

Earnest Money

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What Is Earnest Money?

Here's how the law defines earnest money:

"Earnest money deposit" means the total of any payments or deposits . . . given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord. . . .

Earnest money is a payment made by a potential tenant to show serious interest in leasing the property. It's typically required when you submit a rental application. The purpose of earnest money is to let the landlord know that you're committed to renting the unit, especially while they review your application.

The amount of earnest money charged by landlords can vary. Any fee which the landlord charges for a credit check is not considered part of the earnest money deposit.

What's the difference between Earnest Money and an Application Fee?

Under the law in Wisconsin, nothing. Wisconsin law doesn't use the term 'application fee', but it does say any fee (except for a credit check fee) you pay to a landlord when applying to rent a place is an earnest money deposit.

Wisconsin law says that earnest money deposits must be returned to the tenant in almost all situations (see below). So, even if a landlord calls it an "application fee," it's really considered earnest money, and they usually can't keep it just to cover the cost of reviewing your application.

How Does Earnest Money Work?

1. Before a landlord can accept earnest money from you, **the landlord must:**
 - a. Let you look at the rental agreement.
 - b. Explain which exact unit(s) you are applying for.
 - c. Tell you about any building code violations or conditions affecting habitability.
 - d. Tell you which utilities are or aren't included in the rent and explain how utility charges are divided between the units and common spaces, if there aren't separate meters for the units.

If you are not a Wisconsin resident when you apply for the unit:

- e. Explain if any of the money will be used to pay for a background check, which is limited to a maximum of \$25 per applicant.
2. You submit your earnest money, usually along with your application. The landlord must give you a receipt for your earnest money deposit, unless you pay by a check on which you've written 'earnest money'. Even if you pay by check, the landlord must provide a receipt if you ask for one.
3. **Decision-making period.** The landlord can keep the earnest money for three business days while making a decision about whether to rent to you. You and the landlord can agree to extend the three-business-day decision period up to a maximum of 21 business days.
4. **End of decision-making period.** Options:
 - a. **The landlord hasn't made a decision by the end of the decision-making period.** In this case, the landlord must return the money to you by the end of the next business day.
 - b. **You withdraw the application before the landlord makes a decision.** In this case, the landlord must return the money to you by the end of the next business day.
 - c. **The landlord rejects your application/refuses to enter a rental agreement.** In this case, the landlord must return the money to you by the end of the next business day.
 - d. **The landlord accepts your application, and you sign a rental agreement.** In this case, the landlord must apply the money towards your security deposit or rent OR return it to you by the end of the next business day.
 - e. **The landlord accepts your application, but you choose not to rent.** In this situation, the landlord can use the money for the costs of finding a

new tenant (such as advertising) and for damages (rent lost during the time the unit was kept off of the market). The landlord must make reasonable efforts to re-rent the unit. The landlord cannot charge for their time in re-renting the unit, and cannot hold the earnest money without a reason.

How to Protect Yourself

- **Get it in writing.** Always ask for an earnest money deposit receipt and keep the receipt in a safe place.
- **Apply carefully.** Only apply to units you are seriously interested in and can afford, as backing out after acceptance could mean forfeiting your deposit.
- **Know your rights.** If a landlord does not follow any of these rules, you can sue the landlord for double your money losses and full reasonable attorney fees. In many cases where problems come up between a tenant and a landlord, it's a good idea to try writing a letter to the landlord before taking legal action. In this case, if the landlord does not return your earnest money in the proper time frame, you can write a letter explaining why you don't think the landlord has a right to this money, and that they should return it to you. If they still don't return the money, you may want to complain to the Department of Consumer Protection and/or take legal action. See our [article on filing a consumer complaint](#). You are not required to do any of these things before filing a law suit, however.

[Money issues you might encounter before, during, and after renting Renting Housing](#)

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