

# Legal Update for Landlords and Property Managers

Landlords of Iowa's Annual Convention  
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# Presenter - Attorney Jodie McDougal

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Jodie McDougal is a real estate and construction attorney who handles both litigation and transactional matters for her clients within the construction, real estate and landlord/leasing industries, including commercial and residential landlords and property management companies. She has a niche in affordable housing, representing dozens of local and national manufactured housing community owner-operators. Her work includes:

- Drafting/negotiating residential & commercial leases and other forms/policies
- Real estate sales and acquisitions, including land use/zoning matters
- Advising landlords on legal issues under Iowa Code Chapter 562A (Uniform Residential LL-TT Act) and Chapter 562B (Manuf. Home. Communities)
- Defending ICRC fair housing complaints and handling fair housing issues
- Litigating matters, including FED/evictions actions, collections, lease breaches

Jodie is general counsel for and an active member of several real estate/leasing and construction associations, regularly speaks to these industry groups, and frequently publishes article regarding these industries. Jodie also regularly speaks as an industry expert at the Iowa State Capitol.

# Fredrikson & Byron

**Fredrikson & Byron** is a full-service regional law firm with over 400 attorneys; with Iowa offices in Des Moines and Ames, as well as offices in Minnesota (Minneapolis, St. Paul, Mankato), North Dakota (Fargo, Bismarck), and Wisconsin (Madison); and with attorneys licensed in states throughout the Midwest. There are 45 attorneys in Fredrikson's Des Moines/Ames offices. Our work includes the following:

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- Leasing / Landlord-Tenant Law
- Litigation and Appeals
- Mergers & Acquisitions
- Oil & Gas
- Property Tax Appeals
- Private Equity
- Real Estate
- Tax Planning, Tax Disputes
- Trusts, Wills, and Estates

# Overview of Presentation

- **2024 Legislative Session Update on Real Estate and Leasing Law Changes.**
  - Discussion of 3 New Laws
- **CARES Act:**
  - Background
  - Pending Appeal in Iowa
  - LOI Amicus Brief
- **Nonpayment Evictions:**
  - Common Mistakes by Property Managers
  - Mistakes and Errors by Judges
  - Best Practice Advice, and Trends
- **Other Topics As Time Allows:**
  - The Wisconsin Case that is Scariest than most Halloween Costumes
- **\*Questions at the End of Each Topic**

# Survey of Attendees

- **Property and Property Management Company *Owners and Executives*?**
- **Regional/District Managers?**
- **Onsite Community Managers?**
- **Scope of services as manager**
  - **Tenancy Screening:** Who takes an active part in the decision-making process for applicants?
  - **Evictions:** Who handles evictions from start to finish?
  - **Fair Housing:** Who directly handles fair housing questions? With assistance?
- **Reminders**
  - Seek help from upper management
  - Seek help from attorneys
  - Ask questions sooner rather than later



***New Laws in 2024 affecting the Iowa  
Real Estate and Leasing Industries***

## Overview:

- [SF 2291](#): Intended to provide more transparency in real estate transactions, particularly with respect to a broker's compensation (stems, in part, from NAR's settlement in the commission class action lawsuit)
- [HF 2326](#): Creates new and broader exclusions for non-licensed persons and entities managing Iowa properties
- [SF 2268](#): Relates to assistance animals and service animals as reasonable accommodations in housing

# SF 2291 RE: Real Estate Brokers and Broker Agreements

- [SF 2291](#): Effective July 1, 2024. (Administrative rule-making will also occur.)
- Arises, in part, from NAR's settlement in the commission class action lawsuit.
- Amends Iowa Code Chapter 543B RE: duties of real estate brokers in real estate transactions.
- Requires a prospective buyer and the buyer's real estate broker to both sign a written representation agreement *before* the buyer makes an offer on a property.
- Requires a seller and the seller's broker to both sign a written brokerage agreement *before* the seller's property is listed on the market.
- Requires compensation a broker is to receive to be included in written brokerage agreement. (\*Do not note "N/A" or \$0 in the blank.)
- Requires brokerage agt. to expressly note that broker's compensation is negotiable.
- There is much more to this law and related changes for real estate professionals. Best source of information: Iowa Assn. of Realtors™ and [National Assn. of Realtors™ website RE: lawsuit settlement](#).



