

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 7 12 12 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Office of the Attorney General TITLE NUMBER: 142
RULE TYPE: Legislative ; CITE AUTHORITY: W. Va. Code Section 46A-6-103
W. Va. Code Section 46A-7-102(1)(e)

AMENDMENT TO AN EXISTING RULE: YES ___ NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to The
Prevention of Unfair or Deceptive Acts or Practices in
Landlord Tenant Transactions

DATE OF PUBLIC HEARING: 8/10/94 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center
West Virginia Room 105
200 Civic Center Drive
Charleston, West Virginia 25301

COMMENTS LIMITED TO: ORAL , WRITTEN ___, BOTH ___

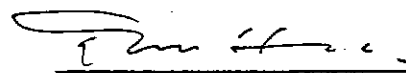
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Tom Rodd, Director

Consumer Protection Division
812 Quarrier Street
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

4.20

**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 26
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN LANDLORD TENANT TRANSACTIONS**

STATEMENT OF CIRCUMSTANCES

Consumer abuse in the area of landlord/tenant is regrettably commonplace. There is scant explicit West Virginia law in this area, especially regarding security deposits. Consumers are left unprotected, and a reasonable landlord has no clear guidance regarding how to conduct leasing of their rental property. The proposed rule would protect both the consumer and the landlord.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Legislative Rule Pertaining to the Unfair or Deceptive Acts or Practices in Landlord Tenant Transactions

Rule Title: _____

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency Office of the Attorney General Consumer Protection Division

Address 812 Quarrier Street, 6th Floor

Charleston, West Virginia 25301

1. Effect of Proposed Rule *Not Applicable*

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:
No cost to State or local government.

3. Objectives of these rules: *Promotion of Consumer Protection*

Rule Title: Legislative Rule Pertaining to the Unfair or Deceptive Acts or Practices in Landlord Tenant Transactions

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Will promote private adjudication of consumer issues, reducing burden on state regulations.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Will promote consumer confidence and assist responsible businesses, leading to job growth.

C. Economic Impact on Citizens/Public at Large.

Will assist consumers and businesses with certainty in consumer law, promoting sustainable and responsible business development.

Date: 6/30/94

Signature of Agency Head or Authorized Representative



**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 26
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN LANDLORD TENANT TRANSACTIONS**

BRIEF SUMMARY

The proposed rule regarding landlord/tenant law covers areas that are common to both the consumer and the landlord. The proposed rule would protect consumers and give guidance to the landlords.

The proposed rule clarifies that it is an unfair and deceptive act or practice for a landlord to rent a dwelling unit which is not habitable or fail to remedy a condition which is a violation of a health law. The proposed rule would also provide for certain disclosures in rental agreements, and provide for regulations governing security deposits, such as timely returning of security deposits. The proposed rule also provides protection for evictions and failure to provide utilities as required.

FILED

**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

JUL 7 12 12 PM '94

**SERIES 26
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN LANDLORD TENANT TRANSACTIONS**

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

§ 142-26-1. General

1.1 Rule Designation.--This rule is legislative.

1.2 Scope.-- This legislative rule covers certain unfair or deceptive acts or practices covering landlord tenant transactions in West Virginia, its counties, and all political subdivisions.

1.3 Authority.--W. Va. Code § 46A-6-103 Code § 46A-7-102(e).

1.4 Filing Date.--

1.5 Effective Date.--

1.6 Repeal of Former Rule.-- Not applicable

1.7 Penalties. -- Except as otherwise indicated, a violation of this rule constitutes a violation of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-6-101 et seq.

1.8 Construction -- This rule shall be liberally construed to effectuate the purposes of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-6-101 et seq.

1.9 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 unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

§ 142-26-2. Definitions

2.1 "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home.

2.2 "Landlord" means the owner or lessor of a dwelling unit under any rental agreement and any agent acting on the owner's or lessor's behalf. The term includes sublessor, other than persons subleasing individual units occupied by them.

2.3 "Owner" means one or more person, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.

2.4 "Person" means an individual, partnership, corporation, association, estate, trust, or other legal or business entity.

2.5 "Premise" means a dwelling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

2.6 "Security deposit" means the total of all payments and deposits given by a tenant to the to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of one month's prepaid rent.

2.7 "Tenant" means a person using the service of a dwelling unit under a rental agreement, for personal, family, household or agriculture purposes, and includes persons using dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

§ 142-26-3 Conditions and Maintenance of a Dwelling Unit.

It shall be an unfair and deceptive act or practice for a landlord to:

3.1 Rent a dwelling unit which;

(a) Contains a condition which amounts to a violation of health, safety, fire, or housing code or other law; or

(b) is not in a fit and habitable condition.

3.2 Fail during the term of a tenancy to remedy a violation of health, safety, fire or housing code or other law in a dwelling unit or fail to maintain the dwelling unit in a fit habitable condition; provided however, that said violation of law on condition was not caused by the occupant or others who are on the premises with the consent of the tenant.

