WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

Committee Substitute for
SENATE BILL NO. 637

(By Senator _______ )

PASSED: March 13, 2004

In Effect 90 Days From Passage
AN ACT to amend and reenact §37-15-2, §37-15-3 and §37-15-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §37-15-3a; and to amend said code by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all relating to factory-built home sites; definition of good cause and section; written agreements for factory-built home sites; adoption of rules and regulations by owners of factory-built home sites; terms of written agreement related to termination of tenancy; remedies for wrongful occupation of factory-built home site; definitions; tenancy of factory-built home site; termination of tenancy; petition for summary relief for wrongful occupation; defenses; proceedings; final order; disposition of abandoned property; and waiver of rights.

Be it enacted by the Legislature of West Virginia:
That §37-15-2, §37-15-3 and §37-15-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §37-15-3a; and that said code be amended by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all to read as follows:

CHAPTER 37. REAL PROPERTY.

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


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.

(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 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.

(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
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.

(j) "Modular home" means any structure that is wholly,
or in substantial part, made, fabricated, formed or assem-
bled in manufacturing facilities for installation or assem-
bly 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 commis-
sion 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.

§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.

(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.


(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.


(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 than 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) 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 article 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.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3B. REMEDIES FOR WRONGFUL OCCUPATION OF FACTORY-BUILT HOME SITE.

§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.

§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.

§55-3B-3. Termination of tenancy.

(a) 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 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.

(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 time period set out in subsection (b), section two of this article, 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 criteria in effect for new tenants prior to the termination of the tenancy.

§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.

§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.

§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 subsec-
tion (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 possi-
bility 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 prop-
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 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 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 three hundred dollars 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.

§55-3B-7. Waiver.

1 A tenant's rights under this article may not be waived by agreement.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 5th Day of April, 2004.

Governor