

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2907

BY DELEGATES AMBLER, COOPER, FLEISCHAUER, DEAN,

WILLIAMS, FLUHARTY, ROHRBACH AND ROWAN

[Introduced March 10, 2017; Referred

to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6 and §37-16-7,
 3 all relating to real property option to purchase contracts executed with lease agreements.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6 and §37-16-7, all
 3 to read as follows:

ARTICLE 16. OPTION TO RENT-TO-OWN OR OTHER REAL ESTATE CONTRACTS

EXECUTED WITH LEASE AGREEMENTS.

§37-16-1. Definitions.

1 The following definitions apply in this chapter:

2 (1) Covered lease agreement or lease agreement. – A residential lease agreement that is
 3 combined with, or is executed concurrently with, an option contract.

4 (2) Cure the default. – To perform the obligations under the lease agreement and/or option
 5 contract that are described in the notice of default and intent to forfeit required by section five of
 6 this article and that are necessary to reinstate the lease agreement and/or the option contract.

7 This term is synonymous with the term "cure."

8 (3) Forfeiture. – The termination of an option purchaser's rights to exercise an option to
 9 purchase property that is the subject of the option contract, and those rights of persons or entities
 10 claiming by or through an option purchaser, to the extent permitted by this chapter, because of a
 11 breach of one or more of the purchaser's obligations under the option contract and/or covered
 12 lease agreement.

13 (4) Option contract or contract. – An option contract for the purchase of single-family
 14 residential real property that includes or is combined with, or is executed in conjunction with, a
 15 covered lease agreement.

16 (5) Option fee. – Any payment, however denominated, made by the option purchaser to
17 the option seller that constitutes the price the option purchaser pays for the right to buy the
18 property at a specified price in the future.

19 (6) Option purchaser or purchaser. – An individual who purchases an interest in property
20 under an option contract, or any legal successor in interest to that individual.

21 (7) Option seller or seller. – A person or entity that makes a sale of an option by means of
22 an option contract, or the person's or entity's successor in interest. If an option contract is
23 subsequently assigned or sold to a third party, the assignor shall be deemed to be an option seller
24 or seller for purposes of this chapter.

25 (8) Property. – Real property located in this State, upon which there is located or there is
26 to be located a structure or structures designed principally for occupancy of from one to four
27 families that is or will be occupied by the purchaser as the purchaser's principal dwelling.

§37-16-2. Minimum contents of option contracts; recordation.

1 (a) Writing Required. – Every option contract, including any assignment of an option
2 contract, shall be evidenced by a contract signed and acknowledged by all parties to it and
3 containing all the terms to which they have agreed. The seller shall deliver to the purchaser an
4 exact copy of the contract, containing all the disclosures required by subsection (b) of this section,
5 at the time the purchaser signs the contract. The writing shall be in clear language pursuant to
6 section one hundred six, article two, chapter forty-six-a of this code.

7 (b) Contents. – An option contract shall contain at least all of the following:

8 (1) The full names and addresses of all the parties to the contract.

9 (2) The date the contract is signed by each party.

10 (3) A legal description of the property to be conveyed subject to an option to purchase.

11 (4) The sales price of the property to be conveyed subject to an option to purchase.

12 (5) The option fee and any other fees or payments to be paid by each party to the contract.

13 (6) All of the obligations that if breached by the purchaser will result in forfeiture of the

14 option.

15 (7) The time period during which the purchaser must exercise the option.

16 (8) A statement of the rights of the purchaser to cure a default, including that the purchaser
17 has the right to cure a default once in any twelve-month period during the period of the covered
18 lease agreement.

19 (9) A conspicuous statement, in not less than fourteen-point boldface type, immediately
20 above the purchaser's signature, that the purchaser has the right to cancel the contract at any
21 time until midnight of the third business day following execution of the option contract or delivery
22 of the contract, whichever occurs last.

23 (c) Right to Cancel. – The purchaser may exercise the right to cancel the option contract
24 until midnight of the third business day following execution of the option contract or delivery of a
25 copy of the option contract, with the required minimum disclosures, whichever occurs last. If the
26 purchaser cancels the option contract, the seller shall, not later than the tenth day after the date
27 the seller receives the purchaser's notice of cancellation, return to the purchaser any and all
28 property exchanged or payments made by the purchaser under the option contract minus an
29 offset of an amount equal to the fair rental value of the use of the property during the duration of
30 the purchaser's possession of the property plus an amount necessary to compensate the seller
31 for any damages caused to the property by the purchaser beyond normal wear and tear.

