WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Office of the Attorney General TITLE NUMBER: 142

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 x

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

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THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

26.70
860 w/o

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 resonsible 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

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

Type of Rule: x Legislative ____ Interpretive ____ Procedural

Agency Office of the Attorney General Consumer Protection Division

Address 812 Quarrier Street, 6th Floor

Charleston, West Virginia 25301

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1. **Effect of Proposed Rule** Not Applicable

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
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 Pract... 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 Reprensentative

DATE: August 15, 1994

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**
Darrell V. McGraw, Attorney General
Building 1, Room E-26, Charleston, West Virginia 25305

FROM: Title 142 Series 23 Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation

W. Va. Code Section 46A-6-103; 46A-7-102(e)

2. a. Date filed in State Register with Notice of Hearing

July 7, 1994

b. What other notice, including advertising, did you give of the hearing?

Press release giving date of hearing and agency phone number for additional information.

c. Date of Hearing(s) August 10, 1994

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 15, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

Darrell V. McGraw, Jr., Attorney General

558-2021

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A ______________________________________

____

b. Date of hearing: ____________________________

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

____

d. Attach findings and determinations and reasons:

Attached ________________________________

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.

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

§ 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; W. Va. 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 the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1 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 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 and habitable condition; provided, however, that said violation of law or condition was not caused by the tenant or others who are on the premises with the consent of the tenant.

3.3 Failure 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 has knowledge prior to 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 unless the failure to meet those requirements is the fault of the tenant, a member of his family or other person on the premises with his consent;

3.6 Fail to provide services and/or supplies after making the 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 by the landlord 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 to be an official governmental or judicial document but which the landlord knows is not;

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

§ 142-26-5 Rental Agreements

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

5.1.1 Violates any law or attempts 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.

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

5.1.4 Provides 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.

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

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

5.2.3 The amount of the security deposit, if any, and whether the owner holds the security deposit in a separate, interest-bearing account, and provide the bank and account number.

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

It shall be an unfair or deceptive act 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 not to exceed 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 demand funds not authorized by the lessee.

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

6.3 Fail to promptly deposit and keep the tenant's security deposit during the tenancy in a bank account, and to provide the tenant with a copy of the bank receipt for said deposit.

6.4 Expend, withdraw or use security deposit funds for any purpose during the tenancy prior to termination of occupancy.

6.5 Fail to, in the case of a landlord, including any property management company which acts as agent for a landlord, which collects over $5000 in a calendar year in security deposits, place such funds in a separate bank account designed for such deposits.

6.6 Fail to take all reasonable steps, to the extent allowed by law, to see that any security deposit account established pursuant to 6.5 of these regulations is interest-bearing.

6.7 Fail to reimburse to the tenant at the end of the tenancy of all interest accrued on a tenant's security deposit held in an account established pursuant to 6.5 of these regulations.

6.8 Unless the security deposit and where applicable, interest thereon is repaid to the tenant in full, fail to furnish to the tenant within twenty (20) days after the termination of occupancy an itemized list of damage, or other authorized charge against said security deposit if any, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage;

6.9 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. Provided, that where utility, heat, water and sewer charges which may become a liability of the landlord are not furnished to the landlord within 20 days, funds sufficient to cover such charges may be retained by the landlord for up to 45 days after termination of occupancy, or 5 days after all such charges have been furnished to the landlord, whichever is sooner.

6.10 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 of security deposit funds for normal wear and tear or other damages for which the tenant is not legally responsible.

6.11 Misrepresent a claim for a security deposit funds including but not limited to the cost of repairs.

§ 142-26-7 Evictions and Termination of Tenancy

It shall be an 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; except in an emergency situation where human life or valuable property is at risk and legal process is not available, a landlord may take reasonable actions to protect persons or property.

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 and as provided in 7.1 of these regulations.

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 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 an 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 when a tenant is current in rent or when any security deposit would cover the utility charges due, 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 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, show the premises to prospective tenants or purchasers upon invitation of the tenant, or for other reason required or authorized specifically by law. Entry for inspections or repairs may not be made except upon advance notice and at reasonable times, except in emergency situations as described herein. 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 reasonably believes that entry is necessary to protect the premises from damage, or entry is otherwise authorized in writing by the tenant in other than 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, unless authorized by judicial proceedings.

§ 142-26-10 REMEDIES

10.1 In the event of a violation of this Rule by person subject to its provisions, the Attorney General may bring a civil action to restrain any such violation, including an application for temporary relief pending final determination of the proceedings, and for other appropriate relief, including restitution for affected consumers and the costs and expenses incurred in the investigation and prosecution of such action.

10.2 In addition to an application for injunctive remedies and other appropriate relief, as aforesaid, the Attorney General may also bring a civil action for the willful violation of this Rule, and if the court finds that a person has engaged in a course of willful and repeated violations of this Rule or any other applicable provisions of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1-101 et seq., it may assess a civil penalty of no more than five thousand dollars for each such violation. The Attorney General may also take such administrative and other action authorized by law and regulation.

CONSUMER PROTECTION REGULATIONS HEARING

Hearing held beginning at 9:19 a.m., on August 10, 1994, in Room 105 of the Charleston Civic Center, Charleston, West Virginia.

APPEARANCES: ATTORNEY GENERAL DARRELL V. McGRAW, JR.
THOMAS W. RODD, Deputy Attorney General
ANDREW MAIER, Asst. Attorney General

MR. RODD: Good morning. We're about to begin. For a few remarks, the Honorable Darrell V. McGraw, Jr., the Attorney General.

DARRELL McGRAW: Good morning.

I'm glad you were able to come. I'm glad that we're going to be able to hear from you with respect to the regulations which have been prepared by the task force that we designed to initiate the promulgation of regulations which we are required under the law to promulgate.

I must share with you a secret in my heart of hearts. Indeed, I had a long conversation about this very issue earlier today with relation to an entirely different proposition than these regulations.

In my heart of hearts I'm always concerned about more regulations and more laws. For quite a long time, even perhaps 20 years, it has been that the Attorney General's office is empowered to, indirectly, to promulgate regulations in these fields that we have chosen to address; and it has also been that others have probably shared the view which I have, which is that, that it's possible for regulations to just be piling on.

I'm not here today to say that that is true with respect to any particular or specific regulation that we are addressing here, but I do want you to know that in my heart of hearts that I approach these things as a matter of duty directed by the law to, to proceed; and it is a duty with which I had some philosophical concern.

I was riding yesterday with a prominent person familiar with the law who said that he had heard me say many years ago that there are already quite enough laws to address probably anything that we want to talk about, and this was a long time ago. And in my judgment, things haven't changed quite a lot since that day to this, except that there have been more, always more.

So, we're here to address this, but we want to do this in a, in a way that responds to the needs of the community in a way that strives to bring fairness to all parties concerned in transactions which these rules address, recognizing all the while, recognizing all the while, that we live in a society which requires to some degree the exercise of individual responsibility by all people who choose to participate in whatever function it is that the society allows engagement in.

And so, I want to express to you my particular heart-felt appreciation that you've come here to share your views of these things, recognizing all the while that this is a part of the process which will culminate in legislative approval of these regulations finally.

And so, again, thank you for coming; and I am depending upon you to express your view with respect to these regulations as we go forward in an effort to promulgate fair and proper regulations.

Thank you very much.

MR. RODD: Thank you, Judge McGraw.

I'm Tom Rodd, the Director of the Consumer Protection & Antitrust Division of the Attorney General's office, and this is the public hearing that was announced in the State Register with respect to the draft regulations filed with the Secretary of State's office by the Division pursuant to West Virginia law.

I have the sign-up sheets for the public hearing; and the first two sign-up sheets -- which seem to be the completed ones -- and I see that we have about 30 people who have indicated a desire to speak.

As I said earlier, at the end of the speaking of those folks who have signed up we may have time to have other people speak, but that's not a certainty. So, if -- it's in the interest of anyone who thinks that they might want to speak today to go ahead and sign up on the sign-up sheet to be guaranteed time.

I'm going to just take a second and consult with my colleague, Andrew Maier, also from the office here, on the question of time; and I'll be right back to make a few remarks about the time, and then we'll begin with the first speaker.

(Short recess.)

MR. RODD: We have concluded that at an appropriate time limit, which, quite frankly, we will be somewhat flexible in administering, is five minutes for peoples' comments; and, of course, we can accept written comments as well. If people begin to go significantly over five minutes, we'll indicate to them that they are at that point. If they really want to deliver a 15- or 20-minute speech, we may have to ask them to give their first five minutes and then fall back to the end of the line and address whoever remains here at the end of the procedure.

Mr. Maier is going to keep a watch on the time, and he'll -- I think he'll show people -- he'll show folks when they have got a minute remaining of those five minutes; but as I say, we'll be flexible. This is not a formal judicial process or anything like that.

Do I have any questions before we actually begin to hear from the witnesses?

LEFF MOORE: We have a process question. Your notice of public hearing indicated that you were not taking written comments, and you limited the notice in the federal -- the State Register to oral comments only. Was that an error or am I to understand that you've changed the procedure?

MR. RODD: Well, I have stated that we will take written comments today. So, I would --

LEFF MOORE: (Interposing) Is that only today?

MR. RODD: The comment period will

end today.

LEFF MOORE: Well, your notice to the public indicated that oral would only be accepted. So, many of us did not prepare written comments, in view of your notice to the public.

MR. RODD: I'm sorry, my impression was that the notice to the public -- and I haven't got that in front of me -- indicated that there was a 30-day comment period following the promulgation of the regulations, and in fact we have been receiving written comments during the 30-day standard comment period; that this hearing comes at the end of that comment period.

LEFF MOORE: I would urge you to read the notice as it appeared in the State Register and on the front of the rules; and if I am wrong in that, in that note, in my interpretation of the notice, then I'll stand corrected. It's my -- the way I read the notice is that there was a public hearing scheduled for today with oral comments only, and that the box that indicated written comments was not checked on that -- the front of this rule. But in view of that, I would request that you would extend for at least 24 hours the opportunity to submit written comments --

MR. RODD: (Interposing) I will.

LEFF MOORE: (Continuing) -- after today's date.

MR. RODD: I will.

LEFF MOORE: Thank you.

MR. RODD: Your name, sir?

LEFF MOORE: My name is Leff Moore.

MR. RODD: And is your address on the sign-up sheet, Mr. Moore?

LEFF MOORE: Yes.

MR. RODD: Thank you for calling that to my attention, Mr. Moore; and I apologize for any inconvenience that that may have caused to anyone else here.

TOM WINNER: Tom, just procedure. Are you going to take these series-by-series-by-series or just lumping everything together or --

MR. RODD: (Interposing) No. I was going to go in the order of the, of the sign-up sheets.

Other questions?

Okay, we'll begin with Richard Gallagher from

Clarksburg, West Virginia.

RICHARD GALLAGHER: First, let me thank Judge McGraw for the opportunity to address these regulationS as they have been proposed.

My name is Richard Gallagher. I'm here on behalf of the West Virginia Automobile & Truck Dealers Association. I'll try to be as brief as possible.

First, I'd like to address the Series 27 regulations regarding motor vehicle repairs.

The 3.1 regulation limits the -- or requires only a $50 anticipated repair before a written repair order is required. In today's market $50 doesn't go very far, as I think we're all aware. We would request that this be increased to at least $200.

In that section also there is consent required to be given by the consumer. We believe that in this provision, as well in a number of other provisions, the consent language should be changed to permit consent from the consumer or any adult member of the consumer's immediate household, because many times you'll have a situation where the consumer, if it's a husband at work, is unable to be reached; and the spouse can call in and say, "We need this done" or "Yes, you have our approval to do that." Under these regulations that would not be feasible or appropriate.

A number of places through the regulations -- for instance, in Section 4.2.1, it requires conspicuous notice of language. That's a term which is subject to different interpretations, a subjective term. We would request that any notice requirements clearly state the language that's required, as well as have it stated in the size print that's required. That would eliminate the subjective terms, because our concern is that the more subjectivity that's involved in it, the more difficult to comply with it, and the more it breeds litigation.

The same type of language is used in Section 4.3.1, which we contend should be, should be replaced.

In regard to 4.3.1, there is an alternative form there that provides three alternatives. That's something that's new. We don't think that's anything that's required under the authority of 46A-6-101, but we could contend that alternative three should be amended so that it reads, "I do not want an estimate, dash, just fix my car," so that people can understand what the point of that is.

Under the waiver language under Section 4.4.1, it permits a written revocation as long as the person has four or more cars. Again, under 46A-6-01 (sic) we belief that that limitation is unnecessary and should not be there.

In regard to the charges provisions under Section 4.5, the provision should be amended to recognize that estimates for repairs at times can't be made in advance, because some problems with engines, for instance, you have to tear the engine down to see what the problem is before you can prepare a meaningful estimate. So, that language should be addressed to, to take care of that problem.

Under the "Authorization to Proceed," the primary concern is -- or one of the primary concerns is the fact that only the consumer can give that authorization. That language should permit any adult member of the consumer's immediate household to provide authorization.

In regard to Section 6.1, the "Return of

Parts," that creates a number of problems. We believe that the provision should be amended to require the consumer to request the parts, if they would like that; or at least request an opportunity to inspect the parts. The language as it's currently drafted creates environmental problems, because some problems -- some parts that are removed from vehicles could create environmental hazards; and what that provides -- what that regulation requires, that these parts be provided to the consumer. So, if that were to take place, the consumer could be held responsible under a different scenario of facts. But the regulation needs to be amended to address those problems.

In regard to invoicing, Section 7.1.1 through 7.1.5, to the extent the provision requires labor to be itemized under warranty work, this request should be eliminated because it serves no useful purpose. This is, again, in regard to warranty work.

"Prohibited Practices," there's a typographical error in 8.1 where it requires misrepresentation, which of course is a, is a mistake; and that just needs to be corrected.

8.1.5, the language is vague, needs to be addressed.

One of the problems through both this and the section on sales is that there is -- there are varying standards required. A "good faith basis" is the standard that's required in several of these regulations. We believe the regulations should be consistent in the standard of conduct that's required. That "good faith basis" requirement should be inserted throughout the regulations, and I don't have time to identify each and every regulation where it's referenced, but that needs to be addressed as well.

With regard to Series 28, "Motor Vehicle Sales," there in 2.6 reference is made to the vehicle in normal usage and for a reasonable time. Again, those are subjective terms which result in varying interpretations of what is normal, what is reasonable. That would breed litigation. We contend that it would be much better and much fairer for all concerned if there are specific limitations. If they are to be imposed, they should be set forth specifically so there can be no subject to interpretation which would only breed litigation.

As you go through that section, again words such as "conspicuously" -- again, that's a subjective term. If that's to be required, then the language, we contend, should be stated, and it should be required to a certain degree of -- that -- the size of the print so, again, there is no interpretation involved, and it's easier for all to, to understand what the point is.

Section 5.2.3 relates to a document- -- to the extent that relates to documentary fee, forbidding that being charged, the statute is on point that it permits that. So, we contend to the extent it contradicts the -- this regulation contradicts the statute, that should be addressed and changed.

In regard to a number of regulations which, which require the dealer to control the actions of the manufacturer to be responsible for problems with the manufacturer delivering vehicles, we contend that that's unfair to the dealer, because the dealer has no authority to control the manufacturer. So, that language should be amended.

Sections 5.9/5.10 include and involve vague terms that again are subject to various interpretations and will breed litigation. That should be, that should be addressed so that it can be specifically understood what's required by these regulations.

In regard to "Advertising And Sales Presentation Requirements," there are provisions there again which are vague. 6.3.3 should be eliminated. 6.3.2 forbids a consumer's question to be answered if in fact the answer could reflect negatively on the vehicle. So, that should be changed. That would prevent a customer's questions from being answered if it in any way would reflect negatively on a vehicle.

Section 6.5 should be eliminated.

I'm almost finished. I just ask you to bear with me.

MR. RODD: Please take your time. You're doing -- take your time.

RICHARD GALLAGHER: Okay. Thank you.

MR. RODD: Complete your report.

RICHARD GALLAGHER: The Section 6.1.3, the language is too vague. It should be eliminated. 6.1.4, the language should be eliminated in its entirety. It requires substantially new record-keeping purposes which have not been required in the past. There are a number of regulations, jumping back to the repairs portion, which require new language should be attached or inserted on certain repair orders. That would involve, in essence, throwing away substantial amounts of forms that could be used. That would cost the dealers a substantial amount of money, depending on the circumstance.

We contend that there should be a phase-in period for that sort of thing so that within a 24-month period those old forms could be used up; that until those forms are used up, the -- during this phase-in period, the required language could just be stapled onto the repair orders in order to permit the consumer to be advised of the new regulation.

Series 24, the "Repossession" statute, others will address that. One section in particular is troubling. It's 3.2.7 which forbids a vehicle to be repossesed if it would result in an undue hardship. Again, that's a subjective term, subjective phrase. That will result in, I would anticipate, a great deal of litigation, because there's no specific guidelines set, and the subjectivity of that will invite litigation. We contend that that's not the purpose of these regulations, and that can be avoided.

There are a number of comments. We also intend to file some written follow-up comments because our time has been limited here, as by necessity, because of the number of folks here, but we do appreciate the opportunity to address you. Thank you.

MR. RODD: Thank you, Mr. Gallagher.

The second speaker is Bill Minsker from Buckhannon.

MR. MINSKER: Because Rick pretty much covered everything that we had, I'm going to waive my time, Mr. Speaker.

MR. RODD: Thank you very much, Mr. Minsker.

The third person signed up is Jack Albert of Belle.

