

Legal Protections - Shelters

Are shelter residents protected by Wisconsin landlord-tenant law?

Generally, no. Given the short stays, no rental agreement, and no rent, shelter residents are usually not considered tenants under Wisconsin landlord-tenant laws or regulations. It is still an open question whether residents who stay at a shelter long-term might be considered tenants at will - people with permission to stay but who don't pay rent or have a lease.

Are shelters covered by the federal Fair Housing Act (FHA)?

Possibly. The FHA bans discrimination in all dwellings except those covered by a specific exemption. In simplified terms, a “dwelling” is defined as a structure occupied as a residence¹. The most important factor in determining whether a particular place is a “dwelling” protected by the FHA is the length of time someone expects to stay there. This is not the only factor, however.

The U.S. Department of Housing and Urban Development (HUD) encourages courts to look at the following to determine whether a shelter is a ‘dwelling’ and therefore protected by the FHA:

- Length of stay;
- How often rent is calculated (or if rent is an in-kind exchange such as doing chores or attending meetings);
- Any written terms of agreement;
- What amenities are included, like kitchen or bathing facilities;
- How the property is marketed to the public;

- Whether the resident has the right to return to the property; and whether the resident has anywhere else to which they intend to return.

Are shelters covered by the Americans with Disabilities Act (ADA)?

Probably. Title II of the ADA applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government.

Note: Section 504 of the Rehabilitation Act of 1973 bans discrimination based on disability in any program or activity receiving funding from the federal government.

Title III of the ADA applies to privately owned “public accommodations”, which likely includes homeless/emergency shelters.

Citations:

42 U.S.C. § 3602(b)

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