WEST VIRGINIA CODE CHAPTER 37

WV Legislature

§37-1-1. Renewal of lease by or to persons under disability.

Where an infant, insane person, or convict is entitled to or bound to renew any lease, any person on behalf of such infant, insane person, or convict, or any person interested, may apply by petition or motion in a summary way, to the circuit court of the county in which the land leased or some part thereof may lie, and by the order of such court, any person appointed by it may, from time to time, surrender or accept a surrender of such lease, or take or make a new lease of the same premises for such term, and with such provisions as the court shall direct. Such reasonable sums as may be incurred to renew any such lease shall, with interest thereon, be paid out of the profits of the leasehold premises and be a charge thereon until such payment.

WV Legislature

§37-1-2. Sale, lease or mortgage; bill; parties; definition.

If the guardian of any minor, or the committee of any insane person or convict, think that the interest of the ward or insane person or convict will be promoted by a lease or by a mortgage or by a trust deed upon or by a sale of his estates, or of an estate in which he is interested with others, infants or adults; or if the trustee of any estate, or any person interested in any estate in trust, whether he be interested with others or not, think the interest of those for whom the estate is held will be promoted by a lease of the same, mortgage or trust deed upon the same, or a sale thereof; such guardian, committee, trustee, or beneficiary, whether the estate of the minor or insane person or convict, or any of the persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, and whether the guardian, committee or trustee, or the minor, insane person, convict, or any of the persons interested, reside in this state or not, may, for the purpose of obtaining such sale, lease, mortgage or trust deed, file a bill in equity in the circuit court of the county in which the estate proposed to be leased, sold or encumbered by mortgage or trust deed or some part thereof may be, stating plainly all of the estate, real and personal, belonging to such infant or insane person or convict, or so held in trust, and all of the facts calculated to show the propriety of the sale, lease, mortgage, or trust deed. The bill shall be verified by the oath of the plaintiff; and the infant or insane person or convict, or the beneficiaries in such trust, when not plaintiffs, and all others interested, shall be made defendants. The word "lease" as used in this article shall include any mining or timber lease or any lease of any profit in land, and the word "sale" shall include the sale of any undivided interest, or any part of the corpus of land, or anything in or growing upon land.

WV Legislature

§37-1-3. Guardian ad litem.

A guardian ad litem shall be appointed for minors under the age of eighteen, inmates and protected persons subject to the requirements of section five, article three, chapter forty-four-a of this code. The guardian ad litem shall answer the petition under oath, be present at any summary proceeding or hearing and inform the court whether the sale of property is in the best interests of the minor, inmate or protected person. Minors over the age of fourteen may answer in person as well.

WV Legislature

§37-1-4. Depositions.

No deposition shall be read in the suit against any infant or insane or convict party, except by leave of the court, unless it be taken in the presence of the guardian ad litem or upon interrogatories agreed on by him

WV Legislature

§37-1-5. Decree.

If it be clearly shown, independently of any admissions in the answers, that the interest of the infant, insane person, convict or beneficiaries in the trust, as the case may be, will be promoted, and the court be of the opinion that the rights of no person will be violated thereby, it may decree that such estate or any part thereof be sold, leased, mortgaged or encumbered by a trust deed, on such conditions and upon such terms as to the court shall seem to the best interests of such infant, insane person, convict or beneficiary in a trust, as the case may be, and in case the sale of such land is decreed, the purchaser, when the sale is on credit, shall be required to give ample security, and, if the sale be of real estate, a lien shall be retained thereon to secure the payment of the purchase money.

WV Legislature

§37-1-6. Who not to be purchaser.

At such sale the guardian, or guardian ad litem, or committee, or trustee, shall not be a purchaser, directly or indirectly.

WV Legislature

§37-1-7. Investment of proceeds.

The proceeds of sale shall be invested under the direction of the court, for the use and benefit of the persons entitled to the estate, and, in case of a trust estate, subject to the uses, limitations, and conditions contained in the writing creating the trust. But into whosesoever hands such proceeds may be placed, the court shall take ample security and from time to time require additional security, if necessary, and make any other proper orders for the faithful application of the fund, and for the management and preservation of any property, or securities in which the same may be invested, and for the protection of the rights of all persons interested therein, whether such rights be vested or contingent.

WV Legislature

§37-1-8. Joinder of spouse, or sale free of dower.

When a decree or order is made under this article, or under article nine, chapter twenty-seven of this code, for the sale or other conveyance of the real estate of an insane or infant or convict spouse, the other spouse may, if he or she think fit, join in the conveyance and thereby release dower and shall in such case, if he or she so demand, receive out of the proceeds of sale the value of his or her inchoate dower, computed according to the provisions of article two, chapter forty-three of this code, or such land may be sold free and clear of inchoate dower under the provisions of section five, article one, chapter forty- three of this code.

WV Legislature

§37-1-9. Release of dower under order of court; conveyance without joinder of spouse.

If the spouse of an infant or insane or convict husband or wife wish to sell real estate and to have the right of dower of such incompetent therein released to the purchaser, he or she may petition for that purpose the circuit court of the county in which such estate or some part thereof is, and if it appear to the court to be proper, an order may be made for the execution of such a release of dower, by a commissioner to be appointed by the court for the purpose, which release shall be effectual to pass such right of dower. And in making such order the court shall secure to such infant or insane or convict spouse, a sum in gross, computed according to the provisions of article two, chapter forty-three of this code as compensation for such right of dower.

WV Legislature

§37-1-10. Proceeds of sale to descend as lands.

What may be received under this article for the real estate of an infant or insane person, sold or divided, or so much thereof as may remain at his death intestate, shall, if he continue till his death incapable of making a will, pass to those who would have been entitled to the land if it had not been so sold or divided.

WV Legislature

§37-1-11. Summary proceedings for sale, lease or mortgage; petition; notice.

In addition to the proceedings authorized by section two of this article, the guardian of any minor, or the committee of any insane person or convict, if he deem that the interests of his ward or insane person or convict will be promoted by a sale, lease or mortgage of, or trust deed upon, his estate, or of any estate in which he with others, infants or adults, is interested, whether the estate of the minor, or insane person or convict, or of any of the other persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, may apply by petition, in a summary way, to the circuit court, or to the judge thereof in vacation, or to any court of concurrent jurisdiction with the circuit court, or to the judge thereof in vacation, or to any juvenile court, or to the judge thereof in vacation, of the county in which the estate proposed to be sold, leased, or encumbered, or some part thereof may be, describing all the estate, real and personal, belonging to the minor, or insane person or convict and setting forth plainly all the facts calculated to show the propriety of the sale, lease, mortgage, or deed of trust. The petition shall be verified by the oath of the plaintiff, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, That any notice or service required by this section to be made upon any infant under fourteen years of age shall be made by delivering a copy of such notice and petition to his guardian resident in this state; or, if there be no such guardian, then either to his father or mother if they be found. If there is no such guardian and if the father or mother cannot be found, service of such notice and petition shall be made upon a guardian ad litem appointed in the manner provided by law.

WV Legislature

§37-1-11a. Jurisdiction of court in proceedings under article; process; investment not required if funds unavailable.

In any suit or proceeding under this article the court shall have jurisdiction to hear, decide and dispose of any matter which involves the property or welfare of any person under legal disability who may be a party to a suit or proceeding, which matter, but for this section, would otherwise be the subject of a separate suit, or suits, under section thirteen, article ten, chapter forty-four of this code. Rules of equity governing service of process generally shall apply to all proceedings under this article, and section seven of this article shall not require the investment of funds of any person under disability in those cases where such funds, as a result of the court's action, may not be available for such purpose.

WV Legislature

§37-1-12. Guardian ad litem in summary proceeding.

For every such minor or insane person or convict the court shall appoint a guardian ad litem who must be present at the hearing of the summary proceeding mentioned in the preceding section.

WV Legislature

§37-1-13. Order; sale.

If it be clearly shown by the petition, exhibits, and evidence adduced, that the interest of the minor or insane person or convict will be promoted by the sale, lease or encumbrance by mortgage or trust deed, and the court be of opinion that the rights of no person will be affected thereby, it may order such estate, or any part thereof, to be sold, lease, or encumbered by mortgage or trust deed; and in such manner and on such terms and in such parcels as may be deemed most beneficial to the minor or insane person or convict; and, in case the same be decreed to be sold, shall take from the purchaser bond, with ample security, when the sale is on credit. And, in case of sale or lease, the same may be decreed to be made either at public or private sale or lease. At such sale or lease neither the guardian, committee, nor guardian ad litem shall be a purchaser directly or indirectly. But no estate of any minor or insane person or convict shall be sold contrary to the provisions of any will or conveyance by which such estate was devised or granted to such person, if such provision would be valid if contained in a conveyance or devise to a person sui juris.

WV Legislature

§37-1-14. Bond for proceeds.

In case such sale or lease be made, the guardian or committee shall enter into bond, with approved security, conditioned for the faithful application of the proceeds of sale or lease. And in case of a mortgage or trust deed such guardian or committee shall enter into bond, with approved security, conditioned for the faithful application of any moneys which may come into his hands from the encumbrancing. In either case such bonds shall be taken in open court, or before the judge in vacation, or before the clerk, and shall be payable to the state, in such penalty as shall be prescribed by the court; and the court may thereafter order a new bond, with other security, to be given if deemed necessary. If the court shall find that the bond already given by the guardian or committee is sufficient, no additional bond need be required.

WV Legislature

§37-1-15. Application of proceeds; costs.

The provisions of section seven of this article shall govern as to the application of the proceeds of sale. The cost of the proceedings may be paid out of such proceeds, but no attorney's fee shall be taxed therein, except where, in the discretion of the court, it be reasonable and just.

WV Legislature

§37-1-16. Confirmation; conveyance.

Whenever a sale, lease, mortgage or trust deed is ordered as herein provided, the court shall order the proceedings under such sale, lease, mortgage or trust deed, to be reported for confirmation; and, in case of sale, may direct a conveyance with covenant of special warranty to be made by the guardian, the committee or a commissioner. And every such conveyance shall be as effectual in law as if the same were made by the minor when of lawful age, or by the insane if compos mentis, or by the convict if competent; and, in case of a lease, the court shall direct the same to be made by the guardian or committee applying for the same, and to be reported to the court for confirmation. And, in case of a mortgage or trust deed, the guardian or committee, as the case may be, shall report to the court in full particulars concerning the making of such mortgage or trust deed and the moneys received under the same.

WV Legislature

§37-1-17. Validation of certain sales.

No sale of the real estate of an infant, convict, or insane person, heretofore made and confirmed, under and by the judgment, order or decree of a court of competent jurisdiction, nor any conveyance of such real estate made or to be made under any such judgment, order, or decree, and no lease, mortgage, or trust deed upon the real estate of any such person, heretofore made under any such judgment, order or decree, shall in any manner be affected or invalidated by reason of the bill or petition in the case not having been verified, or by reason of the persons who would be the heirs or distributees of such infant, convict or insane person, if he were dead, not having been made parties to the suit or proceedings, or by reason of any other error or defect in the proceeding or deed, not affecting the very right of the case, or by reason of any action of the court in dealing with, in such suit or proceedings, matters which would otherwise have been the subject matter of a separate suit under section thirteen, article ten, chapter forty-four of this code. All such sales and conveyances are hereby legalized and made valid; and all such leases, mortgages and deeds of trust, heretofore made, or to be made under any such judgment, order or decree in those cases where the welfare and property of the person under legal disability has been sufficiently protected are hereby legalized and made valid. Sales, leases, mortgages, or deeds of trust heretofore made pursuant to judgments, orders or decrees in suits or proceedings under this article shall not hereafter be invalidated for the reason that the court, in disposing of the case, failed to require such persons, property and estate to be burdened with the expense of a separate suit or proceedings under section thirteen, of article ten, of chapter forty-four of this code, where it appears from the record that the court did adequately protect the welfare and property of the person under legal disability.