# HF 2326: Broadens & Creates Exclusions RE: Property Management

- [HF 2326](#): Effective April 19, 2024; was retroactive for pending cases before Iowa Real Estate Comm.
- **Prior/Existing Law:**
  - **In General:** All individuals who are involved in the management of rental properties must either be a real estate broker or a licensed real estate professional under the supervision of a broker.
  - **Some Exclusions From General Rule Were Already in Place:** (1) Individual, him or herself, owns the rental property. (2) A resident manager when such manager resides in the dwelling and is engaged in property management in connection with their employment.
- **First Part of Law:** Broadens what it means to be **“self-managed”** such that a real estate broker’s license is not needed, by expressly noting the below two exemptions:
  - A person or company who manages rental real estate on behalf of the property owner (Owning Entity) where that person/company has an ownership interest in the Owning Entity.
  - A person or company who manages rental real estate on behalf of the Owning Entity where that person/company is a parent or subsidiary of, or under common control with, the Owning Entity.
- **Second, Key Part of Law:** Provides exemptions under Ch. 543B for **employees of brokers** (who do third-party management).
  - A person who is a non-licensed employee of a real estate broker can engage in advertising, showing, listing, collection of rents and deposits, procuring of prospects, completing form agreements, and executing form agreements as it relates to the rental of real estate, so long as the individual is an employee of a licensed real estate broker.

# SF 2268: Assistance Animals: Background/Introduction

- **Federal & Iowa law prohibits discrimination in housing based upon:** Race, Color, National origin, Religion, Sex/Gender identity, Sexual Orientation, Familial status, Retaliation, and/or Disability.
- **Disability** is a broad definition and includes:
  - Both a mental or physical disability
  - A mental or physical impairment that substantially limits one or more major life activities (walk, see, care for self, hear, learn, work, tasks)
- This translates into landlords having the duty to:
  - **Make reasonable modifications** of existing premises if necessary for tenant/owner to occupy and have full use and enjoyment of the premises.
  - **Make reasonable accommodations** to rules, policies, and practices if necessary for tenant/owner to occupy and have full use/enjoyment of premises.
    - **Assistance Animals and Service Animals Are Often a Reasonable Accommodation**
- *Is a housing provider responsible for proposing accommodation for clearly disabled person? **No.***

# SF 2268: Assistance Animals: Background

- ICRC prefers term “**Assistance Animals**” to refer to all assistance, emotional support, therapy, & companion animals, etc., and at times this term also refers to service animals
- **Assistance Animal** – Any animal that:
  - works, provides assistance, or performs tasks for the benefit of a disabled person
  - provides emotional support that alleviates one or more identified symptoms or effects of a disabled person’s disability.
- **Assistance Animals:**
  - are NOT “pets”
  - do not need to have any specialized training.
  - do not have to be a seeing eye dog (like a service animal)
  - cannot be required to wear special vest, harness, etc.
- **Assistance Animals:**
  - Huge uptick in ICRC complaints RE: Assistance Animals
  - ICRC “testers”

# SF 2268: Assistance Animals: Background

- **Written Policy is Crucial**
- **All Landlords Should Have a Written Reasonable Accommodation and Modification Policy**
- In considering a request for an Assistance Animal, there are only two main questions:
  - *Does the person have a disability?*
  - *Does disabled person have a disability-related need for the Assistance Animal?*
    - Note: If the person's need is obvious, then the housing provider cannot ask for further information.
    - Note: If disability is obvious/known but need for Assistance Animal is not obvious or apparent, then the housing provider can ask for further information necessary to evaluate the request.

