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April 17, 2012

Mr. Heiner Giese  
Giese and Weden, S.C.  
1216 N. Prospect Ave.  
Milwaukee, WI 53202-3061

Dear Mr. Giese:

Thank you for your letter dated April 13, 2012, prepared on behalf of the Apartment Association of Southeastern Wisconsin, Inc., regarding our office's Act Memo for 2011 Wisconsin Act 143.

The Memo is meant to provide only a brief description of the Act, as noted in the lower margin on the first page of the Memo. Your letter correctly points out that more details are provided in the text of the law. The Act must also be read in the context of other related laws and administrative rules, as recognized in your letter.

You first comment on s. 704.95, Stats., created by the Act, and question the availability of an individual right of action. That section provides that:

Practices in violation of this chapter [ch. 704, Stats.] may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection [DATCP] may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.

This means that DATCP may promulgate and enforce any administrative rules that are in line with ch. 704, Stats., including the provisions of the Act that affect that chapter, under DATCP's authority to regulate unfair methods of competition or unfair trade practices in s. 100.20, Stats. Section 100.20 (5), Stats., then, in turn, allows an individual right of action for a violation of any rules promulgated under s. 100.20, Stats., and allows recovery of costs, reasonable attorney's fees, and twice the amount of any pecuniary loss.

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This applies to any rules that DATCP may already have in place, and any rules that could yet be promulgated.

You also comment on s. 704.07 (2) (bm), Stats., created by the Act, and note that it contains specific requirements not mentioned in the Memo. You are correct in noting that among the other enumerated circumstances requiring a landlord to disclose an uncorrected building code or housing code violation, the violation must present "a significant threat to the prospective tenant's health or safety." [s. 704.07 (2) (bm) 3., Stats.]

I appreciate your comments, and that you are providing legal interpretation and advice on 2011 Wisconsin Act 143 for the Apartment Association of Southeastern Wisconsin, Inc.

Sincerely,



Margit Kelley  
Staff Attorney

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cc: Senator Frank Lasee