

TENANTS AND LANDLORDS IN WEST VIRGINIA: RIGHTS AND RESPONSIBILITIES

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This publication offers legal information, not legal advice. We make every effort to ensure the accuracy of the information and to clearly explain your options. However, we do not provide legal advice on how the law applies to your individual circumstances. For legal advice, you should consult an attorney.

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About This Publication

Residential tenants and landlords have legal rights and responsibilities under West Virginia law. A tenant has the right to fully use and occupy the rented property as a home. Landlords have the right to expect tenants to fulfill their responsibilities under the lease such as paying the rent on time and maintaining the property according to requirements in the lease.

This publication will describe both tenant and landlord rights and responsibilities. In addition, it will provide resources to assist you in finding more information on tenant and landlord laws in West Virginia, a checklist to use before moving in, and information on the Fair Housing Act and how it impacts tenants and landlords.

This publication was developed in partnership with individuals representing legal entities, consumer and housing organizations, and other stakeholders. Questions regarding this publication or its contents should be directed to the Housing Advocate at the Northern West Virginia Center for Independent Living at (304) 296-6091.

Section 1 - Preparing to Make a Rental Agreement

Rental Application

A landlord, the person whose property is being rented, will generally ask questions to determine if an applicant would be a good tenant. (*See Appendix A for a sample rental application.*) The application will provide information to help the landlord collect rental money or money owed for property damage if the tenant fails to uphold the lease terms.

Typical questions a landlord might ask to determine whether to accept the tenant's application include:

- Full name, including middle
- Date of birth
- Driver's license/legally accepted ID card (number and state)
- Social security number (Landlord may request it to run a credit check.)
- Name, date of birth and relationship of all people who are going to occupy the premises
- Name, address, and phone number of tenant's past landlords
- Income/employment history including income/salary, contact/supervisor's name, phone number and address. If the tenant is self-employed, the landlord could ask for a copy of business license, tax returns, bank records, or client references.
- Additional income - it is only necessary to list income that the applicant wants included for qualification
- Credit and loan references including automobile payments, department store and other credit cards, and other loans
- Bank references including bank name and account number
- Contact information of a relative to call in case of emergency
- Information about pets and deposit rules
- Other information required for the application

Reasons a landlord might turn down an applicant

Among the reasons a landlord might legally turn down an applicant are:

- The landlord cannot verify the applicant's rental history, after making a good faith effort.
- The landlord cannot verify independently the amount and stability of tenant's income. (For example: through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 applicants, the amount of assistance will be considered part of tenant's monthly income for purposes of figuring the proportion.
- The applicant has misrepresented any information on the application. If misrepresentations are found after a rental agreement is signed, the tenant's rental agreement could be terminated.
- The applicant has a criminal record.
- The applicant had a court ordered eviction, or had any judgment for financial delinquency.

- Previous landlords report complaints of non-compliant activity such as repeated disturbance of the neighbors' peace, reports of prostitution, drug dealing, or drug manufacturing, damage to the property beyond normal wear, reports of violence or threats to landlords or neighbors, allowing persons not on the lease to reside on the premises, or failure to give proper notice when vacating the property.

The above list is only a portion of the reasons a landlord may legally decline a person's application to rent. If the applicant feels any reference given by a previous landlord was unfair, the applicant can request an opportunity to explain the situation and give alternate references.

A landlord can generally refuse to rent for any reason unless it is a discriminatory reason that violates civil rights laws such as Fair Housing.

Basic Facts about Fair Housing Rights - Federal and State

The Federal Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, handicap (disability), familial status (presence of children 18 years and younger, pregnant women, or persons anticipating an adoption), and national origin. *42 U.S.C. §3604.*

The West Virginia Fair Housing Act includes the seven protected classes in the federal Fair Housing Act and also forbids housing discrimination based on blindness and ancestry. *W.Va. Code §5-11A-5.*

The federal and state Fair Housing Acts cover private housing, housing that receives federal financial assistance, and state and local government housing with certain exceptions. *W.Va. Code §5-11A-4.*

The goal of the Fair Housing Acts is to provide protection against discrimination. These civil rights laws are designed to protect applicants so that all qualified applicants are equally invited to apply for rental housing and all qualified applicants are screened fairly.

Under the West Virginia Fair Housing Act *W.Va. Code §5-11A-5(a)-(e)*, it is illegal to take the following actions against an applicant on the basis of race, color, religion, sex, handicap (disability), familial status, national origin, blindness, or ancestry:

- Refusing to sell or rent a dwelling after the making of a bona fide offer, to refuse to negotiate for the sale or rental of a dwelling, or to otherwise make the dwelling unavailable or deny the person the right to purchase or rent the property
- Discriminating against any person in the terms, conditions, or privileges of sale or rental
- Making, printing, or publishing any notice, statement, or advertisement that indicates preference, limitation, or discrimination in the sale or rental of a dwelling

- Making a dwelling unavailable for inspection, sale, or rental when the dwelling is in fact available
- Attempting for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or possible entry into the neighborhood a person or persons of a particular race, color, religion, sex, blindness, handicap, familial status, ancestry, or national origin

According to the West Virginia Supreme Court of Appeals, it is unlawful for a landlord to discriminate against an individual based on his or her association with a person or persons of a protected class. *West Virginia Human Rights Commission v. Wilson Estates, Inc.*, 503 S.E. 2d 6 (W. Va., 1998).

It is also unlawful to discriminate based on a disability of the renter, a person residing in, or intending to reside in, that dwelling, or any person associated with that person. *W. Va. Code §5-11A-5(f)(1)-(2)*. In terms of the rental of property, a disability is defined as a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of having such impairment, or being regarded as having such impairment, but does not include current illegal use of, or addiction to, a controlled substance. *W. Va. Code §5-11A-3(g)(1)-(3)*.

The Fair Housing Acts also require owners of housing facilities to make reasonable accommodations in their policies and operations to afford people with disabilities equal housing opportunities. The Acts require landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space. *W. Va. Code §5-11A-5(f)(3)(A)-(B)*. In most cases, the landlord is not required to pay for the changes in private living spaces. *W. Va. Code §5-11A-5(f)(3)(A)*.

Landlords may be responsible for making changes to private living spaces and to common-use areas such as mail and laundry facilities, under the Fair Housing Acts, in buildings constructed after March 13, 1991. *W. Va. Code §5-11A-5(f)(3)(C)*. In addition, if the general public has access to places, such as a rental office or meeting room, it is possible the landlord may be required to make changes to these spaces under the Americans with Disabilities Act (ADA). *42 U.S.C. §§12812, 12813*.

The information in this section is not a complete list of fair housing rights and responsibilities for tenants or landlords. Fair Housing is both complex and comprehensive. For more information about the Fair Housing Acts, see *Appendix E*.

Leases

The contract between the landlord and tenant is called a lease. Any contract for the lease of land lasting longer than one year must be in writing to be valid. *W. Va. Code §36-1-3*. An oral contract can be valid and binding for a lease lasting less than one year. A written lease that sets out all the rights and responsibilities of the landlord and

the tenant can minimize several problems such as vagueness of lease terms and the difficulty of proving those terms should a disagreement arise.

Before signing a lease, a tenant should read the lease carefully and understand what it says. It is a good practice to have someone who understands leases to read it over as well. This could be an attorney or someone knowledgeable about leases and lease terms. This is particularly important if the tenant does not understand any of the requirements in the lease.

Once the landlord and tenant sign the lease, they are legally liable for the responsibilities set out in the lease unless the terms of the lease are in violation of state laws. Therefore, it is important that both the landlord and the tenant understand what the lease says or does not say, particularly about the following items:

1. Security deposits
2. Pets
3. Penalties for late rents
4. Conditions surrounding subletting
5. The lease duration, meaning when the lease will become effective and when the lease will terminate
6. Which party will be responsible for making improvements to the property, if any will be made, and which party is responsible for which repairs. See the section on Responsibility for Repairs for more information.
7. Who will be responsible for making and paying for reasonable modifications for tenants with disabilities, and what modifications will be necessary to accommodate the tenant's disability. See *Appendix E* for more information on Fair Housing Law and reasonable modifications.
8. Conditions on which the lease may be terminated before the natural end of the lease terms.
9. When, and under what conditions, landlords, or their employees, are permitted to enter the rental unit.
10. How to renew the lease beyond the initial rental period.