WV Legislature

§37-2-1.

Repealed.

Acts, 1992 Reg. Sess., Ch. 75.

WV Legislature

§37-2-2. Escheat of equitable interests.

An estate vested in a person merely by way of mortgage or trust shall not escheat by reason of the mortgagee or trustee dying without heirs but any equitable title to or interest in lands shall escheat or be forfeited in the same manner as it would if the person having the equitable had the legal title.

WV Legislature

§37-2-3. Tenants of escheated land.

If any person holds any escheated land or personal property for a term of years, or for life, or has a right to any rent or other profit or has any other interest whatever in such land, he shall hold and enjoy his lease, rent, profit or other interest, and any sale of such land as escheated land, under the provisions of article three of this chapter, shall be made subject to such lease, rent, profit, or other interest.

WV Legislature

§37-2-4. Escheator.

The assessor of each county shall by virtue of his office be the escheator of such county.

WV Legislature

§37-2-5. List of land by escheator.

Each escheator shall annually, in September, prepare a list of all lands within his county, of which any person shall have died owning an estate of inheritance, intestate and without any known heir, or to which no person is known by him to be entitled, and transmit such list to the commissioner of school lands of his county, according to the provisions of section seven, article three of this chapter. If the state tax commissioner shall be of the opinion that other lands, not included by the escheator in such list, should be so included, and shall so advise the escheator, in writing, the escheator shall place such lands upon such list.

WV Legislature

§37-2A-1.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-2.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-3.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-4.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-5.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-6.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-7.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-8.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2A-9.

Repealed.

Acts, 1961 Reg. Sess., Ch. 133.

WV Legislature

§37-2B-1. Compromise of state's claims.

The Auditor, in his capacity as commissioner of forfeited and delinquent lands, is hereby authorized to compromise all claims of the state against all real property, including undivided interests therein, which, heretofore, may have been exempted from taxation and carried upon the land books of any county as tax-exempt property, or which may have been exempted from taxation as religious, charitable or educational property regardless of the form of assessment or entry insofar as the state may now have any claim thereto and the property, or any part thereof, or interest therein has not been transferred to others by operation of section 3, article XIII of the Constitution of West Virginia, upon payment to him of the sum of $1 for each year that any parcel, lot, tract or interest, heretofore exempted as aforesaid, may have been exempted or carried as exempt property upon the land books of any county prior to the year one thousand nine hundred forty-five. The Auditor, as such commissioner, is hereby authorized to establish and provide administrative procedure for handling of such cases; and to design, procure and keep and maintain such records concerning his transactions under this article as sound business practice may demand, and charge the cost thereof to appropriations for the operation of his office and the proceeds of redemption hereunder.

WV Legislature

§37-2B-2. Auditor's receipt for redemption; receipt as release and discharge from taxes; recordation.

The Auditor shall issue his receipt for redemptions made under the preceding section. Such receipt shall operate as a full and complete discharge and release of the property described therein from any and all claims on account of direct property taxes imposed or imposable by the State of West Virginia, or any of its subdivisions, or agencies of every kind and character for each and every year covered by such receipt, and shall release and return to the owner of the property described such title as may have been in the state at the time such receipt is issued free and acquit of all claims of the state, or any of its subdivisions for the year or years covered by such receipt. Such receipts shall be recordable in the deed books of the proper counties, and once recorded shall constitute notice to all persons of the facts recited therein.

WV Legislature

§37-2B-3. Entry and back-taxing of property after redemption.

In every case where the Auditor provides for redemption under this article he shall, where such redemption is made prior to January 1, 1947, direct the assessor to enter and back-tax such property, as other property should be entered and back-taxed for the assessment year 1945 and each and every year thereafter in which the same has not properly appeared upon the land books of such county. In those cases where redemption is made after January 1, 1947, he shall extend and collect taxes at proper valuations and rates for all assessment years after the year 1945. No compromise shall be made under the authority of this article for direct property taxes for the year 1945 or thereafter: Provided, however, That nothing herein contained shall prevent the Auditor from redetermining value and taxes for the year 1945 and thereafter in the manner otherwise provided for by law in case of redemption of property which may have been sold to the state for nonpayment of taxes, or be delinquent, or forfeit for nonentry.

WV Legislature

§37-2B-4. Entry of property acquired after year 1942.

In every case where real property was acquired for and transferred to or placed in religious, educational or charitable usages after the assessment year one thousand nine hundred forty-two and was improperly exempted (under the holding of Central Realty Company versus Martin, assessor), the assessor shall reenter such property and value and extend taxes thereupon for the assessment year one thousand nine hundred forty-five, without regard to the former exemption in those cases where redemption has been made from the Auditor. Taxes extended upon such assessment shall be valid and enforceable as all other taxes without regard to the former exemptions. Entry and payment of taxes hereunder shall operate to relive such property against the assertion of any forfeiture which has not become effective prior to the effective date of this article, and shall stand and at all times be construed as a valid entry of such property for taxation for the year or years involved, and payment of taxes under such assessment shall discharge and relieve such property from all claims of the state and its subdivisions for all property taxes of any such year or years.

WV Legislature

§37-2B-5. Reports to Auditor by assessor; when assessor to reenter property.

The Auditor is empowered to direct the assessor of each county to examine the lists of tax-exempt properties appearing on the land books of his county for the assessment years one thousand nine hundred twenty-eight through one thousand nine hundred forty-five, both inclusive, and report to the Auditor a list of all real estate so exempted from taxation in any of said years which was not actually used for religious, charitable or educational purposes and which (under the opinion in Central Realty Company versus Martin, assessor) he believes should have been assessed with taxes in any of said years. No assessor shall reenter any real property, now or formerly held for religious, charitable or educational usages and upon which taxes for years prior to the year one thousand nine hundred forty-five should have been paid except upon written directions from the Auditor or by order of the judge of a court of record which has jurisdiction to deal with such property or rights therein. Such list shall show the name of the person assessed, a description of the property, and the year or years for which the same was entered on the land books as tax exempt, and the assessor shall classify and value the same. Where any list of real property is forwarded to the Auditor under this section he shall have power and authority to compromise the claim of the state or its subdivisions or agencies for taxes, to accept redemptions from forfeitures, and to do all acts and things which may be necessary to protect the interest of the state and assist the property owner in clearing his title.

WV Legislature

§37-2B-6. Protection of purchasers of exempted property who have held for five years or more; right of redemption.

In all cases where property formerly held for religious, charitable or educational usages has heretofore been sold or transferred in good faith to persons for value as successors in title of the person who held for such usage, and has been subsequently assessed to them and taxes have been paid thereon for such number of years that such persons are or would otherwise be entitled to claim the benefit of a transfer under section 3, article XIII of the Constitution, the same, by operation hereof, shall be transferred to and vested in such person, and the state hereby waives its claim to assert penalties or forfeiture on account of any taxes which would otherwise have accrued or become due prior to the creation of color of title in such successor.

In all cases where property formerly held for the uses aforesaid has heretofore been sold or transferred to another in good faith and has subsequently been assessed to him and the taxes paid, for a period of time less than the period of time necessary to establish the right to claim the benefit of a transfer under said Constitutional provision or this section, the owners shall have the right to apply for and have redemption so far as title thereto may be in the state.

WV Legislature

§37-2B-7. Protection of Constitutional transferees; priority of redemption.

The provisions of this article shall not extend to or affect any real property or undivided interest therein which has been transferred to or vested in adverse claimants by operation of Constitution, article XIII, section 3, in those cases where the color of title of such claimants originated in good faith and has been regularly maintained and protected against subsequent forfeiture and loss by entry and payment of taxes according to law: Provided, however, That in any case where there has been a Constitutional transfer and the adverse claim has subsequently been acquired by the state for nonpayment or nonentry, the successor in title to the former religious, charitable or educational usage shall have a prior right of redemption.

WV Legislature

§37-2B-8. Purpose of article; power and jurisdiction of courts; state as party to suits.

This article is to provide for clarification of land titles and for establishment of a sound system of property law and of taxation, and the courts of this state which have equitable jurisdiction are hereby vested with authority, power and jurisdiction to entertain, hear and decide suits on behalf of any person whose property or title may be affected by a former exemption from taxation for religious, charitable or educational purposes; and to make and render such decisions, orders and decrees as will give equitable justice to the persons involved. Whenever it appears that the state or any of its subdivisions has any interest in any of such proceedings any person or the court shall have the right to make the state, its subdivisions, or proper officials a party or parties plaintiff thereto and shall cause the Attorney General of the State of West Virginia to be notified thereof. Such courts shall have the right to try title and render decisions as may be necessary and proper, based upon the tax status of different claims without regard to proof of chain of title for a period longer than is necessary to establish a tax claim better than that of any other party. No decision, order or opinion rendered by any court under this article shall establish precedent or be regarded as stare decisis as to any other case.

WV Legislature

§37-2B-9. Auditor's power to provide for redemption of such property as not covered by other statutes.

The Auditor shall have full power and authority to provide for redemption of property covered by this article, and to compromise the state's claim for unpaid taxes upon any such property which has heretofore been purchased at sales for nonpayment of taxes, or acquired by forfeiture for nonentry, to make redemptions, and to provide for reassessment and back-taxing of property redeemed on account of any taxes heretofore levied or hereafter to accrue; such redemptions and compromises to be made upon like payment and condition as provided in section one of this article for any year prior to the year one thousand nine hundred thirty-six.

WV Legislature

§37-3-1.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-2.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-3.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-4.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-5.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-6.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-7.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-8.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-9.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-10.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-11.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-12.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-13.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-14.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-15.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-16.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-17.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-18.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-19.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-20.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-21.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-22.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-23.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-24.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-25.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-26.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-27.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-28.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-29.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-30.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-31.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-32.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-33.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-34.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-35.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-36.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-37.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-38.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3-39.

Repealed.

Acts, 1941 Reg. Sess., Ch. 117.

WV Legislature

§37-3A-1. Ownership of real estate in West Virginia.

Except as otherwise provided in this article, any resident alien or citizen may acquire, hold, and transfer real estate in this state by deed, will, or other instrument, including in fee simple or any lesser estate.

WV Legislature

§37-3A-2. Definitions.

As used in this article:

“Control” means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting an entity, including but not limited to through ownership of at least 20 percent of the total outstanding voting interest, board representation, the ability to appoint or remove board members, proxy voting rights, special shares, contractual arrangements, legal obligations, or other formal or informal mechanisms to act in concert.

“Controlling interest” means an ownership interest of 50 percent or more in the aggregate.

“Owned or operated in whole or in part” means:

(A) For a publicly traded company, the person or entity has the ability to control the company, access any material nonpublic technical information in the possession of the company, or exercise any other rights or involvement in substantive decision-making beyond those of a retail investor holding an equivalent ownership share;

(B) For a privately held company, the person or entity possesses any ownership interest.

“People’s Republic of China” means all provinces and autonomous regions of the People’s Republic of China, including the Hong Kong Special Administrative Region and the Macao Special Administrative Region, but does not include Taiwan.

“Prohibited foreign party” means:

(A) A citizen or resident of the People’s Republic of China who is not a resident alien or citizen of the United States;

(B) The government of the People’s Republic of China or any of its political subdivisions;

(C) Any party other than an individual or government:

(i) Created or organized under the laws of any state or foreign country; and

(ii) In which a significant interest or substantial control is held directly or indirectly by:

(I) A person described in paragraph (A) of this subdivision;

(II) A government described in paragraph (B) of this subdivision;

(III) Any combination of the above; or

(IV) An agent, trustee, fiduciary, or other entity acting on behalf of any of the foregoing;

WV Legislature

(D) Any foreign government, entity, or individual identified by a majority of the Governor, Treasurer, Agriculture Commissioner, Auditor, Attorney General, and Secretary of State, in consultation with the Secretary of Homeland Security, as hostile to the interests of the United States or the State of West Virginia: *Provided*, That in the event of a tie, the Governor's vote shall serve as the tie-breaking vote.

