

MANUFACTURED HOUSING

Manufactured Home Parks – Landlord Practices

Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has adopted a rule to protect tenants in manufactured home parks (“mobile home parks”). See Wisconsin Administrative Code chapter ATCP 125. Violators may be prosecuted, and there is a private remedy for consumers.

ATCP 125 addresses the following and more:

- “Tie-in” sales practices
- Rental agreements and disclosure requirements
- Reselling and relocating manufactured homes
- Terminating tenancy
- Prohibited practices by park operators

Who Is Covered?

ATCP 125 regulates manufactured home park operators who *rent sites* to manufactured home *owners*. ATCP 125 does *not* apply if the homeowner also owns the site on which the home is located (for example, in a manufactured home condominium). Nor does it apply if the park operator rents both the site *and* the home to the tenant.

What Is The Problem?

- ***Homeowner does not own the land.*** Manufactured home owners who rent sites in manufactured home parks may be less secure than conventional homeowners, because they do *not* own the land on which their home is located. They also have more at stake than apartment renters, because they have invested thousands of dollars to buy their homes. That investment may be at risk if they are forced to move. Tenants may have difficulty moving their homes or selling them in place.
- ***Zoning restrictions limit tenant choices.*** Local zoning ordinances often restrict the siting of manufactured homes. These ordinances often confine manufactured homes to rental sites in manufactured home parks. There are not enough rental sites to go around, and many park operators have virtual monopolies in their areas.
- ***Monopoly “tie-ins.”*** Some park operators may abuse their monopoly position. For example, some park operators may require prospective tenants to buy manufactured homes from the

park operator. This may restrict competition and freedom of choice. It may also lead to a monopoly of manufactured home sales.

- **Limited bargaining power.** Manufactured home owners who rent sites may have limited bargaining power once they enter a park. Some park operators may add undisclosed rental terms and charges, or monopolize sales of other goods and services to tenants. The Legislature has restricted a park operator's right to terminate tenancy or remove a manufactured home without good cause. But a park tenant still has fewer rights than a landowner. ATCP 125 adds protection for park tenants.

Tie-In Sales Prohibited

A manufactured home park operator may not require a prospective tenant to buy a manufactured home from the park operator or a person named by the park operator.

Rental Agreement

- A rental agreement must be in writing. The rental agreement must include all rental terms, including:
 - Rent and other applicable charges.
 - Park rules and regulations.
 - The size and location of the manufactured home site.
 - Fees assessed to tenants by local units of government.
 - A disclosure that the park operator reserves the right to screen prospective tenant-purchasers, subject to Wisconsin Statutes section 710.15.
 - The location of the park's emergency shelter, or a disclosure that the park does not have a shelter.
 - The name and address of a person responsible for park maintenance.
- The initial and each succeeding rental agreement must be for a term of at least one year, unless the tenant requests a shorter term. Certain rental terms, such as rent amounts, may not be changed during the term of the rental agreement. The park operator must give tenants at least 28 days prior written notice before changing other rental terms.
- A park operator may not charge a park entry or exit fee (there are limited exceptions).
- A park operator may not limit the vendors from whom a tenant may purchase goods or services (there are limited exceptions). Separate charges for utility and cable TV services must comply with ATCP 125.

Reselling and Relocating Mobile Homes

- A park operator may not demand any payment from a tenant in return for allowing the tenant

to sell his or her manufactured home to an incoming tenant.

- A park operator may not resell a manufactured home in place if the park operator prohibits the homeowner from reselling that home in place.
- A park operator may not refuse to rent a site to the purchaser of a tenant's manufactured home except for a reason specified in Wisconsin Statutes section 710.15(5m).
- A park operator may not require a tenant to relocate a manufactured home during the term of a rental agreement. (There are limited exceptions.)

Terminating Tenancy

- When terminating a tenancy, the park operator must give the tenant written reasons. Wisconsin Statutes section 710.15(5m) lists some legitimate reasons.
- A park operator may not terminate a tenancy because the tenant has reported a law violation or joined a tenant's association, or because the operator wants to make a site available to a person purchasing a manufactured home from the park operator.

Prohibited Practices

- A park operator may not make any false, deceptive or misleading representation to a prospective tenant or manufactured home purchaser.
- A park operator may not impose any rental term or condition that violates ATCP 125.
- A park operator may not require a tenant to make permanent improvements to the manufactured home park, or pay any separate charge for permanent improvements.
- A park operator may not enter a tenant's manufactured home without the tenant's permission and reasonable prior notice to the tenant (there is a limited emergency exception).

Rule Background

DATCP adopted ATCP 125 as a *general order* (rule) under Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20.

