WEST VIRGINIA CODE CHAPTER 36 ARTICLE 4

WV Legislature

§36-4-1. Effect of covenant in a deed.

When the words "the said ..... covenants," are used in a deed, such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself his heirs, personal representatives and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives and assigns.

WV Legislature

§36-4-2. General warranty.

A covenant by a grantor in a deed, "that he will warrant generally the property hereby conveyed," or a covenant of like import, or the use of the words "with general warranty" in a deed, shall have the same effect as if the grantor had covenanted that he his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever.

WV Legislature

§36-4-3. Special warranty.

A covenant by a grantor in a deed "that he will warrant specially the property hereby conveyed," or a covenant of like import, or the use of the words "with special warranty" in a deed, shall have the same effect as if the grantor had covenanted that he his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming by, through, or under him

WV Legislature

§36-4-4. Right to convey.

A covenant by a grantor in a deed for land, "that he has the right to convey the said land to the grantee," or a covenant of like import, shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority to convey the said land, with all the buildings thereon, and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed, or intended so to be by the deed, and according to its true intent.

WV Legislature

§36-4-5. Quiet possession.

A covenant by a grantor in a deed "that the grantee shall have quiet possession of the said land," or a covenant of like import, shall have as much effect as if he had covenanted that the grantee, his heirs, personal representatives, and assigns, might at any and all times thereafter, peaceably and quietly enter upon, and have, hold and enjoy, the land conveyed by the deed, or intended so to be, with all the buildings thereon, and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any lawful eviction, interruption, suit, claim or demand whatever.

WV Legislature

§36-4-6. Freedom from encumbrances.

A covenant, by any grantor in a deed, containing the words "free from all encumbrances," or a covenant of like import, shall have the same effect as if the grantor had covenanted for himself his heirs and personal representatives, that the premises are freely and absolutely acquitted, exonerated and forever discharged, and the grantee, his heirs and assigns, will be saved harmless and indemnified of, from and against any and every charge and encumbrance whatever.

WV Legislature

§36-4-7. Special covenant against encumbrances.

A covenant by a grantor in a deed, "that he has done no act to encumber the said lands," or a covenant of like import, shall have the same effect as if he had covenanted that he had not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whereby the lands and premises conveyed or intended so to be, or any part thereof, are, or will be, charged, affected, or encumbered in title, estate or otherwise.

WV Legislature

§36-4-8. Further assurances.

A covenant by a grantor in a deed for land "that he will execute such further assurances of the said lands as may be requisite," or a covenant of like import, shall have the same effect as if he covenanted that he the grantor, his heirs or personal representatives, will, at any time, upon any reasonable request, at the expense of the grantee, his heirs or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, unto the grantee, his heirs and assigns, in manner aforesaid, as by the grantee, his heirs or assigns, his or their counsel in the law, shall be reasonably advised, or required.

WV Legislature

§36-4-9. Covenant to pay rents.

In a lease, a covenant by the lessee "to pay the rent," or a covenant of like import, shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or to those entitled under him in the manner therein mentioned.

WV Legislature

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease heretofore executed covering oil and/or gas, as against the owner of such oil and/or gas, or the owner's subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located, in whole or in part, and upon payment of a fee of 50¢ for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in the clerk's office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in the clerk's office the words "enforcement barred by notice."

The word "lessor" includes the original lessor, as well as the original lessor's successors in title to the oil and/or gas involved. The word "lessee" includes the original lessee, the original lessee's assignee properly of record at the time such demand is made, and the original lessee's successors, heirs, or personal representatives. No assignee of such lease

WV Legislature

whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There is a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to July 1, 1979, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators and any other equipment, or both, used in the production of any oil and/or gas from any well or wells on said leasehold estate.

This rebuttable presumption shall not be created in instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption is created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or the owner's subsequent lessee or assignee desires to terminate the right, interest or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section, this presumption may not be utilized except in an action or proceeding by the owner of the oil and/or gas or the owner's lessee or assignee in an action brought in the circuit court for the judicial district in which the oil and/or gas property is partially or wholly located. A certified copy of a final order of the circuit court shall be mailed by the clerk of such court to the chief of the office of oil and gas of the Division of Environmental Protection.

The continuation in force of any such lease after demand for and failure to pay such delay rental or failure to produce and sell, or to produce and use oil and gas for a period of twenty-four months as hereinbefore set forth is deemed by the Legislature to be opposed to public policy against the general welfare. If any part of this section shall be declared unconstitutional such declaration shall not affect any other part thereof.

WV Legislature

§36-4-9b. Release of terminated, expired or canceled oil or natural gas leases.

(a) Unless a different time is required by the lease, within 60 days after the termination, expiration, or cancellation of an oil or natural gas lease, the lessee shall deliver to the lessor, without cost to the lessor, or his or her successors or assigns, a properly executed and notarized release of such lease in recordable form.