Mobile Home Lot Rentals

If the lease is for the rental of a lot site, where the land is rented and a mobile home owned by the tenant is placed on the rented property, the lease must be in writing. The landlord must give the tenant a copy of the signed, written lease and of the relevant Article of the West Virginia Code within seven days of the tenant signing the rental agreement. *W.Va. Code §37-15-3(a)*.

The basic agreement in a mobile home lot lease is that the landlord agrees to allow the tenant to live on and use the property and the tenant agrees to pay the landlord a certain amount of money for the exclusive use of that property. A mobile home lot lease normally contains the following information:

- Length of the lease, for instance, one year or month-to-month
- Rent amount and payment terms

- Amount of security deposit (not to be used as rent, unless both the landlord and tenant agree)
- Lease renewal terms
- Notice requirements for terminating a lease
- Name of landlord and tenant(s)
- Exterior and/or interior maintenance responsibilities
- Person responsible for paying the utility bills

Oral Leases and Variation of Lease Terms

In West Virginia, oral leases are valid and binding rental agreements when made between a landlord and tenant for a rental term which lasts less than one year. The rules governing oral leases are substantially the same as those that govern written leases.

Unless otherwise stated by existing statute or case law, a landlord and tenant may negotiate most of the terms of their agreement however they see fit. Some legal protections, such as the right to fit and habitable conditions, cannot be legally negotiated away. When a lease is silent on a term the law will apply to fill in the gaps. For example, if a landlord has not specifically said in the rental agreement that pets are not allowed, then it is assumed that pets are allowed on the rental premises, because West Virginia law does not specifically forbid a tenant from owning a pet on rental property.

The landlord and the tenant can vary terms existing in law in the lease. For instance, West Virginia law provides a required notice period for either the landlord or the tenant to terminate a lease, but these provisions can legally be altered by agreement by both the landlord and the tenant.

While these rules apply to both written and oral leases, it is important to note it will be more difficult for either party to prove the presence or absence of terms in an oral lease.

Change of Terms and Conditions

The law does not permit terms to be changed by one party to a rental agreement, during the life of the agreement, without advance notice. For example, if a landlord wishes to legally increase the rent then he or she must provide notice to the tenant. The notice is effectively a way of terminating the current agreement and offering to enter a new agreement. The tenant has the right to stay in the rental property at the current rent for the remainder of the current lease and then can decide to agree to the increase or to leave the property. Other terms may be legally varied in a similar manner. This situation only applies when the landlord and tenant have not expressly agreed to a different form of notice. For more information on W.Va. Code §37-6-5 and Notice see Section 3.

Unusual Clauses That Require Careful Consideration

There is no standard lease in WV. Leases can contain unexpected provisions, so landlords and tenants should carefully read the entire lease. Many clauses that may not be in the best interests of a tenant can appear in a lease. If any of the clauses such as

those listed below appear in a lease, a tenant would be well advised to seek legal advice before signing the lease. These clauses include:

1. The tenant waives defects in the building, for example, elevator does not work
2. The landlord is not liable for damages arising from the premises, such as damages a fire caused by faulty electrical wiring
3. The tenant does not give written notice thirty days before the tenant wants to vacate the premises, and the lease is extended automatically to a period of time equal to the original lease or automatically renewed for another year
4. The tenant is liable for attorney fees and all legal costs arising from the lease
5. The tenant agrees to default judgment on controversy arising from the lease
6. The tenant agrees to replace the premises if they are destroyed

Unconscionable Terms

A court of law can refuse to enforce any clause in a lease that the court finds to be unconscionable. Unconscionable terms in a contract refer to terms that the court finds to be extremely unreasonable or unfair toward the party with less bargaining power, in the case of rental agreements this is usually the tenant. However, it is not guaranteed that the court will rule in favor of the tenant, so the tenant is advised to not sign a lease with these clauses before seeking guidance or legal advice.

Condition of the Leased Rental Property

Often tenants lease rental property after making only a quick inspection. When tenants take possession of the rental property, they may find conditions they had not observed on their first visit, such as broken steps, insects, faulty electrical systems, or generally shabby conditions.

A new tenant should carefully inspect the rental property before moving in. The tenant should document the inspection in writing or by taking photos or video that documents all existing damage or other conditions. Some landlords may even provide a new tenant with a checklist to perform this inspection. A copy of these findings can help to resolve future disputes concerning the conditions of the rental property. A sample checklist is available in *Appendix B*.

Under current West Virginia law, the landlord has a duty to deliver rental property in conditions that are fit and habitable. For more information on what conditions are covered by habitability law in West Virginia see the section on Warranty of Habitability. Enforcement of these responsibilities of the landlord may take a long time and be costly. It is very important that the tenant make a careful inspection of the premises before entering into a written or oral lease.

Section 2- Rights and Responsibilities

Landlords and tenants have certain rights and responsibilities imposed by state and federal statutes and court decisions. Further rights and obligations can be imposed upon either party by specific provisions in the lease agreement.

Landlords

By law, a landlord is entitled to collect rent by the terms specified in the lease. The landlord also has the right to evict the tenant or terminate the lease if the tenant fails to pay rent or uphold provisions of the lease agreement.

A landlord is responsible for general maintenance to the rental property and to keep it in a fit and habitable condition and to be in compliance with applicable health, safety, fire, and housing codes. *W.Va. Code §37-6-30*. The landlord must comply with state law imposing a warranty of habitability on the premises, for more information on this please see the section on the Warranty of Habitability.

A landlord is also responsible for whatever the lease specifically requires. This could include almost anything that was included in the lease, such as snow removal, grass cutting, etc.

Tenants

Tenants have a set of rights imposed by both rental and general laws. In West Virginia, tenants have the legal right to rent a premise regardless of their race, religion, color, national origin, ancestry, sex, blindness, handicap (disability), or familial status. *W.Va. Code §5-11A-5*. They also have the right to have such premises delivered and maintained in a fit and habitable condition for the duration of their tenancy. *W.Va. Code §37-6-30*.

If a landlord fails to maintain the premises in a fit condition then the tenant has the right to complain to the landlord or to local government agencies, such as the building code inspector, fire marshal, or health department. The landlord cannot legally evict the tenant in retaliation for complaints made about unfit housing conditions. But a landlord is under no general legal duty to renew a lease once it naturally expires.

Tenants have the right to file a civil suit against the landlord to enforce their right to live in fit housing and to seek monetary damages if the tenant's rights have been violated. Tenants do not need to have legal representation in order to file suit and have the right to represent themselves in the action. If tenants are unable to pay filing fees to bring suit, then they have the right to file an Affidavit of Indigency, which, if granted, would waive some court costs associated with bringing a civil case.

In West Virginia, tenants do not legally have the right to withhold rent to pressure a landlord to make changes. *W.Va. Code §37-6-30(7)(c)*. There are some exceptions to this rule; more information on when a tenant is not legally obligated to pay rent can be found in the section on Warranty of Habitability.

Tenants are responsible for the timely payment of rent in accordance with the terms of the lease and reporting and paying proper reimbursement for all damage caused to the property by the tenant or someone on the premises with the tenant's permission.

The tenant is responsible for behaving, and making his or her guests behave, in a way that does not disturb others' peaceful enjoyment of their property, and that does not cause undue wear and tear on the rental property. A landlord is not responsible for making repairs to the property that were caused by the tenant or others on the premises with the permission of the tenant.

Tenant's Personal Property

Tenants are responsible for damages to their personal property. Landlords typically do not insure anything other than the building and infrastructure items such as elevators and air conditioning systems. Even negligent actions caused by one tenant, such as a fire in another rental apartment that causes damage to an innocent tenant's personal property, will not be covered by the landlord's insurance.

