

Wisconsin Institute for Law and Liberty: State agency abandons attempt to regulate pools at rental properties

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The News: A [final rule](#) proposal from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) removes proposed burdensome regulations and licensing requirements that would have blanketed short-term rentals with pools and hot tubs in red tape. The Wisconsin Institute for Law & Liberty (WILL) [submitted a comment](#) in April urging DATCP to remove the regulations from their rule proposal. The Quote: WILL Policy Director, Kyle Koenen, said, "It's encouraging to see DATCP abandon their efforts to impose burdensome red tape on short-term rental owners with pools and hot tubs. Property owners will now have some well-deserved certainty that they can make a living without the heavy hand of government impeding their ability to do so."

Impact: DATCP's attempt to impose burdensome regulations on pools and hot tubs at short-term rental properties in Wisconsin forced homeowners to make difficult choices.

Mike Warecki, of Milwaukee, recently sold his rental property in Sturgeon Bay, WI as a result of DATCP's rule. In [testimony](#) submitted to the legislature in April, Warecki wrote, "Selling the property was not our desire, but we decided that it was the right thing to do given all the troubles we had with the state. While I no longer have a personal or financial interest in having the rule suspended, I don't want to see other property owners go through the same experience we did."

Another homeowner, Kelly Smith, has a property with a beautiful indoor pool (picture below), but DATCP required her to lock it up and prevent guests from using it until it meets the commercial code, which would cost \$150,000. "This was not feasible," Smith [wrote in testimony](#) submitted in April. "Without the pool, I have estimated losses of over \$30,000 in rental income per year. Renters are easily able to see our pool and are usually mystified and upset when I tell them they aren't allowed to use it."



Background: WILL represented a new pool-sharing startup, [Swimply](#), in 2021 after DATCP indicated their business model would be unable to operate in Wisconsin. After WILL got involved, [DATCP issued a letter](#) that said, “On further review of the administrative code, the Department wishes to clarify that, generally, Swimply’s model of pool owners offering their pools for public use on the Swimply website would not fall under public pool licensing requirements in Wis. Admin. Code ch. ATCP 76, regulating safety, maintenance, and operation of public pools and water attractions.”

But DATCP wasn’t done trying to regulate pools and hot tubs at short-term rental properties, such as those listed on AirBNB and VRBO. The department told short-term rental owners with pools and hot tubs that they would have to comply with the commercial pool code if they wished to continue offering this amenity. This impossible bar effectively resulted in a ban of pools and hot tubs at short-term rental properties. In April, the Joint Committee for the Review of Administrative Regulations (JCRAR) [suspended the rule](#) governing pools at short-term rentals until the next legislative session. While these actions were playing out, DATCP was working on a complete rewrite of the commercial pool code. The [proposed rule](#) would have imposed a “Limited-Use Public Pool” license with 15 pages of new regulations on rental properties that make their pools and hot tubs available to renters. Among other things, homeowners would be required to test the water daily and the licensing process would require a physical inspection that could result in costly delays.

WILL submitted [comment](#) in April encouraging DATCP to abandon this rule entirely. WILL’s comment made clear that DATCP’s claim that pools at private properties available for rent become “public,” and therefore subject to regulations found at community pools, is incorrect. WILL also highlighted that the definitions of “public pool” found in state law clearly do not apply to these situations.

In July, DATCP submitted a final proposed rule to the legislature that removed the “Limited Pool License” entirely.

Read More:

- [Mike Warecki Testimony](#), April 26, 2022
- [Kelly Smith Testimony](#), April 26, 2022
- [WILL Public Comment to DATCP](#), April 15, 2022