

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 590**

BY SENATORS WOELFEL, LINDSAY, BEACH, AND PLYMALE

[Introduced February 07, 2022; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §37-6-5, §37-6A-1, §37-6A-5, of the Code of West Virginia, 1931,  
 2 as amended; and to amend and reenact §55-3A-1 of said code, all relating generally to  
 3 clarifying that tenancy includes persons who reside in a sober living home; providing a  
 4 definition for a “sober living home”; and providing that reasonable attorney’s fees shall be  
 5 awarded for a landlord’s willful or bad-faith noncompliance relating to rental security  
 6 deposits when the tenant resides in a sober living home.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 37. REAL PROPERTY.**

### **ARTICLE 6. LANDLORD AND TENANT.**

#### **§37-6-5. Notice to terminate tenancy.**

1 (a) A tenancy from year to year may be terminated by either party giving notice in writing  
 2 to the other, at least three months prior to the end of any year, of his intention to terminate the  
 3 same. A periodic tenancy, in which the period is less than one year, may be terminated by like  
 4 notice, or by notice for one full period before the end of any period. When ~~such~~ the notice is to  
 5 the tenant, it may be served upon him, or upon anyone holding under him the leased premises,  
 6 or any part thereof. When it is by the tenant, it may be served upon anyone who at the time owns  
 7 the premises in whole or in part, or the agent of ~~such~~ the owner, or according to the common law.  
 8 This section ~~shall~~ may not apply where, by special agreement, some other period of notice is  
 9 fixed, or no notice is to be given; nor ~~shall~~ is notice ~~be~~ necessary from or to a tenant whose term  
 10 is to end at a certain time.

11 (b) Tenancy includes those persons residing in a sober living home as that term is defined  
 12 in §37-6A-1 of this code.

### **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

#### **§37-6A-1. Definitions.**

1 When used in this article, unless expressly stated otherwise:

2           ~~(1)~~ “Action” means recoupment, counterclaim, set off or other civil suit and any other  
3 proceeding in which rights are determined, including without limitation actions for possession,  
4 rent, unlawful detainer, unlawful entry, and distress for rent.

5           ~~(2)~~ “Application fee” means any deposit of money, however denominated, which is paid  
6 by a tenant to a landlord, lessor, or agent of a landlord for the purpose of being considered as a  
7 tenant for a dwelling unit.

8           ~~(3)~~ “Dwelling unit” means a structure or part of a structure that is used as a home or  
9 residence by one or more persons who maintain a household, including, but not limited to, a  
10 manufactured home.

11           ~~(4)~~ “Facility” means something that is built, constructed, installed, or established to perform  
12 some particular function.

13           ~~(5)~~ “Landlord” means the owner or lessor of the dwelling unit or the building of which ~~such~~  
14 the dwelling unit is a part. “Landlord” also includes a managing agent of the premises who fails to  
15 disclose the name of ~~such~~ the owner or lessor.

16           ~~(6)~~ “Managing agent” means a person authorized by the landlord to act on behalf of the  
17 landlord under a management agreement.

18           ~~(7)~~ “Notice period” means: ~~(A)~~ (1) within 60 days of the termination of the tenancy; or ~~(B)~~  
19 (2) within 45 days of the occupation of the premise by a subsequent tenant, whichever time period  
20 is shorter.

21           ~~(8)~~ “Owner” means one or more persons, jointly or severally, in whom is vested:

22           ~~(A)~~ (1) All or part of the legal title to the property, or

23           ~~(B)~~ (2) All or part of the beneficial ownership and a right to present use and enjoyment of  
24 the premises, and the term includes a mortgagee in possession.

25           ~~(9)~~ “Person” means any individual, group of individuals, corporation, partnership, business  
26 trust, association or other legal entity, or any combination thereof.

27           ~~(10)~~ “Premises” means a dwelling unit and the structure of which it is a part and facilities

28 and appurtenances therein and grounds, areas and facilities held out for the use of tenants  
29 generally or whose use is promised to the tenant.

30 ~~(14)~~ "Rent" means all money, other than a security deposit, a nonrefundable fee or money  
31 paid to the landlord by the tenant for damage caused by the tenant to the dwelling unit, owed or  
32 paid to the landlord under the rental agreement.