# **SF 2268: Assistance Animals: 2024 Changes in the Law**

- [SF 2268](#): Effective July 1, 2024.
- Replaces existing Iowa Code sections 216.8B and 216.8C RE: assistance animals and service animals in the housing context. Numerous changes and additions to those sections, but in many ways, the law now simply codifies existing federal fair housing law.
- The Iowa Civil Rights Commission (ICRC) has now updated their health care professional form:

**[Request for Assistance Animal in Housing: Health Care Professional Form \(Effective July 1, 2024\)](#)**

- See also the ICRC's Fact Sheet on Assistance Animals:

[AssistanceAnimalsFactSheet.pdf \(iowa.gov\)](#)

# SF 2268: Assistance Animals: 2024 Changes in the Law

## (1) Amends one of the main provisions within Iowa fair housing law to comport with federal fair housing law:

- Old Law: Stated that a landlord must always waive any and all “lease restrictions and additional payments” for AAs/Service Animals
- New Law: (1) Removes language mandating the waiver of “all lease restrictions and additional payments” and (2) Adds below bolded language, which is pulled straight from existing federal FHAA.

“[A landlord] shall make reasonable accommodations in the landlord’s rules, policies, practices, and services normally required for pets, for the assistance animal or service animal of a person with a disability **when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.**”

- **Guidance RE: Pet Deposits/Fees:**
  - **Consistent with the current guidance from HUD and the ICRC, pet deposits and pet fees should not be charged in the situation of assistance animals, as those agencies have stated their position that a landlord’s waiver of all such fees is a reasonable accommodation that must be provided.**
  - Note: Jodie to discuss a client’s case where the member-landlord of a 55+ community has challenged the ICRC’s position that it must waive, for assistance animals, its rule requiring *refundable* animal deposits\* for all animals (\*a deposit that is returned if there is no damage to the rental premises upon departure of tenant/animal), asserting that the waiver of this type of refundable animal deposit is not a reasonable accommodation. Updates to be provided, but general advice is to not impose any pet deposits or pet fees in the case of assistance animals.

## SF 2268: Assistance Animals

**(2) Bases for Denial:** Law expressly sets forth bases for denial, all of which comports with federal fair housing law and long-standing guidance from HUD:

“[A landlord may] deny a request for an accommodation for an assistance animal or service animal if any of the following are true:

- (1) Providing the accommodation would impose an undue financial and administrative hardship on the landlord.
- (2) Providing the accommodation would fundamentally alter the nature of the landlord’s operations.
- (3) The assistance animal or service animal would do any of the following:
  - (a) Pose a direct threat to the safety or health of others that cannot be reduced or eliminated by a reasonable accommodation.
  - (b) Cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation.
- (4) Providing the accommodation is not otherwise reasonable.”

# SF 2268: Assistance Animals

**(3) What a Landlord Can Request:** Law expressly provides what landlord can require from tenant making request, providing as follows:

- After receiving a request for an assistance or service animal, a landlord is required to evaluate and respond to the tenant within a reasonable time.
- If a person's disability or disability-related need for an assistance animal is not readily apparent, the landlord may request supporting information that reasonably supports the person's need for the particular assistance animal being requested.
- An assistance animal or service animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not sufficient information to reliably establish that the person has a disability or disability-related need for an assistance animal or service animal.
- A landlord may request information for each assistance animal requested.
- **\*Note:** Landlord can still request other basic information for its general approval or rejection of animal: City licensure, Rabies vaccination, History of animal.



# SF 2268: Assistance Animals

**(4) Medical Professional Requirements:** Law revises requirements placed upon medical professionals providing information regarding person with disability.

- Specifically, the medical provider must make a written finding that includes all of the following:
  - Whether the tenant has a disability;
  - Whether the tenant has a disability-related need for an assistance animal;
  - The particular assistance provided by the assistance animal;
  - **Certification whether provider-patient relationship has existed, in person or telehealth, for at least 30 days;**
  - Certification whether provider is familiar with tenant and disability before making findings;
  - The date the findings were issued and the date the findings will expire;
  - The provider's license number and type of license; and,
  - Whether the provider received a separate or additional fee or other form of compensation solely in exchange for making the written finding.

# SF 2268: Assistance Animals

## **(5) Timeliness of Medical Professional Finding:**

- **The Law provides that written finding “must be made within twelve months of the start of a rental agreement and is valid for a period of twelve months or the term of the rental agreement, whichever is greater.”**

## SF 2268: Assistance Animals

- The ICRC's new Health Care Professional Form (see [Request for Assistance Animal in Housing: Health Care Professional Form \(Effective July 1, 2024\)](#)) is on Next Slide.
- Remember that landlords cannot require this form, but can and should provide this form to tenants.

