

This policy supersedes the Department of Health Services policy put forward on 5/12/2014

Licensing of rental units within condominium association complexes

Questions

Can a condominium (condo) association hold a Department of Agriculture, Trade and Consumer Protection (DATCP) lodging license under Wisconsin Administrative Code ATCP 72, if the units which are rented to tourists or transients are owned individually?

Background

Over the decades, DATCP has taken differing positions on the licensing of condo associations as lodging establishments. The conflict of policy stems from the language in the Wisconsin Administrative Code ATCP 72.03(14), which defines an “operator” as the “person legally responsible for the operation of the hotel, motel or tourist rooming house.” This change of policy has caused inconsistencies for both industry partners, as well as our regulatory inspection staff.

In 1992, it was decided by the Department of Health Services (DHS) that if a condo association was responsible for “all maintenance, collection of rental fees and compliance with administrative code,” the association was considered the “person legally responsible.” Therefore, many condo associations were licensed as lodging establishments by the department and its agent health departments.

In 2004, DHS reviewed this policy and determined it was not an accurate interpretation of the administrative code. The department decided that the 1992 policy did not properly distinguish the “person legally responsible” and that a new interpretation was required. In this policy, the department shifted its view and interpreted the “person legally responsible” as the person “who gets sued for” an injury or death to a guest. The department took the stance that the individual owner of a condo unit shall hold the license, unless the condo association took on the liability of an injury or death lawsuit and provided the department proof of such an agreement in a legal contract or in the association’s bylaws. This drastically changed how condo associations and owners of condo units were licensed by the department and its agent health departments.

The current policy interprets the licensing of condo associations along the lines of the 1992 policy.

Code interpretation

To understand this current policy, one must first review the following definitions:

ATCP 72.03(14) "Operator" means the **person** legally responsible for the operation of the hotel, motel or tourist rooming house.

ATCP 72.03(15) "Person" means an individual, partnership, **association**, firm, company, corporation, municipality, county or town, whether tenant, owner, lessee, licensee, or the agent, heir or assignee of any of these.

With these two definitions, it is apparent that a condo association can hold a department issued lodging license. The question is then, what is required for the condo association, not the owner of the condo unit, to hold a lodging license?

A condo association may hold a department issued lodging license if all of the following are true:

- 1) The condo association is responsible for all maintenance of the facilities. This includes the interior and exterior of the building(s), as well as the premise.
- 2) The condo association is responsible for the collection of rental fees and payment of all department or agent health department issued fees.
- 3) The condo association is responsible for complying with the administrative code.
- 4) The condo association shall have detailed in their bylaws, or documented in a legal contract signed by both the association and the individual owner of the condo unit, that the condo association "is responsible for complying with Wisconsin Administrative Code ATCP 72."

If one of the aforementioned conditions is not met, the individual owner will be responsible to obtain a lodging license from the department.

The department interprets the "person legally responsible" as the person who holds the license and is responsible for complying with Wisconsin Administrative code ATCP 72.