WEST VIRGINIA CODE CHAPTER 46B ARTICLE 3

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§46B-3-1. Default; procedure.

(a) Whether the dealer or the consumer is in default under a rental contract is determined by the rental agreement and this chapter.

(b) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the rental agreement.

(c) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the rental contract by self-help or any available judicial procedure or nonjudicial procedure: Provided, That consumer goods may only be repossessed by a dealer without judicial process when such repossession can be effected without a breach of the peace.

(d) Except as otherwise provided in this chapter or the rental agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.

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§46B-3-2. Notice after default.

Except as otherwise provided in this chapter, the dealer or consumer in default under the rental contract is not entitled to notice of default or notice of enforcement from the other party to the rental agreement.

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§46B-3-3. Termination of rent-to-own agreements.

(a) Upon the termination of a rent-to-own agreement by a consumer, all obligations that are still executory by both parties are discharged, but any right based on a failure of the dealer to maintain the consumer goods in accordance with the provisions of section six of this article, or any other right based on prior default or performance of the dealer survives, and the consumer retains any remedy or defense for such default. Rights and remedies available to the consumer for material misrepresentation or fraud by a dealer are not affected by a termination of the rental agreement by a consumer. Termination of the rental agreement by a consumer shall not bar or be deemed inconsistent with a claim for damages or other right or remedy.

(b) A consumer may terminate a rent-to-own agreement at any time.

(c) When a consumer terminates a rent-to-own transaction, the dealer may not require any further action or payment by the consumer except:

(1) Payment of any unpaid periodic payments and charges accrued before the consumer notified the dealer of the termination of the transaction and made the consumer goods available to be received by the dealer; and

(2) Payment of any pickup charge provided for in the rental agreement.

(d) A dealer may terminate a rent-to-own agreement when the consumer fails to make a periodic payment as it becomes due: Provided, That seven days prior to terminating the rent-to-own agreement, the dealer shall provide a written notice to the consumer informing him or her:

(1) Of the amount of any periodic payment or payments that the consumer has failed to make;

(2) That the consumer may voluntarily surrender possession of the goods to the dealer at the location where the goods are located;

(3) Of any late payment which has been or may be assessed;

(4) Of the right to reinstate which shall include:

(A) The consumer's right to reinstate the agreement by payment of amounts due when the goods are in the possession of the consumer;

(B) The amount of time when the consumer has to reinstate the agreement;

(C) That reinstatement will result in continuation of the original agreement, including the provisions relating to ownership of the goods; and

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(D) The amount of fees to be paid for reinstatement.

(e) The dealer may request that the goods be surrendered at any time after a consumer has failed to timely make a periodic payment required under the agreement.

(f) A rent-to-own agreement terminates when the consumer surrenders the goods. The dealer shall provide the consumer with a notice of reinstatement rights as stated in subdivision (4), subsection (d) of this section.

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§46B-3-4. Reinstatement of written rental agreement.

(a) The consumer may reinstate the transaction at any time until the consumer is served, in a manner pursuant to rule four of the rules of civil procedure, with a civil complaint arising out of the transaction.

(b) When a consumer fails to timely make one or more periodic payments, he or she may reinstate the original rent-to-own transaction, without losing any right or option of the consumer under the rental-purchase agreement, within sixty days after the expiration of the last period for which the consumer made a timely payment: Provided, That if a consumer has made more than forty percent of the regular payments required to obtain ownership of the goods, pursuant to the rent-to-own transaction, the consumer shall have ninety days to reinstate a rent-to-own transaction: Provided, however, That when a dealer seeks to repossess the goods and has lawfully repossessed the goods two previous times during the same transaction, the consumer may not reinstate the transaction.

(c) If reinstatement occurs pursuant to this section, the dealer shall provide the consumer with the same goods leased by the consumer prior to the reinstatement or if those goods are not available to the dealer, substitute property that is of no less quality and condition. When substitute property is provided, the dealer shall make all disclosures required by this chapter. When consumer goods have been repossessed or returned to the possession of the dealer prior to reinstatement, the dealer may charge a nominal reinstatement fee, not to exceed $5.

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§46B-3-5. Consumer's right to ownership of the goods.

When the consumer has paid all periodic payments required by a rent-to-own transaction together with any other charges authorized by law which have been lawfully imposed in the transaction, he or she shall have exclusive ownership of the goods: Provided, That the consumer, after the initial payment, may obtain ownership before the scheduled end of the rent-to-own transaction by paying:

(1) A portion of the periodic payments, which have not yet become payable, subject to any limitation provided by this chapter;

(2) All periodic payments and other charges authorized by law which have already become due and which may be lawfully imposed in the transaction; and

(3) The amount of any documentary or other fee charged by a governmental entity to transfer ownership or proof of ownership.