(b) If the lessee fails to provide a timely release as required by subsection (a) of this section, the lessor, or his or her successors or assigns, may serve notice of lessee's failure to provide such release. The notice shall be made in good faith and contain the following:

(1) A statement that:

(A) The lease is terminated, expired, or canceled according to its terms, including the date of such termination, expiration, or cancellation;

(B) The lessee has a duty to provide a release pursuant to subsection (a) of this section; and

(C) If the release, or a written dispute to such termination, expiration, or cancellation, is not received by the lessor, or his or her successors or assigns, from the lessee within 60 days from receipt of the notice, the lessor, or his or her successors or assigns, shall have the right to file an affidavit of termination, expiration, or cancellation under subsection (e) of this section;

(2) The name and address of the lessor, or his or her successors or assigns;

(3) A brief description of the land covered by the lease including, but not limited to, the state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying information;

(4) If there is a well on the land covered by the lease, the name or API number of the well, if known to the lessor, or his or her successors or assigns;

(5) If located in a unit, the name of the unit, if known, to the lessor, or his or her successors or assigns; and

(6) The recording information for the lease, or a memorandum of lease, in the public records of the county or counties, along with the execution date of the lease, and the identity of the original lessor and lessee under the lease.

(7) The notice when served shall include a service sheet showing the names and addresses of all persons upon whom the notice has been served.

(c) The notice shall be sent to the following persons as are shown by the lessor's reasonable examination of the public records: (1) Lessee; (2) lessee's assignee; (3) all other lessors; and (4) all other persons who have an interest in the leasehold estate or the oil and natural gas

WV Legislature

leased thereunder. A lessor's inability to afford notice to everyone to whom notice is to be given thereunder does not relieve a lessee of its obligation to respond.

(d) Service of notice under subsections (b) and (c) of this section shall be effected either personally or by certified mail to the recipient's last known business addresses, or, if service cannot reasonably be made by those means, by publication once a week for two weeks in a newspaper of general circulation in the county or counties in which the lands covered by the lease are located.

(e) If, after receiving a notice of termination, expiration, or cancellation under subsections (b), (c), and (d) of this section, a lessee disputes in good faith that the oil or natural gas lease is terminated, expired, or canceled as stated in the notice, the lessee must, not more than 60 days after receipt of the notice, deliver a written dispute of the contents of the notice to the lessor, or his or her successors or assigns, detailing the good-faith basis for such dispute.

(f) A lessor, or his or her successors or assigns, who has served a notice under subsections (b), (c) and (d) of this section, and who fails to receive a timely dispute from a lessee under subsection (e) of this section, may record an affidavit of termination, expiration, or cancellation of an oil or natural gas lease in the office of the county clerk in the county or counties where the lands covered by the lease are situated. The county clerk of each county shall accept all such affidavits and shall enter and record them in the official records of that county and shall index each in the indices under the names, as they appear in the affidavit, of the original lessor, the original lessee, the lessor seeking the release, and the lessee identified in the affidavit.

(g) An affidavit of termination, expiration, or cancellation of an oil or a natural gas lease shall be in the form of an affidavit and contain the following information:

(1) The name and address of the affiant;

(2) The names and addresses of the lessor and lessee;

(3) If located in a unit, the name of the unit, if known to the affiant;

(4) If there is a well on the land, the name or API number of the well, if known to the affiant;

(5) The recording information for the lease, or a memorandum of same, in the public record of the county or counties where the interest is located, along with the execution date of the lease, and the names of the original lessors and lessees under the lease;

(6) A brief recitation of the facts known to the affiant relating to the termination, expiration, or cancellation of the lease, including relevant dates;

(7) A statement that the lessor, or its successors or assigns, complied with his or her duty to serve proper notice to the lessee under subsections (b), (c), and (d) of this section and that the lessee failed to provide a timely challenge to the notice as provided in subsection (e) of

WV Legislature

this section. The lessor's affidavit shall have attached to it a copy of the notice made and served under subsections (b), (c), and (d) of this section including therewith a copy of the service sheet accompanying the notice; and

(8) The notarized signature of the affiant.

(h) A person who files an affidavit under this section shall serve a copy of the same upon all persons to whom notice was required to be given under subsections (b), (c), and (d) of this section in the same manner as notice was required to be served. The filing of an affidavit under this section does not constitute a modification of a lease, nor does it limit, waive, or prejudice any claim or defense of any party to the lease in law or in equity.

(i) A lessor's, or his or her successors or assigns, decision not to use the provisions of this section is not evidence that a lease is still in effect.

WV Legislature

§36-4-9c. Penalties for nonpayment of royalties under the terms of oil and natural gas leases during production from conventional vertical wells.

(a) With regard to conventional vertical oil, natural gas wells, and derivative natural gas liquids only, permitted under §22-6-1 *et seq*. of this code, unless otherwise provided for in writing or unless there is a bona fide dispute between the parties, any lessee or operator of oil, natural gas, or natural gas liquids, or their successors or assigns, who fails to pay a royalty payment for mineral production to a lessor, or their successors and assigns, under the terms of a lease or other agreement within six months after the date payment is due under the terms of the lease or other agreement, shall be liable to such lessor or landowner, or their successors or assigns, in an amount equal to three times the market value of the unpaid royalty for which payment is due.