## FINDING OF DISABILITY AND NEED FOR ASSISTANCE ANIMAL

This form is used to make the required finding pursuant to Iowa Code section 216.8C.

### TO BE COMPLETED BY PATIENT/CLIENT/REQUESTER

Patient/Client/Requester's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

I intend to request that \_\_\_\_\_ [name of housing provider] permit me to keep an assistance animal as a reasonable accommodation in housing for my disability. In connection with that application, I am requesting that you, my health care provider, complete this form regarding my disability.

\_\_\_\_\_  
Patient/Client/Requester's Signature

\_\_\_\_\_  
Date

### TO BE COMPLETED BY HEALTH CARE PROVIDER/ LICENSEE

1. Does your patient/client identified above have a physical or mental condition that substantially limits a major life activity?  Yes  No

2. Does or would an assistance animal alleviate one or more of the symptoms or effects of the condition?  
 Yes  No

If yes, what particular assistance does the animal provide to your patient/client?

3. As the health care provider/licensee listed below, have you received a separate fee, additional fee, or other form of compensation solely in exchange for making this written finding?  Yes  No

4. This letter was issued on \_\_\_\_\_. It will expire after 12 months or at the expiration of the term of your patient/client's rental agreement, whichever is greater.<sup>1</sup>

By signing below, you certify you: 1) have had a relationship with the patient/client for at least thirty (30) days; 2) have met with the patient/client in person or by telemedicine, 3) are sufficiently familiar with the patient/client and their disability, prior to writing the finding, to make the finding; and 4) are legally and professionally qualified to make the finding.

Health Care Provider/Licensee's Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

This document may contain privileged and confidential information and/or protected health information intended solely for use by the recipient housing provider. Please exercise care to avoid dissemination.



***CARES Act – Pending Appeal – LOI's  
Joint Amicus Brief***

# CARES Act Background (Evictions)

## **Federal CARES Act:**

Federal CARES Act is an 854-page federal law (pp. 561-564 for LL-TT provisions)

CARES Act implemented a moratorium on evictions for nonpayment of rent *but only for covered properties*, which expired in on July 25, 2020.

However, the CARES Act continues to impose restrictions on landlords after such expiration per the interpretation of the law by various Iowa small claims magistrates—mainly that the tenant is permitted another 30 days to vacate the premises.

## **Threshold Question:**

Is your property a “Covered Property” under the CARES Act ?

See next slide

# Federal CARES Act

## **CARES Act “Covered Properties”:**

- (1) Tenancy is/was subject to either a Section 8 or USDA Housing Choice voucher.
- (2) Rental property subject to federal program, such as: Project Based Section 8 housing, Section 202 elderly housing, Section 811 housing for people with disabilities, Section 236 multifamily rental housing, Low-Income Housing Tax Credit (LIHTC) Program, etc.
- (3) Rental property is secured by a mortgage issued or guaranteed by one of the following:
  - Fannie Mae or Freddie Mac, or
  - Federal Housing Administration (FHA), Veterans Administration (VA), United States Department of Agriculture (USDA) direct loan, and USDA guaranteed loan
- (4) Landlord received mortgage forbearance for property from 3/27/2020 to 12/31/2020.