JACK ALBERT: I also thank you for the opportunity to speak regarding these proposed regulations.

My name is Jack Albert, but I'm here to speak as a volunteer on behalf of the West Virginia State

Legislative Committee of the American Association of Retired Persons.

I wish to speak in favor of the proposed new Consumer Protection regulations, Legislative Rules Series 23 through 30, Title 142. My statement is regarding the general intent, not any specific item in the regulations.

The AARP has over 262,470 members in the state of West Virginia.

DARRELL McGRAW: How many?

JACK ALBERT: 226,470. Almost 50 percent of the people over 50 years of age in West Virginia belong to AARP. Consumer Protection regulations are especially important to the aging population of West Virginia. According to the U. S. Census Bureau, West Virginia ranks third in the nation with a population between the ages of 65 and 74.

The state ranks tenth with the population of 75 and over. This 75-and-over age group makes up 6 1/2 percent of the total population of West Virginia. So, we're talking about over a 117,230 people who are primary targets of those who are involved in unfair and deceptive practices.

The position of the AARP regarding unfair or deceptive acts or practices statutes is that they are among the most effective tools to fight consumer fraud and abuse at the state level. These statutes provide effective remedies for consumers, encourage merchants to resolve disputes fairly, and they -- it deters misconduct.

The AARP believes that states should enact statutes that, one, prohibit unfair and deceptive practices in trade and commerce and, two, give the state enforcement and regulatory authority.

Therefore, we urge that the West Virginia State Legislature to approve these legislative rules, Title 142, Series 23 through 30 inclusive, as outline by the office of Attorney General of West Virginia.

Thank you very much.

MR. RODD: Thank you, Mr. Albert.

The next person signed up is Bill Gossett from Wheeling.

BILL GOSSETT: Good morning.

My position is Housing Resources Coordinator for Florence Crittenton Home & Services which is based in Wheeling, but we do provide a variety of social services to low-income women and their families throughout West Virginia. We have over 1,000 families throughout the state in our current case load.

I'm here today to speak in support of the Series 26 regulations governing practices in tenant-landlord transactions.

Substandard housing conditions are a major concern that we face every day with our clientele. It is a major problem. Public housing is often unavailable or there's a long wait to get into public housing. So, many of our clients are left to rent on the private market, often finding units that are barely affordable, yet often substandard.

We feel that consumer law protection is right on target in terms of the tenant-landlord relationship, because what is a landlord but a provider of a good or, if you will, a service in the public marketplace. And I think it's well established under consumer law that a provider of a good or service should not provide a good or service which is hazardous to health or safety.

There are a couple of inadequacies in the current law concerning consumer protections, and it comes under the general heading of "Code Enforcement." Code enforcment is either unavailable in rural areas or small towns; and even in the larger towns the major problems with code enforcement and making landlords live up to building code standards, fire code standards, health code standards, it's reactive in nature, and many times it's a lengthy and complicated process that our clientele, because of their limited education, just their unfamiliarity with how the system works, are unable to negotiate. It's difficult even with the assistance of our case managers who often do try to intervene on their behalf.

Another problem of a reactive nature of code enforcement is in the time delays that are involved often our clients incur a fairly large financial burden in situations, such as poor building construction where heating bills are very high or a problem with plumbing where water bills are run up, where the bills are in the names of the clients. So, even if they are doing what they're supposed to do in terms of trying to rectify the situation under building code enforcement, they're still running up those water bills, still running up those heating bills. And often what results, quite frankly, is they choose to pay the utility bill so that their utility service is not cut off, they don't find that they have the money to pay the rent, so they're subject to what is a very fast eviction process in West Virginia.

In closing I'd just like to say I myself am a landlord, so I can speak from that, that perspective. I own four units and three different properties in the Wheeling area. And as I look through the proposed regulations, I did have to smile and ask myself am I in compliance with all of these provisions of the proposed regulations in terms of the complying with the building code and all its details and also in terms of what can be done with deposits, security deposits, and things like that. And I had to admit that I wasn't in compliance with the proposed letter of the Code, but I don't think it's unduly burdensome to bring my properties and my practices into compliance, and I would suggest that this is a fundamental consumer protection law and not overly burdensome to landlords who, you know, are doing this as a business as a serious investment in the public marketplace.

In conclusion, I'd just like to say that I think that these proposed regulations are fair and reasonable; and based on our experience and the experience that, you know, we've garnered through dealing with over a thousand families throughout the state, that they're, they're timely needed and overdue. Thank you very much.

MR. RODD: Thank you, Mr. Gossett.

The next person signed up is James Rice from New Martinsville.

JAMES RICE: Hello. I also thank you for the opportunity to speak today. I'm Jim Rice from AAA Mobile Homes in New Martinsville. Our business is -- consists of both sales of manufactured homes and the rental of 356 lots.

I have several concerns with the proposed rules on Series 23. I'll limit it to one, because of your statements earlier.

MR. RODD: Let me encourage you to identify all areas that you have some concerns, even though you may limit how much you discuss.

JAMES RICE: One section I'm wanting to mostly state involves 3.1 and 5.2. This is regulating the restriction of the vendor when renting the lot -- when renting the space to a manufactured home.

Many hours of hard work and investment went into the business, went into the preparation of the sites that we rent. We feel that, you know, that it is our property and that we should have the opportunity to limit the sales going into it.

The same way with many of the items in this proposal, we feel that the tenants are being given more control over the parks than we are. Thank you.

MR. RODD: Thank you very much, Mr. Rice.

The next speaker signed up is Alvin McCorkle from Charleston.

Alvin McCorkle from Charleston.

ALVIN McCORKLE: I just thought we were signing up as we came in.

MR. RODD: That's fine. Excuse me.

Let me correct what may be a misapprehension, perhaps because the information was not clearly put on the sign-up sheet. If there are folks who have signed up but don't intend to make a presentation at this time or make comments, I'll, unless the people find it embarrassing, go ahead and read their name, because there may have been some confusion in that regard, and then they can indicate that they don't intend to make a presentation or, if you'd like, you can step forward and speak to Mr. Maier, and he'll write down your name, and he'll make sure that I don't call on you.

Thank you.

The next name that I have on the sign-up sheet is A. D. McCorkle, IV.

ALVIN McCORKLE: Good morning. My name is Alvin McCorkle. I'm president of Quality Properties, a property management. We manage almost a hundred units in the valley.

My concerns are mainly the landlord-tenant transactions. The -- the first thing I would like to address is Section 5.2.3 under 142-26-5, the security deposits, requiring landlords to keep these in a separate interest-bearing account.

And my understanding -- and I'm not a lawyer, thank God -- is that by definition of what you-all define here as a trust account and that also by law a trust account cannot be interest-bearing, which would seem to be contradictive. (sic)

The -- the next, 5.2.4, "the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures," I'm assuming you-all -- you people mean going into court, magistrate or otherwise.

I'm totally opposed to that. I think there's a lot of legal evictions that take place that do not involve magistrate court or higher.

The -- under 142-26-6, 6.3, again this is -- addresses what I was talking about before concerning paying interest on security deposits. I think it's a highly unusual practice to publicize your account number and bank that you, that you deal with.

Under that same heading, 6.4, only allowing 20 days to return a security deposit when it's a one full month -- one full rental period for an eviction process, but you're -- in 20 days, if there's repairs needed to be done to the apartment -- and a lot of times you cannot come up with a decent, reasonable price within 20 days as to how much those repairs are going to cost. If there's a sanitary lien involved, you cannot get the proper account status from the Sanitary Department in 20 days from the time of, like, from the time that the apartment was vacated.

6.5, same, same concerns.

MR. RODD: Mr. McCorkle.

ALVIN McCORKLE: Yes.

MR. RODD: May I ask, do you have a time that you would care to specify as to what you consider to be more appropriate for the return of security deposits? I mean, you don't have to come up with something, but I just wondered.

ALVIN McCORKLE: I would say 60 days.

MR. RODD: Thank you.

ALVIN McCORKLE: Under 142-26-7, "Evictions and Termination of Tenancy," quite frankly 7.2, "Commence summary process for possession of a dwelling unit before time period designated in a 30-day notice," I'm not real sure what you mean. I mean, does that mean that they have to violate the lease for 30 days before you're allowed to do anything? In which case, I would like the same consideration as a landlord: that if a tenant deems an apartment uninhabitable, then I have

30 days before he can declare it such, which I think either way is probably a little ridiculous.

Again 7.3, the judicial eviction process.

7.4, "Provide for an acceleration of rent payments in the event the tenant defaults," I'd like a little more explanation on that. Again, what would be provided to -- once you provided this, this payment schedule, what would enforce it?

And, in closing, the title of this is "Landlord Tenant Transactions," but every, every heading starts with "it will be an unfair or deceptive act or practice for a landlord to." I see nothing in here as to what the tenant agrees to when he signs that lease and what is unfair and deceptive for the tenant to do.

Mr. Rodd, I consider myself a consumer; I consider myself, if needed, would be protected by your division. My idea of a tenant-landlord association is contractual. I am not selling anything. I'm entering into a contract with a tenant. And I think both sides of that contract ought to be defined in your legislative rule. Thank you.

MR. RODD: Thank you very much,

Mr. McCorkle.

The next person signed up, if I read this right, is Pat Hose.

PAT HOSE: Thank you, gentlemen. My name is Pat Hose, and I am what I consider a small landlord. I just have a few properties.

I especially want to -- I don't want to talk about the ones that Mr. McCorkle just spoke about, but I do have concerns of those same numbers, but especially I want to talk about 142-26-7 on the "Evictions and Termination of Tenancy."

I'm concerned about this 30-day notice. If you have a tenant that has not paid the rent and you have to give a 30-day notice before you can start proceedings, that means when you come into court it will be 10 days before they have to appear in court, and it will be at least another 10 days before they have to move out. So, you're already into a two months' loss of rent.

I just went through an experience which, to me, was a nightmare. The girl quit her job and did not -- was not paying her rent. I tried to get her out. It took four months to get her out, and in the meantime she's brought in a cat with kittens that are using the carpets for a bathroom, all of which all had -- and I had just carpeted before she moved in. So, her place was -- you could hardly stand to get in it, let alone show it to anyone. We had to redo the carpets; we had to seal the floors. In the meantime her rent, which was 350 for a one-bedroom apartment -- it included all her utilities, which I paid for that the whole time.

I think there should be some way that if we do happen to have an apartment where we're paying the utilities, that we don't have to keep that up if we can't get someone out. If she were paying her own gas and electric, it would have been terminated within a month; but because I was doing it, I had to, I had to keep on paying that.

I think maybe a more fair way would be if there -- if they haven't paid their rent in ten days and they tell you they're not going to pay it, you could give them their notice, but you should be able to go to court and start it so that at least by the end of the 30 days you could have them out.

I'm not sure what you mean on this 7.4 either about an acceleration of rent payments. I do think that we should be able to have something in the contract; that if they haven't paid the rent in three to five days, that there is a late payment charge.

Some of our tenants can be very good, and I don't think there's any problem. I often give rent refunds when someone moves. They don't have to wait anytime if they've paid their rent on time and taken good care of the apartment. But I think there should be exceptions when they haven't paid the rent on time and when they haven't taken good care of it. Thank you.

MR. RODD: Thank you very much, Ms. Hose.

The next signer is Melody Douglas.

MELODY DOUGLAS: I don't have anything.

MR. RODD: Thank you. Excuse me.

MELODY DOUGLAS: That's fine.

MR. RODD: The next signer is Guy Ponter (sic)?

GUY PORTER: Porter.

MR. RODD: Porter, Jr. Excuse me.

GUY PORTER: My name is Guy C. Porter, Jr. I'm from Charleston. I'm a Certified

Property Manager. We manage around 120 units for various customers, clients, owners. And I am opposed to the tenor of your regulations where you are only restricting the landlord more and there is no mention of tenant obligation. I certainly think in a general way that our present statutes are adequate to protect just about every situation.

Let me speak specifically to the item of security deposits. The purpose of a security deposit, as far as I'm concerned, is to make sure that the tenant pays his last sanitary bill and also pays for any damages that might have occurred. Now, the Sanitary Department in Charleston charges the owner of the property, if the tenant does not pay the sanitary bill. And in order to get a final bill from the Sanitary Board, it usually takes three to four weeks. That bill is then sent to the address, forwarded onto the tenant in whatever state he might be living in now; and by the time that he has a reasonable time to pay it, at least six weeks have expired on the sanitary bill alone.

MR. RODD: May I interrupt you and ask a question?

GUY PORTER: Yes, sir.

MR. RODD: Can you give some indication of the typical amount of the sanitary bills that you are referring to, the range?

GUY PORTER: The range will be anywhere from, oh, $8 to $25.

MR. RODD: And that would be a monthly bill?

GUY PORTER: Yes, sir. And they may be behind --

MR. RODD: (Interposing) That's right. I was going --

GUY PORTER: (Interposing) They may be behind with the Sanitary Board, so it could be several hundreds of dollar.

MR. RODD: But typically the range for one month's sanitary bill is $8 to $25?

GUY PORTER: Yes.

MR. RODD: Thank you.

GUY PORTER: Now, I would certainly suggest that instead of 20 days, you have 60 days in there. This seems to be a normal procedure in most leases at this point in time.

The other problem I see is the business of interest on security deposits. We turn security deposits directly over to the owner and along with their rental income, net rental income. This would be a tremendous bookkeeping arrangement, and I question whether or not we can get any of the banks to pay interest on this type of a deposit.

I'm also concerned about the eviction procedure that you have provided, and I'm also concerned about the fact that no provision is made in your regulation for the disposal of personal property that has been abandoned by the tenant and left in the unit, and the tenant is -- you're unable to find the tenant. What do you do with the abandoned property? There is no provision in your regulation for that.

So, I think we need to be fair on both sides of the coin. This is a contract between a landlord and a tenant. We're not a store. We're creating a contractual situation, and both parties should be equal. Thank you very much.

MR. RODD: Thank you, Mr. Porter.

The next name I have signed up is Neal Walters.

Neal Walters from Eleanor?

We'll pass on to the next person. If someone sees Neal Walters, you might tell him that I called his name.

Kathryn Maddox from Charleston.

KATHRYN MADDOX: Thank you very much for this opportunity. I'm Kathryn Maddox from Charleston. I'm president of the West Virginia Landlords Association, which is composed of approximately 125 members. Many of our members own a hundred pieces of property, rental properties or rental units. We are all dedicated to fair and safe housing. We have a variety of rental types, some for low-income and some for the -- more expensive housing units.

We are concerned about several of these items as an organization. First, 3.5 under 142-26-3, the conditions and maintenance of the dwelling unit. It says "Failure within a reasonable time after receiving notice from a tenant to make repairs." Many times the tenant may notify a landlord that there are damages to the unit which were caused by the tenant themselves. And if you rent to low-income -- families of low income, then the landlord is responsible for repairing those damages, because the unit could be declared unfit for habitation.

We feel that there should be something stated about what caused those damages. Now, if they were existing, that's one thing. But if the tenant caused the damages or if they had a breaking and entering, which many times turns out to be the boyfriend of the girl living in the unit who breaks and enters, then should the landlord be responsible for repairing door locks and doors that have been kicked open?

3.7, in that "fail to reimburse the tenant within a reasonable time for service or supplies," our policy is pretty much that we don't require the tenants to do any repairs or maintenance, and we have -- our experience is that we run into more trouble if we do that, because sometimes they'll paint woodwork that is natural woodwork. They might paint it black. I just had that last week to happen. So, if there is any kind of an agreement for painting or anything else, it should be in writing. This says it should be reimbursed by the tenant after any representation from the reimbursement (sic).

So, if any kind of an agreement like that is made, it should definitely be in writing.

Under the next section of rental agreements, 5.2.3, about the interest-bearing account for the deposits, we feel very strongly that this should not be. If you have a hundred rental units and you have deposits from a hundred tenants, think of the bookkeeping that is going to take. Plus, if you'd have to have a separate account for each one of those, I don't think you would find a bank anywhere that would let you set up a hundred different accounts.

And we certainly don't think that the account number should be given out. Keeping a separate account for deposits is understandable, but not interest-bearing, because the banks don't do it that way; and it would be a horrendous thing if you had to give -- pay this out at the end of every year, if you have tenants staying. It would just take too much time, and you'd lose too much money.

The next item, 6.4, the 20 days for termi-, termination of the occupancy, as stated by several other members we feel it should be 60 days, because that -- many times your repairs are much more extensive, and you can't get it done within a 30-day period of time. So, a 60-day refund of the tenant's deposit, we feel, would be much more reasonable.

No. 6.6 --

DARRELL McGRAW: (Interposing) When you say "reasonable," does that -- can I translate that to be an acceptable 60 days?

KATHRYN MADDOX: Yes.

DARRELL McGRAW: All right.

MR. RODD: I'm sorry, the number you had just stated?

KATHRYN MADDOW: 60 days instead of 20 days.

MR. RODD: I'm sorry. You were moving on.

KATHRYN MADDOX: The next one is 6.6.

MR. RODD: Your number is.

KATHRYN MADDOX: 6.6. The normal wear and tear, it says, for the tenant -- normal wear and tear is not to be included when you give the reimbursement -- their deposit. Many times this requires us videotaping or taking pictures when the tenant moves in and also taking pictures when the tenant moves out, because there could be a difference of opinion on this. We have checklists that they can itemize. We itemize things. Like, if new carpet is put in, then when the tenant moves out, if the carpet is very badly damaged, that's really not normal wear and tear at the end of one year. So, it needs to have a definition of what is normal wear and tear.

