WEST VIRGINIA CODE CHAPTER 37 ARTICLE 15

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§37-15-1. Purpose and applicability.

The purpose of this article is to recognize the distinction between a house trailer, a mobile home, a manufactured home and a modular home. While it is the intent of this article to include the different classifications of factory-built homes into a single category for the purposes of this article, it is also the intent of this article to acknowledge the differences between the various types of factory-built homes for other purposes.

In addition, it is the purpose of this article to clarify the ambiguity and confusion related to the classification of factory-built homes as real or personal property, particularly relating to security interests. The provisions of this article apply to factory-built homes, as defined herein, which are held as personal property situated on real property owned by another in conjunction with a landlord/tenant relationship.

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§37-15-2. Definitions.

For the purposes of this article, unless expressly stated otherwise:

(a) "Abandoned factory-built home" means a factory-built home occupying a factory-built home site pursuant to a written agreement under which the tenant has defaulted in rent or the landlord has exercised any right to terminate the rental agreement;

(b) "Factory-built home" includes modular homes, mobile homes, house trailers and manufactured homes;

(c) "Factory-built home rental community" means a parcel of land under single or common ownership upon which two or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of his family;

(d) "Factory-built home site" means a parcel of land within the boundaries of a factory-built home rental community provided for the placement of a single factory-built home and the exclusive use of its occupants;

(e) "Good cause" means:

(1) The tenant is in arrears in the payment of periodic payments or other charges;

(2) The tenant has breached a material term of a written rental agreement or has repeatedly breached other terms of the rental agreement;

(3) Where there is no written agreement, or where the written agreement does not cover the subject matter of a warranty or leasehold covenant, the tenant breached a material warranty or leasehold covenant or has repeatedly breached other terms of a warranty or a leasehold covenant;

(4) The tenant has deliberately or negligently damaged the property or knowingly permitted another person to do so.

(f) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers and shall include fold down camping and travel trailers as these terms are defined in section one, article six, chapter seventeen-a of this code, but only when such camping and travel trailers are located in a factory-built home rental community, as defined in this section, on a continual, nonrecreational basis.

(g) "Landlord" means the factory-built home rental community owner, lessor or sublessor of the factory-built home rental community, or an agent or representative authorized to act on his or her behalf in connection with matters relating to tenancy in the community.

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(h) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on June 15, 1976, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(i) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on June 15, 1976, and usually built to the voluntary industry standard of the American national standards institute (ANSI)--A119.1 standards for mobile homes.

(j) "Modular home" means any structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and is certified as meeting the standards contained in the state fire code encompassed in the legislative rules promulgated by the state Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.

(k) "Owner" means one or more persons, jointly or severally, in whom is vested: (i) All or part of the legal title to the factory-built home rental community; or (ii) all or part of the beneficial ownership and right to present use and enjoyment of the factory-built homesite or other areas specified in the rental agreement and the term includes a mortgagee in possession.

(l) "Rent" means payments made by the tenant to the landlord for use of a factory-built home site and as payment for other facilities or services provided by the landlord.

(m) "Section" means a unit of a factory-built home which is transported and delivered as a whole and which contains some or all of the indoor living area.

(n) "Tenant" means a person entitled pursuant to a rental agreement to occupy a factory-built home site to the exclusion of others.

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§37-15-3. Written agreement required.

(a) The rental and occupancy of a factory-built home site shall be governed by a written agreement which shall be dated and signed by all parties thereto prior to commencement of tenancy. A copy of the signed and dated written agreement and a copy of this article shall be given by the landlord to the tenant within seven days after the tenant signs the written agreement.

(b) The written agreement, in addition to the provisions otherwise required by law to be included, shall contain:

(1) The terms of the tenancy and the rent therefor;

(2) The rules and regulations of the factory-built home rental community. A copy of the text of the rules and regulations attached as an exhibit satisfies this requirement;

(3) The language of the provisions of this article. A copy of the text of this article attached as an exhibit satisfies this requirement;

(4) A description of the physical improvements and maintenance to be provided by the tenant and the landlord during the tenancy; and

(5) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(c) The written agreement for a factory-built home site on which is placed a factory-built home that is comprised of one section, other than a camping or travel trailer, may not allow for the termination of the tenancy by the landlord during the first twelve months that the factory-built home is placed on the site except for good cause. The written agreement for a factory-built home site upon which is placed a factory-built home that is comprised of more than one section may not allow for the termination of the tenancy by the landlord during the first five years the factory-built home is placed on the site except for good cause.