(b) The provisions of subsection (a) of this section shall apply to all royalty payment disputes filed with a court of competent jurisdiction on or after July 1, 2025.

(c) Non-exclusive jurisdiction and venue are proper in the county in which the subject well and leasehold is located.

(d) The prevailing party may be awarded reasonable attorney's fees and costs in addition to and not withstanding any other rights, remedies, and penalties otherwise provided by law.

WV Legislature

§36-4-10. Covenant to pay taxes.

A covenant by the lessee in a lease "to pay the taxes," or a covenant of like import, shall have the effect of a covenant that all taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under him Provided, however, That no assessment for a permanent local improvement, such as paving the street or sidewalk, or other such improvement, and no tax levied upon the income of the lessor derived from such leased premises, shall be chargeable to the lessee, unless it is expressly so provided in the lease.

WV Legislature

§36-4-11. Covenant against assignment.

In a lease, a covenant by the lessee "that he will not assign or sublet without leave," or a covenant of like import, shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, set over, or sublet, the premises, or any part thereof, to any person, without the consent in writing of the lessor, his representatives or assigns.

WV Legislature

§36-4-12. Covenant for repairs.

In a lease, a covenant by the lessee "that he will leave the premises in good repair," or a covenant of like import, shall, subject to the provisions of the following section, have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded up unto the lessor, his representatives or assigns, in good and substantial repair and condition, reasonable wear and tear excepted.

WV Legislature

§36-4-13. Effect of destruction of buildings.

No covenant or promise by a lessee that he will leave the premises in good repair shall have the effect, if the buildings or other structures are destroyed by fire or otherwise, in whole or part, without fault or negligence on his part, of binding him to erect such buildings again, or to pay for the same or any part thereof, unless there be other words showing it to be the intent of the parties that he should be so bound.

WV Legislature

§36-4-14. Covenant for quiet enjoyment.

A covenant by a lessor, "for the lessee's quiet enjoyment of his term," or a covenant of like import, shall have the same effect as a covenant that the lessee, his personal representatives and lawful assigns, paying the rent reserved, and performing his or their covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person whatever.

WV Legislature

§36-4-15. Covenant for reentry for default of lessee.

If in a lease it be provided that "the lessor may reenter for default in the payment of rent or for the breach of covenants," or if the lease contains words of like import, such words shall have the effect of an agreement that if the rent reserved, or any part thereof, be unpaid on or after the day specified in the deed for the payment thereof, or if any of the other covenants on the part of the lessee, his personal representatives or assigns, be broken, then, in either of such cases, the lessor, or those entitled in his place, at any time afterwards, into and upon the demised premises, or any part thereof, in the name of the whole, may reenter and the same again have, repossess and enjoy, as of his or their former estate.

WV Legislature

§36-4-16. Covenants shall run with land.

Each of the covenants hereinbefore mentioned in this article, as well as the covenant of seisin, when used in a conveyance of land, delivered after the date when this code shall take effect, shall be considered as a covenant running with the land, whether such covenants have heretofore been so considered or not, unless a contrary intent shall be apparent from the conveyance.

WV Legislature

§36-4-17. Construction of covenants.

The legal scope and effect of the covenants mentioned in this article, and the person or persons by and against whom such covenants may be enforced, shall be determined according to the rules of law applicable to such cases, and the plain intent and meaning of the parties.

WV Legislature

§36-4-18. Recorded disclaimer of unlawful restrictions.

The clerk of the county commission shall execute, record and post in a prominent place in the county record room a document that disclaims the validity and enforceability of certain restrictions and covenants in deeds. The document shall contain a disclaimer in substantially the following form:

"Except as provided in section eight, article eleven-a, chapter five of the Code of West Virginia, it is the law of this state that certain covenants or restrictions that are based on race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin are invalid and unenforceable. If an invalid covenant or restriction is contained in a document that is recorded in this county, the invalid covenant or restriction is void notwithstanding its recordation."

WV Legislature

§36-4-19. Solar energy covenants unenforceable; penalty.

(a) It is the policy of the state to promote and encourage the residential and commercial use of solar energy systems and to remove obstacles thereto to promote energy efficiency and pollution reduction. Therefore, any covenant, restriction, or condition contained in any governing document of a housing association executed or recorded after the effective date of this section that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable: Provided, That a housing association may, by vote of its members, establish or remove a restriction that prohibits or restricts the installation or use of a solar energy system.

(b) For the purposes of this section:

(1) "Solar energy system" means a system affixed to a building or buildings that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy; and

(2) "reasonable restriction" means those restrictions that do not effectually result in a prohibition of their use by eliminating the system's energy conservation benefits or economic practicality.

(c) This section does not apply to provisions that impose reasonable restrictions on solar energy systems including restrictions for historical preservation, architectural significance, religious or cultural importance to a given community. Nothing in this section precludes the regulation of solar energy systems by state and local authorities which may establish land use, health and safety standards. Nothing in this section precludes housing associations from restricting or limiting the installation of solar energy systems installed in common areas and common structures.

WV Legislature