The next one under "Eviction and Termination," again we feel that the 30-day process for giving a written notice -- if the tenant has not paid their rent, you can now go to magistrate court within ten days and file, if they have not paid their rent; and we feel that that should still remain, that the landlord should be able to go after a period of ten days. Because it's going to take more than 30 days to -- in order to get a process and in order to sometimes even get an appointment, because the tenant can postpone the hearing. If the magistrate sets up the hearing date ten working days -- now, if you have a holiday, that's excluded. Weekends are excluded. So, that's ten working days which sometimes can amount to 20 days before you can get a hearing. Then the tenant can postpone that -- sometimes one, two times. You can already be into 60 days before you can even get a hearing, a legal hearing on an eviction notice. So, we feel that the 30-day notice is too long a time if they fail to pay their rent.

Again, as we get into utilities, this kind of ties in together, but some of the tenants and elderly people can receive assistance when they aren't able to pay utilities; and sometimes if they aren't able to pay their rent, they can get an assistance for, like, for one month's rent. But many times this extends the period of time also for an extra 60 days before you can have court proceedings, because you have to sign a paper after they get a little slip that says they -- that the landlord will refuse to evict them for another 30 days if they get assistance. And so, sometimes that can drag out to be three months.

Under utilities --

MR. RODD: (Interposing) Do you have a number that you're referring to?

KATHRYN MADDOX: For the eviction?

MR. RODD: For what you're about to speak about.

KATHRYN MADDOX: Okay, we feel

that after ten days, that they have --

MR. RODD: (Interposing) No. I meant the number of the regulation. I thought you were changing to another regulation.

KATHRYN MADDOX: All right. This is 7.2, was the --

MR. RODD: (Interposing) Thank you.

KATHRYN MADDOX: (Continuing) -- summary payment as to the 30-day notice.

MR. RODD: And it's helpful for the record --

KATHRYN MADDOX: (Interposing) Okay.

MR. RODD: (Continuing) -- if you identify it by number, if you can, the --

KATHRYN MADDOX: (Interposing) All right.

MR. RODD: (Continuing) -- regulation that you're commenting on, if it's easy.

KATHRYN MADDOX: And also 7.3 then, which says the judicial eviction procedure only, a court procedure, Mr. McCorkle, I think, made mention also of this, that there -- that you should not have to go to court each time you are going to evict a tenant, and this is what this regulation states, 7.3.

Under the next heading of "Utilities," 142-26-8, if the -- again, to refer, if the tenant then -- if the landlord is paying utilities, we do not feel that the landlord should continue to have to pay utilities when a tenant has not paid their rent. Again, if it is a hardship case, the tenant can go to different agencies, several different agencies and receive assistance in paying utilities. But if the landlord is signed up to pay the utilities, then the landlord, according to this, would have to continue paying the utilities, even when a tenant for three months or more hasn't paid rent. So, that can be very, very expensive, because usually you're going to have a big damage bill besides that.

DARRELL McGRAW: I have a question about that kind of a scenario. If, if you had a circumstance where a tenant did not pay, for example, gas in the wintertime --

KATHRYN MADDOX: (Interposing) Yes.

DARRELL McGRAW: (Continuing) --

and the landlord were to not pay the gas, and the gas would be turned off, how would you see who is responsible for the ensuing damage to the property that might occur as a consequence of freezing or whatever. Who, who would you sue as responsible for that?

KATHRYN MADDOX: Well, I think the tenant would be responsible, but in 99 percent of the cases the tenant has no income whatsoever when this happens. I think there is also a regulation that states that the utility company is not allowed to turn off a tenant's utility in the severe winter months.

DARRELL McGRAW: I see.

KATHRYN MADDOX: However, if the landlord is paying the utilities, there's no such provision; the landlord has to continue pay it. So, they're just going to be out the money. If the utility would be shut off, the tenant would, more than likely, not have the money to pay for any of the damages.

DARRELL McGRAW: I see. Thank you.

KATHRYN MADDOX: So, we've all

concluded that we shouldn't be paying utilitis. We should have it signed so that the tenants are paying the utilities.

DARRELL McGRAW: Thank you.

KATHRYN MADDOX: That's the best solution to that, we feel.

Again, we are very interested in maintaining our property and keeping it up, and we want to work cooperatively in every way, but we feel strongly that there should be some provision in here for tenant's responsibilities in a landlord-tenant agreement. Thank you.

MR. RODD: May I ask you one question to clarify one of your remarks?

KATHRYN MADDOX: Uh-huh.

MR. RODD: It's entirely possible that you may say, "I don't think I can comment on that," and I can accept that response as well, I assure you. But on the question of security deposits, and I address this because you said you were president of the Landlords Association, so presumably you're familiar with the position of some landlords, is there a suggestion that your association or you would make which would accomplish the result that tenants would reflect -- somehow accomplish the benefit of having their money held and set aside, losing value in the deposit form, other than the idea of an interest-bearing account; and secondly, isn't it true in your standing that many states do require, and landlords live with your requirement, of returning deposits to tenants with interest? Can you -- do you have any comments on that?

KATHRYN MADDOX: I know that when I talk to the bank for any business, that the bank had a regulation that they do not pay interest on a business account. And so, therefore, unless the banks have changed that ruling, the banks will not pay interest on a business account. We do have separate accounts to keep the deposits in, but they're noninterest-bearing accounts.

So, I think that's the solution; that we would make that a, just make that a provision that it would be deposited in a noninterest-bearing account and would be reimbursed to the tenant after the damages have been deducted or any rent that had not been paid.

MR. RODD: Doesn't it seem unfair

that the person is losing the benefit of that money over that period of time that it sits in that account?

KATHRYN MADDOX: I can't speak for everyone, but I think many times a deposit, particularly when you're dealing with low-income families, might be $20 for the deposit. Now, would you -- if you had, again, a hundred accounts and you're figuring out interest on $20 for a year's interest then -- you know, think of the time that that's taking.

I don't think that it usually matters. I haven't had a single tenant to ever complain about the deposit losing -- that low amount of deposit losing interest. Never had a complaint. I don't know if anyone else ever has or not.

MR. RODD: Thank you very much, Mrs. Maddox.

KATHRYN MADDOX: Thank you.

MR. RODD: The next person we have signed up is Zol -- I apologize -- Maggied?

ZOL MAGGIED: Maggied.

MR. RODD: Maggied?

ZOL MAGGIED: Yes, sir.

My name is Zol Maggied. I live in Charleston. I'm a landlord. I'm the immediate past-president of the West Virginia Landlords Association, the same association that Katie Maddox is now president of.

Because of time interest and because quite a few of our people have already spoken, I must say that I would rather not comment on item for item but maybe make a few general comments.

In the matter of deposits, deposits are designed not to keep extra money from the tenant but designed to encourage the tenant to take care of the property, and also to give proper notice of leaving, and to follow certain procedures in that regard. I've found that by having a substantial deposit, it makes a tremendous difference in the condition that the apartment is left in and kept in.

And as far as the interest-bearing aspect of it, I agree with Katie Maddox. The bookkeeping would be tremendous, and it would be a tremendous problem to do this.

Utility costs, a comment was made also by another speaker. The utility cost probably should be paid for by the tenant. In some of the older buildings which provide very reasonable and good housing, it's virtually impossible to do that, and that's the reason that utilities are always paid for by landlords.

The hue and cry in Charleston, as I understand in most of the country, has been for years that there's a necessity and a great desire by public officials for reasonable housing at reasonable costs for people who do not have high incomes, and that's part of what we provide. And I think it's time that the legislators and the lawmakers stop tilting the laws towards the tenant. I think it's time that the landlords' rights are protected, also. And if you have any doubts as to this, talk to anybody about procedures for evicting tenants who do not pay, talk about procedures for evicting tenants who do not obey the law, and then you will find that this thing is way off-balance.

I apologize for not staying with your numbers here, but I feel very strongly in this regard.

MR. RODD: That's perfectly all right.

ZOL MAGGIED: And I think it's something that should be considered by the lawmakers, by the legislature, by all people concerned.

And if -- you must remember this, too: That when we are burdened with extra costs, there's only one way we can survive, and that's to pass it on. We're just like the clothing store whose suit cost them a given number of dollars, and then it's raised by the manufacturer 20 percent later. They pass it on to the customer. And that's the only way the landlord survives. And I hope you will keep this in mind. Thank you.

MR. RODD: Thank you very much.

The next person signed is Roy Stricklen.

ROY STRICKLEN: Tom, my comments will be made in writing.

MR. RODD: Thank you, Mr. Stricklen.

For anybody who's just come in, at the beginning of the hearing in response to an inquiry I indicated that we would keep the record open for 24 hours, and I will say until the close of business tomorrow at the Attorney General's office, either at the main capitol or preferably at 812 Quarrier Street, for written submissions.

The next person signed up is a Bryan Kett from

Ford Credit.

BRYAN KETT: Hello. I am Bryan Kett. I am with Ford Credit, and I am here to address the Series 24, "Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive" practice -- "Deceptive Acts" and "Practices In Security Interests and Repossession Practices."

As the largest automotive finance company in the world, with over 77 billion dollars in receivables, Ford Motor Credit Company supports efforts to promote fair and consistent treatment of all customers.

To the extent the proposed rule promotes such treatment, Ford Motor is supportive; however, we must express our deep concern over and opposition to provisions which would place unreasonable burdens upon the automotive finance industry and ultimately work against the best interest of the consumers of West Virginia.

Although Ford Credit is -- let's see, although it is Ford Credit's policy to accommodate our customers to the greatest extent possible, unfortunately repossessions do occur. Proposed Rules 3.2.7 and 3.4.3 are opposed by Ford Credit for the following reasons:

3.2.7 requires the creditor to possess knowledge that is generally unavailable. The rule provides that it shall be unfair and deceptive acts or practice deliberately (sic) -- to deliberately seize property from a location that causes undue hardship to the consumer.

Most vehicle repossessions cause some degree of hardship, but how will a creditor ever know whether a recovery place and time will constitute an undue hardship? Ford Credit would make subject to the burden -- would be made subject to the burden of countless claims and litigation, alleging that Ford Credit knows or should have known that the repossession would cause an undue hardship. We believe this rule is tantamount to the repeal of the statutory right to repossess collateral. The cost of which would be borne to the West Virginia consumers who pay is great.

Rule 3.4.3 places burdens on creditors which will increase the cost of and decrease the availability of credit in West Virginia. The rule requires that a repossessed vehicle be sold at retail or that the creditor -- or that the customer be given credit for retail market value. This rule appears to be based on two false premises. First, creditors will always be able to collect deficiencies from defaulted customers and, hence, have no incentive to maximize the sale price of repossessed vehicles. Second, a retail sale will result in greater proceeds applies to the -- apply to the account than a wholesale -- than a wholesale sale.

Unfortunately, such premises are flawed for the following reasons: One, the creditor must get the highest sale price reasonably (sic) for repossesed vehicles. The rule assumes the creditor can simply force the defaulting customer into paying the difference between the outstanding balance and the proceeds of the sale. In fact, repossessions occur precisely because the consumer is unwilling or unable to pay.

The creditors must, therefore, assume the additional amounts will not be collected and seek to obtain the highest sales price reasonable to, to minimize the potential losses. For example, Ford Credit experiences an average deficiency of over 31 hundred dollars after the sale of a repossessed vehicle. Less than one-third of this deficiency is recovered from post-repossession collection activities. Once again, it is critical that we maximize the sale price of a repossessed vehicle to reduce our bottom-line losses.

Number two, wholesale automotive auctions open to dealers obtain the highest prices at the least cost. The automotive auctions used by Ford Credit in selling recovered vehicles are sophisticated, state-of-the-art, multi-million-dollar facilities complete with marketing departments, cleaning and repair facilities. It is not uncommon to have over 1500 dealers in attending and participating at these auctions. Every aspect of the process is designed and monitored by vehicle remarketing specialists to quickly and efficiently obtain the highest price for those consumers' account.

Three, forcing creditors to open retail outlets and/or give retail prices will increase the cost and/or reduce the availability of credit to consumers in West Virginia. Proposed Rule 3.4.3 would increase the cost associated with repossessions to creditors such as Ford Credit. In response, creditors, in order to maintain acceptable profit margins, will either have to raise the cost of credit to the customers or tighten credit policies. Marginal and high-risk customers will be rejected in an effort to reduce the number and cost of repossessions.

Number four, the proposed rule is contrary to current West Virginia law. The legislature has established the standard for rules for repossessed goods as commercially reasonable, West Virginia Code 46-9-504(3). The standard for this application to wholesale automotive auctions has long been accepted in jurisdictions throughout the country.

Five, the federal government has concluded that the wholesale automotive auctions are advantageous to consumers. As a part of the investigation of creditor practices which led to the adoption of the credit practices rules, the FTC considered requiring repossessed vehicles to be disposed at retail. The FTC's conclusions match what common sense would dictate: After deducting the reasonable expenses of the retail sale, the debtor's account would not be credited the amount greater than the resulting (sic) from the wholesale sale.

They further concluded that this provision would impose costs and would raise the cost and reduce the availability of credit in excess of offsetting benefits. Its conclusion was based on the examination of the incentive of creditors to maximize the sale price and the fact that the wholesale retail price difference is due primarily to the cost of running retail outlets.

We view this rule as nothing more than an attempt to increase the creditor cost on defaulting accounts which will only hurt good-paying customers. Thank you.

MR. RODD: Thank you very much, Mr. Kett.

I had -- I apologize for conversing a little bit while you were talking there, but I had seen some of your comments in writing, as well as I was pretty familiar with them. So, I figured -- and I appreciate that.

BRYAN KETT: I have a copy, if you would want one.

MR. RODD: Yes. If you, if you have -- well, we received -- already received your comments in writing.

MR. KETT: Okay.

MR. RODD: Just a second.

The next person signed up is Joe Doughton from --

JOE DOUGHTON: (Interposing) Mr. Kett has explained our position. Thank you.

MR. RODD: Thank you, Mr. Doughton.

The next person signed up is Alonzo Johnson.

ALONZO JOHNSON: I am Alonzo Johnson from Monongalia County. I have a small mobile home park in that county. Several things concern me in these regulations I'd like to talk to you about, and I thank you for allowing me to do this.

When I started my park several years ago when I was a much younger man, I would have probably lost it if these rules had been in effect, because I was able then to rent some of my lots to mobile home salespeople, keeping them available for their sales, which allowed me to make my payments much earlier than I would have been able to otherwise.

Item No. 3.4 on Page 3 of the mobile home regulations you have would exclude the possibility of doing this. Item 3.5 seems a little unfair to me, but I guess we are unfair in some things, that you can't rent to the highest bidder for a lot that excludes one person offering more for a lot than someone else if there's only one lot available.

Item No. 4.2 requiring a one-year lease unless the tenant requests in writing a shorter period of time would exclude many of the practices I now use, it appears to me.

One is you could not prorate the first month's rent, because you'd have to have a year's lease, the payments being monthly, covering this statement in the rule.

MR. RODD: I'm sorry, I'm not following you.

ALONZO JOHNSON: Okay. Item 4.2 says, one, that -- each rental agreement must be for no less than one year. So, it's got to be a one-year. So, it could be more than one year; it could be one year and ten days or one year and 20 days, the first one; and one year after that. I assume it says one-year lease and the payments be monthly.

If it's a one-year lease and the payments being monthly, then I would not be able to get my rents all coming due the first of each month, which I do. I prorate the second month of rental so all payments will come due on the first of the month. This says all payments would be monthly payments.

MR. RODD: So, it's not clear that, that under the circumstances you're describing, partial payments could be made?

ALONZO JOHNSON: It's says they do not. It says montly, equal monthly installments, all rent must be in equal monthly installments.

MR. RODD: I understand. There's no exception for the circumstance where you prorate.

ALONZO JOHNSON: Prorate or where I want my -- all leases to expire on June 30th, if I would want that to happen; and I could see where people, because of administrative costs, would want them all to come due at a particular time.

MR. RODD: Okay. I understand you. Thank you.

ALONZO JOHNSON: Okay. I'm sorry I wasn't clear.

MR. RODD: No, no. Please proceed.

ALONZO JOHNSON: Item 5.3.1,

although I don't now have nonmetered utilities, when I started the park I did have nonmetered utilities; and everyone paid the same amount of rent, and the charge was included in the rent. I don't know whether it was listed as separate or not. But this tends to say that you have to charge everyone for utilities according to how much they use. It appears to me to say that.

Since you are not metering -- when you -- small parks are not metered, you just pay your water. Get one water meter, and everyone has paid for the water in their rent. This would exclude that practice. It appears to.

I have trouble reading these things sometimes.

Item 6.2 excludes rule changes during the terms of the rental agreement. Item 6.2 with Item 9.1, I read 9.1 to give a perpetual lease to anyone that does not break a rule in the park, the mobile home community, whatever we call it here. It appears to include those forever. I'll get back to Item 9.1 again when I get over to that. If Item 9.1 was changed, that would take care of my problems with 6.2.

And I would like to see Item 5, the one I just talked about a moment ago, to allow monthly leases instead of just annual leases, which I do now monthly lease.

MR. RODD: That is at this time your practice is to say that you can terminate a lease anytime --

ALONZO JOHNSON: (Interposing) Either party. Either party can terminate the lease on a 30-day notice.

MR. RODD: Period.

ALONZO JOHNSON: Period.

MR. RODD: Anybody who rents from you, that's what they --

ALONZO JOHNSON: (Interposing) Sign, and that's what they renew.

MR. RODD: You don't offer them any other option?

ALONZO JOHNSON: No.

MR. RODD: Okay.