32 (d) Recordation. – Within five business days after the option contract has been signed and
33 acknowledged by both the seller and the purchaser, the seller shall cause a copy of the option
34 contract or a memorandum of the option contract to be recorded in the office of the clerk of the
35 county court in the county in which the property is located. If a memorandum of the contract is
36 recorded, it shall be entitled "Memorandum of Option Contract" and shall contain, as a minimum,
37 the names of the parties, the signatures of the parties, a description of the property, and applicable
38 time periods as described in subdivisions (7) and (8) of subsection-b of this section. A person
39 other than a seller and purchaser may rely on the recorded materials in determining whether the

40 requirements of this subsection have been met. The seller shall pay the fee to record the
41 document unless the parties agree otherwise.

42 (e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and
43 intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's
44 equitable right of redemption shall be extinguished by:

45 (1) A mutual termination executed by the parties and recorded in the office of the clerk of
46 the county court of the county in which the property is located, or

47 (2) A final judgment or court order entered by a court of competent jurisdiction that
48 terminates the purchaser's rights to the property and extinguishes the equity of redemption. A
49 certified copy of the order shall be recorded in the office of the clerk of the county court of the
50 county in which the property is located.

51 (f) Instrument Ineffective. – No instrument purporting to extinguish the equity of redemption
52 that is executed as a condition of the transaction or prior to a default will be effective

§37-16-3. Application of Landlord Tenant Law.

1 Unless otherwise provided by this article, the provisions of article six of this chapter apply
2 to covered lease agreements.

§37-16-4. Condition of forfeiture; right to cure.

1 A purchaser's right to exercise an option to purchase property under an option contract
2 cannot be forfeited unless a breach has occurred in one or more of the purchaser's express
3 obligations under the option contract and the option contract provides that as a result of the breach
4 the seller is entitled to forfeit the contract. Notwithstanding any option contract or covered lease
5 agreement provisions to the contrary, the purchaser's rights shall not be forfeited until the
6 purchaser has been notified of the intent to forfeit in accordance with section one-hundred-six,
7 article two, chapter forty-six-a of this code and section five of this article, has been given a right
8 to cure the default and has failed to do so within the time period allowed. The option purchaser is
9 entitled to the right to cure a default once in every twelve-month period during the period of the

10 covered lease agreement.

§37-16-5. Notice of default and intent to forfeit.

1 (a) A notice of default and intent to forfeit shall specify the nature of the default, the amount
2 of the default if the default is in the payment terms, the date after which the contract will be forfeited
3 if the purchaser does not cure the default, and the name and address of the seller or the attorney
4 for the seller. The period specified in the notice after which the contract will be forfeited may not
5 be less than thirty days after the notice of default and intent to forfeit is served, or before judgment
6 is given in any action brought to recover the possession of the leased premises pursuant to
7 section five and section nineteen, article six of this chapter. A judgment rendered in an action to
8 recover possession of the premises shall not prejudice either party in a subsequent action to
9 recover monetary damages or other remedies.

10 (b) Any notice of default and intent to forfeit must be delivered to the option purchaser by
11 hand delivery or by any manner authorized by Rule 4, West Virginia Rules of Civil Procedure.

§37-16-6. Effect of seller's default on loan secured by mortgage or lien on property.

1 If, at any time prior to the expiration of the time period in which the option purchaser has
2 a right to exercise the option to purchase, a default occurs on a loan secured by a mortgage,
3 security interest, or other lien on the property, the option purchaser may elect to exercise the
4 option or cancel and rescind the contract and, in addition to any other remedies available at law
5 or equity, seek the immediate return of all moneys paid by the option purchaser. If the purchaser
6 elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair rental
7 value of the use of the property during the duration of the purchaser's possession of the property
8 plus an amount necessary to compensate the seller for any damages caused to the property by
9 the purchaser beyond normal wear and tear.

§37-16-7. Remedies.

1 (a) An option purchaser may bring an action for the recovery of damages, to void a
2 transaction executed in violation of this article, as well as for declaratory or equitable relief for a

3 violation of this article. The rights and remedies provided herein are cumulative to, and not a
4 limitation of, any other rights and remedies provided by law or equity. Nothing in this article shall
5 be construed to subject an individual homeowner selling his or her primary residence directly to
6 an option purchaser to a claim of restraint of trade.

7 (b) In the event of default by the option purchaser under the terms of the lease agreement,
8 the option seller may initiate a summary ejectment action to recover damages and possession of
9 the leased premises pursuant to section nineteen, article six of this chapter. The magistrate shall
10 retain jurisdiction over the summary ejectment proceeding.

11 (c) The option purchaser may counterclaim for damages in any summary ejectment
12 proceeding. No determination of fact or law in an action pursuant to this article assigned to
13 magistrate court estops a party thereto in any subsequent action which, except for the court's
14 limited jurisdiction might have been asserted as a counterclaim in the action in magistrate court.
15 Notwithstanding any other provisions of this code, failure by a defendant to file a counterclaim in
16 an action pursuant to this article assigned to a magistrate, or failure by a defendant to appeal a
17 judgment in such an action to circuit court, shall not bar the claim in a separate action.

NOTE: The purpose of this bill is to establish consumer protections for rent-to-own land contract.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.