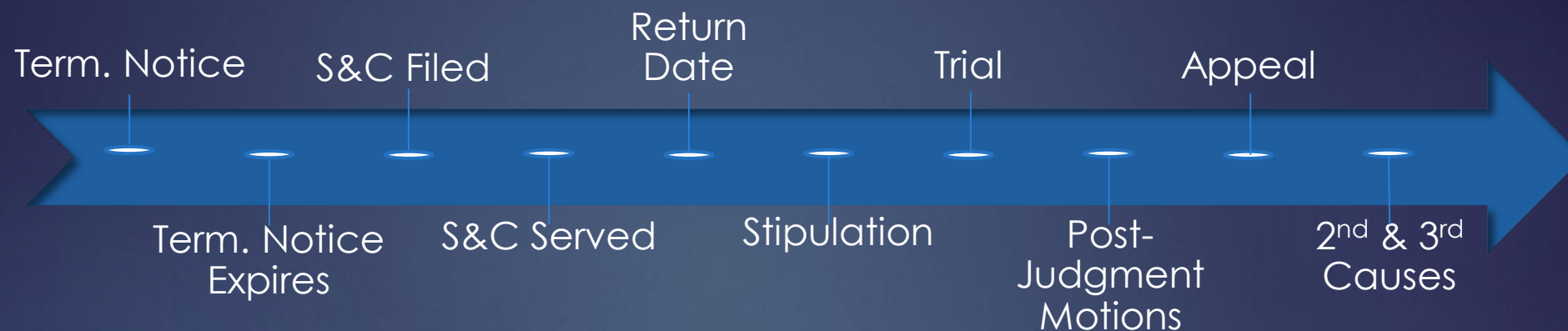
- Move out and stop paying rent.
- Stay and abate rent (pay less).

100% abatement is NOT permitted while tenant still lives in unit

- **Wis. Stat. 704.07(4):** ...This section does not authorize rent to be withheld in full, if the tenant remains in possession.



EVICTIION PROCESS



- ▶ Courthouse is handling proceedings remotely, using Zoom (update addresses)
- ▶ Make sure clients are prepared to take part in virtual proceedings
- ▶ Documents that the court will need to see (stipulations, evidence, etc.) should be filed in advance

Termination Basics

- ▶ Written termination notice required
- ▶ Exceptions:
 - ▶ lease expires naturally
 - ▶ mutual termination agreement

**5 DAY
Notice to Pay Rent or Vacate**

1 _____ Tenant(s) Name

2 **State of Wisconsin** } _____ Address

3 _____ County } _____ City, State, Zip

4 Pursuant to Wis. Stat. § 704.17, this notice terminates your tenancy and requires you
 5 to vacate the premises listed above within 5 days of service of this notice, unless
 6 due rent and other amounts are received in full by the owner or agent within the 5 day period.

7 <u>Past Due Rent:</u>	Amount	Date Rent Was Due
8	_____	_____
9	_____	_____
10	_____	_____

11 **Total amount due: \$** _____

12 If the total amount due has not been received by the owner or agent and you have
 13 within the 5 day period, an eviction action may be filed against you pursuant to Wis. Stat.
 14 default and subject to eviction if you make only a partial payment of the amount listed above
 15 payment after the 5 day period has expired, unless the owner or agent has agreed to vary.

16 **DOUBLE RENT:** Pursuant to Wis. Stat. § 704.27, a landlord shall recover a **minimum**
 17 **amount**, if the tenant remains in possession of the premises after the expiration of this notice.