ALONZO JOHNSON: And I've had no problem with that in years.

Item 7.2 and 7.3, I think all of the items in 7 refer to the age of a factory-built home. You can exclude solely or in part on the basis of.

I am sure many of my tenants would take me to court when I terminate their lease and say it was in part on the basis of, based on. If I would require them to paint the home and they refused to paint the home -- "Why does it need painted?"

"Because of its age, it needs paint."

So, anything dealing with the age of the home you cannot use to exclude someone from the home -- from the park.

Item 7.8 appears to allow tenants to place a mobile home "For Sale" sign anywhere in their lot. Mobile homes have to be moved in and out, and I at least allow to re- -- keep a right to move anything so I can move a home in or out, because you have to pass one -- or cross over one lot sometimes to get into another one. But Item 7.8 says "or on the site on which the mobile home is located." I'm sure people will interpret that anywhere they want to put one.

Item 9.1 really bothers me. "It shall be an unfair and deceptive act or practice to refuse to renew the tenancy of a resident of a mobile home park, except upon the following grounds." (sic) It lists three grounds. That's for renewing. So, we're giving a one-year lease; we cannot terminate the agreement at the end of that unless one of these three things occur.

I recently just put in some extra spaces on land that I, quote, held -- or felt was too valuable for mobile homes, but I knew I could change it in five years if I wanted to put something else of higher value in on the land. The way I read 9.1, if these people pay their rent, don't break any of the terms of the rental agreement, material terms of the rental agreement, they can stay there forever, unless I change the whole community, change the use of the whole community. I just can't change the use of part of it.

Item 10.3, if I wanted to put in a pool, pave roads, does Item 10.3 exclude me from having a charge for doing that? It appears to to me.

Timing on these rules bother me. I just recently had to pay an attorney over $500 to get a lease written that met the conditions, he said, after talking with him, of the West Virginia new law concerning mobile home parks. With this, I will have to get a new lease and have everyone sign a new lease. I wish the two had been done at the same time, because this -- these regulations will require me to have everyone sign a new lease and have a new lease written.

I have two questions I'd like to know. When will these rules be final, and when will they be effective?

MR. RODD: The rules will not be effective until and unless they are approved by the legislature of the State of West Virginia.

ALONZO JOHNSON: So, the answer is the next legislative session?

MR. RODD: I believe that's a pretty safe answer.

ALONZO JOHNSON: Thank you.

MR. RODD: Thank you very much, Mr. Johnson.

Tom Winner.

TOM WINNER: Counsel will give our remarks.

MR. RODD: Okay.

DEBBIE SINK: Debbie Sink. I signed in.

MR. RODD: You're the next person that signed up.

DEBBIE SINK: Yes.

MR. RODD: Thank you.

DEBBIE SINK: My name is Debbie Sink, and I'm here with Tom Winner on behalf of the West Virginia Bankers Association which represents the banks and their parent companies in the state of West Virginia, and we would like to just give some very general oral comments on Series 24, the repossession regulations.

We've previously submitted fairly detailed written comments, and I will not take the time to go through each of those, but the concepts we would like to relay this morning are -- relate to our serious concern with that proposed series. We believe that they would have, if promulgated, an adverse impact on consumer credit or -- and/or the cost of that credit, both availability and cost. The reason we say that is that these proposed rules will discourage banks from lending to a marginal borrower or one where there may be the likelihood of a need to repossess. The cost that the proposed rules would impose upon repossessions, or the limitations on repossessions, would lead to this result.

The regulations also would tend to eliminate flexibility and work-out room, if you will, negotiation room, between a creditor and a borrower because of some of the limitations imposed on creditors within those rules.

Another serious concern we have is the several provisions that are in direct conflict with the Uniform Commercial Code, and we have enumerated those and given references in our written comments. The reason for concern there is multifold, but one point I want to make that hasn't been made, I don't believe, by the other commenters is that the Uniform Commercial Code has extreme value because it is just that: uniform. And it permits interstate commerce, interstate transactions, because of its uniformity.

We are concerned that any attempt, attempt to alter that could not only have an adverse effect with respect to what's available to consumers within the state but also from without the state, because it will be more costly for those out of state who would perhaps make credit offerings or offerings of goods to consumers in West Virginia. It will be more costly for them to do business in this state.

Also, there's some concern, I guess, about enforcecability, given that the proposed rule is a rule as opposed to a statute, and there could be litigation in an effort to establish which prevails in the consumer context.

We also made the point in the written comments and would like to reiterate here that portions of the rule which are not in conflict with the UCC are, we believe, duplicative; and we have the same concern that was expressed at the outset this morning about piling on when there is very adequate coverage on some of the areas addressed in the rules, both within the West Virginia Consumer Credit Protection Act, other areas of West Virginia, and federal law; and, again, we pointed out some specifics in that regard in our written comments.

In short, the concern we have is very high with these proposed rules, and details are set forth in the written comment. And we thank you for this opportunity and appreciate your consideration of our comments.

MR. RODD: Okay. May I ask you one -- it's simply a clarification of something you said, and I understand that you may not be able to respond to this, but you said something about eliminating the work-out room.

DEBBIE SINK: Yes, sir. I could give you one example just off the top of my head. There's -- I believe in the proposed rule there's a provision that a creditor shall not make a, quote, "false threat," I believe is the language, to repossess. If the creditor did that, that would be an unfair or deceptive practice.

I think in the written comments we pointed out that it would be impossible to know what was false. I mean, perhaps it was a genuine indication that repossession was imminent, but perhaps something could be worked out. If the creditor did not follow through, could it then be construed as a false threat? That's one example that occurs to me. That's a very, a very vague standard; and it might require creditors to establish a policy that if they ever mention the likelihood of repossession, they must follow through or else they would in fact be guilty of an unfair practice.

That's one example that occurs to me, but that's the type of thing that I think could impede flexibility or work-out opportunities.

Thank you very much.

MR. RODD: Okay, thank you.

The next person signed is Bonnie Harold.

Bonnie Harold.

The next person signed is S. D. McClure, Charleston.

S. D. McCLURE: Thank you. My name is Steve McClure. I'm with Old Colony Management Services. We manage over 450 rental properties, that's residential and commercial. And I'm very concerned about this whole proposition here of Rule 26 -- or Series 26 that is totally one-sided towards the, towards the tenant.

A couple of questions. I'm not going to go into all of the details, but I would like to invite the author of this to come to my office and spend a day or two or three and see how we have to live fighting this kind of stuff.

One question. It says -- on the -- I don't know what this sheet is called. It's a rule entitled: "Explanation of Overall Economic Impact." It says here that it will promote private adjudication of consumer issues, reducing the burden on state regulations; and right in it it says the only way you can evict anybody is to go to court.

It's kind of contradictory.

Anyway, to me it reads like a Japanese instruction book before you translate into English. I'd like to invite the author to come and spend a day with me. Thank you.

MR. RODD: Thank you.

The next speaker is a J. D. Stricklen.

J. D. STRICKLEN: Thank you. My name is J. D. Stricklen with Stricklen Properties. Our offices are in South Charleston. We operate -- own and operate a few hundred units throughout the Kanawha Valley.

And the comments I want to make today is, first of all, the -- some of the things I'm in agreement with. I can see where some of it is a little bit one-sided, but I don't think anybody should have to live in anything that's inhabitable or substandard.

To get specific with what my concerns are, first of all -- of course, I'm speaking on the tenant-landlord Series 26. The first item would be 3.5 where "Fail within a reasonable time after receipt of notice from the tenant to make repairs" when you've been notified that something is not fit or habitable. The only concern I would have would be that if in fact the problem was created by a tenant, such as someone spoke to earlier where there had been a domestic squabble and the door got busted down or a thermostat got knocked off the wall. I think there should be some special consideration to tenant responsibility due to their negligence.

The next thing would be 3.8, which deals with reimbursement for repairs within a reasonable time. A little bit of gray area there. What is reasonable? If on Sunday afternoon my air conditioner goes off at my house, my wife thinks a reasonable repair could mean within a half an hour, which I don't personally think is reasonable.

You know, I try to -- when we deal with tenants, we try to put the shoe on the other foot. And, you know, if something happened to my house on Sunday, I'm going to tend to wait until Monday to fix it, and I think that's reasonable as opposed to trying to track down a technician at double-time pay. So, I think that could be a little gray, and there could be some misinterpretation of what a reasonable time would be, and I would hope that that would be addressed.

Moving to Section 4 on "Notices and Demands," I really don't have any problem with what you've written other than I'd like for it to be bilateral. I'd like for the tenants to be involved with that. For instance, on 4.2, "Fail or refuse to accept" -- or backing up, it says "It shall be unfair and deceptive act or practice for a landlord to," 4.2, "Fail or refuse to accept any notice sent to any address to which customarily sent."

To make a long story short, I don't have a problem accepting notices; I just wish that the tenants would accept Certified Mail. I'd like to see that be a little bit more bilateral to make it more fair.

Getting to the section that deals with the interest-bearing deposits, security deposits would be first mentioned in Section 5.2.3 and also in Section 6.3. Well, what I want to point out to you is that I was over at One Valley Bank earlier this morning. I noticed that on a one-year C.D. the interest rate is now 3.75. Let's call it 4 percent.

If you've got a $200 security deposit on a tenant, 4 percent, you're talking about $8 a year. In order to process that back to the tenant, our cost made be $20 to process $8. So, what we do is, like in any business, when you have an increase in the cost of business, you generally pass it on to the tenant. So, in order for the tenant to get the benefit of an $8 interest payment on their deposit, they're probably going to have their rent increased to reflect a $20 increase in doing business.

I know it sort of seems like the money is just sitting there, but that's, that's the things that you've got to take into consideration, is what the cost of doing some of these things would be.

Moving on down to the matter of security deposits in 6.4 and 6.5 on the 20-day period, as other landlords, I have a problem with the 20 days. But there's an incentive for me as a businessman and a landlord to even process security deposits much more quickly than 20 days. We -- because of the word mouth, you know, the way you conduct yourself helps you in future business relationships and referrals from past tenants.

However, the problem is, you know, we like to refund deposits within two days of when the people move out. Sometimes you can do that and sometimes you can't. There are al- -- there can be extenuating circumstances where it could take up to

60 days. The most, the most prevalent problem is, is getting the final utilities paid. You know, under the Public Service Commission regulations, the property owner can be held responsible for the final garbage bill or the final sewer bill; and you might think that, "Well, that could be an 8 or $20 item, but by the time -- if that gets slipped past and they actually put a lien on your property and you get that put on your personal credit report, and then it maybe will cost you as much as $100 to get that cleared up. So, it's important to always have those cleared up when tenants leave, and sometimes you just can't do that within 20 days.

What I tell people is when I get notice that they're going to move, I say, "Please get me those paid receipts." Sometimes they don't listen. Sometimes they are moving out of state. When people are moving, it's a busy time. It's very important that we have enough time to get these utilities accounts taken care of when people leave.

The Section 7 which deals with the termination of leases, just generally -- someone made the comment earlier that they thought that West Virginia had a quick eviction process, which I disagree with -- and I would, I would say that I think that probably what's on the books now is fair; and I think that anything that would be more stringent as reflected in Section 7 would not be fair to the landlords.

And the last item I'd like to make a comment on would be Section 9.1 which has to do with entering the tenant's unit. And really the only problem that I have with that -- we don't make periodic inspections or anything of that nature. We re- -- it's mostly through where you reserve a right to enter at reasonable times for purposes of repairs or showing the unit to prospective tenants. And at the end of that it says that you can, you can enter if it's authorized in writing; and if you stop it there, I don't have any problem with it. But it goes on to say that "other than in a form provision," which is what a lease is. And I'd like for that to be struck, from -- the end of Section 9.1, in order for us to be able to put that in the lease as opposed to have to get an individual authorization from every tenant.

I might also say that's all of my comments, and I'm glad that the Attorney General has decided to spend his valuable time here this morning. I'm quite impressed that you stayed to hear our comments. Thank you very much.

DARRELL McGRAW: Thank you.

MR. RODD: Thanks very much.

The next person signed up is David Yoder.

DAVID YODER: Director Rodd, Judge McGraw, thank you for taking the time to hear us today.

I am David Yoder from Morgantown. My address is 1225 Pineview Drive. I'm here representing the Home Builders Association of West Virginia, and I'm also president of the Apartment and Rental Housing Association of West Virginia. I'm president of Allegheny Development Corporation, which operates and owns several hundred -- at least 300 units of various types, whether they are residential housing, single-family, two-family, four-family, and multiple-housing structures, as well as commercial units.

I'd like to state that I have been involved in housing issues for about 30 years. I have worked since that time with at least four university administrations in Morgantown, with President

Harlow, President Budig, President Gee, and also President Bucklew.

In all our endeavors, whether they are in the corporate structure or with the associations in the housing industry which I represent, we promote safe, decent, and affordable housing. In fact, you might recognize the fact that when we can provide good housing, that means more jobs for our industry.

When we can eliminate housing that is not fit and habitable, we, we find that that's good for the housing construction. So, we support good housing. We support fair and just dealings with our housing consumers, as well.

And I could relate some horror stories. I will have a prepared text for you, as well. I recall that in times past we have gotten into situations where we've had tenants that were a little less than responsible in our corporate affairs, and we had tenants' associations deal with us, and always in a good relationship. We're very proud of our reputation in Morgantown.

We have had one instance where a family had rented a new duplex. They were the first tenants in this duplex. It was a 3-bedroom unit, and they had a family with several children, and they couldn't pay their rent. So the, the tenants' association intervened and said, "Well, would you let us hold a check until the end of the tenancy, and then you'll be sure to get your money? And after the tenancy, then we will deliver to you the check, after we inspect the apartment, because these tenants believe that you may not be fair, you may not want to return all of their security deposit. So, after we inspected the unit," the association said, "we will assure you payment."

That check was around $2,000. And after they vacated the apartment -- the unit in about one year -- I think the tenancy was for one year -- we inspected the unit and found that the little kid cars and what have you had raced around the hallways and virtually destroyed the decor of the unit.

So, that's why the cost of repairing the unit was considerably more than the check that was to come to us.

These tenants moved on to an out-of-state location; and at the time when we cashed the check, we found, after a couple of weeks, that payment had been stopped.

So, how do we -- how do you propose that we go about finding the tenants and recover our losses? These are some of the, the experiences typical of this one that we have had.

The issue of security deposits, in my view, is not nearly as serious as it appears in the proposed regulations. They are typically safe in the landlord's hands, simply because to own property you would have some financial assets; and there are remedies, if the security deposit is not repaid when appropriate, to recover any deposit of the security deposit.

So, we -- we also had a situation which was mentioned before where the utilities become an issue. We find that security deposits are necessary for many reasons, whether it's for repair of damages potentially to an apartment or whether they are for the security of utilities which may have been transferred back into the landlord's name.

And where there's a public service district involved, the Public Service Commission provides that the District can attach the landlord's property for not paying the utilities, even though it was a tenant who had signed for the utility. I'm not sure that that's always the case in a municipal utility, but I know it's true in a public service district which I chair.

The Board of Directors of the West Virginia Home Builders Association met on July 23, 1994, and unanimously adopted an action to present testimony here today, and the Apartment and Rental Housing Association has likewise acted on the day before to authorize the providing of testimony here today.

The testimony which I have prepared that is written is from the homeowners association, and I signed it as Chairman of the Subcommittee on Legislation.

We find that many of the provisions outlined -- and I have footnoted in the prepared remarks the, the specific section to which we refer as we provide these comments. I hope that you'll be just slightly lenient, as you have been for the other speakers. I am representing more than one entity, and I thank you very much for your courtesy.

The association, as I've indicated, likes to promulgate good relations with landlords and tenants, and any way that can be accomplished we would support. We find that the requirement under

Section 5.2.3 and 6.3 are, in the paying of interest on security deposit, is probably more cost than the value to the tenant. I think you had some figures brought to your attention this morning regarding the rate of interest. In fact, we find that many banks will refuse to pay an interest on these small accounts and, on the other hand, would likely charge a fee for servicing such accounts.

And there's another problem where the Social Security numbers are required, and you have multiple tenants in one unit. The financial institutions would likewise have a problem in how to segregate out who is responsible for receiving the interest on the money.

A "fit and habitable condition" has never been defined by the legislature. In years past, in the mid-'70s to the mid-'80s, the late Senator William Moreland from Monongalia County frequently attempted to amend the landlord-tenant legislation so that "fit and habitable condition" could be defined. There's always controversy on whether to open the landlord-tenant legislation as it is now provided.

Another section, 6.1, that I wish to refer to, I have the following comments: The prohibition and the regulations against collecting rent in advance or any amounts in excess of one month as a security deposit makes it very difficult to collect for a 12-month lease in college towns where the normal school year is less than nine months. In fact, some landlords provide for payment of the first month's rent and a security deposit with the last month's rent in installments to ensure that at least some rent is collected for the period between May and August.

In addition, some landlords provide for a discount for the payment of a term, such as six months or a year in advance. Our companies do that. We give as much as a ten percent discount for payment of the rent in advance. We're assured that way that the rent will be there; and, as I've indicated, we have not had any problem with this with out tenants, because we're very proud of our relations with our tenants for many years. In fact, yesterday a past tenant of about 1965 called me and wanted to see whether they couldn't stop by and say hello, and they have stopped by on occasions in years past. These are the types of things that make business worthwhile, when you can refer back to relationships that you have developed with those with whom you deal.

As previously noted, the Association supports fair dealings in all landlord-tenant contracts and relationships. We support the refunding of security deposits in all instances, except where legitimate deductions are made for items of damage by a tenant or failure to pay amounts due under the contract.