(d) The written agreement may not contain:

(1) Any provisions contrary to the provisions of this article and shall not contain a provision prohibiting the tenant who owns his or her factory-built home from selling his or her factory-built home;

(2) Any provision that requires the tenant to pay any recurring charges except fixed rent, utility charges or reasonable incidental charges for services or facilities supplied by the landlord; or

(3) Any provision by which the tenant waives his or her rights under the provisions of this article.

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(e) When any person possesses a security interest in the factory-built home, the written agreement or rental application shall contain the name and address of any secured parties. The written agreement shall require the tenant to notify the landlord within ten days of any new security interest, change of existing security interest or settlement or release of the security interest.

(f) When a factory-built home owner sells a factory-built home, the new owner shall enter into a written agreement if the factory-built home continues to occupy the site: Provided, That the new owner meets the standards and restrictions contained in the prior rental agreement.

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§37-15-3a. Rules and regulations.

(a) An owner, from time to time, may adopt rules or regulations concerning the tenant's use and occupancy of the premises. A rule or regulation is enforceable against the tenant if the rule or regulation:

(1) Is reasonably related to the purpose for which it is adopted;

(2) Applies to all tenants in the factory-built home rental community in a fair manner;

(3) Is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(4) Is not for the purpose of evading the obligations of the landlord; and

(5) The tenant has been given written notice of the rule at the time the tenant enters into the rental agreement, or when it is adopted by the owner.

(b) A rule or regulation adopted by the owner after the tenant has entered into a rental agreement that results in a substantial modification of the tenant's original rental agreement does not become effective until the current rental agreement expires and a new agreement is made in writing.

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§37-15-4. Liability of secured party taking possession of an abandoned factory-built home.

(a) A secured party is not liable for rent to a landlord except as provided below:

(1) When a factory-built home subject to a security interest becomes an abandoned factory-built home, the landlord shall mail a notice of abandonment to the owner of the factory-built home and the secured party by certified mail, at the addresses shown in the rental agreement or rental application. The notice shall include any rental agreement previously signed by the tenant and the landlord, and shall also provide the landlord's current mailing address;

(2) A secured party who has a security interest in an abandoned factory-built home, and who has taken title to the factory-built home under court order or under the applicable security agreement, is liable to the landlord under the same rental agreement terms as agreed on by the tenant and the landlord prior to the accrual of a right of possession by the secured party;

(3) Subject to any defenses the tenant may have, when the tenant has failed to comply with the terms of the written rental agreement regarding rent and payment of fees, the tenant remains liable to the landlord for all rent and services provided during the period while the secured party is attempting to gain title or exercise a right of possession to the factory-built home: Provided, That when the landlord has terminated the rental agreement, the tenant shall not be liable for further rent or payment of fees to the landlord. The secured party is not liable to the landlord or tenant for rent or services until the secured party completes foreclosure proceedings under the terms of the security agreement or otherwise takes title or exercises a right of possession to the factory-built home; or

(4) Upon completion of foreclosure proceedings, acquiring title to or the exercise of a right of possession to the secured party, the secured party shall immediately notify the landlord of the completion of such proceedings by certified mail at the address provided in the landlord's notice of default. After the conveyance of title to or the exercise of a right of possession to the secured party, the secured party shall have ten business days to remove the factory-built home. If a secured party who has a security interest in an abandoned factory-built home takes title to or possession of the factory-built home and the factory-built home remains in the factory-built home rental community for a period longer than ten business days, the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of a desire to terminate to the other party thirty days or more in advance of the proposed date of termination. The secured party and the landlord may enter into a subsequent agreement but are not required to execute a new rental agreement.

(b) Nothing in this section may be construed to be a waiver of any rights by the tenant.

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§37-15-5. Demands and charges prohibited; access by tenant's invitee; purchases by factory-built home owner not restricted; exception; conditions of occupancy.

