

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

*Comm. Sub. for*  
**HOUSE BILL No. 2483**

(By Delegates *Mallagher, Rowe and J. White*.)



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

In Effect *ninety days from*..... Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 2483**

(By DELEGATES GALLAGHER, ROWE AND L. WHITE)

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[Passed March 25, 1993; in effect ninety days from passage.]

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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  
2     distinction between a house trailer, a mobile home, a  
3     manufactured home and a modular home. While it is the  
4     intent of this article to include the different classifica-  
5     tions of factory-built homes into a single category for the  
6     purposes of this article, it is also the intent of this article

7 to acknowledge the differences between the various  
8 types of factory-built homes for other purposes.

9 In addition, it is the purpose of this article to clarify  
10 the ambiguity and confusion related to the classification  
11 of factory-built homes as real or personal property,  
12 particularly relating to security interests. The provi-  
13 sions of this article apply to factory-built homes, as  
14 defined herein, which are held as personal property  
15 situated on real property owned by another in conjunc-  
16 tion with a landlord/tenant relationship.

**§37-15-2. Definitions.**

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

3 (a) "Abandoned factory-built home" means a factory-  
4 built home occupying a factory-built home site, pursuant  
5 to a written agreement under which the tenant has  
6 defaulted in rent or the landlord has exercised any right  
7 to terminate the rental agreement;

8 (b) "Factory-built home" includes modular homes,  
9 mobile homes, house trailers and manufactured homes;

10 (c) "Factory-built home rental community" means a  
11 parcel of land under single or common ownership upon  
12 which two or more factory-built homes are located on  
13 a continual, nonrecreational basis together with any  
14 structure, equipment, road or facility intended for use  
15 incidental to the occupancy of the factory-built homes,  
16 but does not include premises used solely for storage or  
17 display of uninhabited factory-built homes, or premises  
18 occupied solely by a landowner and members of his  
19 family;

20 (d) "Factory-built home site" means a parcel of land  
21 within the boundaries of a factory-built home rental  
22 community provided for the placement of a single  
23 factory-built home and the exclusive use of its  
24 occupants;

25 (e) "House trailers" means all trailers designed or  
26 intended for human occupancy and commonly referred  
27 to as mobile homes or house trailers, and shall include

28 fold down camping and travel trailers as these terms are  
29 defined in section one, article six, chapter seventeen-a  
30 of this code, but only when such camping and travel  
31 trailers are located in a factory-built home rental  
32 community, as defined in this section, on a continual,  
33 nonrecreational basis;

34 (f) "Landlord" means the factory-built home rental  
35 community owner, lessor or sublessor of the factory-  
36 built home rental community, or an agent or represen-  
37 tative authorized to act on his or her behalf in connec-  
38 tion with matters relating to tenancy in the community;

39 (g) "Manufactured home" has the same meaning as the  
40 term is defined in section two, article nine, chapter  
41 twenty-one of this code which meets the National  
42 Manufactured Housing Construction and Safety Stand-  
43 ards Act of 1974 (42 U.S.C. §§5401 et. seq.), effective on  
44 the fifteenth day of June, one thousand nine hundred  
45 seventy-six, and the federal manufactured home con-  
46 struction and safety standards and regulations promul-  
47 gated by the secretary of the United States department  
48 of housing and urban development;

49 (h) "Mobile home" means a transportable structure  
50 that is wholly, or in substantial part, made, fabricated,  
51 formed or assembled in manufacturing facilities for  
52 installation or assembly and installation on a building  
53 site and designed for long-term residential use and built  
54 prior to enactment of the Federal Manufactured  
55 Housing Construction and Safety Standards Act of 1974  
56 (42 U.S.C. §§5401 et seq.), effective on the fifteenth day  
57 of June, one thousand nine hundred seventy-six, and  
58 usually built to the voluntary industry standard of the  
59 American National Standards Institute (ANSI)-A119.1  
60 Standards for Mobile Homes;

61 (i) "Modular home" means any structure that is  
62 wholly, or in substantial part, made, fabricated, formed  
63 or assembled in manufacturing facilities for installation  
64 or assembly and installation on a building site and  
65 designed for long-term residential use and is certified  
66 as meeting the standards contained in the state fire code  
67 encompassed in the legislative rules promulgated by the

68 state fire commission pursuant to section five-b, article  
69 three, chapter twenty-nine of this code;

70 (j) "Owner" means one or more persons, jointly or  
71 severally, in whom is vested (i) all or part of the legal  
72 title to the factory-built home rental community, or (ii)  
73 all or part of the beneficial ownership and right to  
74 present use and enjoyment of the factory-built homesite  
75 or other areas specified in the rental agreement, and the  
76 term includes a mortgagee in possession;

77 (k) "Rent" means payments made by the tenant to the  
78 landlord for use of a factory-built home site and as  
79 payment for other facilities or services provided by the  
80 landlord; and

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

**§37-15-3. Written agreement required.**

1 (a) The rental and occupancy of a factory-built home  
2 site shall be governed by a written agreement which  
3 shall be dated and signed by all parties thereto prior to  
4 commencement of tenancy. A copy of the signed and  
5 dated written agreement and a copy of this article shall  
6 be given by the landlord to the tenant within seven days  
7 after the tenant signs the written agreement.