We do not believe that a time limit of 20 days for the refund of a security deposit is always reasonable. We are aware of many landlords whose contracts, as I indicated, run on a calendar year or a term peculiar to a specific location. Therefore, when multiple tenancy is handled on a compressed time frame, it is reasonable to assume that there would be an undue burden on the staff of a company or any landlord to compile the necessary data for the return of the deposit in such a short period of time.

We are aware that other states in some instances have a time period of 30 days. I note that others have indicated that that may not be enough time on occasion. But any term less than 30 days, we believe, would be quite difficult for many of the operators who do a good job and try to do a proper accounting.

We have always urged our members to make an effort to make such refunds on an expeditious and timely manner. And we further believe that a security deposit should rightfully be applied to excessive cleaning required by a tenant whose living habits have caused excessive wear and tear, but we do not condone withholding a security deposit simply to collect additional rent. We refer in that instance to Section 6.4 and 6.5.

The next paragraph which I refer to applies more to Section 3.7. We are strictly opposed to any rule which would allowed tenants to perform work on property of the landlord. The proposed rules would allow a tenant to replace a tile roof. You know, if a tile roof happens to have a leak, that's -- that takes some skilled craftsman to replace it.

So, there are exceptions to anything that a tenant might undertake on a landlord's property, and we believe that any, any work that's refundable to a tenant should certainly be by a contractor acceptable to the property owner.

I have just about concluded, Mr. Director, and I thank you for your consideration.

We also find that the Section 5.2.3 and Section 7.1 through 7.5 have some concerns to us. They prohibit accelerations of rent payments in the event of default or breach of a contract. Common business practice would permit a bank to accelerate payment on a note, but somehow acceleration of rent payments is found by these proposed regulations to be unacceptable. We also find that the section relating to evictions and termination of tenancy is generally restrictive.

West Virginia law provides for a process for eviction for wrongful occupation. We believe this section attempts to extend the time necessary for obtaining possession even during unlawful occupation. We believe this section further requires a landlord to provide utilities during unlawful occupation. We find this to be unreasonable.

As to Section 7.5 and 8.2, we agree with the provisions of the regulations which would prevent denying a tenant the use of utilities during any lawful occupation. We strenuously oppose the requirement that all utilities shall be furnished during unlawful occupation. We object to any arrangement which would require a landlord to provide utilities when funds are being withheld by tenants in a breach of a contract.

It is quite conceivable that a group or an association of tenants could join and decide "We're all going to withhold rent for a month or two," and there may be no alternative for the landlord but to cut off the utilities, because he may not have the funds whereby he could support the utilities during such a time period.

And as to Section 9.1, we believe the requirement of these twelve hours advance notice to show premises to prospective tenants or purchasers is unreasonable when both landlord and tenant have agreed in writing otherwise. This would deny prospective tenants who are in town for just one day the opportunity to view a living unit where arrangements were made -- were not made at least a day ahead of time.

And, finally, these comments are provided in the interest of promoting fair and reasonable landlord and tenant relations and dealings. We believe that the proposed rules and regulations are silent concerning landlord rights or that they attempt to remove legitimate rights which the landlord may already have. It must be noted that there are no unfair and deceptive acts cited which can be attributed to the tenant.

An example of this inconsistency is the provision that it is an unfair and deceptive act for a landlord, quote, to fail or refuse to accept any notice, end quote. But there is no provision which finds a tenant in violation of the same act.

It is our opinion that the adoption of these rules will discourage the development of affordable rental housing in West Virginia. Accordingly, these rules will not promulgate job growth nor landlord-tenant relations as they are presently proposed.

So, we urge you to do some rewriting, and we stand ready and willing and anxious to participate with you in a way to make these rules more equitable. Thank you very much.

MR. RODD: Thank you very much, Mr. Yoder.

The next person we have on the list is Brad

Sorrells.

BRAD SORRELLS: Thank you, Mr. Rodd, Judge McGraw.

I'm here today on behalf of the Chrysler Credit Corporation and Green Tree Financial Corporation.

Before I move to the rule that I'm primarily concerned with, which is Series 24, Title 142, I wonder if I could offer a suggestion that's occurred to me as I've heared (sic) -- as I've heard landlords talk about the problems with the security deposits, in not being able to put them into a separate account and that type of concern.

Lawyers for a long time had the same problem with their trust accounts, and the State Bar came up with the IOLTA system where the -- all the money went into one, interest was drawn and taken off for something of good use. It seems that would be an appropriate use of what in individual cases would be smaller amounts; but when amassed together across the state, it would certainly be quite a sum.

Moving to Series 24, as an initial matter, both Chrysler Credit and Green Tree believe that rules pertaining to repossession are desirable. It's a somewhat nebulous field, but guidance is desirable.

There are, however, a few provisions within the proposed rules that cause concern, and I'll run through them as quickly as I can. First, 2.2, the definition of a "Consumer transaction," I would maintain that that should be limited as it is by West Virginia Code Section 46A-1-102, 12A-5, to transactions that do not exceed $25,000.

Second, 3.1.1, this has been commented on previously regarding the actual intent to repossess. I deal with a variety of certain secured creditors in addition to Green Tree and Chrysler Credit. In most of those instances I've been hired to take possession, and in virtually all of those instances they would rather work something out than take possession. And that rule seems to say, "Go get it. If you took the security interest, you have to go get it."

Next would be 3.2.4, "false threats to repossess." Again, I'm not -- I think that's somewhat ambiguous. I'm not sure whether it's threatening to repossess when you have no intent; and that was already covered, so I think it must mean something else. I assume that what is meant is threatening repossession when the creditor really is not a secured creditor and has no right to repossess; and I would suggest that perhaps it would be clearer if the provision read "threaten to repossess property, including but not limited to household goods when the creditor knows that it has no recoverable claim of a right to do so."

Next, 3.2.5, it's somewhat ambiguous there in the last two words, "of other deception." Certainly it's improper to make false threats about the use of law enforcement, but a lot of ambiguity as to other deceptions.

On 3.2.6, the same concern as to otherwise misrepresent the repossessor's identity, that that could be construed in a lot of instances that when you have a repossession agent going out to look for a car, unless he clearly has it marked "Larry's Repossession Service," he's misrepresented himself as just being a standard citizen driving down the street.

3.2.7 causes a great deal of concern, and I think that it's an invitation for litigation to ensue almost every time that there's a repossession. It is so subjective that I don't think any creditor can be charged with that knowledge of when seizing property from a particular location might cause undue hardship.

I have the feeling that the intent of this provision is to stop malicious conduct on the part of creditors; and perhaps there are some creditors who would say, "Well, this guy defaulted. I'm really going to stick it to him." And if that's the intent, that's a good thing.

But I would propose that language such as the following might serve that same purpose and not put creditors at risk of an ambiguous section, and that would be "Seize the property from a given location when the creditor has actual knowledge that seizing the property from that location will cause objectively undue hardship to a consumer." I think that takes care of the concerns.

I next would bring you to 3.2.9. That regards repossession agents to carry a firearm. Now, neither Green Tree nor Chrysler Credit have any interest in hiring Wyatt Earp to go out and seize their collateral, if they have to do that. On the other hand, they don't have any control, their actual control of whether or not the repossession agent is going to carry a firearm. There are already state laws that govern who can carry a firearm, and when that person can carry it, and what use that person can make of it while they have it.

Now, a creditor can have it in his contract, "Agent shall not carry any firearm"; but if the agent does, this provision would appear to make the creditor strictly liable for that conduct.

DARRELL McGRAW: This is a problem that appears to me. On the one hand -- and among my life's experiences is some experience in the practice of what some might say repossession. On the other hand -- all right. And in that experience I know of the stresses and strains that develop in that enterprise. And the availability -- or the availability of weapons in those circumstances is always problematic.

Do you think it's unreasonable to propose that repossessors should not have -- should not be armed?

BRAD SORRELLS: Well, Judge, there are a lot of situations in life which are highly stressful. I think my concern as to this section deals with creditors who by and large, and I would suggest almost as a universal practice, do not go out and have their employees do the actual repossession. This is accomplished by repossession agencies, people that are in that business.

DARRELL McGRAW: Well, they're contractors; are they not?

BRAD SORRELLS: Yes, they are.

DARRELL McGRAW: Yes. And would it not be possible for the contract to include a provision in the repossession contract that the repossessors not be armed?

BRAD SORRELLS: It -- of course, that would be possible; but unless someone from the credit agency went out, it would be pretty hard to enforce; and as I mentioned previously, I think that section pretty much imposes strict liability on the creditor.

But the thing I want to stress is there are already laws in the state of West Virginia that deal with this. If a creditor comes up and pulls up his gun and says, "I want the Chevy," well, he's brandishing, and that's a criminal offense. He's not supposed to do that. And I think we're already -- I mean, the use of a firearm really doesn't have anything to do with repossession.

MR. RODD: Could I just ask you,

since you've raised this issue -- you are the first person that's raised the issue on a public comment side. I would just like to ask you, would you agree that this is an area where a person is granted the right under the law to in a self-help extra-judicial fashion confiscate or take property from another person's possession?

BRAD SORRELLS: Only if there's not a breach of the peace in doing so.

MR. RODD: Right. But they are given that right to do that, which is kind of an exceptional situation. And it has -- it's very fraught with the possibility of conflict.

BRAD SORRELLS: I won't belabor this point.

MR. RODD: No. I understand.

BRAD SORRELLS: This is not a provision that is particularly -- that Chrysler Credit or Green Tree are particularly adamant about. It sort of goes along the same concerns the Attorney General was addressing this morning, as regulations and rules being piled on when they may not be needed.

MR. RODD: I understand your. I

appreciate your raising it and addressing it. I think you have made legitimate points. Thank you.

BRAD SORRELLS: The final comment on that is I'm not sure that that doesn't raise constitutional questions, both state and federal.

3.2.11, I'm a little concerned over the word, "premises." I'm not sure if that's intended to mean residential property as a whole or the dwelling place. If it -- if -- either way, of course the creditor shouldn't itself or have an agent barge into the customer's home to be repossessing something. On the other hand, if we're talking about going onto that customer's property, this makes, as it's written, makes it illegal to walk up and politely knock on the door and say, "Excuse me. As you were notified, you are in default on the vehicle in the driveway. I'm here to to pick it up. It would be easier on everybody and less expensive if you just gave me the keys."

I mean, this would seem to require a creditor to wait until the vehicle is away from the home and then seize it. But then the creditor has to concern himself with the other provision I mentioned: Is this going to cause undue hardship?

Most consumer goods most of the time are going to be at the home; and that as long as there's no breach of the peace and being on private property after you have been asked to leave -- and we also have a specific provision in here elsewhere that says that trying to repossess when you have been told no -- I mean, that's sufficient. I don't think we need to restrict legitimate and polite entry on the consumer's residence.

DARRELL McGRAW: Well, what is -- I should know this. What is the process these days for the repossession of property? What's the process? And I'm not talking about business in a lot of respects, the help -- the self-help procedures. What is the process for repossessing of property?

BRAD SORRELLS: If it's consumer goods, of course first there has to be a notice of right to cure default. The cure period has to expire, and then the property can be seized whenever or wherever it's found as long as there's no breach of peace. If that is not possible --

DARRELL McGRAW: (Interposing) All right. At this point --

BRAD SORRELLS: (Continuing) -- then you need to move into the courts. You simply file a standard civil action --

DARRELL McGRAW: (Interposing) When you say it can be -- when you say it can be seized by an officer, by whom?

BRAD SORRELLS: By the creditor or its agent. It's when you are still in the self-help mode.

DARRELL McGRAW: Why wouldn't it be more desirable to have a process which requires one to deliver up the property? After all, if you think of the common law, the procedure of (untelligible) probably would require the delivery up of the property, would it not?

BRAD SORRELLS: Well --

DARRELL McGRAW: Unless, of course, it were (unintelligible) or something like this, in which instance it would be the cause of action called replevin, and all of those things have to be merged of course into a cause of a civil action, but -- I guess really my question goes to -- my question is a philosophical one that does not necessarily relate to this process today, but rather it goes to the issue of why don't we have a process by which people who are in the possession of the property of others in the instance of the failure of finance agreements and so on and such as that, why don't we have a process that requires the delivery up to an officer of the court the property?

BRAD SORRELLS: Because it's too expensive to go through a formal process every time there's a breach of a contract which already requires that person to surrender the collateral.

My next point with regard to entering on the residential premises is that would require in the case of all repossessions that process be issued, that a civil action be filed, that a summons and complaint be served, that a judgment be entered, that the creditor then get a writ of possession, that that be served by the sheriff.

And all of those things are very expensive. You've got $70 to file the action; $20 to file the summons and complaint; you've got costs to go back and -- attorney time and time of the individual to go and get the actual judgment; another $20 for service of the writ. All of those costs are charged to the losing party. So, every time that an absolutely meritorious claim -- which wouldn't have been objected to by the consumer in the first place if the creditor simply came up and said, "I'm here to get the keys."

And he'd say, "Yeah. I knew you were coming."

Adding on a lot of money and a lot of time for no benefit. And that's not to mention the fact that you're taking up court time and the time of officers going out and delivering writs and summonses when nobody wants them.

I mean, the sheriffs of the various counties of West Virginia have much better things to do than deliver papers that nobody wants, nobody needs, that cost a lot of money. And certainly there are many instances where the only way to get possession of the property is through an actual civil action. Even in those cases, once the summons and complaint is delivered, the majority of them are worked out, never go to the actual possession.

Moving to provision 3.3.2, "Include a provision waiving the consumer's right to personal property taken with a repossessed vehicle," now neither Chrysler Credit nor Green Tree -- and I would suggest no responsible creditor would say that a consumer just doesn't have a right to their goods in the car, mobile home, or whatever. But I would suggest to you that that needs to be somewhat limited to a reasonable period.

As written, it would prohibit language in contracts saying, "You will be provided with a list of any goods that were in the vehicle; they will be held for you for a period of 'X' days."

You know, there's a lot of things that are left in cars or left in mobile homes. It's just abandoned property. Yet, as written, this would turn the creditors into involuntary bailees, and they would be charged with keeping that stuff forever. You couldn't -- so, there needs to be a reasonable time limit on that.

Moving to 3.4.2, "Sell collateral at private sale to a secured party or to a party affiliated with the secured party," now I think it's quite -- I have a very serious problem with that. That's in direct opposition to the specific provisions of the UCC and 46-9-504-3, which specifically provides a secured party may buy at public sale.

MR. RODD: I'm sorry, I thought it said "private sale" in the regulation.

BRAD SORRELLS: Yes. It said --

MR. RODD: (Interposing) That you read.

BRAD SORRELLS: Okay. Well, I didn't read enough of the UCC.

MR. RODD: I'm just trying to follow you. I thought that you meant --

BRAD SORRELLS: (Interposing) You're, you're right. 3.4.2 is a private sale. 46-9-504-3, "Secured party may buy at public sale and, if the collateral was of a type customarily sold in a recognized market or is in a type that you can subject to widely-distributed price quotations, the secured party may buy at a private sale." And both of my clients would be involved with collateral of exactly that nature. Both of them are published NADA Guides as to the retail -- or the value of used mobile homes and value of used cars, which is what you have to own to be able to repossess.

I believe that the harm -- I think what's trying to be stopped here is the idea that secured parties can abide -- it's going to be a sham transaction, low dollars, high deficiency. That's already covered. The UCC requires that the entire disposition, including the method, the manner, time, place, and terms, must be commercially reasonable.

Now, especially in light of things like mobile homes and cars, which are subject to huge books that are published monthly as to what they're worth, sham transactions can be covered by the UCC, and this is not needed.

3.4.3, "private sale only to wholesale bidders without deducting the retail market value," that -- the retail market value provision just doesn't work. It's going to end up costing consumers more. When you get right down to it, it's just not fair; and if you work out the numbers, it doesn't make any sense. Anytime something is sold on the retail, a significant chunk of that price is profit for the seller for the work that goes into selling a product. But that's not what's going on here. But I don't want to speak much on that. I would refer instead to the Federal Trade Commission's comments when they considered a similar provision and rejected it.

There's a number of very good policy reasons why it's bad, and I'm going to be making a couple of slight changes to my written comments and submitting them this afternoon, and that is attached as an exhibit.

3.4.5, "sell collateral at an ostensible public sale which charges fee or deposit for admission," not all auto auctions do, but some do charge a fee. It's a minor fee. It's something that they use to offset the cost. But we would submit the same thing perhaps in some mobile home auctions, although generally those aren't sold at a public auction.

That doesn't serve any real useful purpose. I think that perhaps what's trying to be accomplished here is someplace where, quote, it's a public sale but you've got to pay big money to get in, so nobody can really get in, so there are no buyers. And that's just not a harm that's going on out there. If you have done any work around these auto auctions, they are big things, they are in competition with each other, and the fees that dealers pay are relatively low. And, you know, dealers travel at great distance to go down to these sales which are well-published and advertised, and that they aren't going down there just to look. They are going down to buy. So, it's not a question of "if" but how much they are going to buy.

3.4.6, it's sort of the same problem. That's saying you can't sell it if the seller waives warranties. Well, when you are selling a piece of repossessed collateral, whether it's a mobile home or a car, you don't know where it's been, you don't know how it's been taken care of. And you are by and large selling it to a dealer, and the dealer doesn't really need that warranty. Now, he may be required by state law when he later sells it to a consumer to warrant that good; but if the seller at an auction has to warrant this vehicle, there's going to be a charge for that. And the charge is not for anything of value in the collateral as it was repossessed from the defaulting consumer. That charge is for the service that this dealer is being -- or the seller is being required to offer by this rule. It doesn't protect consumers.

