WEST VIRGINIA CODE CHAPTER 55 ARTICLE 3B

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§55-3B-1. Definitions.

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

(a) "Factory-built home" has the same meaning given to that term in West Virginia code section two, article fifteen, chapter thirty-seven of this code.

(b) "Factory-built home site" means a parcel of land provided for the placement of a factory-built home for occupancy as a residence whether or not in a factory-built home community. A factory-built home site is not residential rental property for the purposes of article three-a of this chapter.

(c) "Good cause" means:

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

(2) The tenant has breached a material term of a written rental agreement or repeatedly breached other terms of a written rental agreement including those agreements required in section three, article fifteen, chapter thirty-seven of this code;

(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 term of a warranty or leasehold covenant or repeatedly breached other terms of a warranty of leasehold covenant;

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

(d) "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.

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§55-3B-2. Tenancy of factory-built home site.

(a) The tenancy of the site of a factory-built home that is comprised of one section and that is not subject to a written agreement is from month to month. The tenancy of the site of a factory-built home that is comprised of two or more sections that is not subject to a written agreement is from year to year.

(b) The tenancy of a factory-built home site that has placed on it a factory-built home that is comprised of one section, other than a camping or travel trailer, may not be terminated by the landlord until twelve months after the tenancy began except for good cause. The tenancy of a factory-built home site that has placed on it a factory-built home that is comprised of two or more sections may not be terminated by the landlord until five years after the tenancy began except for good cause. A written agreement may provide that the tenant may not terminate the tenancy for the same or greater periods of time. A written agreement may provide that the landlord may not terminate the tenancy for greater periods of time.

(c) For a month-to-month or year-to-year tenancy or a tenancy that is created by a written agreement for a definite period of time, the tenancy does not terminate at the end of the month, year or stated period of time unless either party gives timely notice as required in section three of this article. If no notice is given and if no new agreement is made, the tenancy of a factory-built home site that is comprised of one section becomes a month-to-month tenancy and the tenancy of a factory-built home that is comprised of two or more sections becomes a year-to-year tenancy.

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§55-3B-3. Termination of tenancy.

(a) Except for termination for good cause, the tenancy of a factory-built home site may be terminated by either party only by giving at least three months' notice in writing to the other of his or her intention to terminate the tenancy. When such notice is to the tenant, it may be served upon the tenant or upon anyone holding under the tenant the leased premises or any part of the leased premises. 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 the owner or according to the common law. If the termination is for good cause, no notice requirements other than those provided in sections four and six of this article may be imposed.

(b) 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 period set out in subsection (b), section two of this article, without good cause, the owner may not prevent the sale of the factory-built home in place to another tenant who meets the standards and criteria in effect for new tenants prior to the termination of the tenancy.

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§55-3B-4. Petition for summary relief for wrongful occupation of residential rental property.

(a) A person desiring to remove a tenant and factory-built home from a factory-built home site may apply for such relief to the magistrate court or the circuit court of the county in which such property is located, by verified petition, setting forth the following:

(1) That he is the owner or agent of the owner and as such has a right to evict the tenant and have the factory-built home of the tenant removed;

(2) A brief description of the factory-built home site sufficient to identify it;

(3) That the tenant is wrongfully occupying such property in that the tenant is:

(A) Holding over after having been given proper notice of termination of tenancy, whether or not the tenant has continued to pay and the landlord has accepted rent; or

(B) The landlord has good cause; and

(4) A prayer for eviction of the tenant and removal of the tenant's factory-built home.

(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for such hearing, which time shall not be less than five nor more than ten judicial days following such request.

(c) Immediately upon being apprised of the time and place for hearing the petitioner shall cause a notice of the same to be served upon the tenant in accordance with the provisions of rule 4 of the West Virginia rules of civil procedure or by certified mail, return receipt requested. Such notice shall inform the tenant that any defense to the petition must be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his petition and such proof of service.

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§55-3B-5. Defenses available.

In a proceeding under the provisions of this article, a tenant against whom a petition has been brought may assert any and all defenses which might be raised in an action for ejectment or an action for unlawful detainer or provided by this article or article fifteen, chapter thirty-seven of this code.

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§55-3B-6. Proceedings in court; final order; disposition of abandoned personal property.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order evicting the tenant and ordering the tenant to have the factory-built home removed.