"Prohibited foreign-party-controlled business" means a corporation, company, association, firm, partnership, joint-stock company, trust, estate, or other legal entity in which a controlling interest is owned or operated, in whole or in part, by a prohibited foreign party.

WV Legislature

§37-3A-3. Prohibition on Ownership by Prohibited Foreign Parties.

(a) A prohibited foreign-party-controlled business may not acquire or own, directly or indirectly, any interest in any real estate in this state, including mineral rights.

(b) A person may not hold any interest in real estate as an agent, trustee, or fiduciary on behalf of a prohibited foreign-party-controlled business.

(c) Any interest in any real estate that is held on the effective date of this article shall be divested within six months of the effective date of this article.

WV Legislature

§37-3A-4. Enforcement; Judicial Sale.

(a) A prohibited foreign-party-controlled business that acquires real estate in violation of this article shall divest that interest within six months of acquisition.

(b) If the business fails to divest, the Attorney General shall file a civil action in the circuit court of the county where the real estate is located.

(c) Upon a circuit court finding by a preponderance of the evidence that a violation of the provisions of this article have occurred, the circuit court shall order the real estate to be sold through judicial sale under terms and conditions that are to be set by the circuit court.

(d) Proceeds of the sale shall first be distributed to lienholders according to priority, excluding liens that remain on the real estate under the terms of the sale, and any remaining funds shall be remitted to the prohibited foreign party. Lienholders may credit bid at the sale.

(e) If there are no liens against the property, then the full proceeds shall be remitted to the prohibited foreign party.

(f) The Attorney General shall promptly file in the office of the county clerk where the real estate is located the following:

(1) A notice of the pending action in the county in which the real estate is located upon commencement of the civil action filed pursuant to this article; and

(2) Once all appellate rights have been exhausted by the parties, the circuit court's final order that directs the sale of the real estate.

WV Legislature

§37-3A-5. Good-Faith Protections.

(a) Title to real estate is not rendered invalid or subject to divestiture solely due to a prior violation of this article by a previous owner.

(b) A person who is not subject to the prohibitions contained in this article is not required to investigate whether another person or entity is subject to the prohibitions contained in this article.

WV Legislature

§37-4-1. Who entitled to partition; jurisdiction; state as party plaintiff.

Tenants in common, joint tenants and coparceners of real property, including minerals, lessees of mineral rights other than lessees of oil and gas minerals and stockholders of a closely held corporation when there are no more than five stockholders and the only substantial asset of the corporation is real estate, shall be compelled to make partition, and the circuit court of the county wherein the land or estate, or any part thereof, may be, has jurisdiction, in cases of partition, and in the exercise of that jurisdiction, may take cognizance of all questions of law affecting the legal title, that may arise in any proceedings.

The state hereafter shall, whenever it is an owner of an undivided interest in any land or real estate, together with other persons, become a party plaintiff in any proceedings by any person entitled to demand partition under the first sentence of this section. Before instituting suit for partition the person entitled to demand it shall notify the proper official who has supervision of the state land and thereafter they shall proceed as they determine best. In all cases resulting in partition or sale the costs of suit shall come from the proceeds of sale. No state official in charge of state lands may refuse to perform his duty in any case where any person is entitled to demand a partition, or sale under this article.

WV Legislature

§37-4-2. Allotting shares together.

Any two or more of the parties, if they so elect, may have their shares laid off together, when partition can be conveniently made in that way.

WV Legislature

§37-4-3. Allotment or sale; procedure for allotment.

When partition cannot be conveniently made, the entire subject may be allotted to any party or parties who will accept it, and pay therefor to the other party or parties such sum of money as his or their interest therein may entitle him or them to; or in any case in which partition cannot be conveniently made, if the interests of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced thereby, the court, notwithstanding the fact that any of those entitled may be an infant, insane person, or convict, may order such sale, or such sale and allotment, and make distribution of the proceeds of sale, according to the respective rights of those entitled, taking care, when there are creditors of any deceased person who was a tenant in common, joint tenant, or coparcener, to have the proceeds of such deceased person's part applied according to the rights of such creditors. Where it clearly appears to the court that partition cannot be conveniently made, the court may order sale without appointing commissioners. The court making an order for sale shall, when the dividend of a party exceeds the value of $300, if such party be an infant, insane person, or convict, require security for the faithful application of the proceeds of his interest, in like manner as if the sale were made under article one of this chapter.

In the event that allotment shall be made as aforesaid and the person or persons entitled to the proceeds, for any reason, cannot agree upon the value of the subject, the court, or the judge thereof in vacation, shall appoint three disinterested and qualified persons to fix the value of the whole subject who, after being duly sworn to make an appraisal of the fair market value of the subject, shall within thirty days from the taking of such oath, appraise the subject and make and file a written report of their findings in the office of the clerk of the court in which the suit is pending. If such appraisers report their disagreement, or fail to file such report within thirty days, other appraisers may in like manner be appointed, and so again, from time to time, as often as may be necessary. The report of the appraisers when filed, shall be conclusive and binding upon all persons having any interest in the subject, unless an objection is filed thereto in said clerk's office within thirty days after the date of such report by the appraiser. If objection is made to such report, the court, or the judge thereof in vacation, shall take evidence upon the value of the subject in the same manner as in other chancery matters, shall find the fair market value of the subject and shall decree payment therefor according to the respective rights of those entitled thereto as their interest may appear, taking care to protect the rights of creditors as aforesaid in this section.

If any party to the suit refuses or is unable because of any disability, including but not limited to infancy, insanity and conviction of crime, to make, execute and deliver a deed or other instrument transferring title to the subject to the person or persons to whom the subject has been allotted, the court, or the judge thereof in vacation, shall appoint a special commissioner for the purposes of accepting the purchase money from the person or persons to whom the subject has been allotted, making, executing and delivering thereto a deed or other instrument therefor and distributing such purchase money according to the respective rights of those persons entitled thereto. The special commissioner so appointed shall give

WV Legislature

bond and be governed in all respects as provided in section one, article twelve, chapter fifty-five of this code.

WV Legislature

§37-4-4. Determination of liens.

When there are liens by judgment or otherwise, on the interest of any party to a partition suit, the court may, on the petition of any person holding a lien, ascertain the liens and apply the dividend of such party in the proceeds of sale to the discharge of such liens so far as may be necessary for that purpose.

WV Legislature

§37-4-5. Sale of land free of dower.

The provisions of section five, article one, chapter forty- three of this code shall be applicable to any sale made under the provisions of this article.

WV Legislature

§37-4-6. Unknown owners.

If the name or share of any person interested in the subject of the partition be unknown, so much as is known in relation thereto shall be stated in the bill.

WV Legislature

§37-4-7. Lessees.

Any person who, before the partition or sale, was lessee of any of the lands divided or sold, shall hold the same of him to whom such land is allotted or sold, on the same terms on which, by his lease, he held it before the partition.

WV Legislature

§37-4-8. Record; effect.

The provisions of section seven, article four, chapter fifty-one of this code shall be applicable to any partition made under this article.

WV Legislature

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rulemaking.

Notwithstanding the requirements of §36-8-1 *et seq.* of this code, all funds and proceeds due under this article before or after the effective date of this section to owners of real property interests with their appurtenant rights, whose name or location is unknown and who does not make a claim for those funds for seven years after the date of the order of the court authorizing the distribution of the funds, shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code. The funds shall be paid by the special or general receiver or other person or entity holding the funds on or before November 1 of each year for all funds that became payable before July 1 of that year. The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section.

WV Legislature

§37-5-1. Excavations near boundaries.

No owner or tenant of any land containing coal shall open or sink, or dig, excavate or work in, any coal mine or shaft on such land, within five feet of the line dividing such land from that of another person or persons, without the consent in writing of every person interested in, or having title to, such adjoining lands in possession, reversion, or remainder, or of the guardian of any such persons as may be an infant, or the committee of any such person as may be insane or convict. If any person shall violate this section, he shall forfeit $500 to any person injured thereby who may sue for the same.

WV Legislature

§37-5-2. Survey of mine.

The owner, tenant, or occupant of any land on which a coal mine is opened and worked, or his agent, shall permit any person interested in, or having title to, any land coterminous with that in which such coal mine is, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, and not oftener than once a month, for the purpose of ascertaining whether or not the preceding section has been violated. Every owner, tenant, occupant, or agent, who shall refuse such permission, exploration or survey, shall forfeit $20 for each refusal to the person so refused.

WV Legislature

§37-5-3. Prosecution under preceding sections.

A justice of the county in which such mine is, before whom complaint of such refusal is made, may issue a summons to such owner, tenant, occupant or agent to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that he has been refused without sufficient cause, the justice shall designate an early and convenient time of such entry to be made, and issue his warrant commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration and survey. The cost of such summons, and a fee of $3 to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the justice dismiss the complaint, the costs shall be paid by the party making it.

WV Legislature

§37-6-1. Rights of parties on transfer of land or reversion.

An heir, devisee, grantee or assignee of any land let to lease, or of the reversion thereof, and his heirs, personal representative or assigns, shall enjoy against the lessee, his personal representative, devisees or assigns, the like advantage by action or entry upon any condition or forfeiture, or by action upon any covenant or promise in the lease, which the grantor, assignor, or lessor might have enjoyed.

WV Legislature

§37-6-2. Rights of lessee against transferee of reversion.

A lessee, his personal representatives, devisees or assigns, may have against an heir, devisee, grantee or alienee of the reversion, or of any part thereof, or of any estate therein, his heirs, devisees, or assigns, the like benefit of any condition, covenant, or promise in the lease, as he could have had against the lessors themselves; except the benefit of any warranty, in deed or law.

WV Legislature

§37-6-3. Effect of transfer of rent, reversion or remainder.

When rents are inherited, conveyed or devised, all rights of distress and reentry, or either of them, shall pass to the heir, grantee or devisee without express words. An inheritance, grant, or devise of a rent, or of a reversion or remainder, shall be good and effectual without attornment of the tenant; but no tenant, who, before the death of the ancestor or testator, or before notice of the grant, shall have paid the rent to the ancestor, testator, or grantor, shall suffer any damage thereby.

WV Legislature

§37-6-4. Attornment to stranger void.

The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of, the judgment, order, or decree of a court.

WV Legislature

§37-6-5. Notice to terminate tenancy.

A tenancy from year to year may be terminated by either party giving notice in writing to the other, at least three months prior to the end of any year, of his intention to terminate the same. A periodic tenancy, in which the period is less than one year, may be terminated by like notice, or by notice for one full period before the end of any period. When such notice is to the tenant, it may be served upon him or upon anyone holding under him the leased premises, or any part thereof. When it is by the tenant, it may be served upon anyone who at the time owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply where, by special agreement, some other period of notice is fixed, or no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain time.

WV Legislature

§37-6-6. Desertion of leased property; entry; recovery of rent, disposition of abandoned personal property; notice.

(a) If any tenant from whom rent is in arrears and unpaid abandons the leased property, the landlord or his or her agent shall post a notice in writing in a conspicuous part of the property, requiring the tenant to pay the rent within one month. If the rent is not paid within that time, the landlord shall be entitled to possession of the property, and may enter thereon, and the right of the tenant to the leased property shall end. The landlord may recover the rent owed up to the time when he or she became entitled to possession.

(b) If any tenant of a housing development operated by a housing authority abandons the leased property when rent is not a condition of the lease agreement, the housing authority shall post a notice in writing in a conspicuous part of the property, requiring the tenant to respond in writing within one month stating that he or she has not abandoned the leased property. If the tenant does not respond in writing within one month, stating that he or she has not abandoned the leased property, the housing authority shall be entitled to possession of the property, and may enter thereon, and the right of the tenant to the leased property shall end.

