The Latest Landlords' Legislation, a Description of Act 317

Curt Witynski, Deputy Executive Director, League of Wisconsin Municipalities

Author's Note: The following description of municipally relevant provisions in Act 317, the Landlords' legislation, is lifted with minor changes from a memo prepared by Wisconsin Legislative Council Principal Attorney Scott Grosz. The League appreciates being able to reprint most of Scott's memo in *The Municipality*. The entire memo can be accessed online: http://bit.ly/2017-18MemoWisAct317 Act 317 can be viewed online: http://bit.ly/2017-18WisAct317

2017 Wisconsin Act 317 makes several significant changes, described below, to state law relating to rental housing, landlord-tenant law, court records, and local government authority.

Municipal Inspection of Rental Property

As affected by 2015 Wisconsin Act 176, state law generally prohibits cities, villages, towns, and counties from enacting ordinances that require a rental property or rental unit to be inspected. However, prior law provided certain exceptions to that general prohibition. Specifically, a city, village, town, or county may have required an inspection in any of the following circumstances:

- The inspection is conducted upon a complaint by any person.
- The inspection is conducted as part of a program of regularly scheduled inspections conducted in compliance with special inspection warrant procedures, as applicable.
- The inspection is required under state or federal law.

Prior law required fees charged for the inspection of residential rental property to be uniform and charged at the time the inspection was actually performed.

Act 317 removes the general authority to conduct inspections as part of a "program of regularly scheduled inspections." However, the Act authorizes a city, village, town, or county to establish a rental property inspection program in designated districts in which there is evidence of blight, high rates of building code complaints or violations, deteriorating property values, or increases in single-family home conversions to rental units. No inspection of a unit may be conducted under the program if the occupant of that unit does not consent to allow access, unless the inspection is under a special inspection warrant. Also, a local government is prohibited from inspecting rental property that is less than eight years old as part of the inspection program.

Under such a rental property inspection, if no "habitability violation" is discovered during an inspection, or if such a violation is corrected within a period designated by the municipality (but generally not less than 30 days), then the local government may not inspect the same property again for at least five years. The Act defines "habitability violation" to mean any of the following conditions:

- The rental property or rental unit lacks hot or cold running water.
- Heating facilities serving the rental property or rental unit are not in safe operating condition or are not capable of maintaining a temperature, in all living areas of the property or unit, of at least 67 degrees Fahrenheit during all seasons of the year in which the property or unit may be occupied.
- The rental property or rental unit is not served by electricity, or the electrical wiring, outlets, fixtures, or other components of the electrical system are not in safe operating condition.
- Any structural or other conditions in the rental property or rental unit that constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the property or unit other than negligent use or abuse of the property or unit by the tenant.
- The rental property or rental unit is not served by plumbing facilities in good operating condition.
- The rental property or rental unit is not served by sewage disposal facilities in good operating condition.
- The rental property or rental unit lacks working smoke detectors or carbon monoxide detectors.
- The rental property or rental unit is infested with rodents or insects.
- The rental property or rental unit contains excessive mold.

▸ p.20

A local government may designate a period of less than 30 days to correct a violation if the violation exposes a tenant to imminent danger. Local governments must also extend the designated period upon a showing of good cause. If a habitability violation is discovered and is not corrected within the designated period, then the municipality may conduct annual inspections of the property. However, if no habitability violation is discovered during two consecutive annual inspections, then the local government may not perform a program inspection of the property for at least five years.

In addition, the Act generally limits the amount of a fee charged under the inspection program described above to $75 for an inspection of a vacant unit or an inspection of exterior or common areas, $90 for any other initial inspection, and $150 for a second or subsequent inspection with an allowance for a 2% annual increase to those amounts.

However, the Act prohibits a city, village, town, or county from imposing any fee in any of the following circumstances:

- An owner voluntarily allows access for an inspection of exterior and common areas, and no habitability violation is discovered during the inspection, or, if a violation is discovered, the violation is corrected within a designated period.
- No habitability violation is discovered during the inspection, or, if a violation is discovered, for a reinspection that occurs after the violation is corrected within the designated period.
- The inspection does not occur because an occupant does not allow access to the property.

For inspections conducted pursuant to a special inspection warrant, the Act limits the amount of the fee to $150, subject to an allowance for a 2% annual increase, except that if no habitability violation is discovered, then no fee may be charged. If a habitability violation is discovered and not corrected within a designated period, then the fee may not exceed $300.

Finally, the Act also requires local governments to maintain records regarding inspections performed upon a complaint from an employee or official. The records must include the name of the person making the complaint, the nature of the complaint, and any inspection conducted upon the complaint.