8 (b) The written agreement, in addition to the provi-  
9 sions otherwise required by law to be included, shall  
10 contain:

11 (1) The terms of the tenancy and the rent therefor;

12 (2) The rules and regulations of the factory-built home  
13 rental community. A copy of the text of the rules and  
14 regulations attached as an exhibit satisfies this  
15 requirement;

16 (3) The language of the provisions of this article. A  
17 copy of the text of this article attached as an exhibit  
18 satisfies this requirement;

19 (4) A description of the physical improvements and  
20 maintenance to be provided by the tenant and the

21 landlord during the tenancy; and

22 (5) A provision listing those services which will be  
23 provided at the time the rental agreement is executed  
24 and will continue to be offered for the term of tenancy  
25 and the fees, if any, to be charged for those services.

26 (c) The written agreement may not contain:

27 (1) Any provisions contrary to the provisions of this  
28 article and shall not contain a provision prohibiting the  
29 tenant who owns his or her factory-built home from  
30 selling his or her factory-built home;

31 (2) Any provision that requires the tenant to pay any  
32 recurring charges except fixed rent, utility charges or  
33 reasonable incidental charges for services or facilities  
34 supplied by the landlord; or

35 (3) Any provision by which the tenant waives his or  
36 her rights under the provisions of this article.

37 (d) When any person possesses a security interest in  
38 the factory-built home, the written agreement or rental  
39 application shall contain the name and address of any  
40 secured parties. The written agreement shall require  
41 the tenant to notify the landlord within ten days of any  
42 new security interest, change of existing security  
43 interest, or settlement or release of the security interest.

44 (e) When a factory built home owner sells a factory  
45 built home, the new owner shall enter into a written  
46 agreement if the factory built home continues to occupy  
47 the site: *Provided*, That the new owner meets the  
48 standards and restrictions contained in the prior rental  
49 agreement.

**§37-15-4. Liability of secured party taking possession of  
an abandoned factory-built home.**

1 (a) A secured party is not liable for rent to a landlord  
2 except as provided below:

3 (1) When a factory-built home subject to a security  
4 interest becomes an abandoned factory-built home, the  
5 landlord shall mail a notice of abandonment to the  
6 owner of the factory-built home and the secured party

7 by certified mail, at the addresses shown in the rental  
8 agreement or rental application. The notice shall include  
9 any rental agreement previously signed by the tenant  
10 and the landlord, and shall also provide the landlord's  
11 current mailing address;

12 (2) A secured party who has a security interest in an  
13 abandoned factory-built home, and who has taken title  
14 to the factory-built home under court order or under the  
15 applicable security agreement, is liable to the landlord  
16 under the same rental agreement terms as agreed on by  
17 the tenant and the landlord prior to the accrual of a  
18 right of possession by the secured party;

19 (3) Subject to any defenses the tenant may have, when  
20 the tenant has failed to comply with the terms of the  
21 written rental agreement regarding rent and payment  
22 of fees, the tenant remains liable to the landlord for all  
23 rent and services provided during the period while the  
24 secured party is attempting to gain title or exercise a  
25 right of possession to the factory-built home: *Provided,*  
26 That when the landlord has terminated the rental  
27 agreement, the tenant shall not be liable for further rent  
28 or payment of fees to the landlord. The secured party  
29 is not liable to the landlord or tenant for rent or services  
30 until the secured party completes foreclosure proceed-  
31 ings under the terms of the security agreement or  
32 otherwise takes title or exercises a right of possession  
33 to the factory-built home; or

34 (4) Upon completion of foreclosure proceedings,  
35 acquiring title to or the exercise of a right of possession  
36 to the secured party, the secured party shall imme-  
37 diately notify the landlord of the completion of such  
38 proceedings by certified mail at the address provided in  
39 the landlord's notice of default. After the conveyance of  
40 title to or the exercise of a right of possession to the  
41 secured party, the secured party shall have ten business  
42 days to remove the factory-built home. If a secured  
43 party who has a security interest in an abandoned  
44 factory-built home takes title to or possession of the  
45 factory-built home and the factory-built home remains  
46 in the factory-built home rental community for a period  
47 longer than ten business days, the relationship between

48 the secured party and the landlord shall be governed by  
49 the rental agreement previously signed by the tenant  
50 and the landlord, except that the term of the rental  
51 agreement shall convert to a month-to-month tenancy.  
52 No waiver is required to convert the rental agreement  
53 to a month-to-month tenancy. Either the landlord or the  
54 secured party may terminate the month-to-month  
55 tenancy upon giving written notice of a desire to  
56 terminate to the other party thirty days or more in  
57 advance of the proposed date of termination. The  
58 secured party and the landlord may enter into a  
59 subsequent agreement but are not required to execute  
60 a new rental agreement.