I'm almost done here.

3.4.10 regarding seek -- it says you can't seek attorney fees not authorized by law. I think that's ambiguous. I'm not sure if it means you can't seek attorney's fees unless they are affirmatively authorized by law or you can't seek attorney's fees that are prohibited by law. And just one way or the other it ought to be made clear.

Finally, 3.4.11 regarding "retain property in strict foreclosure without crediting the buyer's obligation with the retail market value and turning over any surplus to the consumer," in the first place this seems to be in violation of 46-9-505-2 which doesn't call that process strict foreclosure, but I think it's the same thing; and it allows strict foreclosure so long as you give the consumer notice of it and he doesn't object within 30 days.

You -- but the bottom line is a repossessed piece of collateral is not worth to the creditor what the retail value is. It's worth to him what the wholesale value is. And there are going to be a lot of instances where the creditor says, "You know, it's not worth selling it and seeking a deficiency. We'll just keep it." But with this section, if they are required to give the retail market value, all of a sudden they are going to go, "No, we have to sell it," and then go after that deficiency when the case could have been closed and everybody was done. But as it ends up, the consumer ends up with a deficiency lawsuit against him and/or bad credit entry with "X" number of dollars owed to Creditor Z.

Again, I thank you, and I know I have sort of picked apart various sections in there, and it truly is my intent that that be helpful, and I hope it won't be taken as criticism. I know -- I think it's quite obvious looking that a great deal of work has gone into this process, and I understand that these repossession rules are only a part of the consumer credit protection process going on.

DARRELL McGRAW: I take your comments in the spirit of constructive contribution. Thank you. And we appreciate what you have said, and we are particularly sensitive to the area that you discussed.

BRAD SORRELLS: Thank you, Judge.

DARRELL McGRAW: Thank you.

MR. RODD: Thank you.

The next person signed up is Norman Googel.

NORMAN GOOGEL: My name is Norman Googel, and I'm here on behalf of a woman named Helen Ann Wooten. Ms. Wooten is a loving, fun person who is also a renter, and this year she formed an organization called the Renters Association and Protective Services, and this is an organization which is strictly volunteer and hopefully will provide some meaningful advocacy to people that rent so that they understand what few legal rights they do have and to enable them to enforce their rights.

At this point the organization operates out of a Helen's suitcase -- or I should say her briefcase. I really would have preferred Helen to be here, because she can comment much better than me and much more eloquently than me on Series 26, which is what I will address.

On the same note, I have to say that I wasn't aware that this public hearing was coming at the end of the written comment period, that I was hoping that Helen could still present some written comments, but I know it wouldn't be possible for her to do it by the close of business tomorrow.

So, I would ask if the law permits it, if you could extend the period for written comments perhaps till maybe the close of business on Monday.

MR. RODD: I don't think I can.

NORMAN GOOGEL: Okay. In any event, I do want to -- my comments are going to be very general. I want to offer my, my support for all of the legislative rules. I'm only going to comment, however, on Series 26. I do want to say that I, I support these rules in principle. I don't see anything in here which is burdensome or that I think would be unreasonable.

I do want to say, as the Attorney General's staff is aware, there are very few statutes that give tenants very many rights, and I think -- but the few rights that tenants do have are very important, but sadly enough they don't get enforced.

We have one statute that requires landlords to provide rental housing in a fit condition when tenants first move in and to maintain it throughout. It's a very important right. There's no way really to enforce it other than a lawsuit, and then there's another statute that says a landlord has to give a one -- one rental period of notice in advance before evicting them. But that doesn't even apply when a tenant doesn't pay the rent.

And then you have a summary eviction statute which not only is fair to the landlords, but this statute in my experience representing tenants in 14 years is absolutely brutal. It calls for a -- it doesn't require landlords to provide any type of written notice of events before filing the eviction suit, and often they don't. When the suit is filed, the trial on the eviction case is five to ten days later. Often the tenants are served with the notice of trial a couple days in advance. And if they don't know their rights and they go straight to the trial and are evicted, as they almost always are, it doesn't even do them any good to appeal, because there's no possession pending appeal.

So, to whatever extent -- as far as the landlords today who have commented on the eviction procedure who would want to say to you that, that it favors tenants, that's simply not true. And in West Virginia we have an eviction procedure which in my opinion doesn't even meet minimum standards of due process.

So, I -- while tenants do have very few rights by statute, there are some legal rights that they have from other sources. And contrary to popular -- or contrary to popular belief, even renters have the right to not be trespassed upon, they have the right to be free from invasion of property, and many other rights.

And what I think these rules do and the reason why I think they're helpful is they, they help to make meaningful those few rights that tenants actually already have. These rules do not create any rights for tenants that don't already exist; but by saying that some of these things that landlords commonly do are unfair and deceptive acts and practices, now tenants have a meaningful way to enforce these rights which they already have, and I just don't see how anybody can disagree with that.

And I haven't really heard any of the landlords today say that they should be required to maintain property in a fit condition or that they shouldn't be required to return damage deposits when it's justified. And all these rules seem to do is enforce the right.

DARRELL McGRAW: But the problem is, is that we live in a society of laws, and within those laws we have provided for contracting, which is the heart of our economic system, that is in terms of the relationship between whomever in an economic engagement -- in any economic activity, and then we have provisions for the enforcement of those contracts.

NORMAN GOOGEL: That's right, and

I do think that no one can say that the tenants and the landlords start out on any type of even footing. I mean, the tenant is at a tremendous disadvantage from this entire relationship. And even with this summary eviction procedure, which I, which I would say is unfair even if it's followed properly by the landlord, the reality is most landlords try to avoid it, and they use ever unlawful means possible to try to evict tenants without going through the statutes, just -- such as cutting off utilities, locking them out.

In one recent case a tenant who lived in an upstairs apartment, the landlord removed the stairs so he couldn't get up to his apartment to get in or to get his stuff. And that's not an extreme example. That's typical. Landlords are only limited by their imagination as to the ways to get around the laws.

And then I don't even want to begin to tell you about all of the tenants who have lived in rental properties and improved these places and make them better by making repairs, and of course they can't get compensated for it.

So, I, I think all these rules do is help to enforce already existing rights. There's no tilt here in favor of the tenants. I think -- it's just not correct to say that rules which now make it possible to enforce already existing rights constitute a tilt toward the landlord and away from the tenant -- or rather in favor of the tenant (sic).

And as far as the security deposits go, that seems to be a favorite issue of the landlord. What I have found in my practice representing tenants, good tenants, bad tenants, it doesn't matter how well you take care of the place, it's almost universal, that you will not get your damage deposit returned. And a lot of tenants, it's just not worth it to them to have to file suits to get the damage deposits back.

So, I think that the rule proposed on damage deposits is very reasonable. It's a good start. It's a lot less than many other states have. I just, I just don't buy the arguments about all of this burdensome bookkeeping by putting a couple of hundred dollars into an account somewhere so that the money is set aside and will be there at the end. I just -- I think it's a very reasonable requirement and a good starting place.

So, I would offer my support for these rules and commend the Attorney General in general for proposing these legislative rules on unfair or deceptive acts and practices.

DARRELL McGRAW: Thank you very much.

MR. RODD: Thank you, Mr. Googel.

Andrew Maier has informed me that there is an individual, a Mr. Anderson, who would like to jump ahead of the pack because he's got some responsibilities, and that's perfectly okay.

Mr. Anderson.

Which Anderson are we going to hear from?

E. C. ANDERSON: I'm "Bud" Anderson; and this is Neal, the more vocal part of my family.

I am both a property owner, a landlord, and a property manager.

DARRELL McGRAW: It's really interesting to see who Neal is kin to.

E. C. ANDERSON: Well, from the cheeks up, he's definitely mine; and from there below, I believe he's my wife's, but --

I would like to say that I apologize for bringing him and being disruptive, and I apologize to anybody with a tight time schedule. I don't have a lot of points to cover that have not already been stated, and I don't want to be redundant. I did miss the first part, so forgive me if I restate something other landlords might have said.

The basic premise on the landlord-tenant relationship as we see it is that there are different options for people to have a place to live. They can have an extended family. Other countries do not find it strange to have many generations under one roof.

We recently enabled some Chinese immigrants here to be able to get mattresses put on their floor. We told them that they had too many people to rent from us, because we were following basic rules. They wanted to have boys and girls in the same room, and they wanted to have 17 people living in a 2-bedroom home. We were unable to follow current regulations and rent to them, but we did go out of our way to assist them in finding clothing, bedding, and other places for them to live.

I'd also like to say that, speaking for myself, my parents, and a few associates of Anderson

Properties, that we do a lot of things to help tenants out. And to the person that spoke just before me, I would love to have a chance to share actual experiences that came from tenants that burdened us as property owners and landlords.

I think that if you look purely to the rights of tenants -- and I know that this varies from landlord to landlord -- but I'm here to say that as a responsible landlord, as a compassionate human being, I feel not only downtrodden by the system but absolutely taken advantage of, humiliated, undermined, and back-stabbed by the way the system supports the consumer aspects without being able to have the tenants held accountable to the landlords.

In a contractual relationship -- as I understood it in college there were five basic tenets. You had to have -- the points of the contract would include a legal contract, an offer, and acceptance, a timeliness, and also compensation.

You do not rent somebody else's property from them without compensating them for it. You do not tear up somebody else's property without expecting to have to pay for that.

Yes, when I rent property, it will be in good shape. There's a lady been trying to move into the unit that I have in Cross Lanes for the last two weeks, and I won't let her move in because I know that I have a leak in the wall -- it's a simple matter -- and it also does not have all of the burners on the stove working, and the dishwasher does not work.

To me, that's a luxury apartment that I am refusing to rent because I want everything to be right when the lady moves in. She is begging me. She is trying to make me feel like I am withholding a place for her to live. She is living with her parents right now. It's just a choice that she has made, that she does not want to be responsible, be cooperative, and share space with her parents and her family; that she is now trying to hurry us up to get these things fixed. And when parts are not available, it is impossible to have something fixed within a day or two.

There were a few specific points that I want to mention that we have done both as members of the Kanawha Valley Landlords Association that a few of us got together and founded a while back, also other members of the West Virginia Landlords Association that I'm a member of, have gone as far as trying to help people out to find them other places to live, to work through the FMHA office -- that's the Farmers Home Administration office -- so that they could find literally better housing than I'm able to rent them at the subsidization of government monies for a rent that is actually 150, sometimes $125 a month. They're getting a bigger house, a yard. And I'm able to do that kind of thing because I enjoy helping people, and I am a compassionate person.

We also work with Mountaineer Habitat For Humanity. And as a member of a number of civic clubs that I belong to, we also help the homeless shelters, both the emergency men's shelter, the Sojourners, and the Samaritan Inn. We cook at the Samaritan Inn at least once a month, provide a lot of help there.

I'm not saying people need to live in homeless shelters if they can't afford to have a place to live, but where in American society has it ever been said that you get something without paying for it? It is no different to move into my place, tear it up, and not pay for it, and move -- or to move into it, and occupy its accommodations and not pay for it and move, there's absolutely no difference in that and walking into Kmart and shoplifting at will, or going into Kroger's and eating off the stand and ruining it for everyone else and then walking away and expecting not to pay for it. Thieves are thieves.

And the biggest thing that I stress to my tenants is that we want to work with them, but that necessitates a two-way communications.

I have asked, "If you cannot pay the rent, you must at least contact us." And I will tell you inevitably it is the people who move out and owe two or three months' rent, tear the doors off the hinges, scratch and tear up walls, loosen the tiles, and knock over the handrail when they are moving their U-Haul truck in, those are the type of people that do not notify us when they're unable to pay the rent. They think the best way to treat us is to ignore us.

I vehemently oppose people that have such poor communication skills that they do not avail themselves of opportunities where I might assist them through the Department of Human Services, FEMA, local community groups that will help to subsidize, such as Heart And Hand.

Tenant obligations are to pay and also let us know when they are ending their occupancy. I have a unit sitting right now where the mother moved off to Maryland. She left an 18-year-old boy and a 16-year-old daughter; and I have no control over that unit.

The boy broke into the unit next-door, thieved, stole over $900 worth of property, and it is still in the hands of the court right now. That unit is totally in limbo. We have sent mailings to both the mother that signed on the lease and the 18-year-old boy that signed on the lease. We have no idea what to do with their property. It's costing me $290 a month plus utilities. I have absolutely no idea when the end of their occupancy will occur.

And if you're not going to expect fair-paying tenants to bear the burden for our overhead and costs -- because we like to help people, but we are not in the human services business, we are not in the charity business. We are in the business of trying to get a fair return on our investment dollar. And believe me, any store uptown does not operate on the profit margin that I subject myself to. And nobody would put up with the kind of bad communications our tenants share with us.

And just -- if I may, to, to state a couple things, Paul Harvey is one of my favorite people. I'll end with him but not before trying to make a point.

In political science, if you read a lot of Plato, you know that Plato wrote The Republic. He had a lot of good ideas. When he wrote the law, it was his idea to try to adjudicate common sense. It was his idea to try to legislate fair practices. And it was as big a flop as it might be to try to overlegislate things that could best be handled if the tenants were required to reciprocate, to communicate, and to be fair to us. We would be much more in a frame of mind to cooperate with them and be more lenient.

My experience is if you do not share with the landlords the ability to collect (sic) more than a flat one-month security deposit, then we will be forever at a disadvantage. If a landlord only owns property in a bad part of town and you expect one month's security deposit when it's well-known that the guy is moving in, and he gives you one month, that's all you see for three or four months -- they know the tricks, they go to the magistrate court, they postpone it, they're still living there. They get a -- they fight the eviction that I give them. That's another 30 days. There are up to 70 to 90 days it will take to get rid of an absolute crook.

If the system is cleaned up so that people can be accountable for the merchandise, and that is the property that they are occupying from me, I would be very happy to deal with them.

Insurance companies are given the ability to set their rates and fees based upon their specific experiences; and I would say to you that one month might be fine in a place where people are paying good rent, the place is in a nice part of town. One month might be just wonderful. But when you are dealing with the lower-income properties, you are dealing with a lot more headaches; and the only way to protect the landlord and protect the other tenants would be to have some flexibility in the amount of security deposits.

They have choices. They can live at home; they can share a dwelling; they can get a roommate; they can go through Mountaineer Habitat; they can go through FMHA (sic); they can deal with people that are willing to help them, but they cannot move in and take advantage of the landlords or the landlords will just simply move their investment dollars elsewhere, and there will be no option left to government but to provide more expensive and more socioeconomically-deprived projects and housing units that compound the problem by concentrating crime and that kind of status.

And as I said, I'd like to end with Paul Harvey, and a famous quote that he always uses is: "Self-government without self-discipline will not work." And I don't want to be like Plato and overlegislate, but I do not see anything spoken to in this that would, quote, assist the responsible businesses, because we consider ourselves a very responsible and humanitarian type business -- but I see on your Appendix B, No. 4B, it says "Will promote consumer confidence and assist responsible businesses." I see nothing in this legislation that would assist me as a responsible business person if you do not give some flexibility and to hold people accountable and make sure that they are accountable to their own leases that they sign, that they communicate with us, and that they actually display self-discipline so that they might have self-government and a lot less legislation. Thank you.

DARRELL McGRAW: Thank you.

MR. RODD: Thank you, Mr. Anderson.

The next person signed up, returning to our original schedule, is Leff Moore.

LEFF MOORE: Judge, Director Rodd, thank you for the opportunity to speak today. I'll try to be brief.

I'd like to have the opportunity to address both Series 23 and Series 24 rules; and then at the conclusion of my remarks I'd like to sort of give an overview, if I could, as to how the organization that I represent, which is the West Virginia Manufactured Housing Association, generally views this rule-making exercise generally and the good work of the Attorney General's office, Consumer Protection Division in particular.

In relation to Series 23, some of the information that we would like for the Attorney

General's office to consider is the problem of the drafting of the rule itself. From a technical standpoint, it appears that the rule drafter recognized that there is a new statute, 1993 statute, Chapter 37, Article 15, wherein the legislature clearly indicates that its purpose -- that it is trying to determine the differences between various types of factory-built homes, and it gives on -- in its legislative purpose and applicability section under 37-15-1, it clearly states the reason for these definitions.

We accept those definitions in drafting the rule in part, but we abandon them in part; and we are unclear as to why the drafter of the regulations accepted some of those legislative statutes and abandoned others.

We find that that process was carried throughout the drafting of the rules, and there's an inconsistency in definitions and terms. And as such, we find that, notwithstanding other parts of the rule and its intent, we find it to be virtually unadministerable and subject to a lot of litigation just on the definition section, because it is in so much conflict with numerous state statutes, but particularly 37-15.

MR. RODD: Excuse me. I'm having a little trouble hearing, Mr. Anderson.

E. C. ANDERSON: We're leaving right now.

MR. RODD: Okay.

I'm sorry.

LEFF MOORE: In addition, we would point out specifically that 2.5 in Series 23 defines a, quote, "mobile home park"; and the rules themselves are entitled "Practices in Mobile Home Parks."

While the statute clearly at 32-15-2(c) defines "factory-built home rental community" clearly in the statute, we're unclear as to why we are using slang language in the rule and in some type of cases we adopt those definitions. I -- we feel that the definition section is extremely important. The title of the rule is extremely important as it relates to other state codes, and for consistency.