Exceptions to this could include damage caused by the landlord's negligence such as damage caused by faulty electrical wiring. However, a tenant might have to seek assistance from a court to receive compensation for damage to personal property. Many insurance companies have rental insurance available for tenants to help insure personal property against damage.

Responsibility for Repairs

The responsibility for repairs and upgrades may be the responsibility of either the landlord or the tenant depending on the type of repair, who caused the damages, and what repairs and upgrades were agreed to in the written lease.

The landlord is responsible for paying for and making all repairs to the rental property and common areas as are necessary to keep the premises in good condition and to maintain compliance with all relevant health, safety, fire, and building codes during the term of the lease. *W.Va. Code §37-6-30*.

The landlord is not responsible for making repairs to damage that was caused by the neglect or carelessness of the tenant, or others on the premises with the permission of the tenant. Even if those repairs would otherwise be required by law. *W.Va. Code §37-6-30*. The tenants are liable for repayment of any repairs made necessary due to their

negligence or carelessness. Failure to pay such damages is a legal ground for, and may result in, eviction.

Generally, routine repairs are the responsibility of the landlord as a part of the services included with rent, however this can legally be altered by express agreement by all parties to the lease. Tenants do not have the right to waive their right to live in habitable housing and it is the duty of the landlord to maintain the property in the condition of habitability imposed by law. General repairs not affecting the warranty of habitability may be the responsibility of the tenant if the tenant has expressly agreed to this provision in the rental agreement.

If the tenant has a written lease, oral promises by the landlord to make repairs which are not included in the written document are not enforceable. For an agreement to make such repairs binding on either party, the oral agreement must be written into the written lease. Oral agreements and oral leases are very difficult to prove in court in the event of a disagreement between the parties.

Landlords are not generally responsible for changes to private living areas. In most cases, any upgrades desired by the tenant must be made at his or her own expense and the landlord has the right to require that the tenant remove any changes at the termination of tenancy or pay to have the changes removed.

Reasonable Modifications vs. Repairs

In legal terms, in the lease for a rental property, the term "reasonable modification" or "accommodation" and the term "repairs" have different meanings. Different types of responsibilities and rights are imposed by law on both landlords and tenants depending on whether a tenant requires a reasonable modification or a repair.

Repairs mean any type of maintenance required to keep the rental property in fit, habitable, and working condition, such as repairing a broken heater or replacing faulty wiring. Repairs apply to all rental properties and include any maintenance necessary to keep the property in compliance with both state and federal law. Repairs can be the responsibility of either the landlord or the tenant, more information on which party is responsible in different situations is contained in this Section.

Reasonable modification or accommodation means any structural change which is necessary to afford a person with disabilities full enjoyment of the leased property. This means making the existing property readily accessible and useable by tenants with disabilities, such as making sure doorways are wide enough for wheelchairs or adding grab bars in the shower. See *Appendix E* for information on what modifications are the responsibility of the tenant and what must be legally provided by the landlord.

Warranty of Habitability - The Right to Decent Housing

In West Virginia, tenants have a right to live in decent housing, and landlords are obligated to maintain rental premises in a fit and habitable condition for the duration of the lease agreement as long as they are receiving rent payments from the tenant and the tenant has not caused the deterioration of the premises through negligence or carelessness. *W. Va. Code §37-6-30*. The West Virginia Supreme Court of Appeals has ruled that even if there is no written lease, there is an "implied warranty of habitability"; meaning that where there is no written lease but where the law recognizes a landlord-tenant relationship, the landlord is responsible for maintaining the premises in a fit and habitable condition. *Teller v. McCoy, 253 S.E. 2d 114 (W. Va., 1978)*.

Under *W. Va. Code §37-6-30*, a landlord is responsible for:

1. Delivering the premises in a fit and habitable condition and thereafter maintaining such condition
2. Maintaining the leased property in a condition that meets all applicable health, safety, fire, and building codes, as long as the failure to meet such codes is not the fault of the tenant or others on the premises with permission of the tenant
3. Keeping clean, safe, and in repair all common areas that are maintained for the use and benefit of the tenants in multiple housing units
4. Making all repairs necessary to maintain the premises in a fit and habitable condition, unless such repairs were made necessary primarily by a lack of due care by the tenant or others on the premises with the permission of the tenant
5. Maintaining in good and safe working condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him or her by written or oral agreement or by law
6. Providing and maintaining appropriate conveniences for the removal of ashes, garbage, rubbish, and other wastes incidental to occupation of the dwelling in multiple housing units
7. Supplying running water and reasonable amounts of hot water at all times, and reasonable heat between the first day of October and the last day of April, except where the unit is constructed so that running water, heat, and hot water are provided by an installation in exclusive control of the tenant in units supplied by direct public utility connections

How to enforce the warranty of habitability

Under West Virginia law, a landlord is excused from making repairs and maintaining fit conditions of rental properties if the tenant has not paid full rent due at the time the repair is made necessary. *W. Va. Code §37-6-30(c)*. The landlord is also not responsible for making certain repairs to the individual dwelling units if the repairs were made necessary primarily by the negligence or lack of due care by the tenant, the tenant's family members, or other persons on the premises with the permission of the tenant. The previous section details when these repairs are not the responsibility of the landlord.

If the rental lease between the landlord and tenant imposes greater responsibilities on the landlord than those imposed by law, then the lease will be the controlling document and the landlord will be held to the higher standard in the agreement. *W. Va. Code §37-6-30(b)*. In other words, your lease can include obligations beyond the basics and if it does, those provisions can be enforceable.

No person may legally waive the right to live in a fit and habitable condition. *Teller v. McCoy at 130*. So for example, a provision saying the tenant is responsible for maintaining the plumbing at tenant's expense may not be enforced.

The first step in enforcing a tenant's right to habitable housing is to make a complaint to the landlord. The tenant must make the complaint detailed as to the exact provisions of the law or rental agreement that are in violation. The law requires the landlord to correct the problem promptly and properly. A responsible landlord should investigate the complaint after receiving it and make any necessary repairs in a prompt and proper manner. A written complaint, allowing a proper time for action, usually around 7-10 days, may be used as evidence if the landlord fails to take action and the tenant has to go to court. The tenant should keep a receipt of mailing the complaint and a written copy of the complaint, which can provide evidence in court of notice to the landlord of the problems with the rental premises.

If the landlord fails to take action in a reasonable amount of time after receiving the complaint, the tenant has a right to file a civil suit against the landlord to enforce his or her rights in the county in which the rental property is located. Having an attorney to represent the tenant in litigation can be helpful. In West Virginia there are programs that can help low-income and older clients obtain free legal help for those who qualify. For more information on these programs see Section 4 on Housing and Legal Authorities. A tenant may proceed without an attorney.

Affidavit of Indigency

If the tenants are unable to pay filing fees and court costs, they have the right to file an Affidavit of Indigency which, if granted, will waive some court costs of litigation. The tenants have the right to have the case decided by a jury in either magistrate court or circuit court, but not both. A tenant unhappy with the outcome of litigation in magistrate court may appeal any part of the final decision to the circuit court within 20 days after the judgment is entered. *WV R MAG CTS RCP Rule 18*.

Withholding Rent

According to the West Virginia Supreme Court of Appeals, if a landlord has failed to maintain rental premises in a fit and habitable condition, he or she has violated the lease agreement's implied warranty of habitability. Once the lease agreement has been violated, the tenant has the right to withhold further rent until such time as the landlord makes reasonable repairs to maintain the property in fit and habitable condition. *Teller v. McCoy at 120*.

The tenant also has the right to vacate the premises and effectively terminate his or her responsibility to pay further rent if the landlord has violated the implied warranty of habitability. *Teller v. McCoy at 125-26*. Breach of the implied warranty of habitability is a defense to an attempt to evict the tenant in court in West Virginia. *Teller v. McCoy at 127*. However, if the tenant does withhold rent until improvements are made, he or she may be required to repay all rent due at the point of repair by the landlord, pay such money into the court during a pending action by either the landlord or the tenant, and/or to repay all or any part of the amount due at the time when any court might order such. *Teller v. McCoy at 129-30*.