61 (b) Nothing in this section may be construed to be a  
62 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; condi-  
tions of occupancy.**

1 (a) A landlord may not demand or collect:

2 (1) Any fee which is not listed in the rental agreement:

3 (2) An entrance fee for the privilege of renting or  
4 occupying a factory-built home site;

5 (3) A commission on the sale of a factory-built home  
6 located in the factory-built home rental community  
7 unless the tenant expressly employs the landlord to  
8 perform a service in connection with the sale, but  
9 employment of the landlord by the tenant may not be  
10 a condition or term of the initial sale or rental; or

11 (4) A fee for improvements or installations on the  
12 interior of a factory-built home, unless the tenant  
13 expressly employs the landlord to perform a service in  
14 connection with such installation, improvement or sale.

15 (b) An invitee of the tenant has free access to the  
16 tenant's factory-built home site without charge unless a  
17 court of competent jurisdiction has ordered otherwise.

18 (c) A factory-built home owner may not be restricted  
19 in his or her choice of vendors from whom he or she may



20 purchase his or her (i) factory-built home, except in  
21 connection with the initial renting of a newly con-  
22 structed factory-built home site not previously rented to  
23 any other person, or (ii) goods and services. However,  
24 nothing in this article prohibits a landlord from  
25 prescribing reasonable requirements governing, as a  
26 condition of occupancy, the style, size or quality of the  
27 factory-built home, or other structures placed on the  
28 factory-built home site.

**§37-15-6. Termination of tenancy.**

1 (a) Either party may terminate a rental agreement  
2 which is for a term of thirty days or more by giving  
3 written notice to the other party at least thirty days  
4 prior to the termination date: *Provided*, That the rental  
5 agreement may specify a period of notice in excess of  
6 thirty days. A landlord may not cause the eviction of a  
7 tenant by willfully interrupting gas, electricity, water  
8 or any other essential service, or by removal of the  
9 factory-built home from the factory-built home site, or  
10 by any other willful self-help measure.

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

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

15 (2) Condemnation of the community; or

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

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

**§37-15-7. Retaliatory conduct prohibited.**


1 (a) Except as provided in this section, or as otherwise  
2 provided by law, a landlord may not retaliate by  
3 selectively increasing rent or decreasing services or by  
4 bringing or threatening to bring an action for possession  
5 after the landlord has knowledge that: (1) The tenant

6 has complained to a governmental agency charged with  
7 responsibility for enforcement of a building or housing  
8 code of a violation applicable to the premises materially  
9 affecting health or safety; (2) the tenant has made a  
10 complaint to or filed a suit against the landlord for a  
11 violation of any provision of this article; (3) the tenant  
12 has organized or become a member of a tenant's  
13 organization; or (4) the tenant has testified in a court  
14 proceeding against the landlord.

15 (b) Notwithstanding the provisions of subsection (a) of  
16 this section, a landlord may terminate the rental  
17 agreement pursuant to subsection (b) of section six of  
18 this article unless the magistrate or circuit court finds  
19 that the reason for the termination was retaliation.

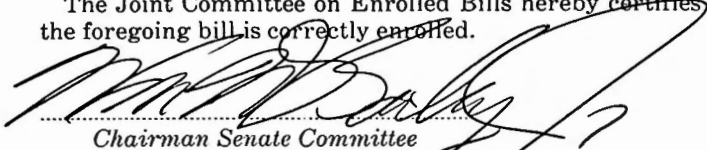
**§37-15-8. Effect on taxation.**

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



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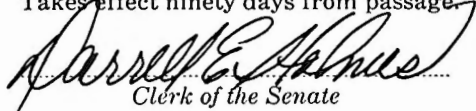
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

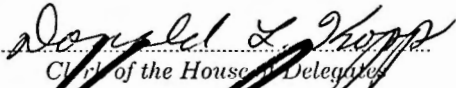
  
.....  
Chairman Senate Committee

  
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Chairman House Committee

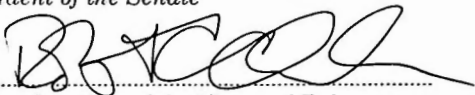
Originating in the House.

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