18 Date: _____

Owner/Agent of Owner

19 **When To Use:**
 20 (1) Tenancy for one year or less or year to year tenancy when tenant fails to pay rent.
 21 (2) Month-to-month or week-to-week tenancy when tenant fails to pay rent.
 22 Wis. Stat. § 704.17

Type of Notice (1/2)

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Type of Tenancy

- ▶ Periodic
- ▶ Lease
- ▶ Tenancy at Will



Reason for Termination

- ▶ No Reason
- ▶ Nonpayment of Rent
- ▶ Behavior
- ▶ Criminal Activity
- ▶ Nuisance

Type of Notice (2/2)

-----Type of Tenancy-----

		Month-to-Month	Lease for 1 year	Tenancy at Will
-----Reason for Termination-----	No reason	28 days to vacate (at end of month)	Not allowed	28 days to vacate (any end date)
	Nonpayment of Rent	5 days to cure or vacate or 14 days to vacate	5 days to cure or vacate	N/A
			2 nd breach w/in 12 mos.: 14 days to vacate	
	Behavior	5 days to cure or vacate or 14 days to vacate	5 days to cure or vacate	N/A
			2 nd breach w/in 12 mos.: 14 days to vacate	
Criminal Activity & Nuisance	5 days to vacate	5 days to vacate	5 days to vacate	

Invalid Termination Notice

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1. Vague
“cleanliness and/or clutter”
2. Misleading/ Confusing
“failed to pay rent of \$700 and late fees”
but note changes imposed by WI Act 317
3. No Right to Cure
5-Day Notice to Vacate
4. Timing
28-Day Notice to Vacate by 1/18/18
5-Day Notice to Cure or Vacate by 1/21/18

Summons & Complaint Form

- ▶ No self-help eviction
- ▶ Owner/agent files summons & complaint
- ▶ Factual statement

STATE OF WISCONSIN, CIRCUIT COURT, Milwaukee COUNTY

For Official Use

Plaintiff: (Name [first, middle, last], Address, City, State, Zip)
 Demandante: (Nombre [primero, segundo, apellido], domicilio, ciudad, estado, código postal)

See attached for additional plaintiffs
 Ver adjunto para otros demandantes

-vs--contra-

To: Defendant(s) : (Name [first, middle, last], Address, City, State, Zip)
 Para: Demandado(s): (Nombre [primero, segundo, apellido], domicilio, ciudad, estado, código postal)

See attached for additional defendants
 Ver adjunto para otros demandados

If you require reasonable accommodations due to a disability to participate in the court process, please call (414) 985-5757 at least 10 working days prior to the scheduled court date. Please note that the court does not provide transportation.
 Si necesita ajustes razonables debido a una discapacidad para poder participar en el procedimiento judicial, sírvase llamar como mínimo 10 días hábiles antes de la fecha judicial programada. Por favor tome en cuenta que el tribunal no proporciona transporte.

Amended/Enmendado

**Summons and Complaint
 Small Claims
 Citaciones y Demandas
 Reclamos de menor cuantía**

Case No. _____
 Número de caso

Claim for money (\$10,000 or less) 31001
 Reclamo de dinero (\$10,000 o menos)

Return of property (replevin) 31003
 Devolución de propiedad (Reivindicación de cosas muebles)

Eviction/Desalojo 31004
 Eviction due to foreclosure
 Desalojo por ejecución de hipoteca

Arbitration award 31006
 Sentencia de arbitraje

Return of earnest money 31008
 Devolución de señal

Tort/Personal injury (\$5,000 or less) 31010
 Agravio/Daños Corporales (\$5,000 o menos)

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SUMMONS CITACIÓN

To the Defendant(s): Para el/los demandado/s:
 You are being sued as described below. If you wish to dispute this matter:
 Lo están demandando según lo indicado abajo. Si desea disputar este asunto:

You must appear at the time and place stated.
 Debe comparecer a la hora y en el lugar establecidos.

AND/OR (Clerk will circle one)
 Y/O (El Actuario del juzgado marcará una)

You must file a written answer and provide a copy to the plaintiff or plaintiff's attorney on or before the date and time stated.
 Debe presentar una respuesta por escrito y proporcionar una copia al demandante o al abogado del demandante en la fecha y hora establecidas o con anterioridad a ellas.

If you do not appear or answer, the plaintiff may win this case and a judgment entered for what the plaintiff is asking.
 Si no comparece ni responde, el demandante puede ganar esta causa y se puede dictar un fallo a favor de lo que el demandante esté solicitando.