Smoke and Carbon Monoxide Detectors

Effective June 2012, the West Virginia legislature amended *W. Va. Code §29-3-16a* of the Fire Prevention and Control Act. Under this law, as amended, an operational smoke detector must be installed in the immediate vicinity of each sleeping area in all one and two family dwellings. The detector must meet the specifications of and be installed in accordance with the current edition of the National Fire Prevention Association Standard 72. When activated the alarm must be loud enough to warn the occupants of the dwelling of the danger of a fire. *W. Va. Code §29-3-16a(a)*.

It is the responsibility of the owner of the dwelling to install and replace operational smoke detectors, however, it is the duty of the tenant to perform routine maintenance on the smoke detectors. *W. Va. Code §29-3-16a (b)*. If the tenant of a unit is deaf or hearing impaired, it is the responsibility of the owner, upon written request by or on behalf of the tenant, to provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire. *W. Va. Code §29-3-16a(c)*. A properly installed, automatic fire sprinkler system may be provided instead of smoke detectors. *W. Va. Code §29-3-16a(d)*.

Effective September 1, 2012, a carbon monoxide detector or a combination detector meeting state law specifications must be installed, maintained, tested, repaired, or replaced, as necessary, in either a common area where the general public has access to or all rooms in which a person will be sleeping which are adjoining to, directly below, or directly above all areas or rooms which contain permanently installed fuel-burning appliances and equipment that emits carbon monoxide as a byproduct of combustion in all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one and two family dwellings intended to be rented or leased, hotels, and motels. *W. Va. Code §29-3-16a(f)(3)*.

Effective January 1, 2013, the single station carbon monoxide detector or combination detector, where required by law must be hardwired into an alternating current (AC) electrical source with a battery backup. *W. Va. Code §29-3-16a (g)*.

Covenant for Quiet Enjoyment

West Virginia law grants tenants the right to the quiet and peaceful enjoyment of their rental property as long as they are current in all rent payment owed. *W. Va. Code §36-4-14*. This means that as long as the tenant has paid all rent owed, the tenant has the right to enjoy the property without the interruption or disturbance by any person including the landlord.

It is unlawful for the landlord or any person to enter the premises without consent of the tenant, or reasonable notice in advance, except in emergency situations, such as threat to the health and safety of an individual or property. If the landlord violates the tenant's right to quiet enjoyment by entering the premises without his or her permission or subjecting the tenant to other forms of harassment, then the tenant has the right to file suit against the landlord for trespass and invasion of the right to privacy.

Destruction of Buildings

If leased property is destroyed in whole or part by fire or otherwise, and if the destruction is not caused by the negligence or carelessness of the tenant, then the tenant has a right to a reasonable reduction in rent for the amount of time it takes the landlord to replace the leased structure with one of as much value to the tenant as the one which was destroyed, unless the lease otherwise provides. If the landlord does not replace or rebuild the leased structure, then the tenant has the right at the end of a reasonable period of time to surrender possession of the leased premises and be relieved of any further liability for rent not yet owed at that time. *W. Va. Code §37-6-28*.

Section 3 - Termination of Tenancy

A lease agreement may naturally terminate at the end of the agreed rental period. Unless the lease says otherwise, neither the tenant nor the landlord has a right to renew a lease if the other party chooses not to renew. In other words, no matter how long you have lived somewhere your landlord can choose not to renew your lease once it ends, and you do not have a legal right to demand that it be renewed.

Notice to Terminate Tenancy

West Virginia law recognizes various types of tenancy agreements and the rules for termination by either the landlord or the tenant vary depending on the type of agreement held. In a year-to-year lease agreement, either the landlord or the tenant may legally terminate the agreement by giving written notice to the other party of his or her intention to terminate the tenancy at least three months before the end of the year. *W.Va. Code §37-6-5.*

A periodic tenancy, one in which the lease is for less than one year, such as a month-to-month-agreement, may be legally terminated one full rental period after the rental period in which notice is given. Rental periods will vary from tenant to tenant, but, for example, if the period of a tenant's lease is from the 1st to the 1st, then notice must be given before the first of the month and the tenant may legally remain a tenant until the end of the rental period following the notice. So if the landlord notifies the tenant on June 15th that he or she wishes to terminate the tenancy, then the tenant may remain a tenant for the remainder of June and also the July rental period, from July 1st to July 31st, before the tenancy is legally terminated on August 1st. The landlord must serve a Notice of Termination on the tenant or any person holding the premises or any part of the premises under the tenant. A tenant must serve a Notice of Termination on the person owning the premises or his or her designated agent. *W.Va. Code §37-6-5.*

This law does not apply to lease agreements which specify that another notice period is required or that no notice period is required. It also does not require notice to or from a tenant when the lease term is to end at a certain time. *W.Va. Code §37-6-5.*

Security Deposits

In 2011, the WV Legislature enacted a new law defining the legal requirements of how security deposits must be handled. A security deposit is any refundable deposit paid to a landlord, by the tenant as security for damage to the leased property. *W.Va. Code §37-6A-1(14).* A security deposit does not include any fees paid for the rental application or for pets if the landlord and tenant expressly agreed, in writing, that these were nonrefundable, and does not include any money paid for rent or prepaid rent. *W.Va. Code §37-6A-1.*

Security deposits held by the landlord must be returned, minus any deductions for damages or other charges, upon termination of the tenancy, or within the notice period, meaning within 60 days of the termination of the tenancy or 45 days of occupation of the premises by another tenant, whichever period of time is shorter. *W. Va. Code §37-6A-2(a)*. The landlord must include a written itemization of any deductions or other charges with the deposit.

If the total cost of damage to the premises is greater than the amount of the security deposit and requires the use of a third-party contractor, the landlord may give written notice within the notice period advising the tenant of this fact. If the landlord provides this notice, then he or she will have an additional 15 days to provide the itemization and cost of repair. *W. Va. Code §37-6A-2(c)*.

A security deposit may legally be applied to the following items at termination of a tenancy *W. Va. Code §37-6A-2(b)(1)-(5)*.

1. Payment of rent due, including reasonable fees for late payment of rent, but a security deposit does not have to be applied as an immediate credit against a tenant's delinquent rent
2. Payment of the amount of damages the landlord has suffered as a result of the tenant's noncompliance with the rental agreement, not including reasonable wear and tear
3. Payment of utilities that were the responsibility of the tenant under the agreement and were unpaid by the tenant, which were billed to and paid for by the landlord
4. Payment for the reasonable costs of removal and storage of the tenant's personal property
5. Payment of other damages and charges as provided by the rental agreement, such as the costs of the services of a third party contractor to repair property damage caused by the tenant

The security deposit may be returned either by personal delivery or mailed to the tenant's last known address or to a forwarding address provided by the tenant. *W. Va. Code §37-6A-2(g)*. It is the responsibility of the tenant to provide accurate information to the landlord. If a deposit is not reasonably able to be returned in person to the tenant and is returned to the landlord as non-deliverable after an attempt to mail it to the tenant, then the landlord must hold the deposit for a period of six months to be personally delivered to the tenant or his or her authorized agent at the landlord's place of business.

When landlords fails to comply with security deposit provisions as outlined in this section, and their noncompliance is willful or not in good faith, then the tenant is entitled to recover the amount of any unreturned security deposit and damages equal to up to one and a half times the amount of the wrongfully withheld deposit for annoyance and inconvenience. *W. Va. Code §37-6A-5*. If the tenant owes rent to the landlord then any amount awarded will be ordered by the court to be applied against the amount of rent owed.

Tenants may not waive their rights under Section 37-6A of the West Virginia Code concerning the return of security deposits. Any lease provision waiving these rights is unenforceable by law. *W.Va. Code §37-6A-4.*

Tenant Abandonment of a Leased Rental Property

The tenant has a duty to pay rent on the leased premises for the term of the lease. If a tenant has not paid rent and vacates the premises before the end of the lease agreement with the clear intent not to be bound by the lease, the tenant has “abandoned” the residence.