That ambiguity be clear -- is also clear in 2.1 and 2 wherein mobile homes and mobile homes rather than factory-built homes are generally addressed. And when you compare those definitions and apply the legal definition to the, to the proposed rule, it would indicate that we have a problem there.

We're, we're confused and perplexed about why we even included 142-23-3, the "Tie-in Sales; Separate or Discrimination (sic) Charges." I heard speakers earlier today complain that they felt that that was unfair; that people should be able to use their property in whatever way they felt appropriate. However, we recognize as an industry that the, that the antitrust provisions of West Virginia and federal law clearly prohibit tie-in sales.

The reason we raise the question is the Attorney General's office's Antitrust Division has brought in the past several successful, I might add, actions against rental community owners who engaged in tie-in -- in tie-in sales and engaged in antitrust activity, and there were several consent decrees that were signed by those -- by our industry firms.

And so, we're unsure as to why we're even including that language in the rule. We think the energy might be better expended actually enforcing the law that is already there, because we do have -- we clearly do have laws that protect people from tie-in sales and separate and disciminatory charges based on previous actions of the Attorney General's division.

In the term, the "Rental Agreement Requirements," we find that, that a, that again the rule appears to be redundant in view of the statute of 37-15-1. Those statutory requirements were there. The only thing that this rule appears to do is allow the Attorney General's division to bring a civil suit on behalf of an aggrieved party who finds that the, the regulated entity under thirty- -- under Chapter 37, Article 15 fails to perform. And from that standpoint we find no -- nothing wrong with that as long as the language in that rental agreement requirement section is compatible with our existing statute.

Where we feel that the rule is defective is it fails to take into account and fails to acknowledge a whole body of law that's designed to protect the consumer that's not even, not even addressed here.

The West Virginia Fair Housing Act, which is the companion statute to the United States Fair Housing Act, it's a body of law that is, is readily available to the consumers of all kinds of rental property nationally, and particularly in West Virginia; and that statute is very clear; and rental agreements and what shall be contained in them and what cannot be contained in them as well as all kinds of rental practices are very much a part of the existing body of law.

It's obvious to us in our industry that there is a general ignorance on the part of not only the landlords but also the tenants in this state about that body of law; and as a result, a lot of violations of that law occur; and even the court system, particularly at the magistrate level, is unaware of that body of law and issues rulings without referring to that law or to the -- and thus depriving the consumer, those that the law was designed to protect, with -- from the benefits of the law.

We find that to be consistent throughout a lot of the activities of government generally is that those people charged with enforcing the law in many cases are not well-versed in the letter and the provisions of the law, so the result there being that we try to pass another new law so that it's within our comfort zone rather than to enforce the laws that we already have on the books.

I would point out that, that in the manufactured housing regulations generally -- I'll submit more detailed comments about the particular technical sections that we feel are defective, and -- but many of that (sic) has to do with the overall approach to terminology.

An old lobbyist at the legislature many years ago told me that -- he said, "Just let me write the definitions, and you can write all the rest of the bill." And in writing the definitions in this proposed rule, I think we've created a situation where we're going to have a lot of conflict in its effective administration between contract law, contract terminology, and the existing state law.

In addition, I'd like to just briefly talk about rule Series 24 regarding repossessions. I'm not going to repeat a lot of the information that the Attorney General's office has received this morning, but there are certain sections that are particularly troublesome to the manufactured housing industry because of the uniqueness of the product.

For instance, it would be a deceptive act or trade practice to enter a consumer's residential premise to seize property. We understand the concept there, and we understand what we are trying to achieve, but remember that we were actually repossessing his residential property from his residential property. His real estate very well may be his residential property; and we may be also entering into his factory-built manufactured home which is held as personal property, that's secured as personal property, to remove it from his residential property.

So, just the -- that -- we think that's a fixable thing, but we think that it could be the source of a lot of litigation by those people who feel -- felt aggrieved by trespass or "entering into" or wherever.

There is also -- there's some time limitations on the sale of distressed merchandise or on repossessions that we find to be owners, particularly in view of the trade practices within the industry.

If we were forced to meet the time frames that were outlined in the, in the rule, what would happen is that many consumers would be subjected to greater deficiency balances than are necessary. There are many times when it's to the advantage of both the consumer and the holder of the security to defer a sale for a seasonal period of time in order to capture the best dollars for the season. In addition, because of the transportation difficulties of adverse and inclement weathers and mud and those kinds of things, many times collateral has to sit in place for some time in order for it to be physically moved, and it is not as simple as repossessing an automobile and towing it to another location, because of the complexity there.

We would urge that -- and we will address those in more detail in our written comments, but we would urge that the Attorney General's office revisit those rules with those kind of comments in mind with the idea of trying to refine the language somewhat to consider that there is a lot of unique situations that could very well prove troublesome under the draft language.

Finally, I would like to, if I could, just briefly address our history of consumerism within our industry generally and how it has related to the Consumer Protection Division most particularly.

In 1975 when the act passed, went into effect, we recognized that the holder in due course doctrine was eliminated in West Virginia, and a lot of the, the, the, a lot of the requirements of the business community were changed by the nature of that statute. And we also recognize that, unlike some of the previous speakers, that business people are held under -- to a higher standard in the marketplace than consumers are. And we recognize that there is -- they should be held to a higher standard, and we subscribe to that. And it's a right and a privilege under licenses and other laws that business people serve the public, and it is a privilege to do that, and we understand that consumers' rights and businesses' rights are not necessarily to be held even in all cases before the law.

But we, we also recognize that business has a responsibility to its consumers; and as such, we formed what we call our Consumer Service Bureau through the West Virginia Manufactured Housing Association. And what we did is we worked very closely with the Attorney General's Consumer Protection Division, and so the Consumer Protection Division actually would review consumer complaints emanating from our industry. They would then review the complaints to see if a statute was violated, particularly Chapter 46A; and if no violation on the surface was deemed and they couldn't mediate the complaint, they would refer it to our Consumer Protection Division for industry mediation and assistance.

What we learned over -- and that system worked for -- very well. What we learned over the years, that most of the complaints coming before the Attorney General's Consumer Protection Division were not violations of 46A, but they were contractual disputes, or warranty disputes, or violations of the Magnus-Moss (phonetic) Warranty Act, or violations of Chapter 29 -- or Chapter 21-9 or Chapter 21-11 of the Code of West Virginia in regards to manufactured housing, or violations of the fair housing law, or many other violations of existing statutes.

We, we have stacks and stacks of files in our offices of complaints that -- where the complainant had first filed a complaint with the Attorney

General's Consumer Protection Division, and the Attorney General's Consumer Protection Division made a good-faith attempt to mediate. In addition, they also made a review and determined that there was not a violation or not an apparent violation of Chapter 46A.

We then got the complaint. Upon investigating those complaints, in many cases we found numerous protracted, over and over, lots of code sections that were violated. There were -- there -- we -- the Attorney General's case workers did not understand that they were looking at a violation of numerous laws. But they applied their law, 46A, to that particular complaint but did not look at other Code sections that are in existence that protect that consumer.

We have a defect in our system. And I'm not sure I know how to fix that defect; but when a consumer comes to the Attorney General's office, they assume that, that, that they're going to get legal advice on how to proceed with their consumer complaint.

In many cases what they get is a review of the consumer complaint, a good faith attempt at mediation, but they are left unawares of many of the laws that exist in the Code of West Virginia and the United States Code that protect them. And so, what we -- I think what happens is is that that leaves -- the consumer unserved to a degree, although it's not a willingness on the part of the Attorney General's office to do that. I understand their restraint -- constraints by staff and budget and their legislative mandate under Chapter 46A.

But at the same time many, many landlord-tenant relationships, many magistrate situations, many violations of other licensing laws or regulatory laws that are designed to protect consumers are never passed on to those consumers by the Attorney General's consumer complaint division, simply because the case worker does not have the comprehensive knowledge of all of those various consumer protection laws that exist, including fair housing and licensing laws and regulatory laws and other rules and regulations that exist, including sanitary, health laws, trespass laws, and those other things.

So, in reviewing that consumer complaint, a knowledgeable consumer advocate, like APPALRED and others, use a whole body of law to assist the consumer and not just Chapter 46A. I believe that what we are doing is we are trying to expand our realm of influence under Chapter 46A so we can act as a government agency on behalf of more aggrieved people.

But now, even that, it requires a civil action and a protracted process under West Virginia law under these sections for any meaningful work to happen on behalf of the consumers.

I would submit, gentlemen, that we would be better served to find ways to inform the public, assist the public in accessing that body of knowledge about the laws that already exist that protect them. I find that many of our business people are not -- are -- in many cases are violating the laws themselves simply because they don't know they exist.

So, we have a real educational problem on behalf of the public, on behalf of the business community, and I would submit on behalf of the Attorney General's Consumer Protection Division case workers who in many cases are unawares of the various laws that they overlook in assisting consumers.

I'm, I'm sort of like the guy alongside the road who can point out how the car broke down, but I'm not sure that I have a solution on how to fix it. But I believe that if we recognize that this body of law exists, that -- I'm sure that as these rules make their way through the legislative process, there will be advocates from all corners pointing out how there are existing statutes that cover many of the things that are covered in these rules and why -- and how we have as a society collectively failed to inform our consumers about these particular laws that there are there to benefit them. If we can address that issue at the same time we're working on these rules, I think the public would be well served. Thank you.

DARRELL McGRAW: Mr. Moore, I want to say something before you quit. I want to say that, of course, wisdom, you know, the concept of wisdom, is most often recognized because the purveyor of the wisdom is cultivating the prejudice of the one who is listening attentively to what he has to say, all right?

And so, I want to thank you for what I perceive to be in your latter remarks this morning a very wise commentary with respect to how government operates generally. And inasmuch as we are able to apply your observations to the improvement of our little corner of the government, I want to, I want to, to perhaps apply your wisdom to our circumstances with a view to improving our services to the general community that we serve, consumers particularly and vendors also.

And so, so, so, I want to thank you particularly for your, your remarks this morning and imparting your wisdom to us on these issues that you have addressed.

LEFF MOORE: Thank you very much.

MR. RODD: Thank you, Mr. Moore.

I'm going to take about a two-minute break to consult about the process here, and then we'll resume the hearing; but literally that will be just a couple of minutes.

(Short recess.)

MR. RODD: Our court reporter has kindly acknowledged that he is able to continue, so in about two minutes we'll resume with the next speaker; and I mean that precisely, that being, in the order that I have it here, Lester Caudill.

I'm going to -- during this two-minute period of time, I'm going to also give you the names of the remaining people whose names I have here: David McMahon, Nelson Robinson, Susan Sobkoviah, and then previously I had called the name of Bonnie Harold, and I was told that the name of Terry Snyder should be deleted, and also a Neal Walters.

Are any of those people around?

Okay, we'll begin in just, as I say, about a minute with Mr. Lester Caudill. Thank you.

Thereupon, at 12:17 p.m. a recess was had until 12:19 p.m., at which time the following proceedings were had, all parties being present as heretofore noted:

MR. RODD: We're ready to resume, and the next person listed is Lester Caudill.

Thanks for your patience, Mr. Caudill.

LESTER CAUDILL: Well, I'm actually here and going to speak on behalf of myself and Terry Snyder representing the role of United National Bank. And, of course, we're members of the West Virginia Bankers Association. We're here basically just to support Tom Winner's letter that he's already submitted and addressed to you-all.

I did want to make some simple comments that we support the Consumer Protection Agency, the issues that they have to address. In general, on Series 24 as Tom Winner has already pointed out. I don't want to be redundant, but the issues that he -- that Tom has addressed, that the Series 24 is prevented in certain areas, and perhaps not necessary in certain areas; and then as other people have also pointed out, other creditors, that some of the language as written that the issues are too vague and in certain circumstances too restrictive.

And that's basically all we have. I think there were some questions asked about some general repossession procedures earlier, and I was going to encourage anyone from the Consumer Protection Agency or the Attorney General's office simply to call. I'm sure the other banks will -- certainly mine will -- we would be happy to discuss and, as I indicated, as to our procedures and any recommendations or any conflicts or issues that we -- we all need -- you know, we need the agency as, you know, not only as an agency to keep us in line, but as individuals I'm sure we all have got friends and relatives that we need protected, and we respect and appreciate the efforts of the agency and the Attorney General's office. Thank you.

MR. RODD: Thank you, Mr. Caudill.

The next speaker listed is David McMahon.

DAVID McMAHON: I had some thank-you's for the General. I'll save those until later.

I have some general remarks and some specific remarks. Do you have any particular idea whether it would be better to wait for the General to hear the specifics in general or shall I just -- or does it make a difference?

MR. RODD: Well, give us your --- start with your specifics, I would say.

DAVID McMAHON: Okay.

There have been several comments by creditors and other businesses about the difficulty of using the word, "reasonable." The benefit of using the word, "reasonable," is it means flexibility. We cannot under these rules predict all future market conditions, all future needs, all current circumstances and damages. I think that if we ---

the, the complaint about overregulation -- unfortunately we complain about reasonableness. If you become too specific, then it will be overregulated and inflexible.

Reasonableness leaves it in the hands of industry to decide and businesses to decide. They who know, as Mr. Moore went on, better than the consumers how things work, what the standard should be. They in the first instance are the ones who know what it is.

With regard to the subject of landlord-tenant and deposit accounts bearing interest at some possible time frame, there is -- if you are the fiduciary for the account and if it is to your benefit for the money to stay in the account, and if you get paid the interest, then that is possibly a conflict because of your fiduciary's interest. That's why lawyers are not allowed to receive interest on their trust accounts. However, it's unclear that because it applies to the lawyer's fiduciary, that it would apply here.

But I support the suggestion by the man from Robinson & McElwee, that we do for deposit accounts what was done for interest on lawyers' trust accounts. Have them put the money in a, in a, in an interest-bearing account. The interest will first go to the expenses of the account. And because it is so difficult to account for each tenant's interest if there is more than one tenant's money in the account, have that money go to a fund that would provide housing for homeless people.

With regard to the comment in the -- in a landlord-tenant on the fact that the rules require the deposit be returned, if possible, to have been done within 20 days, I think that's extraordinarily reasonable. I would think 14 days would be my first choice. That's two weeks for the landlord to walk in the place, look around, get a reasonable estimate of what's it's going to take, get someone in there to do an estimate of repairs, and walk out.

60 days is just not workable for your typical tenant. People have a hard enough time getting together a deposit to rent one apartment. If they then need to move from one apartment to another, where do they get the money for the second deposit if they've got to wait 60 days for the deposit from the first unit to become free? It's just not a feasible thing for the tenant to be able to do, to

wait 60 days to get a deposit back. It should be -- I say 14 sounds reasonable to me. Anything beyond 30 is just -- it just deprives tenants of the ability to rent their next rental unit.

With regard to the complaint about there having to be a roof -- an estimated repair of $50, one gentleman suggested $200, I would suggest that if you are on a minimum wage, working 30 hours a week, which lots of folks are, trying to raise a family, your monthly income is going to be about 550 bucks. If you have got a surprise auto repair for 200 bucks on a car that might not be worth more than 3 or $400, that's a significant fact. I think the $50 amount is very reasonable on that account.

I have written down -- I think it was on deposits. To get to the lady who said she required a $20 deposit, I have never in my 20 years of Legal Aid history heard of a deposit that low. There are -- I'm not sure that I've ever heard of one under a hundred dollars either. It's kind of a practice in the industry to have one month's rent, which is, which is not unreasonable, which is what, what is allowed by the rule, and I think it's unreasonable to -- just by the comments of Mr. Anderson.

With regard to the comments of Ford Motor Credit company and with respect to Chrysler Credit company, they talked about the place that they have found where they can get the highest dollar when they resell a repossessed vehicle is a wholesale, that is dealers-only auction and not the public. And they say that they've tried all of these different things, and that's what they found works. They say they've tried an independent lot to sell repossessed goods; they say they have tried to advertise in the paper; they have tried -- they have tried public sales on the courthouse steps; they have tried the dealers-only auction.

The problem with the dealers-only auction is it assures that never ever will they get an amount for the repossessed goods above wholesale, because consumers are not allowed into those auctions. So, it guarantees that they will, that they will not get more than wholesale. If the car was worth more than wholesale, the dealers are friendly, that he'd bid on some other car at its wholesale value, and then you could mark it up to retail. So, it's inherently unfair.

They say it's the one they have tried that is the best, but they haven't really tried them all. The best one is to put it back on their dealer's used-car lot. But they don't do that, and the reason is because the dealers make a higher profit, a higher net profit when they sell their own inventory, used inventory -- even as used inventory, they make a higher net profit on that than reselling the repossessed car. But they don't wish to compete with themselves in the way that they really would get a true fair market value.

Of course, you go to a used car lot. If -- you can call the previous owner.

You can call the previous owner of a repossessed car. There's no reason why not. But they don't use that kind of practice as they would if their own used car lot sold a car, because they don't want to compete with themselves. So, references to the -- the retail value of the books is the most accurate one.

Another comment I want to make generally is that several of the commentators said that any little additional expense that these rules may cause are automatically passed on to the consumer. I'm confused. I thought these gentlemen were all private enterprise people who live in a marketing fund where price is determined by supply and demand in addition to cost. And it depends on the flexibility and demand for the product whether in fact the industry will absorb from its profits some of the other expenses. It's simply not an accurate statment that all costs would be passed on to the consumer.

