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VIA EMAIL AND U.S. MAIL

Ms. Margit Kelley, Staff Attorney
Wisconsin Legislative Council
P.O. Box 2536
Madison, WI 53701-2536

Re: New landlord/tenant legislation – 2011 Wisconsin Act 143

Dear Ms. Kelley:

I am the attorney for the Apartment Association of Southeastern Wisconsin, Inc. I am writing you concerning the “Act Memo” dated March 26, 2012 prepared by you on behalf of the Wisconsin Legislative Council concerning the above legislation.

I believe your Memo is in error in one respect and also contains some incomplete analysis of certain provisions of Act 143.

Most importantly, I want to address your interpretation of the new §704.95. This is the last bullet point on page 2 of your Memo which reads as follows:

Specifies that any violation of the statutory chapter on landlords and tenants, including the provisions of the Act, may also constitute **unfair methods of competition or unfair trade practices** that are enforceable by the Department of Agriculture, Trade and Consumer Protection (DATCP), and by an individual right of action that allows recovery of reasonable attorney’s fees and twice the amount of any pecuniary loss. Regulations by DATCP cannot change any of the rights or duties arising under the statutory chapter on landlords and tenants.

A tenant advocate attorney, David Sparer of Madison, discussed this issue in a March 14 letter to the Wisconsin Assembly which critiqued the new law. He pointed out that §100.20(5) only applies to violations of Chapter ATCP 134 and not to violations of any statute. For a private cause of action to exist under §100.20(5) there has to be a violation “of an *order* issued under this *section*” and statutes are not “orders” and “section” means §100.20 which governs marketing and trade practices generally and is not a provision of general landlord/tenant law.

So the new §704.95 does only two things: (1) it specifies that violations of provisions of Act 143 which copy or track existing ATCP Rule provisions can still result in double damages and attorney’s fees even though those provisions are now also statutory and (2) it prohibits the ATCP

Dept. from passing any new regulations which would change rights or duties landlords and tenants got under Act 143. Interestingly, some tenant advocates have interpreted Act 143 as taking away a tenant's private cause of action because the landlord violations which could lead to such an action were placed directly into the statutes in Chapter 704. But I believe that fear is unfounded.

The fourth bullet point on page 1 of your Memo addresses Section 17 of Act 143 which created §704.07(2)(bm) regarding disclosure of building or housing code violations. You correctly point out that the landlord must have actual knowledge of a violation before being required to disclose it, but you do not mention subsection 3 of the statute which requires that only violations which present "a significant threat to the prospective tenant's health or safety" must be disclosed. For example, a building order stating "repair defective floorboards on front porch deck" would need to be disclosed, while an order stating "paint front porch deck" would not need to be disclosed.

Since Wisconsin judges and court commissioners might look to the interpretive Memo of the Wisconsin Legislative Council in determining legislative intent, in the event that an ambiguity in the statutory language was found, our Association strongly believes that it is important for the Wisconsin Legislative Council to issue an amended Act Memo which addresses the points we have raised above. This is particularly important to clarify that nothing in Act 143 changes the existing ATCP regulations or case law regarding when private civil actions may be brought regarding violations of ATCP Chapter 134. It is important to clarify that a new private right of action under §100.20(5) has not been created whereby a tenant may sue for double damages and attorney's fees because some provision of Chapter 704 (other than those affected by Act 143) has been violated by a landlord.

I would look forward to discussing this matter with you further if you so desire.

Very truly yours,

Heiner Giese

cc: Senator Frank G. Lasee (via email and U.S. mail)
Attorney Tristan Pettit, President of AASEW (via email only)
Joe Murray, Wisconsin Realtors Association (via email only)