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§46B-3-6. Maintenance of goods.

A dealer shall maintain the goods that are the subject of any rent-to-own transaction in working order and usable condition until such time as the consumer obtains ownership of the goods.

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§46B-3-7. Disclosure requirements.

(a) The dealer shall make all disclosures required by this section.

(b) In all circumstances listed in subsection (c) of this section, the dealer shall disclose the following information with respect to the goods that are the subject of the rental agreement in a clear, conspicuous, and easily understood manner:

(1) Retail value;

(2) Rent-to-own charge;

(3) Rental period;

(4) Number of periodic payments required for ownership;

(5) Amount of each periodic payment;

(6) Total of all payments; and

(7) Whether the goods are new or have been previously rented or are otherwise used.

(c) The dealer shall make the disclosures required in this section:

(1) On a label attached or posted on top of the goods displayed to any potential consumer if the goods are displayed on the premises of the dealer and offered under a rent-to-own agreement by that same dealer;

(2) In any rent-to-own agreement as defined in §46B-1-5 of this code;

(3) In any telephone communication with a potential consumer; and

(4) In any radio, television, or printed advertisement for the goods when the amount of the periodic payment for the item is included in the advertisement.

(d) For any goods displayed or offered online and for which a consumer can enter into a rent-to-own agreement online or remotely through electronic commerce, a dealer may, in lieu of attaching the disclosure required by 46B-3-7(c)(1) of this code to the goods, provide the same information electronically so long as such information is disclosed in a clear, conspicuous, and easily understood manner.

(e) For any goods offered to the consumer under a rent-to-own agreement by one dealer, but displayed by any other person or on the premises of any other dealer, the dealer offering the rent-to-own agreement may provide the information required under §46B-3-7(b) of this code electronically, as described under §46B-3-7(d) of this code, or on a label, as described under §46B-3-7(c)(1) of this code.

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(f) Any oral communications concerning the terms and conditions of the transaction shall be incorporated into a written agreement which shall govern the transaction.

(g) In any transaction involving more than one dealer, only one dealer may make the disclosures required by this article: *Provided*, That when the name of the dealer is required to be disclosed, all dealers shall be disclosed.

(h) A dealer may disclose information that is not required by this section only when the additional information is not stated, used, or placed in a manner that may contradict, obscure, or distract attention from the information required by this section.

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§46B-3-8. Prohibitions for rent-to-own transactions.

No dealer may:

(1) Require any initial payment in any transaction except the payment for the first rental period, deposit fee, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

(2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

(3) Raise the amount of any payment or charge after the execution of the written agreement without both parties voluntarily entering into a second written agreement;

(4) Take any action to collect a payment which is prohibited by this chapter;

(5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

(6) Take any security interest in any property owned by the consumer;

(7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or damage, unless the dealer requires such insurance for all goods of comparable type and value in every rent-to-own agreement;

(8) Require damage waiver from a particular insurer;

(9) Seek to collect any charge not authorized by this chapter and disclosed in a written agreement; or

(10) Have an initial period which is more than one week longer than any other rental period.

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§46B-3-9. Limitations on charges and fees.

(a) Any consumer seeking to fulfill obligations pursuant to §46B-3-5 of this code may be charged a fee no greater than the retail value divided by the total of payments multiplied by the amount of the periodic payments which have not yet become due.

(b) A dealer may not charge a fee for delivery or pickup unless the charge is provided for in the written agreement, the parties agree that the dealer shall deliver or pick up the goods, and the charge is reasonably related to the costs of delivery.

(c) Any late fee imposed by a dealer may not exceed five percent of the periodic payment or $15, whichever is less. Only one late charge may be imposed for any payment for which a late charge may be charged. Under a rental agreement in which periodic payments are due weekly, a late charge may not be imposed until the payment is three days late. Otherwise, a late charge may not be imposed until the payment is five days late.

(d) The total of payments in a rent-to-own transaction shall not be greater than 240 percent of the retail value.

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§46B-3-10. Attorney general; promulgation of rules.

The Attorney General may adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof. In addition, the Attorney General shall adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of said chapter, as are necessary and proper to determine formula or method of ascertaining retail value as defined in this article and as are necessary and proper to detail the requirements for disclosure set forth in this article.

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