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July 30, 2013

OAG-04-13

Mr. Ben Brancel  
Secretary  
Wisconsin Department of Agriculture, Trade and Consumer Protection  
Post Office Box 8911  
Madison, WI 53708-8911

Dear Secretary Brancel:

¶ 1. Through a letter from Chief Legal Counsel David V. Meany, you have requested an opinion concerning the lawfulness of certain residential lease provisions under Wisconsin statutes.

#### BACKGROUND

¶ 2. Some residential rental agreements in Wisconsin contain provisions requiring the tenant to pay the cost of professionally cleaning carpets at the termination of the tenancy. You question whether such provisions impermissibly waive the landlord's statutory obligation to keep rental premises in a reasonable state of repair, thereby rendering such residential rental agreements void.

#### QUESTIONS PRESENTED AND BRIEF ANSWERS

¶ 3. You first ask, based on current law: does routine carpet cleaning at the end of a tenancy fall within the landlord's duty to keep the premises "in a reasonable state of repair" as prescribed by Wis. Stat. § 704.07(2)?

¶ 4. In my opinion, the answer is no. Landlords' statutory duty to keep premises in a reasonable state of repair does not encompass routine carpet cleaning.

¶ 5. Your second question is: would a provision requiring the tenant to pay for professional carpet cleaning, in the absence of negligence or improper use by the tenant, render a rental agreement void under Wis. Stat. § 704.44(8)?

¶ 6. In my opinion, the answer is no. Because routine carpet cleaning is not a statutorily-imposed obligation of a landlord, assigning this responsibility to a tenant through a contractual provision does not render a rental agreement void.

## ANALYSIS

¶ 7. Residential tenancies in Wisconsin are governed by both Chapter 704 of the Wisconsin Statutes, and by Wis. Admin. Code ch. ATCP 134, which was promulgated and is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP).

¶ 8. Wis. Stat. § 704.07 prescribes the respective duties of landlords and tenants. Of relevance here, the statute provides that “[e]xcept for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to . . . [k]eep in a reasonable state of repair portions of the premises over which the landlord maintains control.” Wis. Stat. § 704.07(2)(a)1. Conversely, tenants are responsible for repairing damage caused by “negligence or improper use of the premises by the tenant.” Wis. Stat. § 704.07(3)(a). The statute is silent on the subject of responsibilities that fall outside the scope of “repairs.”

¶ 9. Both the statute and the administrative rule preclude residential leases from shifting the landlord’s statutory obligations onto the tenant. Section 704.07(1) of the statutes provides as follows: “An agreement to waive the requirements of this section in a residential tenancy, including an agreement in a rental agreement, is void.” The administrative code provides that “[n]o rental agreement may . . . [w]aive any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.” Wis. Admin. Code § ATCP 134.08(7).

¶ 10. The Legislature, through enactment of 2011 Wisconsin Act 143, has incorporated the DATCP rule language into the statutes. Newly created Wis. Stat. § 704.44(8) provides that a residential rental agreement is void if it “[w]aives any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition or to maintain the premises during the tenant’s tenancy.”

¶ 11. According to your letter, “some residential leases in Wisconsin contain clauses requiring the tenant to pay for the cost of cleaning the carpet upon termination of the tenancy regardless of whether the tenant has damaged the carpet due to willful or negligent use.” The question posed by your letter is whether such clauses are permissible under the statutes cited above.

¶ 12. You indicate that DATCP has taken the position that such carpet cleaning clauses are unlawful, relying on a letter authored by an Assistant Attorney General in 2001. That letter concluded that the carpet cleaning provisions of the type at issue here impermissibly waive a landlord’s statutory obligation to keep the rental unit in a reasonable state of repair, by shifting the landlord’s responsibility to the tenant. According to the letter, such provisions render residential rental agreements void.

¶ 13. You question the validity of this conclusion, and request that the Department of Justice revisit this question.

¶ 14. The dispositive question is whether the routine cleaning of carpet falls within the sphere of obligations statutorily assigned to landlords. If so, the law clearly provides that the obligation may not be reassigned to the tenant. If not, it may be validly assigned to the tenant in a residential rental agreement.

¶ 15. Chapter 704 does not supply a definition of the term “repair,” as it appears in Wis. Stat. § 704.07(2)(a). However, in ordinary usage the term “repair” is distinct from “cleaning.” For example, the Merriam-Webster online dictionary defines “repair” as “to restore by replacing a part or putting together what is torn or broken.” (The Merriam-Webster Dictionary, “repair,” Entry 3 (1)(a), <http://www.merriam-webster.com/dictionary/repair>.) The American Heritage Dictionary similarly defines “repair” as “[t]o restore to sound condition after damage or injury; fix.” (The American Heritage Dictionary 1047 (2<sup>nd</sup> ed. 1982).) While a carpet that is ripped might be said to need repair, a carpet that is merely dirty and needs cleaning would normally not be considered in need of “repair.”

¶ 16. Further, although the statutes do not define “repair,” the manner in which the term is used in various statutory provisions supports the conclusion that “repair” involves fixing something that is broken or not functioning properly, and does not include simply cleaning something that is dirty. In fact, the section of the statutes at issue, Wis. Stat. § 704.07, itself contains the following language in conjunction with the term “repair” (emphases added): “repairs made necessary by the *negligence* of, or *improper* use of the premises by, the tenant” (Wis. Stat. § 704.07(2)); “[k]eep in a reasonable state of repair *all equipment* under the landlord’s control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as *heat, water, elevator, or air conditioning*” (Wis. Stat. § 704.07(2)2.); “repair or replace any *plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition*” (Wis. Stat. § 704.07(2)4.). Subsections (3) and (4) similarly use the term repair in connection with portions of the premises that are broken, non-functional or dangerous.

¶ 17. It is apparent from the statutes and accepted usage that the term “repair” does not extend to routine cleaning. Thus cleaning carpets at the end of a tenancy does not fall within the sphere of duties assigned to landlords by Wis. Stat. § 704.07(2). Because carpet cleaning is not a landlord’s legally-prescribed duty, including a provision in a residential rental agreement requiring the tenant to have carpets professionally cleaned does not waive the landlord’s legal obligation.

¶ 18. On this point, I disagree with the 2001 letter discussed above. That letter erroneously assumed that the responsibility of routine carpet cleaning must be statutorily assigned to either the landlord or the tenant, and could not be shifted from the former to the latter by contract. As

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discussed above, the statute is silent with regard to the imposition of cleaning responsibilities, as distinct from repairs, leaving the parties free to assign responsibilities through lease provisions.

¶ 19. In light of my conclusion that the statutes do not compel landlords to engage in routine carpet cleaning, the presence of a provision requiring tenants to do so does not render such a residential rental agreement void and unenforceable pursuant to Wis. Stat. §§ 704.07(1) or 704.44(8).

¶ 20. Finally, I note that the permissibility of provisions requiring tenants to arrange or pay for carpet cleaning at the termination of their tenancy does not mean that landlords can deduct carpet cleaning charges from the security deposit of a tenant who has failed to comply with such a provision. Under your agency's present rule, ATCP § 134.06(3)(c), landlords are expressly prohibited from withholding security deposits "for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law." The accompanying note cites carpet cleaning as an example of an impermissible basis for withholding a portion of a security deposit. My conclusion that carpet cleaning provisions are valid does not affect the prohibition against deducting carpet cleaning expenses from a tenant's security deposit as a means of enforcing such provisions.

Sincerely,



J.B. VAN HOLLEN  
Attorney General

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