(c) Upon regaining possession of the property, the landlord or his or her agent or housing authority may take, dispose of or otherwise remove the tenant's personal property without incurring any liability to the tenant or any other person. To dispose of the tenant's property under this section, the landlord or housing authority shall give a written notice to the tenant that shall be:

(1) Posted in a conspicuous place on the property; and

(2) Sent by first-class mail with a certificate of mailing, which provides a receipt of the date of mailing, in an envelope endorsed "Please Forward", addressed and mailed to the tenant at:

(A) The leased property;

(B) Any post office box held by the tenant and known to the landlord or housing authority; and

(C) The most recent forwarding address if provided by the tenant or known to the landlord or housing authority.

(d) The written notice required under subsection (c) of this section shall state that:

(1) The leased property is considered abandoned;

(2) Any personal property left by the tenant must be removed from the property or from the place of safekeeping, if the landlord or housing authority has stored the property, by a date specified in the written notice that is:

WV Legislature

(A) Not less than thirty days after the date the written notice was mailed; or

(B) Not less than sixty days after the date the written notice was mailed if the tenant has notified the landlord or housing authority that he or she is on active duty in the Armed Forces of the United States.

(3) If the personal property is not removed within the time provided for in this section, then the tenant forfeits his or her ownership rights to the personal property, and the personal property becomes the property of the landlord or housing authority.

(e) Notwithstanding the provisions of subsection (c) of this section, if the abandoned personal property is worth more than $300 and was not removed from the property or from the place of safekeeping within the time period stated in the notice required in subsection (d) of this section, the landlord shall store the personal property for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the abandoned personal property pays the landlord the reasonable costs of storage and removal.

WV Legislature

§37-6-7. Reletting by landlord.

The landlord, or other person entitled to the rent may, however, at his election, incorporate, in the notice provided for in the preceding section, the further notice that he will, after he shall have taken possession of the demised premises, lease the premises to some other person, in which case the tenant will still remain liable upon his lease, for the unexpired portion of his term, for the difference between the amount of rent received by the landlord from the new tenant, and the amount payable under the lease of the original tenant, and upon any other covenants or agreements contained in the original lease.

WV Legislature

§37-6-8. Tenant's right to recover possession.

If the landlord shall have elected to continue to hold the tenant liable upon his lease, as provided in the preceding section, the tenant shall be entitled, upon the payment of all arrears of rent, and the satisfaction of any liabilities which shall have accrued upon the covenants or agreements contained in his lease, and any other liabilities with which he is chargeable by virtue of his lease, to the possession of the premises, except to the extent that some other person is already in possession of the premises, or is entitled to such possession, by virtue of a lease made by the landlord to such other person pursuant to the notice given under the preceding section, before the tenant shall have notified the landlord in writing of his intention to resume possession of the premises, and shall have satisfied, or tendered an amount sufficient to satisfy, his liabilities under his lease as aforesaid. No tenant whose lease has been lawfully forfeited, under the second preceding section, shall be entitled to any right, either at law or in equity, to be relieved of such forfeiture, or to reenter the premises, except as provided in this section.

WV Legislature

§37-6-9. Recovery of rent by distress or action; evidence; interest.

Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover a reasonable satisfaction for the use and occupation of lands, and, on the trial of such action, if any parol demise, or any agreement wherein a certain rent was reserved, shall appear in evidence, the plaintiff shall not for that reason be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts.

WV Legislature

§37-6-10. Who may recover rent.

He to whom rent or compensation is due, whether he have the reversion or not, his personal representative or assignee, may recover it as provided in the preceding section, or may, in a proper case, resort to an attachment, whatever be the estate of the person owing it, or though his estate or interest in the land be ended. And when the owner of real estate in fee, or holder of a term, yielding him rent, dies, the rent thereafter due shall be recoverable by such owner's heir or devisee, or such term- holder's personal representative or devisee. And if the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, his alienee or assignee may recover such rent.

WV Legislature

§37-6-11. Persons liable for rent; termination of lease upon death.

(a) Rent may be recovered from the lessee, or other person owing it, or the heir, personal representative, devisee or assignee, who has succeeded to the lessee's estate in the premises. But no assignee shall be liable for rent which became due before his or her interest began. Subject to the provisions of subsection (b), nothing herein shall change or impair the liability of heirs, personal representatives, or devisees, for rent, to the extent and in the manner in which they are liable for other debts of the ancestor or testator; nor shall the mere merger of the reversion to which a rent is incident affect the liability for such rent.

(b) (1) Notwithstanding any other provision of this code to the contrary, upon the death of a lessee of a residential premises, an heir, personal representative, devisee or assignee of the deceased lessee may terminate a lease prior to its expiration.

(2) Termination of a residential lease, as provided in this subsection, shall become effective on the last day of the calendar month that is two months after:

(A) The date on which the notice is hand-delivered to the other party of the lease, or

(B) The date on which the notice, addressed to the other party to the lease, is deposited in the United States mail, postage prepaid, evidenced by the postmark.

(3) Termination of a lease under this subsection does not relieve the lessee's estate from liability for either:

(A) The payment of rent or other sums owed prior to or during the two month written notice period, or

(B) For the payment of amounts necessary to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(4) The right of termination contained in this subsection may not be waived by a lessor, lessee or lessee's heir, personal representative, devisee or assignee, by contract or otherwise. Any lease provision or agreement requiring a longer notice period than that provided by this article, is void and unenforceable.

(5) The provisions of this subsection apply to residential property leases entered into or renewed on or after July 1, 2012.

WV Legislature

§37-6-12. Distress for rent; time and place; warrant.

Rent may be distrained for within one year after the time it becomes due, and not afterwards, whether the lease be ended or not. The distress shall be made by any sheriff or constable of the county wherein the premises yielding the rent or some part thereof may be or the goods liable to distress may be found, under a warrant from a justice founded upon the affidavit of the person claiming the rent, or his agent, that the amount of money or other thing to be distrained for (to be specified in the affidavit), as he verily believes, is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed.

WV Legislature

§37-6-13. Property subject to distress.

The distress may be levied on any goods of the lessee, or his assignee or undertenant, found on the premises, or which may have been removed therefrom not more than thirty days. If the goods of such lessee, assignee or undertenant, when carried on the premises, are subject to a lien which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon while they are upon the leased premises, they shall be liable to distress, but for not more than one year's rent, whether it shall have accrued before or after the creation of the lien: Provided, That if the goods are subject to a perfected purchase money security interest, as defined in section one hundred seven, article nine, chapter forty-six of this code, and that such purchase money security interest is in effect under the terms set forth in section four hundred three, article nine of chapter forty-six of this code, then the goods are liable to distress only to the extent of the unencumbered interest of the lessee, assignee or undertenant. No goods shall be liable to distress other than such as are declared to be so liable in this section.

WV Legislature

§37-6-14. Forcible entry by officer.

The officer having such distress warrant or an order of attachment, based upon rent, if there be need for it, may, in the daytime, break open and enter into any house or close in which there may be goods liable to the distress or order, and may, either in the day or nighttime, break open and enter into any house or close wherein there may be any goods so liable, which have been fraudulently or clandestinely removed from the demised premises.

WV Legislature

§37-6-15. Unlawful act after making distress; damages.

Where distress shall be made for rent justly due, and any irregularity or unlawful act shall afterwards be done by the party distraining, or his agent, the distress itself shall not be deemed to be unlawful, nor the party making it be therefore deemed a trespasser ab initio; but the aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he shall have sustained thereby.

WV Legislature

§37-6-16. Distress or attachment when rent not payable in money.

Where goods are distrained or attached for rent reserved in a share of the crops, or in anything other than money, the claimant of the rent, having given the tenant ten days' notice, or if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the court or justice to which the distress or attachment is returnable, to fix the value of such rent. Upon such application the court or justice having ascertained the value, either by its own judgment, or, if either party require it, by the verdict of a jury impaneled without the formality of pleading, shall order the goods distrained or attached, to be sold to pay the amount so ascertained.

WV Legislature

§37-6-17. Attachment for rent.

On complaint by any landlord or person entitled to rent, or his agent, to a justice, that any person liable to him for rent intends to remove, or is removing, or has within thirty days removed his effects from the leased premises, if such landlord or person entitled to rent, or his agent, make oath to the truth of such complaint to the best of his belief, and to the rent which is reserved (whether in money or other thing) and will be payable within one year, and the time or times when it will be payable, and also make oath either that there is not, or he believes, unless an attachment issues, there will not be, left on such premises, property liable to distress sufficient to satisfy the rent so to become payable, such justice shall, if the landlord or person entitled to rent, or his agent, shall execute before such justice a bond in the penalty and with the conditions prescribed in section eight, article seven, chapter thirty-eight of this code, issue an order of attachment for such rent against the personal estate of the person so liable therefor. If the amount of rent claimed by the landlord or person entitled to the rent, or his agent, exclusive of interest, is $50 or less than that amount, the order of attachment shall be returnable before the justice issuing the order, or another justice; if the amount of rent so claimed, exclusive of interest, is more than $50 and not more than $300, the order of attachment may be returnable before the justice issuing the order, or another justice, or to the next term of the circuit court thereafter; and if the amount of rent so claimed, exclusive of interest, exceeds $300, the order of attachment shall be returnable to the next term of the circuit court thereafter.

If the order of attachment is returnable to the circuit court, it shall be in form or effect as follows:

"District of ....., ... County, to-wit:

A..... B....., Plaintiff) Order

vs.) of

C..... D....., Defendant) Attachment.

The above-named plaintiff having filed with me the affidavit and bond required by law, the sheriff of the County of ....., or any constable therein to whom this order may come, is hereby required, in the name of the State of West Virginia, to attach and take into his possession the personal estate of the defendant, C..... D....., sufficient to pay the sum of ..... dollars (the sum affiant states will be due), and the costs of this attachment, and to make return of his proceedings under this order to the next term of the circuit court of the said county.

Given under my hand this ..... day of ....., 19.....

E..... F....., Justice."

The defendant, in an attachment issued under the next preceding paragraph, may make

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defense thereto in the same manner and to the same extent as in other cases of attachment; and the same, as to the rent claimed, shall be proceeded in, tried and determined, as if it were an original action brought in said circuit court, and the affidavit and attachment shall take the place of a declaration in the case. The affidavit in such case shall be returned to the clerk of the circuit court by the justice. The provisions of sections seven to forty-six, both inclusive, except sections thirty-seven, thirty-eight, and thirty- nine, article seven, chapter thirty-eight of this code, shall be applicable to attachments issued hereunder and returnable to the circuit court.

If the order of attachment is returnable before a justice, it shall be in form or effect as follows:

"District of ....., ..., County, to-wit:

"A..... B....., Plaintiff,) Order

vs.) of

C..... D....., Defendant.) Attachment

The above-named plaintiff having filed with me the affidavit and bond required by law, any constable in the County of ....., to whom this order may come, is hereby required, in the name of the State of West Virginia, to attach and take into his possession the personal estate of the defendant, C..... D....., sufficient to pay the sum of ..... dollars (the sum affiant states will be due), and the costs of this attachment, and to make return of his proceedings under this order to me (or, if the order is made returnable before another justice, to G..... H.....), a justice of the peace in ..... County.

Given under my hand this ..... day of ....., 19....

E..... F....., Justice."

The provisions of sections seven to twenty-four, both inclusive, article nine, chapter fifty of this code shall be applicable to attachments issued hereunder and returnable before a justice.

WV Legislature

§37-6-18. Removal of goods by third party having lien.

