WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

Cam. Sub. for

HOUSE BILL No. 2483

(By Delegates Haltom, Rouse, and J. White.)

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Passed ......... March 25, ................................ 1993

In Effect ......... days from ......... Passage
AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to factory-built home site rentals generally; defining terms; requiring written agreements; limiting liability of secured parties; prohibiting certain acts and conduct; providing procedures for terminating tenancy; limiting effect on taxation.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fifteen, to read as follows:

ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.

§37-15-1. Purpose and applicability.

1. 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.


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) “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;

(f) "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;

(g) "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 the fifteenth day of June, one thousand nine hundred seventy-six, 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;

(h) "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 the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI)-A119.1 Standards for Mobile Homes;

(i) "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
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(j) "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;

(k) "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; and

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

§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 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.

(d) 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.

(e) 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.


(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 proceed-
ings 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 imme-
diately 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.

§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 con-
structed 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.


(a) Either party may terminate a rental agreement
which is for a term of thirty days or more by giving
written notice to the other party at least thirty days
prior to the termination date: Provided, That the rental
agreement may specify a period of notice in excess of
thirty days. 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.

(b) A rental agreement may be terminated by the
landlord for the following reasons:

(1) Failure to comply with the terms of the rental
agreement;

(2) Condemnation of the community; or

(3) Change of use of the community: Provided, That
all requirements imposed by this chapter are complied
with.

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


(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) of section six of
this article unless the magistrate or circuit court finds
that the reason for the termination was retaliation.


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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 9th day of April, 1993.

Governor
PRESENTED TO THE
GOVERNOR

Date: 9/9/93
Time: 4:00 pm