

Historical Reference

**TITLE 142
INTERPRETIVE RULE
ATTORNEY GENERAL**

**SERIES 20
THE TREATMENT OF RENT TO OWN TRANSACTIONS AS
CONSUMER LEASES OR CONSUMER CREDIT SALES**

§142-20-1. General.

1.1. Scope. -- This interpretive rule sets forth the Attorney General's policy to consider certain types of rental-purchase agreements as consumer leases or consumer credit sales subject to the provisions of Chapter 46A of the West Virginia Code.

1.2. Authority. -- W. Va. Code §46A-7-102(1)(e).

1.3. Filing Date. -- September 18, 1992

1.4. Effective Date. -- November 17, 1992

1.5. Penalties. -- Except as otherwise indicated, a violation of this rule will be considered by the Attorney General to be an unfair and deceptive act or practice in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 et seq.

1.6. Construction. -- This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection act, W. Va. Code §46A-1-101 et seq.

1.7. Severability. -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such holding shall not affect other sections, subsections, sentences, clauses, phrases, or provisions which are hereby each declared severable.

§142-20-2. Definitions.

2.1. "Lessee" means any natural person who leases or purchases personal property under

lease agreement, including a rental-purchase agreement.

2.2. "Lessor" means any person or organization who, in the ordinary course of business, leases, offers to lease, or acts as an agent for the leasing or sale of personal property under a lease agreement, including a rental-purchase agreement.

2.3. "Rental-purchase agreement" means an agreement for the use of property by an individual lessee for personal, family or household purposes in which the lessee has an option to renew the agreement by making additional periodic payments after an initial period, and that permits, but does not obligate, the lessee to become the owner of the property.

§142-20-3. Rental-Purchase Agreements as Consumer Leases.

3.1. A rental-purchase agreement not otherwise considered a consumer credit sale will be considered a consumer lease subject to the provisions of Chapter 46A of the West Virginia Code where the lessee intends to obtain ownership of the property through payments made as scheduled pursuant to the agreement, and such scheduled payments are to extend for a period of more than four (4) months.

3.2. A rental-purchase agreement not otherwise considered a consumer credit sale will be presumed to be a consumer lease subject to the provisions of Chapter 46A of the West Virginia Code regardless of whether or not the parties originally intended to transfer ownership through the agreement where the lessee makes all payments required under the agreement for a period of more than four (4) months.

3.2.1. The lessor may rebut the presumption that a rental-purchase agreement is a consumer lease even though payments have extended beyond four (4) months by showing that the lessee does not intend to gain ownership, such showing which can be made, inter alia, by obtaining a written waiver stating that the parties solely wish to rent the property, which waiver is signed by the lessee before each four (4) month period.

3.2.2. When a rental-purchase agreement becomes a consumer lease under this subsection the lessor should make the disclosures required by W. Va. Code §46A-2-111 and otherwise comply with all pertinent provisions regarding consumer lease transactions set forth in Chapter 46A of the West Virginia Code.

§142-20-4. Rental-Purchase Agreements as Consumer Credit Sales.

4.1. A rental-purchase agreement will be considered a consumer credit sale subject to the provisions of Chapter 46A of the West Virginia Code, including the limits to finance charges set forth in W. Va. Code §46A-3-101 where the lessee intends to obtain ownership of the property through payments made as scheduled pursuant to the agreement, and such scheduled payments total not more than \$1,000 or other amount specified in W. Va. Code §46A-2-119(2).

4.2. The rate of finance charge should be calculated from the difference in the cash price of the item and the total amount required to be paid, excluding taxes, delivery charges, and bona fide maintenance or service fees, in the agreement's schedule of payments, and as otherwise in accordance with proper determination of the annual percentage rate under federal law.

4.3. Where the rental-purchase agreement is considered a consumer credit sale, the person offering to supply the good will be viewed as having a security interest in that good.

§142-20-5. Exclusions.

5.1. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where such agreements are subject to the Federal Truth in Lending Act, 15 U.S.C. §1601 et seq., or the Federal Consumer Leasing Act of 1976, 15 U.S.C. §1667 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule.

5.2. Rental-purchase agreements entered into prior to the effective date of this rule are excluded from the provisions of this rule.