Clerk/Attorney Signature Firma del Actuario/Abogado
John Barrett

**When to Appear/File an Answer
 Fecha para comparecer/
 presentar una respuesta**

Date Fecha	Time Hora
---------------	--------------

**Place to Appear/File an Answer
 Lugar para comparecer/presentar una respuesta**

**Milwaukee County Courthouse
 901 N Ninth Street, Room 400
 Milwaukee, WI 53233**

Date Summons Issued Fecha de emisión de la citación	Date Summons Mailed Fecha en la que se envió la citación
--	---

You've just
been served.



Service of Summons & Complaint

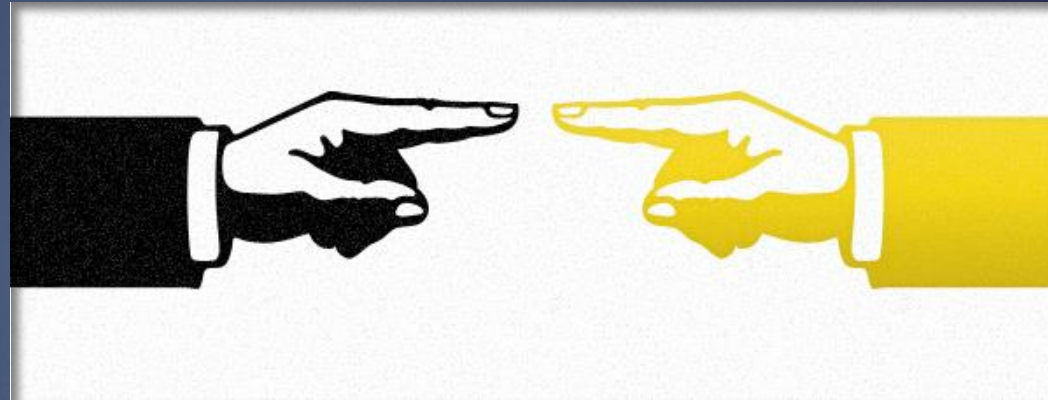
- ▶ Manner of Service
 - ▶ Personal
 - ▶ Nail & Mail (only some counties)
 - ▶ Substituted
 - ▶ Certified Mail (only some counties)
 - ▶ Publication + Mailing
- ▶ Jurisdictional
- ▶ Improper Service → Delay or Dismissal

Ownership

Plaintiff is not
owner or agent

Common Issue

Check on My Milwaukee
Home or local equivalent



RETURN DATE

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Term. Notice

S&C Filed

Trial

Appeal

Term. Notice
Expires

S&C Served

Stipulation

Post-Judgment
Motions

2nd & 3rd
Causes



1. Appear
2. Contest
3. Schedule Trial or Stipulate

Photo credit: *Milwaukee Journal Sentinel*, <http://www.jsonline.com/story/news/blogs/proof-and-hearsay/2017/03/20/milwaukees-wave-eviction-lawsuits-these-volunteer-lawyers-give-tenants-unexpected-help/98950798/>

Common Stipulations

Vacate
Pay & Stay

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

_____, Plaintiff(s)
vs.

_____, Defendant(s).

**STIPULATION AND ORDER
TO ENTER JUDGEMENT
OF DISMISSAL**

Case No. _____

IT IS HEREBY STIPULATED between the parties hereto, by the undersigned, as follows:

The First Cause of Action is DISMISSED per the following stipulation:

Defendant will vacate the premises by _____ (and)(or) pay to Plaintiff:

\$ _____ on or before _____	\$ _____ on or before _____
\$ _____ on or before _____	\$ _____ on or before _____
\$ _____ on or before _____	\$ _____ on or before _____

If Defendant fails to follow the terms of this stipulation, Plaintiff may vacate the dismissal and take judgement for restitution of premises (immediate Writ) with costs and disbursements without notice to the Defendant.

As to the Second and Third Causes of Action (check one):

a. Adjourned to _____ at 2:30 p.m. before the Small Claims Court Commissioner, Room 400 of the Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, WI 53233.