If, after the commencement of any tenancy, a lien be obtained or created by trust deed, mortgage, or otherwise, upon the interest or property in goods on premises leased or rented, of any person liable for the rent, the party having such lien may remove such goods from the premises on the following terms, and not otherwise, that is to say: On the terms of paying to the person entitled to the rent, so much as is in arrear, and securing to him so much as is to become due; what is so paid or secured not being more altogether than a year's rent in any case: Provided, That if the party removing such goods has perfected a purchase money security interest in the goods, as defined in section one hundred seven, article nine, chapter forty-six of this code and that such purchase money security interest is in effect under the terms set forth in section four hundred three, article nine, chapter forty-six of this code, then the goods are liable to distress only to the extent of the unencumbered interest of the lessee, assignee or undertenant. If the goods be taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear; and, as to what is to become due, he shall sell a sufficient portion of the goods on a credit till then, taking from the purchaser bond, with good security, payable to the person so entitled, and delivering such bond to him If the goods be not taken under legal process, such payment and security shall be made and given before their removal. Neither this nor any other section of this article shall affect any lien for taxes or levies.

WV Legislature

§37-6-19. Right of reentry; ejectment; unlawful detainer; judgment by default.

Any person who shall have the right of reentry into the lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, where there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any messuage, or at any other conspicuous place on the premises, which service shall be in lieu of a demand and reentry; or may commence an action of unlawful detainer, and obtain service either in person or by publication, as in other such actions, which service shall be in lieu of a demand and reentry; and upon proof to the court, by affidavit in case of judgment by default, or upon proof on the trial that the rent claimed was due, and there was not sufficient property subject to distress upon the premises to satisfy the claim for rent due, or that the covenant or condition was broken before the service of the declaration in ejectment, or the commencement of the action of unlawful detainer, and that the plaintiff had power thereupon to reenter, he shall recover judgment, and have execution for such lands. In case the time for reentering be specified in the instrument creating the rent, covenant or condition, the proceedings in ejectment or unlawful detainer shall not be begun until such time shall have elapsed.

WV Legislature

§37-6-20. Relief against forfeiture.

Should the defendant, or other person for him not pay the rent in arrear, with interests and costs, nor file a bill in equity for relief against such forfeiture, within twelve months after execution executed, he shall be barred of all rights, in law or equity, to be restored to such lands or tenements.

WV Legislature

§37-6-21. Rights of mortgagee or trustee.

Any mortgagee or trustee of the tenant's interest in such lands, or any part thereof, whether he be in possession of the lands or not, may, within twelve months after execution executed, pay the rent and all arrears, with interest and costs, or file a bill in equity for relief against such forfeiture; and thereupon may be relieved against it, on the same terms and conditions as the tenant of such lands or tenements would be entitled to.

WV Legislature

§37-6-22. Injunction against ejectment or unlawful detainer.

If the tenant of such lands, or any person having a right or claim thereto, shall, within the time aforesaid, file his bill for relief in the circuit court of the county wherein the lands are situated, he shall not have or continue any injunction against the proceedings at law on the ejectment or unlawful detainer, unless he shall, within thirty days next after a full and perfect answer filed by the plaintiff in ejectment, or unlawful detainer, bring into court or deposit in some bank within the state, to the credit of the cause, such money as the plaintiff in ejectment or unlawful detainer shall, in his answer, swear to be due and in arrear over and above all just allowances, and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to such plaintiff on good security, subject to the decree of the court.

WV Legislature

§37-6-23. Effect of payment of rent or relief in equity.

If any party having a right or claim to such lands shall, at any time before the trial in such action of ejectment or of unlawful detainer, pay or tender to the party entitled to such rent, or to his attorney in the cause, or pay into court, all the rents and arrears, with interest and costs, all further proceedings in the action shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance.

WV Legislature

§37-6-24. Record of reentry; publication of certificate.

Where actual reentry shall be made, the party, by or for whom the same shall be made, shall return a written act of reentry, sworn to by the sheriff or other officer acting therein, to the clerk of the county court of the county wherein the lands or tenements shall be, who shall record the same in the deed book, and shall deliver, to the party making the reentry, a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded, which certificate shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be such county. Such publication shall be proved by affidavit to the satisfaction of such clerk, who shall note the fact on the margin of the deed book against the record of the act of reentry in the words, "Publication made and proved according to law, A ..... B ....., Clerk," and shall return the original act of reentry to the party entitled thereto. Such written act of reentry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence in all cases of the facts therein set forth.

WV Legislature

§37-6-25. Fees of clerk.

The clerk shall be paid for recording, granting certificate, and noting publication, as aforesaid, $1.50.

WV Legislature

§37-6-26. Payment of rent and reinstatement after reentry.

Should the person entitled to such land at the time of reentry made, or having a claim thereto, not pay or tender the rent and all arrears thereof, with interest and all reasonable expenses incurred about such reentry, within one year from the first day of publication as aforesaid, he shall be forever barred from all right, in law or equity, to such lands. In case any party, having such right, shall pay or tender such rent and arrears with interest and expenses as aforesaid to the party making reentry, within the time aforementioned therefor, he shall be reinstated in his possession to hold as if the reentry had not been made.

WV Legislature

§37-6-27. Defects in entry proceedings.

No person who, or those under whom he claims, shall have been possessed of lands by virtue of a reentry, for the term of two years, shall be disturbed therein by suit or otherwise for any defect of proceedings in such reentry.

WV Legislature

§37-6-28. Destruction of buildings; abatement of rent.

Where buildings or other structures upon leased premises, not owned by the tenant or removable by him are destroyed by fire or otherwise, in whole or in part, without fault or negligence on the part of the tenant, there shall be, unless the lease otherwise provides, a reasonable reduction of the rent for such time as may elapse until there be placed again upon the premises buildings, or other structures, of as much value to the tenant for his purposes as those destroyed, and unless the landlord shall rebuild or replace such structures as soon as he can reasonably do so, the tenant may, after the expiration of such reasonable time, surrender the possession of the premises and be relieved of all further liability for rent, after the time of such surrender.

WV Legislature

§37-6-29. Land taken by eminent domain; termination or reduction of rent.

Whenever the whole of any tract of land which is under lease is taken under the power of eminent domain, the liability of any tenant of such land to pay rent thereon shall terminate unless the lease expressly provide otherwise. If any part of a tract of land which is under lease, or any easement or other interest in such land, is taken under the power of eminent domain, the rent of any tenant of the land shall, unless the lease expressly provide otherwise, be reduced in the proportion which the value of the land or interest taken bears, at the time of such taking, to the total value of the land upon which rent was payable, under the lease. The foregoing provisions shall not affect nor impair any right which a tenant of land may have to compensation from the person exercising the right of eminent domain, for the value of his lease, or other property upon the leased premises belonging to him or in which he may have an interest, if such value shall exceed the amount of the rent from the payment of which he is relieved by virtue of the provisions of this section.

WV Legislature

§37-6-30. Landlord to deliver premises; duty to maintain premises in fit and habitable condition.

With respect to residential property:

(a) A landlord shall:

(1) At the commencement of a tenancy, deliver the dwelling unit and surrounding premises in a fit and habitable condition, and shall thereafter maintain the leased property in such condition; and

(2) Maintain the leased property in a condition that meets requirements of applicable health, safety, fire and housing codes, unless the failure to meet those requirements is the fault of the tenant, a member of his family or other person on the premises with his consent; and

(3) In multiple housing units, keep clean, safe and in repair all common areas of the premises remaining under his control that are maintained for the use and benefit of his tenants; and

(4) Make all repairs necessary to keep the premises in a fit and habitable condition, unless said repairs were necessitated primarily by a lack of reasonable care by the tenant, a member of his family or other person on the premises with his consent; and

(5) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air- conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him by written or oral agreement or by law; and

(6) In multiple housing units, provide and maintain appropriate conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit; and

(7) With respect to dwelling units supplied by direct public utility connections, supply running water and reasonable amounts of hot water at all times, and reasonable heat between October 1, and the last day of April, except where the dwelling unit is so constructed that running water, heat or hot water is generated by an installation within the exclusive control of the tenant.

(b) If a landlord's duty under the rental agreement exceeds a duty imposed by this section, that portion of the rental agreement imposing a greater duty shall control.

(c) None of the provisions of this section shall be deemed to require the landlord to make repairs when the tenant is in arrears in payment of rent.

(d) For the purposes of this section, the term "multiple housing unit" shall mean a dwelling which contains a room or group of rooms located within a building or structure forming more than one habitable unit for occupants for living, sleeping, eating and cooking.

WV Legislature

§37-6-31. Exclusions from application of this article.

(a) For purposes of this Article, “squatter” means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter” does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) Occupancy by a squatter is not governed by the provisions of this article.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under the provisions of this chapter, by an owner in any instance involving the removal of a squatter from possession of a property, and such removal shall not be unduly hindered.

WV Legislature

§37-6A-1. Definitions.

When used in this article, unless expressly stated otherwise:

(1) "Action" means recoupment, counterclaim, set off or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry and distress for rent.

(2) "Application fee" means any deposit of money, however denominated, which is paid by a tenant to a landlord, lessor or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit.

(3) "Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

(4) "Facility" means something that is built, constructed, installed or established to perform some particular function.

(5) "Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner or lessor.

(6) "Managing agent" means a person authorized by the landlord to act on behalf of the landlord under a management agreement.

(7) "Notice period" means: (A) within 60 days of the termination of the tenancy; or (B) within 45 days of the occupation of the premise by a subsequent tenant, whichever time period is shorter.

(8) "Owner" means one or more persons, jointly or severally, in whom is vested:

(A) All or part of the legal title to the property, or

(B) All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

(9) "Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

(10) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(11) "Rent" means all money, other than a security deposit, a nonrefundable fee or money paid to the landlord by the tenant for damage caused by the tenant to the dwelling unit,

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owed or paid to the landlord under the rental agreement.

(12) "Rental agreement" means all agreements, written (including an electronic record as defined by paragraph (7), section two, article one, chapter thirty-nine-a of the code) or oral, express or implied, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(13) "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

(14) "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, or as security for damages to the leased premises. Security deposit does not include: (A) Rent; (B) a pet fee; or (C) application fee: Provided, That the parties expressly agree, in writing, that a pet fee or application fee is nonrefundable. A security deposit does not include prepaid rent.

(15) "Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

(16) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others and shall include a roomer.

(17) "Utility" means electricity, natural gas, propane gas, water, sewer, telephone and cable television provided by a public utility or such other person providing residential utility services. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment, or a ratio utility billing system.

WV Legislature

§37-6A-2. Security deposits.

(a) Upon termination of the tenancy and within the applicable notice period, any security deposit held by the landlord, minus any deductions for damages or other charges, shall be delivered to the tenant, together with a written itemization of any such damages or other charges as provided in subsection (c).

(b) Upon termination of the tenancy, any security deposit held by the landlord may be applied by the landlord only to:

(1) The payment of rent due, including the reasonable charges for late payment of rent specified in the rental agreement;

(2) The payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement, less reasonable wear and tear;

(3) The payment of unpaid utilities that were billed to and paid by the landlord, are the obligation of the tenant under the rental agreement and unpaid by the tenant;

(4) The payment of reasonable costs for the removal and storage of the tenant's personal property. The landlord may dispose of the stored personal property pursuant to the provisions of subdivisions (1) through (3), subsection (h), section three, article three-a, chapter fifty-five of this code; and

(5) To other damages or charges as provided in the rental agreement, including but not limited to, paying for the services of a third party contractor to repair damages to the property caused by the tenant.

(c) In the event that damages to the premises exceed the amount of the security deposit and require the services of a third party contractor, the landlord shall give written notice to the tenant, advising him or her of that fact, within the applicable notice period. If notice is given as prescribed in this subsection, the landlord shall have an additional fifteen day period to provide an itemization of the damages and the cost of repair.

(d) Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit.

(e) The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant. The provisions of this subsection apply whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his or her successors in interest.

(f) If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a

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security deposit from only one party in compliance with the provisions of this section.

(g) For the purposes of this section, the delivery to a tenant of a security deposit and/or any notice prescribed by this section, may be accomplished by either personal delivery to the tenant, or by mailing the deposit and/or notice to the tenant's last known address or forwarding address as provided by the tenant. It shall be the responsibility of the tenant to provide an accurate address to the landlord. If personal delivery is not reasonably possible and a deposit or notice mailed to the tenant at his or her last known address or forwarding address provided is returned as non-deliverable, then the landlord shall hold the deposit or notice for the period of six months, to be personally delivered to the tenant, or his or her authorized agent or attorney, at the landlord's place of business during normal business hours within seventy-two hours after a written request is received from the tenant.