If a tenant has abandoned the property, a landlord may legally take steps to regain possession of the property before the end of the lease period. To begin this process, the landlord must post a notice in a conspicuous part of the property that requires the tenant to pay the rent owed within one month. If the tenant does not pay the rent within one month then the landlord is entitled to possession and the right of the tenant to the leased property is ended. Landlords have a right to recover all rent owed up to the time when they became entitled to possession of the property. *W.Va. Code §37-6-6(a).*

Regarding lost rent, the landlord has three lawful options:

1. The landlord has the right to accept the abandonment and not hold the tenant liable for the rent as it accrues
2. The landlord may legally hold the tenant liable for the rent as it accrues
3. The landlord has the right to re-lease the property with the tenant being liable for any difference between the amount of rent the landlord is reasonably able to re-let the property for and the amount of rent which the tenant was paying at the time of abandonment

The landlord may legally re-lease the rental property if notice is given to the original tenant of the landlord’s intention to re-lease the property. This notice may legally be included in the original notice posted in a conspicuous area of the property. If the landlord chooses to do this, the first tenant will still be liable for the remaining term of the lease, to pay the difference between the rent owed under the agreement and the amount of rent the landlord was able to re-lease the apartment for to a new tenant. *W.Va. Code §37-6-7.*

If the landlord continues to hold the tenant liable for rent on the lease, then the tenant has the right to resume possession of the leased property. The tenant will need to provide notice to the landlord of the tenant's intention to do so and payment of all rent and liabilities owed on the lease, as long as no other person is already in possession of the premises or entitled to possession of the premises by virtue of a lease with the landlord, and as long as the tenant's lease has not been lawfully forfeited. *W.Va. Code §37-6-8.*

Abandonment of tenant's personal property

Once the landlord has lawfully re-entered the leased property, the landlord has the right to begin the process of taking possession of all personal property left on the premises by the tenant. *W.Va. Code §37-6-6(c)*.

To gain possession, the landlord is obligated to give written notice to the tenant that must be: *W.Va. Code §37-6-6(c)*.

1. Posted in a conspicuous place on the property and
2. Sent by first class mail with a certificate of mailing, which provides a receipt of the date of mailing, in an envelope endorsed "please forward", addressed and mailed to the tenant at the leased property, any post office box held by the tenant and known to the landlord, and the most recent forwarding address if provided by the tenant or known to the landlord.

The notice must state that the leased property is considered abandoned and that any personal property left by the tenant must be removed by a date specified within the written notice that is not less than thirty days after the date the written notice was mailed, or not less than 60 days if the landlord knows the tenant is on active duty in the United States military. *W.Va. Code §37-6-6(d)*.

If the personal property is not removed within the time stated in the written notice, then the tenant loses all ownership interest and the personal property becomes the property of the landlord. *W.Va. Code §37-6-6(d)(3)*.

If the personal property is worth more than three hundred dollars (\$300.00) and was not removed within the time period specified in the notice letter, the landlord must store the property for up to thirty additional days if the tenant, or other person with an ownership interest in the personal property, notifies the landlord of intention to remove the property. The tenant may be responsible for paying the reasonable costs of storage and removal. *W.Va. Code §37-6-6(e)*.

Holding Over

If the tenant stays longer than the term of the lease agreement, even by one extra day, this is considered holding over. A landlord has the option to collect rent from the tenant for the holding over period or to commence legal action to evict the tenant from the premises. *W.Va. Code §55-3-1*. The landlord, but not the tenant, has the legal right to determine whether to continue to view the tenant as a tenant or to view the tenant as a trespasser if the tenant has remained on the premises after the end of the rental period. *Voss v. King, 18 S.E. 762 (W.Va., 1893)*.

Death of the Tenant

In 2012, the West Virginia legislature passed a law changing the liability of those who come into possession of a lease agreement after the death of the original tenant. This

amended law became effective on all leases entered into or renewed on or after July 1, 2012.

Rent may be recovered from the tenant, or other person owing it, or his or her heir, personal representative, devisee, or assignee who has succeeded to the tenant's estate in the premises. But no assignee is liable for rent that became due before his or her interest began. The heirs, personal representatives, or devisees of the tenant are liable for the rent owed to the extent and in the manner in which they are liable for the other debts of the tenant's estate. *W.Va. Code §37-6-11(a)*.

Unless otherwise provided by law, the heirs, personal representatives, devisees, or assignees of the deceased tenant may legally terminate a lease prior to its expiration. *W.Va. Code §37-6-11(b)(1)*.

Termination of the lease becomes effective on the last day of the month that is two months after: *W.Va. Code §37-6-11(b)(2)*.

1. The date on which the notice is hand-delivered to the other party of the lease or
2. The date on which the notice, addressed to the other party to the lease, is deposited in the United States mail, postage prepaid, as evidenced by the postmark

Termination of the lease does not relieve the tenant's estate from liability for rent owed before or during the two month period or any amount necessary to restore the premises to the condition before the commencement of the lease, with the exception of general wear and tear. *W.Va. Code §37-6-11(b)(3)*.

Evictions

If a tenant has violated the rental agreement by not paying rent or violating any provision of the lease agreement then the landlord may take action to have the tenant evicted. The tenant is entitled to notice of termination of the tenancy and to vacate the premises. This notice can be given in any form and does not have to be in writing if the term of the lease has expired or the tenancy has already ended. The law permits the landlord to specify a date on which the tenant must vacate the premises, no matter how soon, if the lease agreement has been violated. The landlord is not required by law to provide any advanced notice to the tenant and has the right to go directly to court and file a suit to have the tenant evicted.

If the tenant has violated the rental agreement and the landlord has asked the tenant to vacate the premises but the tenant has refused, the landlord has the right to go directly to court and file a suit to have the tenant evicted. It is illegal for the landlord to physically force the tenant off the premises and for the landlord to force the tenant off the property by cutting off or interfering with utilities in the tenant's name or changing the locks to the rental property.

A popular belief is that an eviction notice is sufficient to force a tenant to move out by the date specified on the notice. In fact, the eviction notice is just the first step. Technically, the landlord's notice to vacate means that, should the tenant not move out by the date specified, then the landlord may file suit in court to regain possession of the property.

The tenant may move out before the notice expires. However, if the tenant does not move out by the specified date, the landlord may start a legal action with the local courts to regain possession of the property.

In cases where a tenant wishes to resist eviction, the tenant may lawfully remain on the premises until a landlord has received a court judgment against the tenant. Then, if forced physical removal of the tenant is required, it must be done by the sheriff's office.

Eviction Notice

Under West Virginia law, the landlord is required to provide the tenant with proper written notice in advance before attempting to evict the tenant, *unless the tenant has violated the lease or failed to pay rent*. The amount of notice required varies depending on whether or not there is a written lease or rental agreement. The landlord is required to provide at least the amount of notice stated in the lease. More information can be found in the section on Notice to Terminate Tenancy. In many instances, the eviction notice can legally be the summons to appear in a proceeding for eviction if the landlord has filed suit against the tenant.

Filing a Suit for Eviction

The landlord may file a suit for eviction in either the magistrate court or the circuit court for the county in which the property is located. This process can move very quickly; a landlord can get a hearing within five days of filing. The landlord must provide a reason as to why the tenant is in wrongful occupation of the premises. Valid reasons for applying for wrongful occupation include that the tenant has failed to pay rent, has breached a warranty or provision of the lease agreement, or has negligently or deliberately damaged the property. *W.Va. Code §55-3A-1(a)(3)*.

The landlord must serve notice on the tenant that includes the time and place of the hearing and must inform the tenant that any defense must be submitted in writing to the landlord 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. *W.Va. Code §55-3A-1(c)*.

The landlord cannot legally threaten to or take action to do any of the following before such is ordered by a court or the landlord has followed the steps proscribed by law to regain possession of an abandoned rental property:

1. Lock the tenant out of the rental property
2. Take the tenant's personal property
3. Shut off the tenant's utilities
4. Send the tenant to jail

Tenant Rights in Regard to Eviction Notices

A tenant may only have a few days to respond to an eviction notice. The tenant should find a lawyer immediately for assistance. If the tenant cannot afford to pay an attorney, the tenant may be eligible for assistance from a legal aid program that serves low-income persons. Call Legal Aid of West Virginia, toll free at 800-642-8279 to determine your eligibility for assistance.