(b) In the case of a petition alleging good cause or holding over after proper termination of a tenancy, if the tenant files an answer raising the defense of breach by the landlord of a material covenant upon which the tenant's duties depend or other defenses to the claim or claims set forth in the petition, the court shall proceed to a hearing on such issues.

(c) Continuances of the hearing provided for in this section shall be for good cause only and the judge or magistrate shall not grant a continuance to either party as a matter of right. If a continuance is granted upon request by a tenant, the tenant shall be required to pay into court any periodic rent becoming due during the period of such continuance.

(d) At the conclusion of the hearing, if the court finds that the landlord is entitled to evict the tenants and have the factory-built home of the tenants removed, the court shall make and enter an order evicting the tenants and ordering the tenants to have the factory-built home removed. In the case of a proceeding pursuant to subsection (a) of this section, the court may also make a written finding and include in its order such relief on the issue of arrearage in the payment of periodic payments or other agreed charges related to the tenancy as the evidence may require. The court may disburse any moneys paid into court by the tenant in accordance with the provisions of this section.

(e) The court order shall specify the time when the tenant shall vacate the property, taking into consideration such factors as the nature of the factory-built home, the possibility of relative harm to the parties and other material facts deemed relevant by the court in considering when the tenant might reasonably be expected to vacate the property. The court shall not order the tenant to vacate the premises in less than one month unless the tenant refuses or fails to pay rent for that period in advance as it becomes due or unless the court finds that the tenant has deliberately or negligently damaged the property or the property of other tenants or materially threatened or harmed the quiet enjoyment of the property of other tenants or neighbors or knowingly permitted another person to do so. The court shall not order the tenant to remove the factory-built home in less than three months unless the tenant refuses or fails to pay rent in advance as it becomes due for that period or unless the court finds that the presence of the factory-built home poses an imminent threat to the health or safety of other tenants or neighbors: Provided, That the court may order the home to be removed in not less than thirty days if the factory-built home is a single section and the tenant had held over after having been given notice pursuant to section three of this article. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time or if the tenant refuses or fails to remove the factory-built home in the time required, the landlord may apply for a writ of possession and the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of

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the landlord and the tenant.

(f) In the event an appeal is taken and the tenant prevails upon appeal, and if the term of the lease has expired and proper termination notice was given pursuant to section three of this article, absent an issue of title, retaliatory eviction or breach of warranty, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession. During the pendency of any such appeal, if the period of the tenancy has otherwise expired and proper termination notice was given pursuant to section three of this article, the tenant is not entitled to remain in possession of the property.

(g) When an order is issued pursuant to this section evicting the tenant and ordering the tenant to remove the factory-built home and the tenant fails to remove the factory-built home by the date specified by the order issued pursuant to subsection (e) of this section, the landlord may:

(1) Dispose of the tenant's factory-built home without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the tenant is abandoning the factory-built home;

(2) Remove and store the factory-built home after the date and time by which the court ordered the tenant to remove the factory-built home. The landlord may sell the stored factory-built home after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored factory-built home; or (ii) the costs of storage equal the value of the factory-built home being stored; or

(3) Leave the factory-built home on the property. The landlord may sell the factory-built home left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the factory-built home on the landlord's property and has not taken possession of the factory-built home.

(h) The sale shall be conducted and the proceeds distributed pursuant to article nine, chapter forty-six of this code as if the landlord became the holder of a security interest on the day the tenant was to have the factory-built home removed from the site except that the landlord shall have first priority to recover unpaid rent and may require as a condition of the sale that the buyer post security or place in escrow the cost of moving the factory-built home from the site.

(i) When an order is issued pursuant to this section granting possession of the property to the landlord and the tenant removes the factory-built home, but fails to remove all other personal property by the date and time specified by the order issued pursuant to subsection (e) of this section, the landlord may:

(1) Dispose of the tenant's personal property without incurring any liability or responsibility

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to the tenant or any other person if the tenant informs the landlord in writing that the other personal property is abandoned or if the property is garbage;

(2) Remove and store the other personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord's property and has not taken possession of the personal property.

(j) Notwithstanding the provisions of subsections (g) and (i) of this section, if the personal property is worth more than $300 and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (i) of this section, or if the factory-built home was not removed within thirty days with the required fees paid as provided in subsection (g) of this section, the landlord shall store the personal property or factory-built home for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property or factory-built home informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the personal property pays the landlord the reasonable costs of storage and removal.

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§55-3B-7. Waiver.

A tenant's rights under this article may not be waived by agreement.

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