33 ~~(12)~~ "Rental agreement" means all agreements, written (including an electronic record as  
34 defined by § 39A-1-2(7) of this code) or oral, express, or implied, embodying the terms and  
35 conditions concerning the use and occupancy of a dwelling unit and premises.

36 ~~(13)~~ "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or  
37 kitchen facility, in a structure where one or more major facilities are used in common by occupants  
38 of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet,  
39 and either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

40 ~~(14)~~ "Security deposit" means any refundable deposit of money that is furnished by a  
41 tenant to a landlord to secure the performance of the terms and conditions of a rental agreement,  
42 or as security for damages to the leased premises. Security deposit does not include: (A) Rent;  
43 (B) a pet fee; or (C) application fee: *Provided*, That the parties expressly agree, in writing, that a  
44 pet fee or application fee is nonrefundable. A security deposit does not include prepaid rent.

45 ~~(15)~~ "Sublease" means the transfer by any tenant of any but not all interests created by a  
46 rental agreement.

47 "Sober living home" means an alcohol-free, controlled substance-free, or other similar  
48 living environment for individuals attempting to maintain abstinence from alcohol, controlled  
49 substances, or other similar arrangement which may include house rules with these terms.

50 ~~(16)~~ "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit  
51 to the exclusion of others and shall include a roomer as well as a person residing in a sober living  
52 home.

53 ~~(17)~~ "Utility" means electricity, natural gas, propane gas, water, sewer, telephone, and

54 cable television provided by a public utility or such other person providing residential utility  
 55 services. If the rental agreement so provides, a landlord may use submetering equipment or  
 56 energy allocation equipment, or a ratio utility billing system.

**§37-6A-5. Landlord's noncompliance.**

1 (a) If a landlord fails to comply with any of the provisions of this article, and ~~such~~ the  
 2 noncompliance is willful or not in good faith, the tenant is entitled to a judgment for:

3 (1) The amount of any unreturned security deposit; and

4 (2) Damages for annoyance or inconvenience resulting from the landlord's  
 5 nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant  
 6 owes rent to the landlord, in which case, the court shall order an amount equal to any amount  
 7 awarded to the tenant pursuant to this subsection to be credited against any rent due to the  
 8 landlord: Provided, That if the tenant is residing in a sober living home, the court shall also award  
 9 reasonable attorney's fees.

10 (b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate  
 11 court or circuit court in the county where the residential rental premises or units are located.

12 (c) This section does not limit rights or remedies available to a landlord or tenant under  
 13 any other law.

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

**ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL  
 RENTAL PROPERTY**

**§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.**

1 (a) A person desiring to remove a tenant, including a person residing in a sober living  
 2 home, from residential rental property may apply for ~~such~~ relief to the magistrate court or the  
 3 circuit court of the county in which ~~such~~ the property is located, by verified petition, setting forth  
 4 the following:

5 (1) That he is the owner or agent of the owner and as such has a right to recover  
6 possession of the property;

7 (2) A brief description of the property sufficient to identify it;

8 (3) That the tenant is wrongfully occupying ~~such~~ the property in that the tenant is in arrears  
9 in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or  
10 negligently damaged the property or knowingly permitted another person to do so, and describing  
11 such arrearage, breach, or act or omission; and

12 (4) A prayer for possession of the property.

13 (b) Previous to the filing of the petition the person shall request from the court the time  
14 and place at which the petitioner shall be heard. The court shall fix a time for ~~such~~ the hearing,  
15 which time ~~shall~~ may not be less than five nor more than 10 judicial days following ~~such~~ the  
16 request.

17 (c) Immediately upon being apprised of the time and place for hearing the petitioner shall  
18 ~~cause~~ have a notice of the ~~same to be~~ hearing served upon the tenant in accordance with the  
19 provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt  
20 requested. ~~Such~~ The notice shall inform the tenant that any defense to the petition ~~must~~ shall be  
21 submitted in writing to the petitioner within five days of the receipt by the tenant of the notice, and  
22 in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of  
23 service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner  
24 shall file with the court his petition and such proof of service.

NOTE: The purpose of this bill is to clarify that persons who reside in sober living homes are tenants and provided tenant protections granted by law and provide for reasonable attorney's fees for willful or bad faith landlord noncompliance when the tenant resides in a sober living home.

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