Tenants have the right to represent themselves in a court action for eviction. West Virginia law does not require a tenant to be represented by an attorney in an eviction proceeding. The tenant has the right to have help from others, but the tenant cannot be legally represented by a person who is not a licensed attorney in the state of West Virginia. Tenants who choose to represent themselves must follow the required procedure. To defend against eviction, the tenant must:

- File a written answer to the notice
- Use the form attached to the summons for the tenant's written answer. The tenant is required to mail or deliver one copy of the completed form to the magistrate court and mail or deliver one copy to the landlord and keep one copy
- Appear in court on the date specified in the eviction notice
- Ask to have the eviction suit moved from magistrate court to the circuit court. The tenant must file a form and pay a fee for this option. If the tenant cannot afford the fee, the tenant may file an Affidavit of Indigency, which, if granted, will waive the fee for moving the action to circuit court and also waive the fee for a jury trial if the tenant asks for one
- File a counterclaim

Judgment for Possession

If the tenant does not provide a written answer to the eviction notice or appear in court, the landlord will be given a judgment for possession, which will require the tenant to vacate the rental property by a certain date. The court may order an immediate move or give the tenant more time depending on the circumstances (such as giving additional time to move as a reasonable accommodation to a tenant with disabilities). *W.Va. Code §55-3A-3(a),(f)*.

If the landlord is trying to evict a tenant for non-payment of rent only, an eviction suit must be dismissed if the tenant pays all rent, with interests and costs, and all other fees any time before the beginning of the trial. The landlord does not have to accept a partial payment. *W.Va. Code §37-6-22*.

Counterclaim

If the landlord files an eviction suit, the tenant may file a suit against the landlord, called a counterclaim. One reason a tenant may file a counterclaim is if the landlord has not maintained the rental property in a fit and habitable condition at all times. Serious violations would include lack of adequate heat and hot water, faulty wiring and other fire and safety hazards, and roach or rat infestations. For more information on the Warranty of Habitability see Section 2.

The tenant may also file a counterclaim for other reasons, including retaliation. For example, if the landlord started the eviction proceedings in retaliation for the tenant making a complaint about the conditions of the property or in retaliation for a civil rights discrimination complaint made by the tenant. *W. Va. Code §55-3A-3(g)*.

The tenant may sue for money damages for not maintaining the property in fit and habitable condition and for annoyance and inconvenience as a result of the unlawful housing conditions. In magistrate court, the law allows the tenant to ask for damages, but only up to \$5,000. If the tenant has asked to have the eviction suit moved to circuit court, there is no limit on the amount of damages the tenant can legally ask for from the landlord in a counterclaim.

Eviction Order

The landlord must prove that the tenancy has been properly terminated in court to obtain a court order granting possession of the property.

At the conclusion of the hearing, if the court finds the tenant is in wrongful occupation of the property, the court will issue an order granting possession of the property to the landlord and may require back rent to be paid as required by the evidence. *W. Va. Code §55-3A-3(e)*.

The tenant has the right to appear in court with or without a lawyer to present evidence in his or her defense. *W. Va. Code §55-3A-2*. If the tenant fails to answer the landlord's petition or appear in court after being properly served, the court may grant the landlord's request for immediate possession of the property and require payment of money as shown by the evidence presented by the landlord. *W. Va. Code §55-3A-3(a)*

If an order of possession is obtained, the sheriff's office will assist in enforcing the order if necessary. The order will specify a date and time by which the tenant must remove his or her belongings from the property and vacate the premises. *W. Va. Code §55-3A-3(f)*.

If a magistrate court issues an eviction order, the tenant has 20 days after the court has entered final judgment to appeal the decision to the circuit court if the tenant disagrees with the court decision. However, the tenant can only appeal the monetary amount, not the eviction order itself. *WV R MAG CTS RCP Rule 18*.

Tenant's Personal Property after an Eviction Order

After a judge issues an eviction order, the tenant must remove all personal property by the date and time specified in the court order. *W. Va. Code §55-3A-3(f)*.

If the tenant fails to remove the personal property, the landlord must preserve it and allow the tenant to take possession of it. *W. Va. Code §55-3A-3(h)*. The landlord has several options on how to do this:

1. The landlord may remove and store the personal property and may charge the tenant reasonable costs for the storage
2. The landlord may dispose of the property after storing the property for thirty days, if the tenant fails to pay the reasonable cost of storage and has not taken possession of the stored property or if the storage costs equal the value of the personal property being stored
3. The landlord may leave the personal property on the premises and, after thirty days, the landlord may dispose of the property if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord's premises and has not taken possession of the personal property

If the personal property is worth more than three hundred dollars (\$300) and was not removed by the tenant after thirty days, the landlord must store the property for up to an additional thirty days if the tenant, or any person with a security interest in the personal property, informs the landlord of intent to remove the personal property. The tenant, or the person holding a security interest in the personal property, is responsible for paying a reasonable cost of storage and removal to the landlord. *W.Va. Code §55-3A-3(i)*.

A landlord is only legally permitted to throw away a tenant's possessions during the waiting period when the tenant informs the landlord in writing that the personal property is abandoned or the property is garbage. *W.Va. Code §55-3A-3(h)(1)*.

Section 4- Housing and Legal Resources

Legal Assistance

Legal Aid of West Virginia - Legal Aid of West Virginia (866-255-4370) may be able to assist low-income tenants facing eviction, having difficulties with subsidized housing, or who feel they are being treated unfairly by their landlord, such as failure to repair sub-standard conditions.

West Virginia Senior Legal Aid, Inc. - If you are at least 60 years of age you can call West Virginia Senior Legal Aid, Inc. (800-229-5068) for legal assistance with rental issues.

West Virginia Office of the Attorney General Civil Rights Division - The West Virginia Office of the Attorney General Civil Rights Division enforces the West Virginia Human Rights Act and the West Virginia Fair Housing Act. The West Virginia Fair Housing Act prohibits discrimination in the sale or rental of housing against any person because of race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin. If you feel your rights have been violated in regards to housing, you can call the West Virginia Human Rights Commission at 888-676-5546 or the Office of the Attorney General Civil Rights Division at 877-421-5074.

HUD Housing Choice Voucher Program

The HUD Housing Choice Voucher Program (formerly called the Section 8 program) provides housing subsidies to very low-income persons, the elderly, and people with disabilities to help them find decent housing. Participants who receive vouchers are free to choose any housing that meets the requirements of the program and is not limited to units in subsidized housing projects.

The housing vouchers are administered locally by public housing authorities (PHA). The public housing authority pays the housing subsidy directly to the landlord on behalf of the participating individual or family. The PHA determines what “reasonable rent” is and sets that amount. Landlords do not have to accept vouchers, but if they do they may not charge you more than the amount set by the PHA.

Landlords who accept the Section 8 housing choice vouchers are required by HUD to maintain a safe and decent living environment and charge rent at fair market rates. The rental property must meet HUD’s “housing quality standards” for safety and sanitation.

Call your local housing authority for information on how to apply for a housing choice voucher. To locate a public housing authority in your area, call 800-955-2232 or go online to www.hud.gov/offices/pih/pha/contacts/.

General Definitions

Affidavit of Indigency - A tenant who cannot pay court or jury fees can file an affidavit of indigency, which if approved, waives the fees.

Dwelling Unit - A single unit that provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Circuit Court - Circuit courts have jurisdiction over all civil cases at law over \$300; all civil cases in equity; proceedings in habeas corpus, mandamus, quo warranto, prohibition, and certiorari; and all felonies and misdemeanors. The circuit courts receive appeals from magistrate court, municipal court, and administrative agencies, excluding workers' compensation appeals. The circuit courts also hear appeals of family court decisions unless both parties agree to appeal directly to the Supreme Court of Appeals.