Landlord Registration Fees and Prohibition Against Imposing Aesthetic Regulations on Rental Property

Act 317 generally prohibits local governments from requiring that a residential rental property owner register or obtain a certification or license related to owning or managing the residential rental property. However, a local government may

▶ p.21

require a residential rental property owner be registered if the registration requires only one name of an owner or authorized contact person and an address, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. Local governments may charge a one-time registration fee that reflects the actual costs of operating a registration program, but such fee may not exceed $10 per building. The registration fee may also be charged anytime there is a change of ownership or management of a building or change of contact information for a building. (The fee cap does not apply to the City of Milwaukee.)

The Act prohibits local governments from enacting or enforcing an ordinance, or otherwise imposing a requirement that includes "aesthetic considerations," defined to mean considerations relating to color, texture, and design that do not relate to health or safety, for purposes of inspection criteria for the interior of residential structures.

Provision of Utility Service to Rental Units

State law sets forth certain procedures governing a property owner's responsibility for service to a rental dwelling unit. The Act retains those provisions but provides certain additional requirements in the event that a tenant's utility payments are in arrears or service is to be disconnected. Specifically, if requested by the owner of a rental unit and authorized by the tenant residing in the unit, the Act requires a public utility to notify the owner in the same manner as the tenant of any pending disconnection of service to the unit that is due to nonpayment of past due charges, and may provide information about the status of the disconnection to the owner by telephone. In addition, the Act prohibits a public utility from requiring the owner of a rental unit to provide proof of eviction or other evidence that a tenant has vacated a rental unit as a condition for providing or resuming service to the unit, if the service is placed and maintained solely in the owner's name. Finally, the Act makes a certain process for enforcing utility bill arrears by placing liens on property unavailable to a municipal utility that does not comply with a requirement under state law to send bills for utility service to the tenant.

Limiting the Amount of Levy Limit Reductions Required When Using Fees for Covered Services

Under the prior levy limit law, if a municipality received fee revenues designated to pay for a covered service (i.e., garbage collection, fire protection, snow plowing, street sweeping, or storm water management) that was funded partially or totally in 2013 by property tax levy, the municipality was required to reduce its levy limit by an amount equal to the estimated amount of fee revenue collected for providing the covered service. Act 317 limits the amount by which a municipality must reduce its levy to the amount of levy dollars expended in 2013 for providing the covered service.

New Notice Requirements for Certain Municipal Charges for Services

The Act prohibits a local government from imposing a fee or charge relating to enforcing an ordinance relating to noxious weeds, electronic waste, or other building or property maintenance standards, unless the local government first provides a notification of that charge. If the notice relates to a building that is not owner-occupied, the notice must be provided to the owner by 1st class mail or electronic mail. If the owner of a property provides an electronic mail address to the local government, the community may not impose a fee or charge related to enforcing an ordinance related to noxious weeds, electronic waste, or other building or property maintenance standards at that property unless the municipality notifies the owner of the property using the electronic mail address provided. The notice requirement does not apply to a fee or charge related to the clearing of snow or ice from a sidewalk or to an ordinance violation that creates an immediate danger to public health, safety, or welfare.

Refund of Certain Fees after a Municipal Order is Withdrawn or Overturned

State law (Chapter 68, Wis. Stats.) provides a process by which a person whose rights, duties, or privileges are adversely affected by a determination of a municipality may request a review of the relevant municipal decision. Act 317 requires a municipal agency to refund any fee paid as a condition of appealing an order that is withdrawn or overturned under that review process.

Allowable Materials for Repairing Historic Buildings

Generally, state law authorizes local governments, as part of the exercise of their zoning and police power authority, to regulate places, structures, and objects with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics.

Act 317 requires local governments to allow owners of property that is designated as a historic landmark or included within a historic district or neighborhood conservation district, when repairing or replacing such property, to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

Effective Date: The parts of Act 317 described above took effect on April 18, 2018.

Financial Procedure # 238; Powers of Municipalities # 934

LEGAL

MUNICIPAL AUTHORITY OVER REAL PROPERTY INSPECTIONS AND REGISTRATIONS RECENTLY LIMITED

By: Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

Many municipalities have property registration and inspection ordinances to help ensure that they have important information regarding buildings within the municipality and that buildings remain safe and code compliant. In recent years, the legislature has significantly curtailed municipal authority in this area. Although municipalities can still require that properties be inspected and registered, they must do so within these new constraints. This legal comment summarizes recent laws curtailing municipal authority in this area. Municipal officials should check municipal ordinances governing property registration and inspection to make sure ordinances do not exceed municipal authority.

Rental properties:

Many municipalities have ordinances requiring that rental properties be registered and inspected periodically. Although municipalities can require that rental properties be registered and inspected periodically, Wis. Stat. § 66.0104(2)(e),[1] prohibits municipalities from enacting an ordinance that does *any* of the following:

1. Requires that a rental property or rental unit be inspected except upon a complaint by any person, as part of a program of regularly scheduled inspections conducted in compliance with sec. 66.0119 which contains a procedure for obtaining special inspection warrants, as applicable, or as required under state or federal law.
2. Charges a fee for conducting an inspection of a residential rental property UNLESS the amount of the fee is uniform for residential rental inspections AND the fee is charged at the time that the inspection is actually performed.
3. Charges a fee for a subsequent reinspection of a residential rental property that is more than twice the fee charged for an initial reinspection.
4. Requires that a rental property or rental unit be certified, registered, or licensed, except that a municipality may require that a rental unit be registered if the registration consists only of providing the owner's name and an authorized contact person and an address and telephone number at which the contact person may be contacted.