# CARES Act: Current State of the CARES Act in Iowa

## Additional 30 Days' Notice to Vacate Requirement:

- **Outstanding Question:** Is CARES Act's requirement for landlords to provide add'l 30-day notice to vacate still in effect?
- **The Law:** Once moratorium expires on July 25, Landlord may not "require a tenant to vacate the unit [due to nonpayment of rent]" until 30 days after Landlord provided tenant w/ notice to vacate.
- **Inconsistent Answers to Outstanding Question:**
  - Iowa and Nationwide: Many Iowa judges hearing evictions, as well as judges in certain other states, say yes, while many other states' courts say no.
  - So far, in other states where this has gone up on appeal to the highest state court, that court has answer "yes" to the above question.
- **Congress:** Coalition of housing associations have sent letter to Congress urging end to CARES Act's requirement through H.R. 802, but there is no real hope for a legislative fix at the national level.
- **My Advice/Safest Route:** Landlords of *Covered Properties* must provide 30-day Notice to Vacate, in addition to standard Iowa 3-day Notice of Nonpayment of Rent, before eviction commenced.
  - **Recommendation:** Use Combined 3-day/30-day Notice, containing 3-day notice to cure, plus add'l 30-day notice to vacate. If tenant does not cure in 3 days, tenant can remain for 30 days and at the 30-day mark, the lease terminates and landlord can evict.



# CARES Act: Current State of the CARES Act in Iowa

- **This Issue is Now Before Our Iowa Supreme Court.**
  - My Case in Polk County: Magistrate ruled that the 30-day CARES Act additional notice to vacate applied to all evictions and not just nonpayment evictions.
  - Small claims appeal was fully briefed and arguments heard before the district court, when learned of case on appeal.
- **Pending on Appeal:** Two companion cases from an out-of-state owner of apartments in Linn County:
  - *MIMG CLXXII RETREAT ON 6th, LLC v. Williams,*
  - *MIMG CLXXII Retreat on 6th, LLC v. Miller*
  - Iowa Supreme Court opted to hear the cases.
- **LOI Amicus Brief:**
  - March of 2024: Motion to File Amicus Brief on behalf of LOI, IMHA, GIAA, NAA, Conlin Prop. was filed & granted
  - May of 2024: Amicus Brief Filed
- **Current Status:**
  - All briefs from Plaintiffs and ILA (Defendant was *pro se*) are now filed.
  - Oral Arguments will take place between October, 2024 and April, 2025.
  - Written opinion to be issued between 3-6 months (or more) from conclusion of oral arguments.
- **Further updates to be provided. Public can attend oral arguments.**

## Before Moving on to Next Topic

**Any Questions on the CARES Act?**



***Eviction Actions: Common Errors by  
Landlords, Common Errors by  
Magistrates, and Trends***

# Nonpayment Evictions: Content of Notice

- **The Basics:** Notice requires tenant to pay rent within 3 days (i.e., 7 days if notice posted/mailed), and if fail to pay, lease terminates, and landlord can file eviction.
  - If landlord accepts payment after cure period, new lease must be signed or lease must be reinstated.
- **Best Practices for the Content of a Notice of Nonpayment:**
  - **One Month of Rent:** Although case law supports multiple months' rent, safest route is for a nonpayment notice to include only one month's of rent due to Iowa's 30-day peaceable possession rule (discussed later herein).
    - If you wish to include multiple months in a notice, consult legal counsel.
  - **Base Rent vs. Rent, Utilities, & Late Fees:**
    - 2022 Law: Clarified definition of rent in Ch. 562B (Man. Home Comm.). No change in Ch. 562A definition.
    - **Sec. 562B.7 (10):** “Rent means a payment made to landlord under rental agreement, including base rent, utilities, late fees, and other payments made by the tenant to the landlord under the rental agreement.”
    - **Sec. 562A.6 (10) Remains:** “Rent means a payment made to landlord under the rental agreement.”
    - We will once again try to get this legislative change for 562A in the 2025 legislative session.
    - Current practices among counties/magistrates continue to vary on this topic.
    - \*We continue to recommend just one month's worth of all such items.

## Evictions: Services of Legal Notices:

**Remember the 4-Day Mailing Rule:** Whenever notice is mailed, must add 4 days

- A 3-day Notice of Nonpayment of Rent equates to a 7-day notice.
- A 7-day Breach Notice equates to an 11-day notice.
- Generally, the first day is excluded, and final day included for counting purposes.

**Service Options for Legal Notices** (Breach Notice, Nonpayment Notice, Notice to Quit):

Personal service by private process server or sheriff;

Hand-delivery with tenant acknowledgment (tenant must sign and date); or

Mail via US Mail, Mail via Cert. Mail, AND Post on the Primary Entrance of Door

**Service of Eviction Petition:**

After 2 personal service attempts first, then notice can be served via post-and-mail method

Some counties require pers. serv. attempts a day or many hours apart (i.e., day & afternoon)

Remember: Tenants must get at least 3 full days' notice before the hearing takes place.