WV Legislature

§37-6A-3. Maintenance of records by landlord.

The landlord shall:

(1) Maintain and itemize records for each tenant of all deductions from security deposits provided under this article which the landlord has made by reason of a tenant's noncompliance with the rental agreement for one year after the termination of the tenancy; and

(2) Either permit a tenant or his or her authorized agent or attorney to inspect the tenant's records of deductions at any time during normal business hours within seventy-two hours of a written request, or at the landlord's option, provide a tenant or his or her authorized agent or attorney a copy of the tenant's record of deductions during normal business hours within seventy-two hours of a written request.

WV Legislature

§37-6A-4. Prohibited provision in rental agreements.

A rental agreement may not contain a provision that the tenant agrees to waive or forego rights or remedies under this article. A provision prohibited by this section included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him or her and reasonable attorney's fees.

WV Legislature

§37-6A-5. Landlord's noncompliance.

(a) If a landlord fails to comply with any of the provisions of this article, and such noncompliance is willful or not in good faith, the tenant is entitled to a judgment for:

(1) The amount of any unreturned security deposit; and

(2) Damages for annoyance or inconvenience resulting from the landlord's nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to any amount awarded to the tenant pursuant to this subsection to be credited against any rent due to the landlord.

(b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate court or circuit court in the county where the residential rental premises or units are located.

(c) This section does not limit rights or remedies available to a landlord or tenant under any other law.

WV Legislature

§37-6A-6. Application and effective date of this article.

(a) The provisions of this article shall apply to all residential rental premises or units used for dwelling purposes.

(b) The provisions of this article do not apply to agreements for the payment of security deposits entered into prior to the effective date of this article.

WV Legislature

§37-7-1. Waste by tenant in possession.

If any tenant of land or any person who has alienated land commit any waste thereon while he remains in possession, unless by special permission of the owner so to do, he shall be liable to any party injured for damages.

WV Legislature

§37-7-2. Waste by co-tenant.

If a tenant in common, joint tenant, or parcener commits waste, he or she is liable to his or her co-tenants, jointly or severally, for damages. The lawful use or development of oil or natural gas and their constituents in compliance with the provisions of §37B-1-1 *et seq*. of this code is not the commission of waste. The lawful mining, extraction, or production of coal in compliance with the provisions of §37B-3-1 *et seq*. of this code is not the commission of waste.

WV Legislature

§37-7-3. Guardians.

If a guardian or committee commit waste of the estate of his ward, he shall be liable to the ward, at the expiration of his guardianship, for damages.

WV Legislature

§37-7-4. Actions; damages.

Any person entitled to damages, in any case arising under the preceding sections of this article, may recover the same in an action on the case. And if it shall be found by the jury that the waste was committed wantonly, judgment shall be for three times the amount of damages assessed therefor.

WV Legislature

§37-7-5. Waste pending suit.

If the tenant in possession of any land shall, pending any suit to recover or charge such land, with knowledge of such suit, commit any waste thereon, the court, in which the suit is, may command the sheriff or other officer to take possession of the land; and, if the plaintiff succeed in recovering or charging the land, he may recover, in an action on the case against him who committed the waste, three times the amount of damages assessed therefor.

WV Legislature

§37-8-1. Lessee of tenant or owner of an uncertain interest.

If the landlord of land which is let to another be tenant for life or other uncertain interest or be an owner whose estate is subject to a limitation over upon a contingency, and if the estate of such landlord terminates during the tenancy of the lessee, the lessee may hold the land to the end of the current year of the tenancy, paying rent therefor; the rent, if it be reserved in money, shall be apportioned between the landlord or his personal representative, and those who succeed to the land. If rent be reserved in kind, it shall be paid to the landlord, or his personal representative; and such landlord, or his personal representative, as the case may be, shall pay to those who succeed to the land a reasonable rent in money, from the expiration of the life estate, or other uncertain interest or estate, to the end of the current year of the tenancy; the rent to be paid to those who succeed to the land shall be a charge in preference to other claims on the rent received in kind by such landlord or his personal representative. Such lessee shall be entitled as at common law to the emblements growing on the lands at the expiration of the estate for life, or other uncertain interest, whether they be severed during the year or not, but shall not, after the expiration of the life estate, plant any crop which will not mature during the current year, and, if he does so, he shall have no right to sever the same after the end of the current year. But where the growing crops are severed after the expiration of the current year of the tenancy, such lessee shall pay a reasonable rent to those who succeed to the lands, from the end of such tenancy to the time when the same are severed. If such life estate, or other uncertain interest or estate expire before the first of August in any year, the lessee shall permit those who succeed to the land to put in the ground any crop they may desire after that period; and if any land has been prepared by such lessee previous to that period, for the purpose of putting a crop in the ground, those who succeed to the land shall pay a reasonable compensation for such preparation; and to the extent that such lessee is deprived of the use of the land by reason of a crop being put in the ground, by those who succeed to the land, he shall be paid a reasonable compensation for the use of such land.

WV Legislature

§37-8-2. Land employed in farming or planting.

If any person, having land employed in farming or planting, whether it be held for life or any other interest, shall die on or after the first of March, his personal representative may, in his discretion, continue such employment until the last day of December following, and all the emblements which such representative may sever before that day shall be personal assets in his hands, deducting first the taxes and levies on such land, and the cost of tools procured after the decedent's death. If he elect not to continue such employment, he shall dispose of, for the balance of the year, to the best advantage for the estate of the decedent, such land held by him for life only, and in either case such representative shall, out of the assets, pay to those entitled in reversion or remainder, a reasonable rent or hire, from the death of his decedent to the last day of December. Such rent or hire shall be chargeable, in preference to all other claims against the estate, on the profits which may arise from such land after the death of the decedent.

WV Legislature

§37-8-3. At common law.

In all other cases the right to emblements shall be as at common law.

WV Legislature

§37-9-1. Apportionment of rent on determination of estate.

On the determination by death or otherwise, of the estate or other thing, from or in respect of which any rent, hire or money, coming due at fixed periods, issues or is derived, or on the death of any person interested in such rent, hire or money, the person or the personal representative or assignee of the person who would have been entitled, but for such death or determination, to the rent, hire, or money coming due at any such period, shall have a proportion thereof, according to the time which shall have elapsed of the time for which such rent, hire, or other money was growing due, including the day of such death or determination, deducting a proportional part of the charges.

WV Legislature

§37-9-2. Remedies for recovery.

For recovering such proportion, such person, representative, or assignee, shall, after such fixed period, have such remedies as he would have had for recovering the whole of such rent, hire or other money, if entitled thereto.

WV Legislature

§37-9-3. Scope of article.

This article shall not apply to any case in which it is expressly provided that no apportionment shall take place.

WV Legislature

§37-9-4. Apportionment on purchase of rent or part of land.

Where the holder of a rent shall purchase part of the land out of which the same issues, the rent shall be apportioned in like manner as if the land had come to him by descent; and where the holder of land, being part of land out of which rent shall be issuing, shall purchase such rent, or part thereof, the rent so purchased shall be apportioned as aforesaid.

WV Legislature

§37-10-1. Custody of records procured from Virginia.

That the records, books documents and papers, relating to land titles in this state, the assessments, delinquency sales and redemptions of lands, and which have been heretofore procured from the state of Virginia by the Governor of this state, under and by virtue of an act of the general assembly of Virginia entitled "An act to authorize the Auditor of public account and the register of the land office to deliver to the State of West Virginia certain of the original title papers respecting land in the State of West Virginia, and to authorize the said state to obtain copies of such title papers to lands as cannot be properly so delivered," approved February fifth, eighteen hundred and ninety-two, shall be placed and kept in the Auditor's office of this state as part of the public records of said office. The foregoing provision relates to the following list of records, books, documents and papers, as well as to other records and papers of a similar character, viz: 1 vol. western delinquent lands, 1840, 1845; 1 vol. western delinquent lands, 1845, 6, 7, 8 and 9; 1 vol. loose-printed, 1821, 1831; 1 vol. western delinquent lands, 1850, 1, 2, 3, and 4; 1 vol. eastern delinquent lands, 1840, 45; 1 vol. eastern delinquent lands, 1845, 6, 7, 8 and 9; 1 vol. eastern delinquent lands, 1851, 2, 3 and 4; 1 vol. delinquent lands, east Allegheny, to 1820 inclusive; 1 vol. delinquent lands and lots, printed; 1 vol. written delinquent lands since 1831, loose; 1 vol. delinquent lands, east Allegheny, to 1820 inclusive; 1 vol. lands not ascertainable, since 1832; 1 vol. lands not ascertainable since 1832; 1 unbound book written, without title or back; 1 vol. lands sold and bought for the commonwealth, 1855, 1860; 1 vol. lands sold and bought for the commonwealth, 1851, 1855; 1 vol. taxes paid in advance; 1 vol. receipts for redeemed lands, from N. to Z.; 1 vol. (thin book) of forfeitures; 1 vol. list of delinquent lands and lots, western; 1 vol. receipts for lands, from A. to M.; 1 vol. lands sold and bought for the commonwealth, 1844, 45; 1 vol. delinquent lands, since 1831, since 1839. Unascertained lands for the following counties, 1 vol. for each year named, viz: Barbour 1843; Braxton 1841, 42 and 44; Brooke 1848; Fayette 1832 and 44; Gilmer 1845, 46 and 47; Hampshire 1832; Hardy 1832, 33 and 34; Harrison 1832, 41, 42 and 44; Jackson 1832; Kanawha 1841 and 32; Lewis 1834, 44, 45, 46, 47, 41, 42 and 43; Logan 1832; Marion 1843; Mason 1834 and 32; Monongalia 1832; Morgan 1832, 33, 34, 36, 38 and 40; Nicholas 1832 and 41; Preston 1834; Randolph 1832, 41, 44 and 48; Taylor 1847; Tyler 1832; Wood 1832. assessor's books for the following counties, one volume for each year named, viz: Barbour, Berkeley, Boone, Braxton and Brooke for 1850; Cabell 1830; Fayette and Gilmer 1850; Greenbrier 1850; Hampshire and Hancock 1850 and 1856; Hardy 1856; Harrison 1850 and 1856; Jackson and Jefferson 1838 and 1850; Kanawha, Lewis, Logan, Marshall, Mason and Mercer, 1850; Monongalia 1838 and 50; Monroe 1838; Morgan 1838 and 1850; Nicholas 1838; Pendleton, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Taylor, Tyler, Wayne, Wetzel, Wood and Wyoming, 1850. Delinquent list for the following counties and years, viz: Barbour 1843 and 44; Berkeley 1835, 6, 7 and 8; Braxton 1836, 7, 8, 9, 40, 1, 2, 3 and 4; Brooke 1835; Cabell 1835, 6, 7, 8, 9, 41, 2 and 3; Fayette 1841, 2, 3 and 4; Greenbrier 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Hampshire 1834, 5, 6, 7, 8, 9, 41, 2, 3 and 4; Hardy 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Harrison 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Jackson 1841, 2, 3, 4, 5, 6, 8 and 9; Jefferson 1835, and 43; Kanawha 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Lewis 1834, 5, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Logan 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Marion 1842, 3 and 4;