Constructive eviction - A tenant is no longer bound by a lease because the landlord creates a situation that makes it impossible for the tenant to live in the rental property, for instance, the landlord fails to provide adequate heat in the winter.

Counterclaim - A lawsuit brought in response to a lawsuit. An example would be a suit filed by a tenant against a landlord who has filed an eviction notice. In the countersuit, a tenant can sue for money damages as a result of the landlord's failure to provide fit and habitable conditions at all times in the rental property.

Disability - As it pertains to the rental of property, a handicap is defined as a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such impairment, or being regarded as having such impairment, but does not include current illegal use of, or addiction to, a controlled substance.

Eviction - Eviction is the legal process undertaken by a landlord to remove a tenant from rental property. The landlord must provide an eviction notice. A court will decide if a tenant is given an eviction order.

Exterior Property - Exterior property is the open space on the premises and on adjoining property under the control of owners or operators of such premises.

Fair Housing - The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. West Virginia state law also prohibits housing discrimination on the basis of ancestry and blindness.

Familial Status - As it pertains to Fair Housing laws, one or more individuals who have not attained the age of 18 and are living with a parent or other person having legal custody of such individuals or a person having written permission from the parent or

legal guardian to have the minor living in his or her custody; or any person who is pregnant or is in the process of securing legal custody of an individual who is under the age of 18.

Fixed Period Tenancy - A lease that states a specific beginning and ending date of the rental period. A fixed tenancy is automatically over at the end of the fixed rental period. Tenants are not required to give notice if they intend to leave at the end of the rental period.

Habitable Space - Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls storage or utility paces, and similar areas are not considered habitable spaces.

Handicap - see Disability

Holding Over - Holding over occurs when a tenant does not leave a rental property at the end of a lease.

Implied Warranties - The law imposes certain responsibilities on a landlord, whether they are stated in a written lease or not. These responsibilities are called “implied warranties.”

Judgment for Possession - A court order that requires a tenant to vacate the rental property by a certain date.

Landlord - The landlord is the person who owns the rental property. In apartment complexes, the manager may be considered the landlord.

Lease - A lease is a contract between a tenant and a landlord. The lease may be either written or oral.

Magistrate Court - There are 158 magistrates statewide, with at least two in every county and 10 in the largest county. Magistrates issue arrest and search warrants, hear misdemeanor cases, conduct preliminary examinations in felony cases, and hear civil cases with \$5,000 or less in dispute. Magistrates also issue emergency protective orders in cases involving domestic violence. The circuit courts hear appeals of magistrate court cases. Magistrates run for four-year terms in partisan elections. They do not have to be lawyers. Circuit judges appoint magistrates to fill vacancies. An appointee who wishes to remain in office must run in the next election.

Multiple Housing Unit - As it pertains to Warranty of Habitability laws, a dwelling which contains a room or group of rooms located within a building or structure forming more than one habitable unit for occupants for living, sleeping, eating, and cooking.

Owner - Any person, agent, operator, firm, or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property.

Periodic Tenancy - A tenancy where the lease is year-to-year, month-to-month or week-to-week. For example, a month-to-month tenancy would be for a lease for one month periods. Often a lease agreement will list requirements for terminating the lease. If a lease does not list these requirements, either the landlord or the tenant may terminate the lease by giving written notice, one full rental period in advance of termination.

Premises - A lot, plot or parcel of land, easement or public way, including any structures on the land.

Reasonable Accommodation - A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Reasonable Modification - Structural changes made to existing premises in order to afford a person with disabilities full enjoyment of the premises.

Repairs - Maintenance that is necessary to keep the rental property in fit, habitable, and working condition.

Tenancy - Tenancy is the legal name for the tenant's right to occupy the house or apartment being rented.

Tenant - A tenant is the person who pays rent for a rental property. If there is a written lease, the tenant is the person who signed the lease.

Unconscionable - In contracts, a term is unconscionable if the court finds that the term is extremely unreasonable or unfair towards the party with less bargaining power; the term "shocks the conscience" of the court.

Warranty of Habitability - The landlord must provide rental units suitable to live in. If the landlord creates conditions on the premises that make them unfit for the tenant to use, the tenant may leave the premises and be excused from rental payments.

Warranty of Quiet Enjoyment - During the term of a lease, the rental unit belongs to the tenant and no one, including the landlord, is permitted to enter without the consent of the tenant, while the tenant is using the premises. No one, including the landlord, can disturb the tenant and neither the landlord nor his employees are permitted to enter unless the terms of the lease would provide otherwise.

APPENDIX B SAMPLE RENTAL MOVE-IN CHECK LIST

Tenant: _____

Address: _____

Move-In Date _____

Welcome to your new residence. We thank you for choosing to rent from us. Please check off each of the following areas of the rental unit to confirm with us that each area prior to you moving in is in satisfactory condition. If there are any areas or items that require cleaning or repairs, please note in the section designated below. Any additional notes to this list must be submitted to the management within 3 days of the date this checklist is signed and returned to the management. Thank you for your cooperation.

	Satisfactory			Satisfactory	
	Yes	No		Yes	No
Entrance Door			Bedroom #1		
Peephole			Ceiling		
Deadbolt Lock			Walls		
Knocker/Bell			Floors/Carpets		
Living Room			Windows		
Ceiling			Screens -Mini Blinds		
Walls			Light Fixtures		
Floors/Carpets			Bedroom #2		
Windows			Ceiling		
Screens -Mini Blinds			Walls		
Light Fixtures			Floors/Carpets		
Dining Room or Bdrm #3			Windows		
Ceiling			Screens -Mini Blinds		
Walls			Light Fixtures		
Floors/Carpets			Bathroom		
Windows			Exhaust Fan		
Screens -Mini Blinds			Ceiling		
Light Fixtures			Walls		
Kitchen			Floors/Carpets		
Stove			Windows		
Refrigerator			Screens -Mini Blinds		
Cabinets			Light Fixtures		
Sink			Med. Cabinet		
Counter Tops			Mirror		
Ceiling			Sink		
Walls			Commode		
Floors/Carpets			Shower		

General					
Screens-Fixtures			Porch/Balcony		
Back Door			Heat System		
Mail Box			Air Cond		
Smoke Detectors			Water Heater		
Garage			Front Yard		
Garbage/Trash Pick-up Instructions			Back Yard		

Special Remarks (Cleaning or Repairs needed) _____

Was weekly garbage and trash pick-up for this unit satisfactory _____

We hereby acknowledge that we have inspected the above-mentioned rental unit and have found everything to be in satisfactory condition except as stated otherwise. We understand that we are liable for any new damages that may occur during our occupancy. We also acknowledge that we have received ____ keys.

Tenant(s) Name(s) _____ Date _____

Owner/Manager _____ Date _____

APPENDIX C RELEASE OF SECURITY DEPOSIT

Release of Security Deposit is subject to the following:

1. Full term of lease has expired and all provisions therein complied with.
2. A full thirty (30) day notice must be given to management in writing prior to vacating the apartment for nonrenewable lease.
3. Entire apartment including range, oven, refrigerator, bathroom, closets, and cabinets must be cleaned.
4. No damage to residence beyond normal wear and tear.
5. No unpaid late charges, delinquent rent or deficiency in security deposit.
6. Forwarding address must be left with management.
7. No indentations or scratches in wood on resident floors caused by furniture or other means. Carpeting shall be in a condition showing only normal wear and tear.
8. No wall covering, stickers, scratches or large holes in walls.
9. All keys, including mail box keys, must be returned. If keys are lost, tenant must pay the cost of replacing locks.
10. All debris and discard must be placed in the proper rubbish containers in designated areas.
11. All carpeting must be vacuumed. If the carpet must be professionally cleaned, the cost will be deducted from the security deposit.
12. All screens and windows and other glass covers such as tight fixtures are to be in the condition when occupancy was taken, or replacement or repairs will be deducted from security deposit.

THE SECURITY DEPOSIT CANNOT BE USED AS THE LAST MONTH'S RENT

The security deposit will be returned by check and will be mailed to tenant's forwarding address within 20 days after move-out . I understand and agree to the above stated provisions.