- DATCP adopted ATCP 125 in 1972 (DATCP Administrative Docket No. 969).
- DATCP repealed and recreated ATCP 125 effective January 1, 1976 (DATCP Administrative Docket No. 1152).
- DATCP amended ATCP 125 effective March 1, 1987 (DATCP Administrative Docket No. 1831).

Rule Enforcement

Private Remedy

A consumer who suffers a monetary loss because of a park operator's violation of ATCP 125 may sue the operator under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fees.

Injunction and Restitution

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 125 and ordering a park operator to pay restitution to tenants. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or a district attorney may start a court action, under Wisconsin Statutes section 100.26(6), to recover a civil forfeiture from a park operator who violates ATCP 125. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.20(3), against a park operator who violates ATCP 125. A park operator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.

Selected Court Cases

Block v. Roberts, 154 Wis. 2d 869 (Wis. Court of Appeals unpublished decision, 1990).

- Eviction of manufactured home park tenant was invalid because notice terminating tenancy failed to give reason for termination as required by ATCP 125.

State v. Fonk's Mobile Home Park and Sales, Inc., 133 Wis. 2d 287 (Wis. Court of Appeals, 1986).

- In a civil enforcement action alleging violations of ATCP 125, state had burden of proving violation by "clear, satisfactory and convincing evidence." The court rejected a higher burden of proof.
- The state met its burden of proof that park operator placed unreasonable restrictions on tenant resale of manufactured homes when it showed all the following by credible evidence:

- That the park operator refused to allow tenants to sell their homes in place.
 - That the resale restrictions resulted in loss of purchase offers to tenants.
 - That tenants were unable to find alternative sites for their homes.
 - That the resale restrictions resulted in sales to the park operator that would not otherwise have occurred.
 - That the homes purchased and resold by the park operator generally remained on the same sites.
- The trial court properly issued a broad injunction against the manufactured home park operator and the operator's employees, agents, transferees, assigns and beneficiaries, prohibiting them from imposing unreasonable resale restrictions.
 - The trial court properly granted restitution to all Wisconsin residents who were able to show a monetary loss resulting from the park operator's violation of ATCP 125, regardless of whether they had testified at trial.

State v. Fonk's Mobile Home Park and Sales, Inc., 117 Wis. 2d 94 (Wis. Court of Appeals, 1983); Supreme Court review denied 134 Wis. 2d 457.

- In a statutory injunction action against manufactured home park operator under Wisconsin Statutes section 100.20(6), the state did not have to prove threat of future harm in order for court to enjoin rule violations.
- DATCP had authority to adopt and did adopt ATCP 125 as a "general order" under Wisconsin Statutes section 100.20. A "general order" is synonymous with a rule.
- ATCP 125 prohibits a park operator from placing unreasonable restrictions on a tenant's resale of the tenant's manufactured home. That prohibition is not unconstitutionally vague.

State v. Flood, 195 Wis. 2d 515 (Wis. Court of Appeals, 1995).

- ATCP 125 provision, prohibiting a park operator from requiring the purchase of a manufactured home as a condition to the rental of any "site," applies to sites that are not yet fully developed.
- A double-wide manufactured home is a "mobile home" within the meaning of ATCP 125.
- To establish a violation of ATCP 125 prohibition against "tie-in" purchase requirements, it is not necessary to prove that the individual park operator had "market power" -- only that the operator required the purchase of a manufactured home as a condition to the rental of a site.
- The DATCP rulemaking record contained adequate factual support for the ATCP 125 prohibition against tie-in purchase requirements.

- ATCP 125 prohibits a park operator from requiring a tie-in purchase for *any* site, even if the operator offers other sites without a tie-in purchase requirement.

State v. Edlebeck, 196 Wis. 2d 744 (Wis. Court of Appeals, 1995).

- ATCP 125 applies to “mobile homes” as defined in ATCP 125.01(1). “Manufactured” homes are covered by ATCP 125 if they fall within the “mobile home” definition in ATCP 125.01(1).

Logterman v. Dawson, 190 Wis. 2d 90 (Wis. Court of Appeals, 1994)

- A manufactured home park operator may terminate a tenancy under Wisconsin Statutes section 710.15(5m), where state or local authorities require the park operator to abandon or replace a failing septic system serving the tenant’s lot and the park operator chooses to abandon the system.

Benkoski v. Flood, 229 Wis. 2d 377 (Wis. Court of Appeals, 1999)

- A manufactured home owner who rents a site in a park, and who does not occupy the manufactured home but rents it to another tenant, is a park “resident” protected by Wisconsin Statutes section 710.15.
- A manufactured home owner who rents a site in a park, and who does not occupy the mobile home but rents it to another tenant, is a park “tenant” protected by ATCP 125.
- Tenant was entitled to double damages, under Wisconsin Statutes section 100.20(5), for pecuniary losses suffered because of park operator’s violation of ATCP 125.