Municipalities may not impose an occupancy or transfer of tenancy fee on a rental unit.[2]

Municipalities may not enact an ordinance that requires a residential rental property owner to register or obtain a certification or license related to owning or managing the residential rental property unless the ordinance applies uniformly to all residential rental property owners, including owners of owner-occupied rental property. However, municipalities are not prohibited from requiring that a landlord be registered if the registration consists only of providing the name of the landlord and an authorized contact person and an address and telephone number at which the contact person may be contacted.[3]

Any municipal ordinance in effect on March 2, 2016 and inconsistent with §66.0104 (2) (e), (f), or (g), does not apply and may not be enforced.[4]

All Real Estate

Time-of Sale, Purchase or Occupancy Requirements Prohibited

Under Wis. Stat. § 706.22(2)(a),[5] local governmental units[6] are prohibited from imposing or enforcing time-of-sale, purchase or occupancy (TOSPO) requirements on the sale of real property. Specifically, this means municipalities cannot restrict the ability of an owner of real property to sell or otherwise transfer title to or refinance the property by requiring

continued on page 17

1. This provision was created by 2015 Wis. Act 176.
2. Wis. Stat. § 66.0104 (2) (f).
3. Wis. Stat. § 66.0104 (2) (g).
4. Wis. Stat. § 66.0104 (3)(c).
5. Wis. Stat. § 706.22 was enacted as part of the 2015-2017 State budget act, 2015 Wis. Act 55, and further amended by 2015 Wis. Acts 176 and 391.
6. Local governmental unit includes the following:
   1. A political subdivision of this state.
   2. A special purpose district in this state.
   3. An agency or corporation of a political subdivision or special purpose district in this state.
   4. A combination or subunit of any entity under subds. 1. to 3.
   5. An employee or committee of any entity under subds. 1. to 4.

the owner or an agent of the owner to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain time period after, selling, refinancing, or transferring title to the property.

Additionally, municipalities cannot restrict the ability of a person to purchase or take title to real property by requiring the person or an agent of the person to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain period of time after, completing the purchase of or taking title to the property.

Finally, municipalities cannot restrict the ability of a purchaser of or transferee of title to residential real property to take occupancy of the property by requiring the purchaser or transferee or an agent of the purchaser or transferee to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain period of time after, taking occupancy of the property.

The law defines "actions with respect to the property" as including such actions as having an inspection made by a local government employee, agent or contractor; making improvements or repairs; removing junk or debris; mowing or pruning; performing maintenance or upkeep activities; weatherproofing; upgrading electrical systems; paving; painting; repairing or replacing appliances; replacing or installing fixtures or other items; and actions relating to compliance with building codes or other property condition standards.[7]

Existing ordinances, resolutions or policies inconsistent with the time-of-sale provisions and in effect on July 14, 2015 do not apply and may not be enforced. Existing ordinances, resolutions or policies inconsistent with the purchase and occupancy provisions and in effect on March 2, 2016 do not apply and may not be enforced.[8]

Significantly, sec. 706.22(2)(b) provides that 706.22(a) does NOT prohibit municipalities from requiring a real property

7. Wis. Stat. § 706.22(1)(a).
8. Wis. Stat. § 706.22(3).

continued on page 18

MUNICIPAL AUTHORITY OVER REAL PROPERTY INSPECTIONS AND REGISTRATIONS RECENTLY LIMITED (CONTINUED)

owner or the owner's agent to take certain actions with respect to the property not in connection with the purchase, sale, or refinancing of, or the transfer of title to, the property. Furthermore, it does not prohibit a local governmental
unit from enforcing, or otherwise affect the responsibility, authority, or ability of a local governmental unit to enforce, a federal or state requirement that does any of the things a local governmental unit is prohibited from doing under par. (a).

CONCLUSION

Although municipalities can still require that properties be registered and inspected, it is important that municipalities be aware that recent legislation significantly curtails municipal authority in these areas and declares inconsistent ordinances inapplicable and unenforceable.

Building Regulation 112
Powers of Municipalities 930

About the author:

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire's responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member municipalities, writing legal articles for the League's magazine and amicus briefs in appellate cases involving issues of statewide concern to municipalities, organizing an annual institute for municipal attorneys, and educating local officials on a variety of topics pertaining to their duties. In addition, she coordinates legal material for the League's web page. Claire joined the League staff in 1992.