Marshall 1836, 7, 8, 9, 40, 1, 2, 3 and 4; Mason 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Mercer 1840, 42 and 4; Monongalia 1835, 6, 7, 8, 9, 40, 1, 2, 3 and 4; Monroe 1835, 6, 7, 8, 9, 41, 2, 3 and 4; Morgan 1841, 2, 3 and 4; Nicholas 1835, 7, 8, 9, 40, 1, 2, 3 and 4; Ohio 1842, 3, 4, 5, 8 and 9; Pendleton 1840, 3 and 4; Pocahontas 1836, 7, 8, 9, 40, 1, 2, 3 and 4; Preston 1836, 7, 8, 9, 41, 2, 3 and 4; Randolph 1835, 6, 7, 8, 9, 41, 2 and 4; Ritchie 1843 and 44; Taylor 1844; Tyler 1835, 6, 9, 40, 1, 2, 3 and 4; Wayne 1842, 3 and 4; Wood 1835, 7, 8, 9, 40, 1, 2, 3 and 4. Land books as follows, viz: Barbour 2, 1843 to 54 and 1855 to 1860; Berkeley 9, 1779 to 1826, 1827 to 1837, 1838 to 1850, 1851 to 1856, 1857 to 1861, 1782 to 1794, 1795 to 1803, 1804 to 1812, 1813 to 1818; Boone 1, 1847 to 1860; Braxton 3, 1836 to 1850, 1851 to 1856, and 1857 to 1861; Brooke 5, 1716 to 1725, 1797 to 1815, 1826 to 1830, 1831 to 1850, 1851 to 1860; Cabell 5, 1809 to 1822, 1823 to 1831, 1832 to 1840, 1841 to 1852, 1853 to 1860; Clay-Calhoun 1, 1856 to 1861; Doddridge 1, 1845 to 1860; Fayette 2, 1831 to 1850, 1851 to 1861; Gilmer 2, 1845 to 1855, 1856 to 1861; Greenbrier 11, 1782 to 1811, 1812 to 1820, 1821 to 1825, 1826 to 1829, 1830 to 1834, 1835 to 1839, 1840 to 1844, 1845 to 1851, 1852 to 1856, 1857 to 1860, 1861 to 1863; Hampshire 15, 1782 to 1797, 1798 to 1801, 1805 to 1811, 1812 to 1815, 1816 to 1819, 1820 to 25, 1826 to 28, 1829 to 32, 1833 to 36, 1837 to 1840, 1841 to 1844, 45 to 50, 51 to 54, 55 to 57, 58 to 60; Hancock 1, 1848 to 1860; Hardy 12, 1786 to 1805, 1806 to 14, 15 to 20, 21 to 26, 27 to 32, 33 to 39, 40 to 44, 45 to 49, 50 to 53, 54 to 56, 57 to 59, 60 to 61; Harrison 12, 1796 to 1806, 1807 to 1813, 14 to 19, 20 to 25, 26 to 31, 32 to 34, 35 to 37, 38 to 41, 42 to 45, 46 to 52, 53 to 56, 57 to 60; Jackson 3, 1831 to 1845, 46 to 55, 56 to 61; Jefferson 5, 1802 to 24, 25 to 35, 36 to 48, 49 to 56, 57 to 61; Kanawha 6, 1793 to 1813, 14 to 31, 32 to 44, 45 to 53, 54 to 57, 58 to 61; Lewis 7, 1817 to 1826, 27 to 33, 34 to 39, 40 to 46, 47 to 52, 53 to 56, 57 to 60; Logan 3, 1824 to 1845, 46 to 55, 56 to 60; Marion 4, 1842 to 1850, 51 to 54, 55 to 57, 58 to 60; Marshall 4, 1836 to 1844, 45 to 52, 53 to 57, 58 to 60; Mason 5, 1814 to 1823, 24 to 35, 36 to 50, 51 to 56, 57 to 60; Mercer 2, 1837 to 1855, 56 to 63; Monongalia 10, 1788 to 1806, 1807 to 15, 16 to 23, 24 to 32, 33 to 38, 39 to 45, 46 to 51, 52 to 54, 55 to 57, 58 to 60; Monroe 4, 1851 to 1854, 55 to 57, 58 to 60, 61 to 63; Morgan 4, 1820 to 1830, 31 to 44, 45 to 55, 56 to 61; McDowell 1, 1859 to 1863; Nicholas 4, 1818 to 1833, 34 to 45, 46 to 52, 53 to 61; Ohio 12, 1784 to 1795, 96 to 1801, 1802 to 1806, 07 to 13, 14 to 22, 23 to 30, 31 to 36, 37 to 43, 44 to 51, 52 to 54, 55 to 57, 58 to 60; Pendleton 11, 1789 to 1804, 1805 to 14, 15 to 19, 20 to 25, 26 to 30, 31 to 36, 37 to 42, 43 to 48, 49 to 54, 55 to 59, 60 to 63; Pleasants 1, 1851 to 1860; Pocahontas 3, 1822 to 1838, 39 to 53, 54 to 61; Preston 5, 1818 to 37, 38 to 47, 48 to 53, 54 to 57; Putnam 1, 1848 to 1861; Raleigh 1, 1850 to 61; Randolph 7, 1802 to 1819, 20 to 29, 30 to 38, 39 to 47, 48 to 53, 54 to 57, 58 to 61; Ritchie 2, 1843 to 1854, 55 to 60; Roane 1, 1856 to 1861; Taylor 1, 1844 to 1860; Tucker 1, 1856 to 60; Tyler 4, 1815 to 1830, 31 to 41, 42 to 55, 53 to 60; Upshur 1, 1851 to 1860; Wayne 2, 1842 to 1855, 56 to 61; Webster-Wyoming 1, 1850 to 1861; Wetzel 2, 1846 to 1855, 56 to 60; Wirt 1, 1848 to 1860; Wood 5, 1802 to 1822, 23 to 34, 35 to 44, 45 to 54, 55 to 60. Total 206 books. Also copies of five books containing record copies of sheriffs' returns of lands delinquent for taxes and of sales made by the sheriffs of lands sold for taxes.

WV Legislature

§37-10-2. Charge of such records by Auditor.

All such books, records, documents and papers relating to land titles in this state, which may hereafter be procured by this state from the state of Virginia, under and by virtue of said act of the general assembly of Virginia, and all copies in whole or in part of records, books, documents and papers relating to land titles in this state, which may hereafter be procured from the state of Virginia by the Governor of this state by his agent, under and by virtue of said act of the general assembly of Virginia, and which shall be prepared and made under the authority and direction of the Governor, shall be placed in the Auditor's office as they are procured from time to time and shall be kept in said Auditor's office as part of the public records of said office.

WV Legislature

§37-10-3. Copies from records as evidence; fees.

All copies in whole or in part of books, records, documents and papers, which have heretofore been or which shall hereafter be procured from the state of Virginia by the agent of the Governor of this state, under and by virtue of said act of the general assembly of Virginia, and which shall be placed and kept in the Auditor's office under the provisions of this article, shall be treated and held to be prima facie correct, and may be used for all purposes in like manner and with like effect as the originals from which they were copied could be used: Provided, however, That any person shall have the right to prove that any such copy or any part thereof was not correctly made from the original in Virginia, and that it is not a correct copy of such original. The Auditor shall take charge of and be the custodian and keeper of the books, documents and papers mentioned in this article, and make and certify copies or abstracts thereof. The books in the Secretary of State's office, containing the record of land grants, surveys and plats shall be transferred to the Auditor's office, and the Auditor shall be the custodian and keeper of such books; and copies thereof attested by the Auditor shall be held to be prima facie correct and may be used for all purposes in like manner and with like effect as the originals from which they were copied could be used. For making searches and certifying copies and abstracts from such books, documents and papers the Auditor shall charge such fees as are allowed by law to clerks of the county courts for like services, which fees shall be allowed when the services are rendered. A record and account shall be kept of all such fees. Such fees shall be paid into the State Treasury at the end of every six months.

WV Legislature

§37-10-4. Fees.

The provisions contained in sections seven and eight, article one, chapter fifty-seven of this code shall apply to a copy of or from any of the books, records, documents or papers, or copies of books, records, documents or papers, which shall be placed and kept in the Auditor's office under the provisions of this article, attested as provided in said sections; and to any certificate of the Auditor based in whole or in part upon the contents of any such books, records, documents and papers, or copies of books, records, documents and papers, as to the return of any real estate as delinquent, or sale thereof for taxes or payment or nonpayment of taxes or forfeited or delinquent lands, or nonentry of lands, or the books of the commissioners of the revenue.

WV Legislature

§37-11-1. Informality in deeds and other instruments.

Any instrument, executed before this code takes effect, shall be as valid and effective as it would be, according to the provisions of section four, article three, chapter thirty-six of this code, if executed after this code takes effect.

WV Legislature

§37-11-2. Validation of instruments, acknowledgments and records.

(a) No deed or other writing conveying or purporting to convey or release or assign real estate, or any interest therein, or to create any power of attorney relating to real estate or any interest therein, heretofore made or executed and delivered by any person or persons whomsoever, or by a husband and wife to a bona fide purchaser for good and valuable consideration, and acknowledged by him or them before an officer duly authorized by law to take such acknowledgments, if such deed, writing or power of attorney was made, executed, acknowledged and delivered prior to June 7, 1955, shall be deemed, held or adjudged invalid, or defective, or insufficient in law or in equity, by reason of any informality or omission in setting forth the particulars of the acknowledgment made before such officer aforesaid in the certification thereof, or in stating the official character of such officer, or the place of taking the acknowledgment, or by reason of the fact that the wife executed such instrument prior to the execution thereof by the husband, or by reason of the fact that the parties making or executing the instrument or writing, or any of them omitted to seal the same, or by reason of the fact that the official taking the acknowledgment omitted his official seal, or by reason of the failure to set forth the date of the deed or other writing or the date of the acknowledgment in the certification thereof, or by reason of the failure to set forth correctly the date of the deed or other writing or the date of the acknowledgment in the certification thereof.

(b) If a period of five years has elapsed from the date of recordation of any deed or other writing, and if said deed or other writing has an acknowledgment considered defective for any reason, then every such deed or other writing shall be as good, valid and effectual in law as if the law with respect to acknowledgments and seals, in force at the date of such acknowledgment had been fully complied with; and the record of the same duly made in the proper office for recording deeds in the State of West Virginia, or in the state of Virginia before formation of West Virginia, and exemplifications of the same duly certified, shall be legal evidence in all cases in which the original would be competent evidence: Provided, That this section shall not apply to suits now pending and undetermined insofar as it amends laws existing at the time such pending suits were instituted, nor to any suit that may be brought within one year after the day this section takes effect, insofar as it amends laws existing at the time this section takes effect; nor shall this section apply to any deed or other writing which has heretofore been declared or held invalid by any court of competent jurisdiction.

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§37-11-3. Validation of acknowledgments defective in other respects.

Where the acknowledgment of any deed or other writing, or the privy examination of a married woman respecting the same, has been taken either within or without the State of West Virginia, by a notary public, justice of the peace, or president of a county court, whether he used an official seal or not, or by two justices of the peace in any county in the state of Virginia prior to the reorganization of the state government thereof, or by any justice out of his district or township, or it does not appear by the certificate of the justice that such acknowledgment or privy examination was taken within his district or township, or county, the same shall nevertheless be sufficient, unless there be other lawful objections; and the admission to record and recordation of any such deed or writing heretofore had or made upon any such acknowledgment or privy examination shall likewise be sufficient and valid unless there be other lawful objections: Provided, That this section shall not affect the rights of any party to any pending suit instituted prior to the twenty-fifth day of May, nineteen hundred and eleven.

WV Legislature

§37-11-4. Validation of records failing to comply with §9, chapter 73, code 1868.

All deeds and other writings admitted to record under chapter seventy-three of the Code of West Virginia of eighteen hundred and sixty-eight, are hereby declared to be as legal and valid as if the provisions of the ninth section of said chapter, and of all acts amendatory of said section, had been fully complied with.

WV Legislature

§37-11-5. Presumption of jurisdiction in cases of judicial sales.