**Issues RE Post-and-Mail Method in Certain Counties** (See next slide)

# Mail-and-Post Service Problems & Recos (Linn; Wapello; Black Hawk; Polk)

## Posting of Notice on the Front Door– Options for Appeasing Magistrates:

- **Date it.** Handwrite somewhere on the notice “Posted on \*insert date\*”
- **Do not fold the notice.** Tape it flat to the door so we can see what it is in the photo
- **Take two photos:** (1) Close photograph, to show title of doc. & “posted on” language, & (2) Wider photograph, far enough away to see house/apt. # and see multiple notices

## Mailing of Notice by US Mail and Certified Mail – Options for Appeasing Magistrates:

- **Take Notices to Post Office to Mail.**
- Get them to print the postage on the regular mail, and then take photo of it (or witness)
- Get them to stamp the certified mail receipt, and then take a photograph of it
- Pay for each premises’ regular and certified mailings together, so there is one receipt
- **Submit Affidavit of Mailing/Posting.** My form is on next slide.

## Number/Content of Notice(s): Appeasing Magistrates:

**Separate Notices.** Separate notice for each tenant and for “Parties in Possession”

Ex: Home with 2 Tenants: 3 postings, 3 regular mailings, and 3 certified mailings.

LOI tried to implement a legislative fix with a 2024 bill and will try again in 2024.

**Witness:** Ideally, person who posted and mailed the notice come to court.

IN THE IOWA DISTRICT COURT FOR \_\_\_\_\_ COUNTY  
Small Claims Division

\_\_\_\_\_  
Plaintiff,

\_\_\_\_\_  
Defendant(s).

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Small Claims No. \_\_\_\_\_

**PROOF OF SERVICE:  
AFFIDAVIT OF POSTING  
AND MAILING OF NOTICE  
OF NONPAYMENT OF RENT**

State of Iowa :  
                              : SS  
County of \_\_\_\_\_ :

I, \_\_\_\_\_, being first duly sworn, depose and state:

1. I am the community manager or other agent of the Plaintiff-Landlord and have personal knowledge of all matters contained herein.

2. On the date of \_\_\_\_\_, I posted the Notice of Nonpayment of Rent and Termination upon the primary entrance door of the dwelling unit located at \_\_\_\_\_. The posted three-day notice included the date that the notice was posted.

3. On that same date, I also mailed the Notice of Nonpayment of Rent and Termination by both regular mail and certified mail to the address of the dwelling unit or to the tenant's last known address, if different from the address of the dwelling unit.

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Date Name

Subscribed and sworn to before me, a Notary Public, by \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Iowa

## Before Moving on to Next Topic

**Any Questions on Evictions?**





*Other Topics If Time Allows*

# Wisconsin Case is Scariest Than Most Halloween Costumes

- In April, the Wisconsin Court of Appeals issued its opinion in *Koble Investments v. Marquardt*.
- **Questions to the Court:** Did lease contain prohibited term, rendering it void? If so, what is the remedy?
- **Answers from the Court:**
  - Yes, lease contained prohibited term making the lease void.
  - Tenant “entitled to recover twice the amount of her pecuniary loss—that is, **twice the amount of all rental and other payments that she made under the void and unenforceable lease.**”
- **Last Case Update:** That landlord was petitioning the Wisconsin Supreme Court to consider the case and either clarify or overturn the decision of the Wisconsin Court of Appeals.
- **Spillover Into Iowa?:**
  - “Actual damages” under Iowa law is not defined. One could argue that “actual damages” under Iowa law is akin to “pecuniary loss” under Wisconsin law.
  - Iowa caselaw does not reveal if Iowa Supreme Court would consider previously paid rent to be “actual damages”. Though, Iowa Court of Appeals has opined that an example of actual damages could be “improper enforcement of the allegedly illegal automatic carpet cleaning lease provision,” and neither appellate court has ever given any subtle indication that it would rule as WI court did.

# Thank You



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