(a) A landlord may not demand or collect:

(1) Any fee which is not listed in the rental agreement;

(2) An entrance fee for the privilege of renting or occupying a factory-built home site;

(3) A commission on the sale of a factory-built home located in the factory-built home rental community unless the tenant expressly employs the landlord to perform a service in connection with the sale, but employment of the landlord by the tenant may not be a condition or term of the initial sale or rental; or

(4) A fee for improvements or installations on the interior of a factory-built home, unless the tenant expressly employs the landlord to perform a service in connection with such installation, improvement or sale.

(b) An invitee of the tenant has free access to the tenant's factory-built home site without charge unless a court of competent jurisdiction has ordered otherwise.

(c) A factory-built home owner may not be restricted in his or her choice of vendors from whom he or she may purchase his or her (i) factory-built home, except in connection with the initial renting of a newly constructed factory-built home site not previously rented to any other person, or (ii) goods and services. However, nothing in this article prohibits a landlord from prescribing reasonable requirements governing, as a condition of occupancy, the style, size or quality of the factory-built home, or other structures placed on the factory-built home site.

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§37-15-6. Termination of tenancy.

(a) The tenancy for a factory-built home site upon which is placed a factory-built home that is comprised of one section, other than a camping or travel trailer, may not be terminated until twelve months after the home is placed on the site except for good cause. The tenancy for a factory-built home site on which is placed a factory-built home that is comprised of two or more sections may not be terminated until five years after the home has been placed on the site except for good cause.

(b) The tenancy for a factory-built home, other then a camping or travel trailer, may be terminated at the time set forth in this subsection.

(1) Either party may terminate a rental agreement at the end of its stated term or at the end of the time period set out in subsection (a) of this section, whichever is later, for any reason, unless the rental agreement states that reasons for termination must exist.

(2) Either party may terminate a tenancy which has continued after its stated term and longer than the period set out in subsection (a) of this section for no reason, unless the rental agreement states that reasons must exist.

(3) A tenancy that has not reached the end of its stated term or has not existed for the time periods stated in subsection (a) of this section may be terminated only for good cause.

(c) A tenancy governed by subdivision (1) or (2), subsection (b) of this section may be terminated only by written notice at least three months before the termination date of the tenancy. A tenancy governed by subdivision (3), subsection (a) of this section may be terminated only by a written notice at least three months before the termination date of the tenancy. The rental agreement may specify a period of notice in excess of the periods of time set out in this subsection.

(d) A landlord may not cause the eviction of a tenant by willfully interrupting gas, electricity, water or any other essential service, or by removal of the factory-built home from the factory-built home site, or by any other willful self-help measure.

(e) The landlord shall set forth in a notice of termination the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses and circumstances concerning that reason.

(f) Unless the landlord is changing the use of the site, if a tenancy is ended by the landlord at the later of its stated term or at the end of the time period set out in subsection (a) of this section with no good cause, the owner may not prevent the sale of the factory-built home in place to another tenant who meets the standards and restrictions in effect for other new tenants prior to the termination of the tenancy.

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§37-15-6a. Termination of tenancy of more than twenty-five tenants.

(a) A landlord of a factory-built home rental community may not terminate a rental agreement nor otherwise evict more than twenty-five tenants of any factory-built home rental community within a single eighteen-month period unless:

(1) The landlord obtains written agreement to voluntarily vacate the premises by every tenant prior to the expiration of the eighteen-month period;

(2) The landlord provides not less than six months' notice to terminate the rental agreement to each tenant; or

(3) The tenant has breached a provision of the rental agreement and the termination complies with the requirements of this article.

(b) If a landlord violates the provisions of this section, the tenant has a cause of action to recover actual damages, the costs required to relocate the aggrieved tenant and, in addition, a right to recover treble damages or the equivalent of the aggrieved tenant's rent for one year, whichever is greater, and reasonable attorney fees.

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§37-15-7. Retaliatory conduct prohibited.

(a) Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the landlord has knowledge that: (1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (2) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this article; (3) the tenant has organized or become a member of a tenant's organization; or (4) the tenant has testified in a court proceeding against the landlord.

(b) Notwithstanding the provisions of subsection (a) of this section, a landlord may terminate the rental agreement pursuant to subsection (b), section six of this article unless the magistrate or circuit court finds that the reason for the termination was retaliation.

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§37-15-8. Effect on taxation.

Nothing in this article shall be construed to affect the taxation of factory-built homes.

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