When any land or any interest in land in this state has heretofore been sold, partitioned or disposed of prior to the formation of this state, under the order, judgment or decree of any court of competent jurisdiction of the state of Virginia, or has heretofore been or shall hereafter be sold, partitioned or disposed of under the order, judgment or decree of any court of competent jurisdiction of this state, it shall be presumed, in the absence of evidence to the contrary, that every such court obtained due jurisdiction in the cause by the institution of all proper proceedings and by the service or execution of proper process over any and all persons whose names appear in any part of the record of the cause as persons embraced therein or against whom the court proceeded, and this presumption shall apply to any person or persons named by the designation of child, children, heir-at-law, heirs-at-law, devisee, devisees, or other sufficient designation or classification from which it can be shown by the record or otherwise the person or persons included therein or intended thereby.

WV Legislature

§37-11-6. Presumption of authority of commissioners and certain other officers in certain cases.

When any deed has heretofore been made prior to the formation of this state for land or any interest in land therein, which purports on its face to be made under judicial proceedings of a court of the state of Virginia by a commissioner, special commissioner, guardian or other person, or when any deed has heretofore been made or shall hereafter be made for land or any interest in land in this state, which purports on its face to be made by a commissioner, special commissioner, guardian or other person under the judicial proceedings of a court of this state, then in every such case it shall be presumed, in the absence of evidence to the contrary, that the person executing such deed was authorized by the court to convey the land or interest therein which is conveyed by such deed, and if any such deed was duly, or shall hereafter be duly admitted to record in any county, and not less than ten years shall have elapsed after such record thereof, it shall be presumed, in the absence of evidence to the contrary, that the title of all persons which said deed professes to convey, under such judicial proceedings, did in fact pass by such deed.

For the purpose of this and the preceding section a court of the United States shall be deemed a court of the state within which it has been or may be held.

WV Legislature

§37-12-1. Survey by magnetic meridian; variations; measurement.

When any surveyor is required to survey lands which have been surveyed before, he shall make such survey by the magnetic meridian, but shall also return and certify in his plat the degree of the variation of the magnetic needle from the true meridian, at the time of the resurvey; and also (if the same can be done) the degree of such variation at the time of the original survey; and every survey, whether original or not, shall be made by horizontal measurement, unless otherwise provided by deed or contract.

WV Legislature

§37-12-2. Execution of orders of survey.

Every surveyor shall promptly and faithfully execute any order of survey made by any court, of lands lying in his county, and make due return of a true plat and certificate thereof; and, if he fail to do so, he shall forfeit $50 to the party injured by such failure.

WV Legislature

§37-13-1. Jurisdiction to permit and order removal, etc.

The circuit court of any county shall have jurisdiction and authority to permit and order the removal, transfer and reinterment, or other disposition, of remains in any graves located upon privately owned land within the boundaries of such county under the provisions hereinafter set forth: Provided, That the provisions of this article shall not apply to any grave or grave area where title or color of title to the same exists as a matter of public record in any person or persons not a plaintiff or plaintiffs instituting an action pursuant to this article: Provided, however, That when title or color of title of public record to such grave or grave area exists in such plaintiff or plaintiffs, the provisions of this article may be available in addition to any other rights or remedies provided by law for the removal, transfer and disposition of remains in graves or grave areas.

WV Legislature

§37-13-1a. Improvement, construction or development upon privately owned lands containing graves.

No improvement, construction or development shall commence upon privately owned lands on which a cemetery or graves are located if such improvement, construction or development would destroy or otherwise physically disturb the cemetery or graves located on the land unless the owner first files a petition in accordance with the provisions of section two of this article and an order is entered pursuant to section five of this article providing for the disposition of the remains.

WV Legislature

§37-13-2. Action; contents of petition.

Any owner of private lands, may, as plaintiff, institute an action for the purposes set forth in section one of this article by filing a petition before the circuit court of the county in which the lands affected are located. Such petition shall show the title to such lands, the condition of the graves in question, the interests of all persons in such lands and in the remains in such graves, so far as known, the reasons why removal is sought, and the proposed disposition of such remains. The petition shall further show that plaintiffs have made reasonable and diligent effort to ascertain the identity of each deceased and each deceased's surviving next of kin, heirs-at-law, administrator, executor or personal representative. The court may, if deemed necessary, appoint a guardian ad litem to protect the interests of known or unknown persons in interest, whether living or dead.

WV Legislature

§37-13-3. Parties; notice.

All owners, lessees and other persons having an interest in such lands, other than plaintiffs, and also the surviving next of kin, heirs at law, administrator, executor, or personal representative of each deceased, so far as can be determined through reasonable and diligent effort, shall be made defendants in such action. Insofar as possible all defendants shall be served with notice of the institution of the action and the date of the first hearing upon the same, such service to be made in the same manner provided by law for the service of process in other civil actions. If the address of any defendant be unknown, or, if there be any unknown next of kin, heirs at law, administrator, executor or personal representative of any known or unknown person whose remains may be interred within any such grave, then, in such event, a copy of said notice shall be published prior to the hearing upon the same as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

WV Legislature

§37-13-4. Hearing; discretion in granting or refusing relief; order.

No sooner than three weeks from the filing of such petition the court shall take evidence upon relief sought, together with any evidence presented in opposition thereto. In granting or denying such relief the court shall consider, as well as other evidence adduced, evidence as to the wishes of all persons concerned, whether living or deceased, and shall exercise a sound discretion in granting or refusing, in whole or in part, the relief sought. If the court is satisfied with the propriety of the relief sought by plaintiffs it shall enter an order granting the same, either in whole or in part.

WV Legislature

§37-13-5. Procedure upon removal.

Such order permitting removal, transfer and disposition of remains in any grave shall provide that the same shall be done with care, decency and reverence for the remains of the deceased, may require that the services of a licensed funeral director shall be utilized and may be upon any other terms and conditions as the court may deem fit and proper, including the method and manner of disposition of such remains.

WV Legislature

§37-13-6. Costs.

In the event that the plaintiff or plaintiffs shall be granted the relief sought, then all costs of such action shall be borne by plaintiffs. In the event that such relief is not granted, or is granted only in part, then such costs may be allocated between the parties as the court shall deem equitable and just. In any event wherein any relief is granted, the costs of removal, transfer and disposition shall be borne by the plaintiffs, including the cost of erecting appropriate memorials to the deceased as the same may be ordered by the court.

WV Legislature

§37-13-7. Remedy herein provided cumulative.

This article and the rights and remedies herein provided for shall be cumulative and in addition to other existing rights. The right of eminent domain and the remedy of condemnation of lands shall not be affected hereby. This article shall not apply to burial grounds governed by the provisions of article five, chapter thirty-five of this code or by the provisions of section eight-a, article one, chapter twenty-nine of this code.

WV Legislature

§37-13A-1. Access of certain persons to cemeteries and graves located on private land; limiting liability of landowners.

(a) Any authorized person who wishes to visit a cemetery or grave site located on privately owned land and for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purposes described in subsection (c) of this section after providing the owner of the privately owned land with reasonable notice as defined in subsection (b) of this section.

(b) An authorized person intending to visit the cemetery or grave site for the purpose of installing a monument or grave marker pursuant to subdivision (2), subsection (c) of this section, shall give reasonable notice to the property owner which is to include a description of the monument or grave marker to be installed. As used in this article, "reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave site delivered to the property owner at least 10 days prior to the date of the intended visit.

(c) The right of access to cemeteries or grave sites provided in subsection (a) of this section shall be during reasonable hours and only for the purposes of:

(1) Visiting graves;

(2) Maintaining the grave site or cemetery, including the installation of a monument or a grave marker: *Provided*, That a property owner may deny access to the cemetery or grave site because the owner objects to the installation of the type or style of the monument or grave marker that has been described in the notice given pursuant to subsection (b) of this section;

(3) Burying a deceased person in a cemetery plot by those granted rights of burial to that plot; and

(4) Conducting genealogy research.

(d)(1) The access route to the cemetery or grave site may be designated by the landowner if no traditional access route is obviously visible by a view of the property. If no traditional access route is obviously visible by a view of the property, the landowner is not required to incur any expense in improving a designated access route.

(2) Unless the property owner has caused a traditional access route to the cemetery or grave site to be unusable or unavailable, the property owner is not required to make any improvements to their property to satisfy the requirement of providing reasonable ingress and egress to a cemetery or burial site pursuant to this section.

(e) A property owner who is required to permit authorized persons reasonable ingress and egress for the purpose of visiting a cemetery or grave site and who acts in good faith and in a reasonable manner pursuant to this section is not liable for any personal injury or property

WV Legislature

damage that occurs in connection with the access to the cemetery or grave site.

(f) Nothing in this section shall be construed to limit or modify the power or authority of a court in any action of law or equity to order the disinterment and removal of the remains from a cemetery and interment in a suitable location.

(g) A private property owner shall not be held liable for any damage to a cemetery on their property when that damage is caused by individuals conducting familial or social visitations to the cemetery: *Provided*, That this limitation on liability shall not apply if the person conducting the visitation is an agent of the private property owner. Individuals conducting familial and social visitations to a cemetery contemplated by this section are liable for any damage they cause.

WV Legislature

§37-13A-2. Definitions.

In this article:

(1) "Authorized person" means:

(A) A family member, close friend or descendant of a deceased person;

(B) A cemetery plot owner;

(C) A person who has the written permission of a family member or descendant of a deceased person to enter the property solely for the purpose of installing monuments or grave markers or preparing the cemetery plot for burying a deceased person by those granted rights of burial to that plot; or

(D) A person engaged in genealogy research.

(2) "Governmental subdivision" means any county commission or municipality.

(3) "Reasonable ingress and egress" or "reasonable access" means access to the cemetery or grave site within ten days of the receipt of written notice of the intent to visit the cemetery or grave site. If the property owner cannot provide reasonable access to the cemetery or grave site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access within five days of the receipt of the initial notice.

WV Legislature

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

All persons exercising access to a grave site or cemetery under the provisions of this article are responsible for conducting themselves in a manner that does not damage the private lands, the cemetery or grave sites and are liable to the owner of the private lands for any damage caused as a result of their access.

WV Legislature

§37-13A-4. Limiting the use of motor vehicles on private lands.

The access to a cemetery or grave site on private lands conferred by this article does not include the right to operate motor vehicles on the private lands, unless there is a road or adequate right-of-way that permits access by motor vehicle and the owner has given written permission to use the road or right-of-way or way of necessity.

WV Legislature

§37-13A-5. Cause of action for injunctive relief.

(a) An authorized person denied reasonable access under the provisions of this article, including the denial of permission to use vehicular access or the denial of permission to access the cemetery or grave site to install a monument or grave marker, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the authorized person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in this article. In granting relief, the court may set the frequency of access, hours and duration of the access.

(b) The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

WV Legislature

§37-13A-6. Application of article.

The provisions of this article shall not apply to any deed or other written instrument executed prior to the effective date of this article which creates or reserves a cemetery or grave site on private property and which specifically sets forth terms of access.

WV Legislature

§37-13A-7. Existence of cemetery or grave site, notification.

If a governmental subdivision is notified of the existence of a cemetery, or a marked grave site that is not located in a dedicated cemetery, within its jurisdiction, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or grave site's existence and location. The governmental subdivision shall, upon notification of grave site location, document the location. Data collected shall be deposited with the Division of Culture and History. The notification shall include an explanation of the provisions of this article.

WV Legislature

§37-14-1.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-2.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-3.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-4.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-5.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-6.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-7.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-8.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-9.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-10.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

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§37-14-13.

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Acts, 2001 Reg. Sess., Ch. 237.

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§37-14-14.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

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§37-14-15.

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Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-16.

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WV Legislature

§37-14-17.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-18.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-19.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-20.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-21.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-22.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-23.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-24.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-25.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-26.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-27.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-28.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-29.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-30.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-31.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-32.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-33.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-34.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-35.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-36.

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Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-37.

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WV Legislature

§37-14-38.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-39.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-40.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-41.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-42.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-43.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-44.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§37-14-45.

Repealed.

Acts, 2001 Reg. Sess., Ch. 237.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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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