3.3 Fail to disclose to a prospective tenant the existence of any condition amounting to a violation of any code or law within the dwelling unit of which the owner knowledge at commencement of the tenancy;

3.4 Represent to a prospective tenant that a dwelling unit meets all requirements of law when, in fact, it contains violations of law;

3.5 Fail within a reasonable time after receipt of notice from the tenant to make repairs needed to render the premises in a fit and habitable condition;

3.6 Fail to provide services and/or supplies after the making representation

or agreement, that such services or supplies would be provided during the term or any portion of the term of the tenancy agreement;

3.7 Fail to reimburse the tenant within a reasonable time or upon notice, for the reasonable cost of repairs made or paid for, or supplies or services purchased by the tenant after any representation that the reimbursement would be made;

3.8 Fail to reimburse a person for reasonable sums expended to correct conditions in a dwelling unit affecting habitability or violations of law, if the owner failed to make corrections within a reasonable time after notice thereof;

3.9 Fail to comply with the sanitary laws or any other law applying to the conditions of a dwelling unit within a reasonable time after notice of violation of such code or law from the tenant or agency;

3.10 Rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze, or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.

§ 142-26-4 Notices and Demands

It shall be an unfair and deceptive act or practice for a landlord to:

4.1 Send to a tenant any notice or paper which appears or purports an official or judicial document but which he knows is not;

4.2 Fail or refuse to accept any notice sent to any address to which customarily sent, or given to any person who customarily accepts on by the owner, or sent to the person designated in the rental agreement.

§ 142-26-5 Rental Agreements

5.1 It shall be unfair and deceptive act or practice for a landlord to include any rental agreement any term which:

5.1.1 Violates any law or attempt to waive any rights conferred by law;

5.1.2 Fails to provide all written terms in plain language as required by W. Va. Code § 46A-6-109.

5.2 It shall be unfair or deceptive practice for a landlord to enter into a written rental agreement which fails to state fully and conspicuously simple and readily understandable language:

5.2.1 The names and addresses, and telephone numbers of the owner other person who is responsible for the care, maintenance and the property;

5.2.2 The name, address, and telephone number of the person authorized to receive notices of violations of law and to accept service of process

behalf of the owner;

5.2.3 The amount of the security deposit, if any, and that the owner holds the security deposit in a separate, interest-bearing account for the benefit of the tenant a receipt and provide notice of the bank and account number. The owner must pay a interest to the tenant at the end of each year if the security deposit is held for one year or longer after commencement of the tenancy. Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport to waive the landlord's obligation to mitigate damages;

5.2.4 Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures.

5.2.5 Provide for termination on a tenancy or lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit.

§ 142-26-6 Security Deposits and Rent in Advance

It shall be an unfair or deceptive and or practice for a landlord to:

6.1 Require a tenant or prospective tenant, at or prior to the commencement of any tenancy to pay any amount in excess of the first month's rent, except for a security deposit equal to the first month's rent; or at any time subsequent to the commencement of a tenancy, demand rent in advance in excess of the current month's rent, or a security deposit, or otherwise.

6.2 Fail to give to the tenant a written receipt indicating the amount of the security deposit, if any, paid by the tenant;

6.3 Fail to pay interest at the end of each year of the tenancy, on any security deposit held for a period of one year or longer from the commencement of the term of the tenancy; or fail to hold a security deposit in a separate interest-bearing account and provide notice to the tenant of the bank and account number; or

6.4 Unless security deposit is repaid in full, fail to furnish to the tenant within twenty (20) days after the termination of occupancy an itemized list of damage, if any, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage;

6.5 Fail to return to the tenant the security deposit or balance thereof in which the tenant is entitled together with interest within twenty (20) days after termination of occupancy.

6.6 Fail to repay a security deposit, except for tenant damages, or nonpayment of rent or utilities for which the tenant is responsible. Nothing herein shall be construed to authorize the withholding for normal wear and tear or other damages for which the tenant is not legally responsible.

6.7 Misrepresent a claim for a security deposit including but not limited to cost of repairs.

§ 142-26-7 Evictions and Termination of Tenancy

It shall be unfair and deceptive act or practice for a landlord to:

7.1 Deprive a tenant of access to or full use of the dwelling unit or exclude a tenant without first obtaining a valid legal process.

7.2 Commence summary process for possession of a dwelling unit before time period designated in a 30-day notice.

7.3 Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures.

7.4 Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport to waive the landlord's obligation to mitigate damages.

7.5 Terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit, in retaliation against a tenant because the tenant has: reported a violation of law or condition affecting habitability to any governmental authority; or filed made such a claim to the landlord; or joined or attempted to organize a tenant's union or association; or asserted, or attempted to assert any right specifically accorded to tenants under federal, state or local law.

§ 142-26-8 Utilities

It shall be unfair and deceptive act or practice for any landlord who is obligated by express or implied terms of any tenancy agreement to:

8.1 Fail to provide gas, water, or electric service to any tenant.

8.2 It shall be an unfair and deceptive act or practice for any owner to fail to provide utility services or to expose such occupant to the risk of loss of such services by failure to pay bills when they become due or by committing or unauthorized use of such gas or electricity; or to take any action to cause interruption of such service. If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.

§ 142-26-9 Unauthorized Entry and Tenant Personal Property

It shall be and unfair practice for a landlord to:

9.1 Enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers. Entry may not be made except upon advance notice and at reasonable times. Advance notice means at least twelve hours advance notice unless the tenant, upon being notified of the proposed entry, consents to a shorter time period. This subsection does not apply to situations where the tenant requests or consents to a proposed entry at a specified time, a health or safety emergency exists, the tenant is absent and the landlord reasonable believes that entry is necessary to protect the premises from damage, or entry is otherwise authorized in writing other than in a form provision.

9.2 No landlord shall seize or hold a tenant's personal property, or otherwise prevent the tenant from having access to or removing the tenant's personal property.

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