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To: Wisconsin County Sheriffs; Chiefs of Police and Village Marshals

RE: *Removal of Guests from Licensed Campgrounds*
Our File No.: 489.01

Sometimes, guests at public accommodations need to be removed from the premises. When that happens, the proprietors attempt to use diplomacy and persuasion to induce the errant guests to leave. In the few instances in which guests will not leave, proprietors need to be able to call upon law enforcement to assist. There seems to be some confusion around Wisconsin about the status of campground guests. The Wisconsin Association of Campground Owners asked me, as its legal counsel, to explain why campground guests, like tavern and motel guests, are subject to removal by the police.

Questions have arisen because in some instances, campground guests or law enforcement officers have contended the campground guests are tenants and must be evicted. This is not correct. Campground guests have no tenure or estate in the campground. Just as is the case with hotel guests, if they cease to be welcome on the premises, they become trespassers and are subject to summary removal.

The Wisconsin Association of Campgrounds (“WACO”) recently worked successfully with the Wisconsin Department of Agriculture to redraft the administrative rules which govern the licensing of campgrounds. Those rules were just recodified at ATP 79 of the Wisconsin Administrative Code. (the “Rule”)

Campgrounds are licensed by the State. Indeed, no one in Wisconsin may run a campground without a permit, Wis. Stats. sec. 97.67 (1) and ATP 79.05. The Rule’s definitions include: “(3) “Campground” means a parcel or tract of land owned by a person, state, or local government that is designed, maintained, intended, or used for the purpose of providing campsites offered with or without charge, *for temporary overnight sleeping accommodations.*”

The Rule does not allow campgrounds to offer tenancies. Section ATP 79.11 (1) states “No operator may allow a campsite to be occupied by the same individual for more than 8 continuous months in any 12-month period.”

Read together, these two sections indicate that campgrounds may host individuals for up to 8 continuous months as temporary overnight guests.

Campgrounds do not provide residences to their guests. They allow people to stay temporarily on the campground's premises. The limited scope of campgrounds' licensure does not allow campgrounds to convey a tenancy to a guest. Campground agreements explicitly state that the guests are not granted a lease, a periodic tenancy or tenancy at will.

WACO has been working with campgrounds for several years to help them clarify the status of their guests in the camping agreements they sign. Under Wisconsin law, campground guests are given permission to enter the land of the campground for temporary sleeping accommodations. That relationship is not a landlord-tenant relationship because the guest is not conveyed any interest in the campground, i.e., a leasehold. Guests are licensees.

In 1975, the Wisconsin Supreme Court abolished the practical distinctions between licensees and invitees, *Antoniewicz v. Reszczyński*, 70 Wis. 2d 836, 856, 236 N.W.2d 1, 11 (1975). Because the two terms are practically the same, we refer to campground guests as licensees. What is significant is that guests are not tenants, as shown in the following excerpt from a case distinguishing "tenancy" from "license:"

The fundamental distinction between a tenancy and a license of this character is that the license gives no estate or interest in the land to the licensee and may rest in parol, yet is valid until revoked by the licensor. A license of this kind to occupy real estate borders very closely upon a tenancy at will, but it is not identical. A licensee having no estate or interest in the land and yet in lawful occupancy thereof by permission of the owner, is in substance occupying in the right of the owner as agent of the owner for the purpose of occupation only. This would seem quite clear upon principle. His agency does not extend beyond the mere occupation unless there is something more in the authorization by the owner than mere authority to occupy, as there was in *Rockport v. Rockport G. Co.* 177 Mass. 246, 58 N.E. 1017, 51 L. R. A. 779.

"A license in relation to land is a bare authority to do some act or series of acts upon the land of another without possessing any estate therein." *Hazelton v. Putnam*, 3 Pin. 107.

Vicker v. Byrne, 155 Wis. 281, 284-85, 143 N.W. 186, 188 (1914).

The distinction in status makes a big difference in the process of removal. A tenant has an estate in the property, and is not a trespasser until evicted. *Johnson v. Blackburn*, 220 Wis. 2d 260, 273, 582 N.W.2d 488, 494 (Ct. App. 1998). A guest, however, (invitee or licensee) becomes a trespasser when their permission to temporarily occupy the land is revoked by the owner, sec. 943.13 (3m):

(3m) An owner or occupant may give express consent to enter or remain on the land for a specified purpose or subject to specified conditions and it is a violation

of sub. (1m) (a) or (am) for a person who received that consent to enter or remain on the land for another purpose or contrary to the specified conditions.

Campgrounds enter into agreements with campers which allow them to use assigned spaces in the Campground for temporary overnight sleeping accommodations. The agreements are not leases. There is serious potential for disorder at the Campground if the owners cannot remove guests who refuse to follow behavioral guidelines. When campgrounds end the stay of these guests at the campground, they are trespassers and should be removed. Campgrounds ask for your support in those instances in which campers need to be removed involuntarily. In instances where campers are causing a breach of the peace by refusing to leave, it is not a civil matter and requires law enforcement intervention.

Very truly yours,

KASIETA LEGAL GROUP, LLC

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cc: County Corporation Counsels