

20 Nov, 2018

Intake #201806258

Jeremy Cudd  
Joanne R. Gamache  
Property Executives Realty LLC  
1378 County Road J  
River Falls, WI 54022-5919

Dear Ms. Gamache:

The Wisconsin REALTORS® Association Legal HOTLINE is an educational resource intended to keep the WRA abreast of legal developments affecting real estate practice in Wisconsin. The exchange of information which occurs during HOTLINE calls supplements WRA educational programs and written materials. In addition, the WRA staff will develop programs, products and written materials in response to the information provided by HOTLINE callers. We want a stronger, more expert profession; the HOTLINE is a part of the WRA effort to achieve it.

#### **QUESTION:**

**The agent is looking for WRA information on electronic communication or e-signature for tenants. She believes there was a legal update and can't find the information.**

#### **ANSWER:**

**The new Wis. Stat. § 704.10 indicates that a rental agreement may permit a landlord to provide electronically and sign electronically: 1) a copy of the rental agreement and any related document; 2) a security deposit and any documents related to the accounting or disposition of the security deposit and refund; and 3) any promise made by the landlord prior to entering into the rental agreement, to clean, repair or otherwise improve the rental unit; and 4) a notice to enter the rental unit for showings, inspections and repairs per § 704.05(2). These new provisions first apply to rental agreements entered into or renewed as of the April 18, 2018 effective date.**

**While it is possible to have tenants sign leases electronically, certain notices such as eviction notices or utility disconnections cannot be delivered electronically. The easiest and cleanest way to set this up is to use the current WRA Residential Lease or the WRA Residential Rental Contract in zipForm or another electronic forms platform with built-in automatic electronic consents. In other situations the electronic communications provisions might be added via an amendment to an existing rental agreement or added in additional provision if using a different rental contract form.**

## E-Signatures for Leases

The first step would be to have the residential tenants provide electronic consent to the use of electronic documents, signatures and delivery. Generic electronic consents to electronic forms or documents also may be available for use in various electronic forms platforms such as zipLogix or DocuSign via a simple click-through feature. There also is a Consent for Use of Electronic Documents and Signatures in Consumer Real Estate Transactions form found at <http://www.wra.org/eCommerce/> that may be modified as needed for a residential rental transaction. References to the broker, for instance, might be changed to refer to the landlord or owner.

Once the tenants have provided electronic consent it may be advisable to include in the rental agreement the new Wis. Stat. § 704.10 provisions and language indicating that the parties have consented to the use of electronic documents, signatures and delivery to the extent it is not prohibited under federal or state law. It would also be prudent to state the email addresses that the parties agree are to be used. This may be written into the rental agreement or included in an addendum that is incorporated by reference into the contract. In a purchase transaction a lot of the focus is upon the use of email delivery (in addition to the use of electronic documents and signatures) whereas in a rental transaction the focus may be more on using electronic documents since many notices will not be able to lawfully be given via email.

The language from the offer could be modified and used in any rental agreement that does not already include electronic communication provisions, as do the current WRA Residential Lease and the WRA Residential Rental Contract, something along the lines of “the Landlord and the Tenant agree to the use of electronic documents, e-mail delivery and electronic signatures in this transaction to the extent not prohibited by federal or Wisconsin law. If this is a consumer transaction where the premises being rented or the rental proceeds are used primarily for personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically, as required by federal law, to the use of electronic documents in the transaction. The following email addresses shall be used (the landlord could specify the email address of a property manager or rental agent, if desired):

Landlord/Owner: \_\_\_\_\_

Tenants: \_\_\_\_\_

**NOTE: Federal and Wisconsin law do not authorize the use of electronic documents and electronic delivery with regard to notices given under Chapter 704 of the Wisconsin Statutes.”**

## Electronic Delivery not Permitted for Certain Notices

Under E-Sign federal law, you cannot use electronic records for: “any notice of- the cancellation or termination of utility services (including water, heat, and power); (B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;” Wis. Stat. § 137.12(2r) states similar limitations.

Wisconsin E-Commerce law, in Wis. Stat. § 137.16(2) provides, “If a law other than this subchapter requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, then:

(a) The record shall be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in sub. (4) (b), the record shall be sent, communicated, or

transmitted by the method specified in the other law.

(c) The record shall contain the information formatted in the manner specified in the other law.”

Wisconsin landlord-tenant law has very specific rules regarding how documents must be delivered. Therefore, landlord-tenant notices must continue to be delivered in compliance with Wis. Stat. § 704.21, which does not allow for electronic delivery. BUT -- Section 704.21(5) states: “Effect of actual receipt of notice. If notice is not properly given by one of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the party alleging actual receipt to prove the fact by clear and convincing evidence.” So electronic forms and delivery might still work in some cases where actual receipt is admitted or can be demonstrated.

See pages 1-3 of the September 2018 *Legal Update*, “Landlord Tenant Law Changes 2018,” at [www.wra.org/LU1809](http://www.wra.org/LU1809) and the October *Legal Update*, “WRA Residential Lease and Rental Contract,” at [www.wra.org/LU1810](http://www.wra.org/LU1810).

This HOTLINE response should be considered a statement of applicable legal principles. Given the HOTLINE format, it is impossible to fully analyze all the relevant facts in any particular situation. A determination of one's legal rights can only be obtained after complete analysis of the law and its applicability to one's particular fact situation. Therefore, this response does not constitute legal advice and should not be relied upon as legal advice in litigation, arbitration or ethics matters. Neither this HOTLINE response nor the communication with the attorneys associated with the Legal Hotline is intended to create an attorney-client relationship, and no information communicated to or by the attorneys associated with the Legal Hotline will be protected by attorney-client privilege or the work product doctrine. Private counsel should be consulted if legal advice is needed or if the member or a party is involved in litigation, arbitration or ethics matters.

Thank you for using the Wisconsin REALTORS<sup>®</sup> Association Legal HOTLINE.

Sincerely,

Tracy Rucka

A handwritten signature in black ink that reads "Debbi Conrad". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Reviewed by Debbi Conrad