TRIAL

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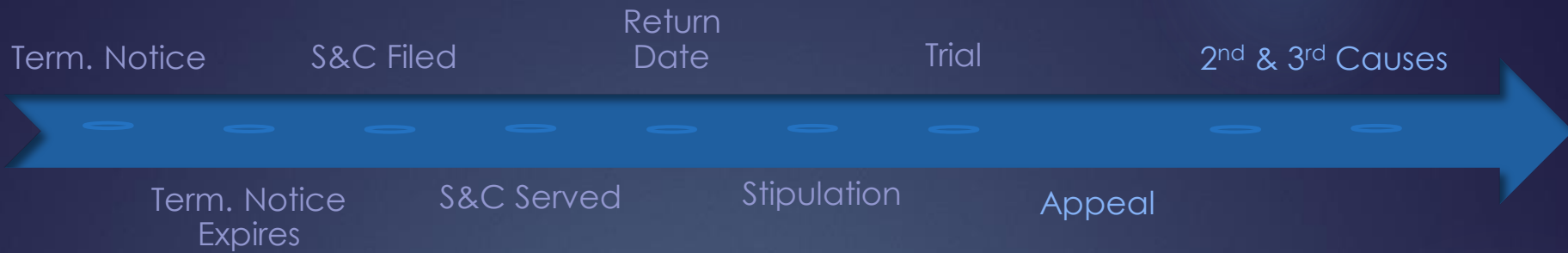
Informal

No rules of evidence

Except:

Privilege & HIV tests

No *essential* finding of fact
based *solely* on oral hearsay



After Trial

Post-Judgment Motions (Reopen)

Execution of Writ

Seal CCAP

Appeal



CCAP Seals

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- ▶ MVLC and MJC have a clinic for this: <https://go.appointmentcore.com/guest/book/eWUDfc61eR>
- ▶ Removes the client's name from being publicly visible
- ▶ Can only be obtained by motion to the court (judge)
- ▶ Entire case must be dismissed (rare exceptions)
- ▶ If dismissed by stipulation, the court will look to see if there are outstanding obligations (payment terms, Move out date)
- ▶ Balancing Test
- ▶ Marquette Volunteer Legal Clinic and the Milwaukee Justice Center

Tenant Cured / No Breach

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Tenant Cured

- Took **reasonable steps** to remedy alleged default



Breach Not Material

- Loud car alarm
- Unauthorized pet gecko



No Breach

- Allegations must be proved by **preponderance** of evidence



Retaliation

- ▶ A landlord may not take adverse actions against a tenant because the tenant complained about conditions in the rental unit or otherwise attempted to exercise her rights.
- ▶ Retaliation must be the “**but for**” cause of the eviction / raise in rent / other
- ▶ Tenant must show that the action was retaliatory by a **preponderance of the evidence**
- ▶ Can be raised in eviction defense (Wis. Stat. 704.45) or affirmative claim (ATCP Ch. 134.09)



Retaliation
Just Ahead

Reasonable Accommodation

- ▶ Landlords *must* accommodate a tenant's disability if
 - ▶ No undue burden
 - ▶ No direct threat
- ▶ Process
 - ▶ Make written request
 - ▶ Identify disability
 - ▶ Describe accommodation



Contract Defenses

Unconscionability

Modification

Laches

~~Waiver~~

Promise of
No Hindrance

Duty of
Good Faith

Bankruptcy

- ▶ Chapter 13
can prevent eviction
- ▶ Chapter 7
delays eviction
- ▶ Chapter 128
best



Subsidized Housing: Types

- ▶ Public
- ▶ Voucher
aka Section 8
aka Rent Assistance
- ▶ Private Owner—
HUD Site-Based
- ▶ Tax-Credit



