ISSUES TO CONSIDER BEFORE SUBLETTING:

If you sublet you will still be on the lease, even though you will no longer be living in the apartment. If the person you sublet to does not pay the rent or damages the apartment, YOU will be financially responsible.

When can a tenant sublet or assign a lease?

For tenancies of a year or less, the tenant must obtain the landlord’s consent before subletting or assigning the apartment. This rule applies even if there is no written lease. For longer tenancies (1 year or more), a lease may be freely assigned or sublet unless the lease you signed expressly prohibits or restricts that right. [Wis. Stat. § 704.09]

Issues to consider before subletting

- **Landlord Permission.** Tenants can sublet with the landlord’s permission unless the lease says otherwise. CHECK YOUR LEASE. If you sublet without the landlord’s permission and permission is required in your written lease, the landlord can evict the sublessees and possibly hold the sublessor (YOU) liable for the remaining rent payments and damages.

- **Landlord Sublet Procedures.** Some landlords have specific procedures which you must follow for sublet permission. Some landlords require that you advertise, show the apartment, and forward interested parties to them for approval. Some landlords demand “sublet fees” as well as the actual cost of ads. If a flat fee is required, ask in writing for itemized fees, so you know the actual and reasonable costs. Flat fees over $100 may be illegal.

- **Roommate Permission.** All parties on the lease must agree to any major changes, including adding new tenants. Make sure that your roommates meet the potential sublessee. Remind your roommates that they are “jointly and severally” liable, so if you do not find a sublessee and do not pay the rent, the landlord may try to evict and/or collect your rent from them.

- **Check out the possible sublessee.** You will want to screen potential sublessees carefully, because you can be ultimately responsible for unpaid rent and/or damages. You may ask for landlord references to find out if they paid rent late or caused any damages in previous rentals. A landlord may also decide to screen the potential sublessees him-or herself.

- **Sublet Agreements.** The single most important step is using a written sublet agreement. List all terms of the sublet clearly, such as the starting and ending dates, amount of rent, and how rent will be paid, the security deposit arrangement, and who will clean the apartment at the end of the lease or pay charges to the deposit. Include any particular conditions such as whether or not the apartment will be furnished, responsibilities like taking care of plants or pets, and parking.

- **Security Deposits. Because you are ultimately responsible** in a sublet agreement, you may want to collect a deposit from the sublessee. In the event the landlord sues the sublessess and/or you, you will at least retain some of the sublessee’s money. When you collect the deposit, you can keep it yourself and/or arrange with the landlord in writing for the deposit you paid to returned directly to the sublessee. In some cases, the landlord may charge the sublessee a deposit while trying to keep the original tenant’s deposit. Landlords may charge a sublessess any amount for a deposit.

See the “Security Deposit” brochure on the Tenant Resource Center’s website for more information.

- **Check-In.** It is wise to have your sublessee complete a CHECK-IN FORM when they move in to document the apartment conditions. Both you and the landlord should keep copies.

The new law [2011 Wis. Act 143] requires the landlord to provide the tenant a "standardized information check-in sheet that contains an itemized description of the condition of the premises at the time of
check-in." This means the landlord should fill in the check-in sheet. Since the sublessor takes on the landlord's role, it would be wise to fill out the form yourself, as well as give them a form to fill out.

The new law also says: "The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord." This means there should also be an area for the sublessee to fill in the check-in sheet with their description of the premises. It is unclear if there is a deadline for the sublessee to fill in the check-in sheet, but the sublettor should give them at least 7 days. Wis. Stat. 704.08. Failure to meet the sublessor's deadline in any way does not negate the information on the form.

ATCP 134 says tenants have at least 7 days from when they move into an apartment to give the completed check-in form to the landlord. How this is impacted by 2011 Wis. Act 143 is unclear.

No matter what, tenants should keep a copy of the completed check-in form or forms for themselves.

Have the sublessee make a copy of the completed forms for him- or herself. Give the original to the landlord within several days of moving and keep a copy for your records.

- **Check-Out.** Make an appointment to check out with your landlord before the new sublessee moves in. You can also fill out a **CHECK-OUT FORM.** Inform your landlord *in writing* that you completed your own check-out form. Make a copy of the completed check-out form for your records and give the original to the landlord. If you believe you may have difficulty getting your deposit back, have a witness (not a roommate or relative) inspect with you and sign the completed check-out form. You can also take photos to document the condition of the unit.

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**GUIDE TO SUBLETTING YOUR APARTMENT**

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No part of this brochure should be regarded as legal advice or considered a replacement of a landlord’s or tenant’s responsibility to be familiar with the law. If you need legal assistance, seek the services of a Wisconsin housing attorney.