

1462 ABSCONDING WITHOUT PAYING RENT — § 943.215(1)**Statutory Definition of the Crime**

Absconding without paying rent, as defined in § 943.215(1) of the Criminal Code of Wisconsin, is committed by one who, after being a tenant of residential property, intentionally absconds without paying all current and past due rent.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant had obtained tenancy of residential property.¹
2. The defendant intentionally absconded.

"Intentionally abscond" means that the defendant left with the mental purpose to avoid paying all current and past due rent.²

3. Current or past due rent actually was owed by the defendant.

IF THERE IS EVIDENCE OF AN AFFIRMATIVE DEFENSE UNDER § 943.215(2) OR (3), USE WIS JI-CRIMINAL 1462A HERE IN PLACE OF THE LAST TWO PARAGRAPHS.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1462 was originally published in 1999 and revised in 2008. This revision was approved by the Committee in December 2009.

1. The following definition of "tenancy" is provided in § 704.01(4): "'Tenancy' includes a tenancy under a lease, a periodic tenancy, or a tenancy at will."

"Lease" is defined in sub. (1) of § 704.01, "periodic tenant" in sub. (2), and "tenancy at will" in sub. (5).

2. The 2010 revision changed the definition of "intentionally absconded" from "the mental purpose not to pay" to "the mental purpose to avoid paying." The Committee concluded that this captures the sense of "absconds" most applicable to this offense.

The definition is adapted from the one used in the instruction for violations of § 943.21, Fraud on a hotel or restaurant keeper . . . See Wis JI-Criminal 1461. For that offense, case law had defined "absconds" as "to depart clandestinely." State v. Croy, 32 Wis.2d 118, 121-22, 145 N.W.2d 118 (1966). The Committee concluded that "departing clandestinely" without paying is one way to commit this offense, but that the statute is also violated, for example, by one who leaves openly without paying by deceiving the proprietor about his having paid for what he received. In the latter case, it is the intent to avoid paying that constitutes the offense, notwithstanding the fact that the actor did not clandestinely depart the premises. On the other hand, the statute is not violated if credit has been extended, if the actor simply forgets to pay before leaving, or if the actor leaves with intent to return immediately and pay the bill. See Comment to § 343.22, p. 117, 1953 Report on the Criminal Code. Also see footnote 6, Wis JI-Criminal 1461.

The Committee concluded that the same analysis applies to violations of § 943.215.