Tenant's signature _____

APPENDIX D

ADDITIONAL INFORMATION ABOUT FAIR HOUSING LAW

In West Virginia, the Fair Housing Act prohibits discrimination in housing based on nine protected classes; race, color, national origin, religion, sex, familial status, disability, blindness and ancestry. For basic Fair Housing rights see Section One of this manual.

In addition to those basic rights, it is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others to exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or disability. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

Additional Protection if you have a Disability

If you or someone associated with you:

- Have a physical or mental disability that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

you have the right to reasonable accommodations and reasonable modifications to afford equal use and enjoyment of the dwelling.

Your landlord may not:

- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the person with a disability to use the housing. *42 U.S.C. §3604(f)(3)(B).*
- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the person with a disability to use the housing. The landlord may, however, where it is reasonable to do so, condition permission for a modification on the agreement of the renter to return the inside of the property to its original state. *42 U.S.C. §3604(f)(3)(A).*
- Impose conditions or fees on making the accommodation or modification.

There is no legal obligation to making housing available to a person who is a direct threat to the health or safety of others, or whose tenancy would result in substantial physical damage to the property of others. *42 U.S.C. §3604(f)(9).* Housing does not have to be made available to any person who is currently using illegal drugs. *A direct threat cannot be based on fear, speculation, or stereotypes. It must be an individualized*

assessment based on reliable objective evidence, and must take into account recent intervening treatment or medication.

There are three requirements for reasonable accommodations and modifications:

1. The request is for a person with a disability as defined by the Fair Housing Act.
2. An identifiable relationship exists between the requested accommodation or modification and the person's disability.
3. The request is reasonable; it must not
 - a. Impose an undue financial and administrative burden on the housing provider
 - b. Alter fundamentally the nature of the provider's operations
 - c. Pose a direct threat on health and safety

Privacy Concerns

The housing provider may request information regarding the disability only if it is necessary to verify that the person meets the Act's definition of disability. If the disability is apparent and the request is clearly related to the disability, the housing provider may not request additional information. If the disability is not apparent, the landlord may ask for "proof of disability". The "proof" may include a statement from a friend, social service agency, or anyone who knows the person stating that they are a person with a disability, and should show the relationship between the person's disability and the requested modification/ accommodation. The housing provider is not permitted to request medical records or detailed information. All information must be kept confidential.

How to request an accommodation or modification

There is no specific format for making a reasonable accommodation or modification request. A request may be made orally or in writing. Written requests provide documentation to support the tenant should it be denied. A housing provider may have a form to fill out, but this is not required. Requests may be made at anytime during tenancy. The tenant should give the landlord reasonable time to respond. If there is no response for an extended period of time this is considered a denial by the landlord.

This should be an interactive process between the tenant and the landlord. If the financial burden is deemed too great, the landlord should offer an alternative that would be equally effective. However, tenants are not obligated to accept an alternative offered by the landlord if it does not meet their needs and the originally requested accommodation is reasonable.

Reasonable Accommodations

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling."

See the Joint Statement of the DOJ and HUD at www.hud.gov/offices/fheo/library/huddojstatement.pdf

- Example: A building with a “no pets” policy must allow a visually impaired tenant to keep a guide dog.
- Example: An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space to assure access to the apartment.

If there is a cost associated with a reasonable accommodation, the housing provider is responsible for that cost. If the cost poses an undue financial burden to the housing provider, the provider may work with the tenant to find an alternative accommodation.

Reasonable Modifications

A “reasonable modification” is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners’ association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises." See the Joint Statement of the DOJ and HUD at

www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

- Example: Because of a mobility disability, a tenant wants to install grab bars.
- Example: Because of a hearing disability, a tenant wishes to install a peephole.
- Example: Because of arthritis a tenant has impaired use of her hands and wishes to replace the doorknobs in the apartment with levers.
- Example: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area.

Note: The tenant must have landlord's permission before making modifications.

Who pays?

The tenant must pay for modifications unless:

- Any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed. Then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.
- The housing receives any federal funds, then modifications would fall under Section 504 of the Rehabilitation Act as a reasonable accommodation, and the landlord would be required to pay. More information on 504 is available at

Who maintains the new structure?

- If a modification is used exclusively by the tenant, then the tenant is responsible for the upkeep and maintenance of the modification.
- If the modification is made to a common area that the housing provider normally maintains, then the housing provider is responsible for the upkeep and maintenance of the modification.
- If the modification is made to a common area that is not normally maintained by the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

When tenancy ends

The housing provider may require the tenant to return the property to the original condition when moving out, if modifications were made to the interior of the dwelling and if it is reasonable to do so. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state.

The tenant is not responsible for expenses associated with reasonable wear and tear.

For large modifications that need to be removed at the end of tenancy, the landlord may require the tenant to establish an escrow fund to cover the costs of removing the modification.

If the next occupant of the dwelling wants to retain the modifications, then the next tenant will be responsible for returning the property to the original condition if it is reasonable to do so, and requested by the landlord.

Requirements for New Buildings

The Fair Housing Act has Design & Construction requirements for buildings ready for first occupancy after March 13, 1991 with four or more units:

- Accessible entrance on an accessible route
- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- Accessible route into and through the unit
- Accessible light switches, electrical outlets, thermostats and other environmental controls
- Reinforced bathroom walls to allow later installation of grab bars
- Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and was ready for first occupancy after March 13, 1991, these standards apply to ground floor units only. If the building has an elevator, these standards apply to every unit in the building.

These requirements for new buildings do not replace any more stringent standards in state or local law. For more information on design and construction requirements see www.fairhousingfirst.org.

Housing Opportunities for Families

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988, to continue living in the housing regardless of their age, without interfering with the exemption.

The purpose of these laws is to prevent discrimination on the basis of a person's membership in a protected class. Nothing in the law forbids landlords from setting fair screening guidelines and applying them equally to all applicants.

Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development (HUD).

Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
The Wanamaker Building
100 Penn Square East, 12th Floor
Philadelphia, PA 19107-3380
(215) 656-0663, ext. 3260
888-799-2085
TTY (215) 656-3450

portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination

The West Virginia Human Rights Commission
1321 Plaza East Room 108A
Charleston, WV 25301-1400
(304) 558-2616
888-676-5546

West Virginia Fair Housing Action Network
601-3 East Brockway Ave Suite A + B
Morgantown, WV 26501
800-834-6408
304-296-6091
www.wvfairhousing.org

Visit the HUD website for more information on Fair Housing and Equal Opportunity:
portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp

APPENDIX E FURTHER RESOURCES

Laws and Rules Governing Housing Programs

United States Housing Act of 1937, 42 U.S.C. §§ 1437, *et. seq.*

Federal Regulations: 24 C.F.R.

Fair Housing Act: 42 U.S.C. §§ 3601-3619 and W.V. Code §5-11A-1 *et. seq.*

West Virginia Landlord Tenant Law: W.Va. Code § 37-6-1, *et. seq.*

West Virginia Remedies for Unlawful Occupation of Residential Property, including information about proceedings in court: W.Va. Code § 55-3A-1 *et. seq.*

West Virginia case law on the “Implied Warranty of Habitability,” Teller v. McCoy, 162 W.Va. 367, 253 S.E.2d 114 (1978).

Free Online Legal Resources

The United States Code: www.law.cornell.edu/uscode/

The Code of Federal Regulations: www.law.cornell.edu/cfr/

West Virginia State Code: www.legis.state.wv.us/WVCODE/Code.cfm

HUD Housing Handbooks: www.hud.gov/offices/adm/hudclips/handbooks/hsggh/

Free Legal Assistance or Information in West Virginia

Legal Aid of West Virginia, Inc.: www.lawv.org or 866-255-4370

West Virginia Senior Legal Aid, Inc. (for West Virginians 60 years and older): www.seniorlegalaid.org or 800-229-5068

West Virginia Office of the Attorney General: www.wvago.gov or 800-368-8808

West Virginia Human Rights Commission: www.hrc.wv.gov or 888-676-5546