Subsidized Housing: Differences

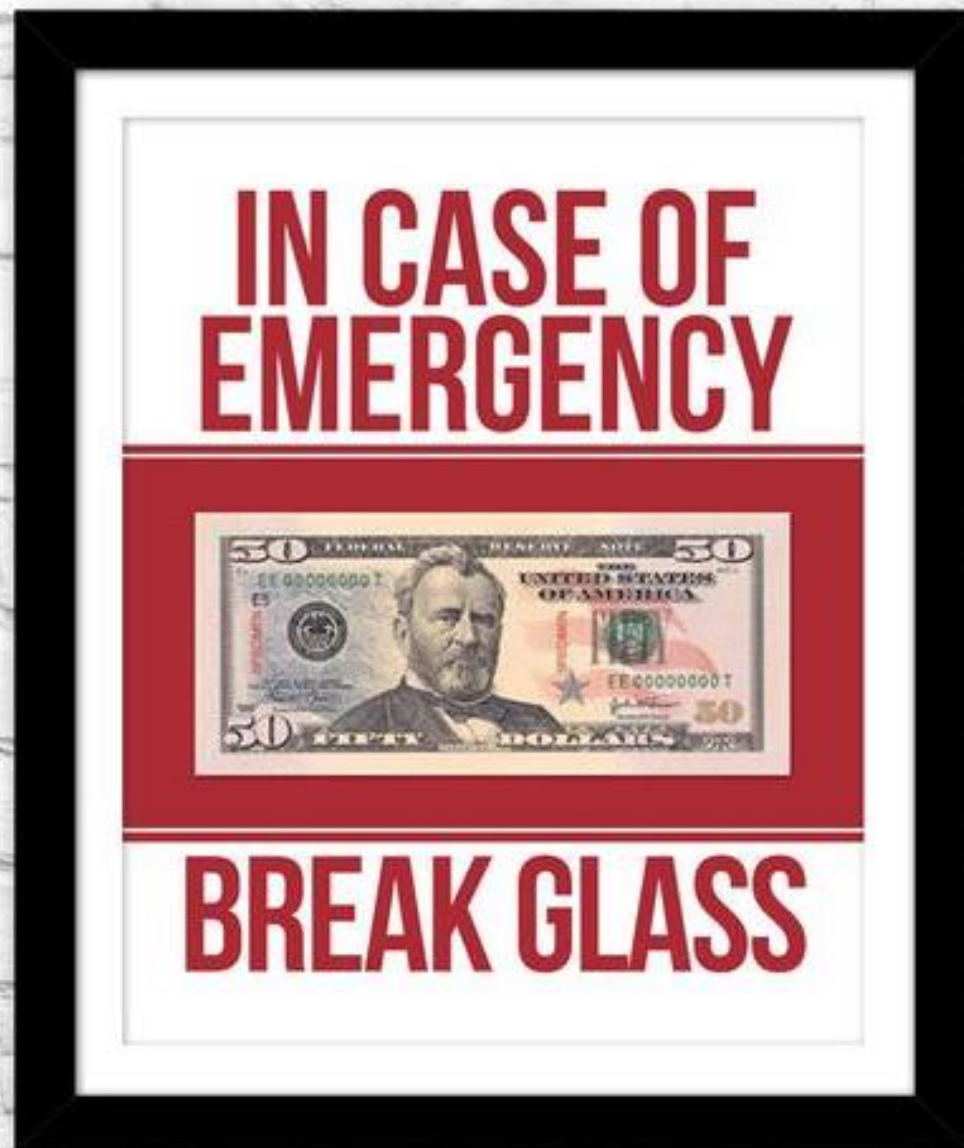
- ▶ Leases only (initial term)
- ▶ Evictions only for cause
- ▶ Termination notice must be specific
- ▶ Rent Calculation
- ▶ VAWA
- ▶ 30 Day Notice

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Emergency Assistance

- ▶ Often confused with rent assistance or energy assistance
- ▶ Tenants with minor children
- ▶ Apply at W-2 Agency
- ▶ Eviction stay pending application
- ▶ Stay for *pending* eviction (max 10 working days)





The EDP is made possible through a collaboration between Legal Action of Wisconsin and its community partners: Legal Services Corporation, the Milwaukee Justice Center, Marquette Volunteer Legal Clinic, the Legal Aid Society of Milwaukee, Community Advocates, Quarles & Brady LLP, volunteer attorneys, and the support of the Circuit Court.