There were also several comments that said that what the, what the Attorney General has proposed goes beyond the Uniform Commercial Code. Well, that's really not the question. If -- everything, almost everything in Article 46A -- Chapter 46A goes beyond what's in the Uniform Commercial Code. Chapter 46A provides additional consumer protections. Included in that is the unfair and deceptive practices law which can offer protections to consumers. It goes beyond the Uniform Commercial Code, Holder v. Course deemed as an example. So, that it's not inappropriate for the Attorney General to do this. The difficulty would be assuring that there is particular statutory authority for what you are doing when you go beyond the Uniform Commercial

Code.

MR. RODD: Do you want to explain what you mean by the example of the Holder v. Course as going beyond the UCC?

DAVID McMAHON: The Uniform Commercial Code -- I don't know the exact provisions -- devised the -- let me think for a second.

It says there -- I think "privy" would be appropriate -- privy between the buyer -- where he brings a warranty claim and the assignee of the negotiable paper -- therefore, the old -- for example, the old roofing scams where someone would go to an old person's house, convince them they needed a new roof, go up and paint the roof black, charge them for a new roof, sell the paper to a bank or a collection agency which would then collect the cost of the new roof.

Under the Holder v. Course that stood up in UCC, the seller would have to pay the bank. It could only go against the guys that painted his roof black to get his money back. Of course, they guy that painted the roof black is in Ohio. However, 46-2-101, 102, and 103 abolishes Holder v. Course.

It's -- it goes beyond the Uniform Commercial Code, perhaps not exactly conflicting with it.

The cutoff in landlord and tenant cases, the cutoff of utilities, the gentleman made an excellent remark. He said that when the tenant is lawfully, lawfully in the premises, the landlord should not be able to turn off his utilities. When the tenant is unlawfully on the premises, then everyone should; and I agree with him. The question is who decides unlawfully? And I believe if you listen to his remarks, he was saying once the guy has stopped paying rent before any court has declared his tenancy to be unlawful, that's when he ought to be able to cut off the utilities.

The problem with that is, is that despite the apparent reputability of the people who testified here, there are lots of disreputable landlords. I find it frankly incredible that the fellow representing the Morgantown landlords association comes down, and anybody that's gone to school in Morgantown or had children gone to school in Morgantown knows that landlords take tremendous advantages of suits in those situations. I think there are other people who are not at a good bargaining position, either economically or otherwise, to, to get back deposits and to otherwise protect themselves from unsrupulous practices of landlords.

I'd also like to correct the gentleman from Robinson & McElwee when he talked about the fact that the secured party came by at a private sale when there are recognized markets for -- that state the price of goods.

The case law in that situation talks about things like wheat futures, especially the commercial practice thing of grain futures, security markets, you know, when stocks are put up as security. And unfortunately a -- the -- its values would -- NADA blue books. Those are not considered to be recognized markets.

MR. RODD: I believe there is case law to that effect.

MR. McMAHON: Yes.

They talked to us somewhat about not needing more guidance on commercially-reasonable sales. Currently the concept of commercially-reasonable sales is too flexible. I have an article that's about to be published in the <u>Financial Quarterly</u>

which I will submit tomorrow that's pertinent testimony that states nine reasons why it's not true that the secured party has a financial interest in getting the most out of the resale of secured goods. In fact, what they are most interested in is their own deeds and their own overall financial interest.

Why should you step on your feet and not work a little harder to get a little extra value for these goods you repossessed when you can send that same guy out to a sales promotion that will bring lots and lots of business to your, into your company?

So, there are in fact huge difficulties with commercially-reasonable sales currently in the Uniform Commercial Code which makes the Attorney General's attempts to limit and clarify an excellent idea. An example: There is a West Virginia case that says that a car was advertised for sale in the legal ads in a local paper as part of the notice to the public that the goods were for sale so the public could bid on it. And the West Virginia Supreme Court, surprisingly but consistent with other courts, remanded that to the circuit court to find out if that was a commercially-reasonable way to advertise a car for sale.

Well, I think anybody in this room -- there's not many of us left -- knows that if you ever shopped to buy a used car, you start in the want ads or you start in the Ad Bulletin or you start in the car advertisements. Whoever goes to the legal aid section to buy a car? And yet our West Virginia Supreme Court has said that that may in fact be a commercially-reasonable way to sell a car, and that makes no sense.

Part of the NADA book valuation as in strict foreclosure, the real fraud that takes there is strict foreclosure, that is where I go to the consumer -- I go to the -- the secured party goes to the debtor and says, "I'll tell you, I'm not going to go to this commercially-reasonable sale, so let me keep the goods, and you don't owe me anything."

The current law: that can only be done for full satisfaction. That is, I can only keep the goods that way from a commercially-reasonable sale if I grant full value. Oh, I have to tell you that the national conference of (unintelligible) uniform state laws has taken a change in that to be purchase satisfaction. But that -- what that -- it's only supposed to apply if the secured party doesn't keep the goods for their own use. And we all know that people who finance used cars or repossess new cars which are then used cars never keep it for their own use. So, the use of strict foreclosure at all is probably inappropriate.

Mr. Moore, from the manufactured housing association, made some excellent points, some of -- some I agree with. I am not sure either that the 60-day requirement for sale will in the end work to the consumer's benefits, because particularly in the area of mobile homes I think you do better selling them in the summer than February, and it's better to wait and get a better price. On the other hand, there are times when -- with cars, you know, it doesn't make such a difference; that people do keep cars until they deteriorate in value, and they don't make enough effort. Perhaps a reasonableness time frame should be put in there which gives the burden on the industry to figure out what it is if they know this.

With regard to his statement that there are perhaps other areas of West Virginia law that cover some of the areas that we have covered, and a number of people said that, that it is true that there are other areas of law that cover some of the ones we covered, but the particular benefit of making it an unlawful practice under the West Virginia Consumer Credit and Protection Act is that it will give the consumer a remedy for things like your -- the credit -- UCC -- FTC Credit Practices Act that West Virginia incorporated. There currently is no private remedy for the Attorney General to do that and enforce that. Only the FTC can enforce its. And I don't know about antitrust. And so this would give the consumer a remedy to enforce, which would be very beneficial.

Let's go back to the general remarks. Of course, we thank the Attorney General for doing this. These rules and regs, they have law. These are -- they also are an enormous undertaking, and I admire the work of Mr. Rodd and his people under him trying to do this. Because it is such an enormous task, of course there will be, there will be things that cannot be thought about by all of the heads sitting around the first time. So, these comments are important, and I thank the Attorney General and his staff for allowing me to comment and exceeding my five minutes.

There are certain areas that are very important, landlord-tenant being one. We see repeated problems with landlords entering tenants' places as if they were the landlord's residence instead of the tenants' residence. That's an important factor.

It is also important to recognize that landlord-tenants transactions now are essentially consumer transactions, and the law originally arose out of the law of England dealing with lords and peasants. And so this kind of update is needed. All of the provisions that you are inquiring in other states -- and there are still lots of landlord-tenant transactions going on in there.

It's particularly important to segregate that deposit account. A lot of the problems we have are the, are the tenant -- the landlords who are not particularly doing well who mix -- commingle their deposits, their deposit funds with their, with their general cash flow. When cash flow is down, we find -- when their cash flow is down, particularly are the deposits, and that's why it's particularly important to segregate those accounts.

Within repossession -- again, I'm talking about commercially-reasonable sale -- the sale at a public auction is the worst abuse of used cars that I see, and then it's resold later. I have a particular case that I am now working on where the bank sold the car to itself at a public auction for $200; my clients and everbody -- the car went there for $800. Well, even the value -- it will only earn credit against the resale for $200. And in fact when the car was repossessed, they told her that the car was going to be sold to that dealer. So, it was all a setup.

I've already mentioned that the credit practice rule is not enforceable unless you pass these rules.

I'd also like to particularly thank you for your proprietary schools. Since the legislature in the last session eviscerated the statutory protections for students going into proprietary schools, such as Northeastern Business College, they closed down Century College, they closed down the -- I think it was great that the Attorney General used his statutory authority to do this.

My closing remark is that whenever you do legislation, the rules -- the important thing: You never want to hurt the good guys, but it's important to get the bad guys. The difficulty is how do you regulate the bad guys in a way that hurts the good guys the least? But the polar star -- we must always keep the light lit -- is that we do have bad guys out there operating. The good guys should not have to compete with them. We need to be sure to get the bad guys while treating the good guys as gently as we can, and still not forget that the ultimate goal is to regulate those bad ones in our business community and protect our interests.

And I will also submit a mark-up, if you would, of the rules and regs and some small things that I have found as I have read through them.

MR. RODD: Thank you very much.

As I look around the room, I see that there is nobody here, all who has not spoken, so I will spread my thanks upon the record to all of those people who have spoken and to our court reporter for bearing with us during this long morning.

And with that I'll declare the public hearing closed; but I'll state for the record that we will receive comments at the Attorney General's Consumer Protection Division, 812 Quarrier Street, Sixth

Floor floor, until 5:00 o'clock the close of business tomorrow.

Any comments, questions?

Thank you. This hearing is concluded.

AND at 1:42 p.m. these were all the proceedings had and reported upon this matter.

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:

I, Dwayne Price, a notary public within and for the county and state aforesaid, duly commissioned and qualified, do hereby certify that the foregoing public hearing was duly taken by me and before me at the time and place specified in the caption hereof.

I do further certify that the said hearing was reported by me in stenotype notes, that the same were accurately written out in full and reduced to typewriting, and that said transcript is a true record of the proceedings.

I do further certify that I am neither attorney or counsel for, not related to or employed by, any of the parties to this action, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

My commission expires December 13, 1998.

Given under my hand this 13th day of August, 1994.

Dwayne Price

LIST OF PERSONS WHO ATTENDED PUBLIC HEARING
ON PROPOSED LEGISLATIVE RULES TITLE 142 SERIES 23-30

1. Richard Gallagher
2. Bill Minsker
3. Jack Albert
4. Bill Gossett
5. James Rice
6. Alvin McCorkle
7. A.D. McCorkle, IV
8. Pat Hose
9. Melody Douglas
10. Gary C. Porter, Jr.
11. Neal Walters
12. Zol Maggied
13. Kathryn Maddox
14. Roy Stricklen
15. Bryan Kett
16. Joe Doughton
17. Alonzo Johnson
18. Tom Winner
19. Debbie Sink
20. Bonnie Harold
21. S. D. McClure
22. J. D. Stricklen
23. David Yoder
24. Brad Sorrells
25. Norman Geogel
26. Leff Moore
27. Lester Claudill
28. David McMahon
29. Nelson Robinson
30. E.C. "Bud" Anderson

SUMMARY OF WRITTEN COMMENTS TO PROPOSED LEGISLATIVE RULE
TITLE 142 SERIES 126 PERTAINING TO THE PREVENTION OF
UNFAIR OR DECEPTIVE ACTS OR PRACTICES
IN LANDLORD TENANT TRANSACTION

One commenter stated general approval of the legislative rule on the ground that the proposed legislative rule would provide protection that is basic, yet commonly unavailable to under educated and unempowered economic minorities. Commenter further stated that landlords should be required to adhere to the truth in marketing standards and should not be permitted to offer products or services that are hazardous to health or safety. Commenter further stated that enforcement of minimum quality standards in rental housing under present law is ineffective and gives little or no incentive for landlords to become code compliant. Commenter further stated that many tenants have trouble securing their deposits. Commenter further stated that the landlord tenant relationship is one sided, in favor of the landlord, and the rule will help balance this relationship.

One commenter agreed with the general direction of the legislative rule but objected to specific sections of the rule.

3.1 Three commenters objected to Section 3.1 on the ground that the term "fit and habitable" should have a specific definition.

3.5 Two commenters objected to Section 3.5 on the ground that the phrase "reasonable time" should have a definite time period.

3.7 Two commenters objected to Section 3.7 of the proposed rule. One commenter stated that the tenant should not be allowed to perform any work on the property of a landlord. One commenter stated that the language "after any representation that reimbursement would be made" should be replaced with " after landlord and tenant had agreed in writing that reimbursement would be made."

4.1 One commenter objected to Section 4.1 on the ground that it is unclear whether the landlord could send a notice on his or her letterhead, stating that legal action would be taken if rent is not paid by a certain date.

5.3 Three commenters objected to Section 5.3. One commenter stated that there are no landlord's rights protected by this section. Two commenters stated that the banks would charge a fee on this account which would be deducted from the tenant's deposit, resulting in the renter receiving a smaller deposit than was originally made. One of these commenters also stated that this section is in conflict with existing real estate law. This commenter stated that West Virginia real estate license law and administrative rule section 47-12-18 states that trust accounts must designate a trustee and provide for withdrawal of funds without previous notice. This commenter reasons that this is an account which does not pay interest; therefore, a security deposit cannot be replaced in an interest bearing account.

6.1 Two commenters objected to Section 6.1 of the proposed rule. One commenter raised the question to what happens when "a tenant takes off without paying." One commenter stated that this rule would place a burden on landlords who rent to students in college towns, who typically only rent 9 months out of the year. This commenter also stated that it is clear that no rent in advance can be claimed by a landlord beyond terms provided in the contract/lease. Commenter further stated that the tenants who honor contracts are required to make up the difference of those tenants who fail to honor a contract.

6.2 One commenter objected to Section 6.2 on the ground that this section would create more paperwork for a landlord.

6.3 Two commenters objected to Section 6.3. One commenter stated that this section would create more paperwork. One commenter stated that this section would conflict with existing real estate license law and could result in tenant receiving a smaller deposit than originally made due to fees placed on the account by the banking institution.

6.4 Three commenters objected to Section 6.4 on the ground that twenty days is too short. Two commenters stated that 30 days would be acceptable, one commenter stated that 45 days would be acceptable.

6.5 Two commenters objected to Section 6.5 of the proposed legislative rule on the ground that the 20 day time limit is too short of a time period.

7.2 Three commenters objected to Section 7.2 on the ground that the landlord should not be required to wait an additional 30 days to remove a tenant when this would result in another month's loss of rent. One commenter further stated that this section is not needed since the landlord must file a petition in magistrate court before any action can be taken for an eviction.

7.3 - 7.5 One commenter objected to Section 7.3 through 7.5 of the proposed legislative rule on the ground that it is common business practice to permit a bank to accelerate payment on a note, and the same should be allowed for the acceleration of rent payment. The commenter also objected to these sections on the ground that it may require a landlord to provide utilities during unlawful occupation, which would be unreasonable.

8.2 Two commenters objected to Section 8.2 of the proposed rule on the ground that the landlord should not be required to provide utilities during an unlawful occupation. One commenter further stated that this would only add to the amount of the uncollected rent owed to the landlord.

9.1 One commenter objected to Section 9.1 of the proposed rule on the ground that the 12-hour advance notice is unreasonable when both the landlord and tenant agree otherwise. This commenter stated that this section would deny prospective tenants who are in town for only one day an opportunity to view a living unit, when arrangements were not made sometime in advance.

9.2 Two commenters objected to Section 9.2 of the proposed rule. One commenter stated that the landlord cannot get a tenant to honor his or her debt unless a lien is placed against his or her personal property. One commenter stated that the following should be added to the end of this section; "unless authorized by judicial proceedings."

SUMMARY OF ORAL COMMENTS
TO PROPOSED LEGISLATIVE RULES

Series 26: Legislative Rule Pertaining to the Prevention of Unfair Acts and Practices in Landlord Tenant Transactions

General support for the entire series was expressed by several witnesses.

One witness, a landlord, noted that substandard housing is a major problem, that enforcement of housing codes is reactive in nature, too slow, too expensive, and often unavailable. He viewed the regulations as fair and reasonable.

Other witnesses commented as follows:

Rule 3.5: This rule does not take into account that premises may become unfit for habitation due to actions of the tenant.

Rule 3.7: Reimbursement by the landlord of a tenant's repair expenses should only occur after a written agreement is executed by both parties.

Rule 3.8: The term "reasonable time" is vague.

Rule 4.2: This rule should apply to tenants as well.

Rule 5.2.3: Several witnesses stated that keeping a tenant's deposit in an interest-bearing account would be burdensome, that banks do not allow such accounts, or that the amount of money that would accrue would be insignificant. One witness representing landlords suggested that interest on such accounts should be pooled statewide and used to subsidize low-income housing or homeless shelters in the same manner as the current "Interest on Lawyer Trust Accounts" (IOLTA) program. A witness representing tenants agreed.

Rule 6.4: 20 days is too short: 60 days would be better.

Rule 6.6: "Normal wear and tear" is not defined.

Rule 7.2: 30 day notice of eviction is too long. 10 days would be better.

Rule 7.3: Landlords should be able to evict tenants without resorting to court proceedings.

Rule 8.2: Landlords should be able to terminate utilities for non-payment of rent without court action.

Rule 9.2: This rule should end after the words "... authorized in writing."

Several landlord witnesses stated that the proposed regulations give no new protection to landlords, who are humane and caring people who create jobs and economic growth.

Several landlord witnesses stated that increased protection of tenant's rights will result in increased rents.

A landlord witness stated that the regulations do not protect landlords from tenants who leave personal property indefinitely after vacating the premises.

A landlord witness stated that security deposits should be required for utility payments, that the phrase "fit and habitable condition" is not defined in West Virginia.

A witness representing tenants stated that 14 days for the return of a tenant's security deposit is long enough, and that a longer period hampers a low-income tenant's ability to place a security deposit on a subsequent rental unit. He further stated that landlords must not be allowed to cut off utilities without a decision by a court, because the issue of whether a tenant is in lawful possession is precisely the sort of dispute that must be decided by a court. He further stated that the tenant protection proposed by these regulations are in effect in other states without damaging the availability of rental housing. He further stated that the term "reasonable" is well established in the law and provides flexibility to landlords in the performance of their obligations.

Another witness representing tenants stated that current protection for tenants during evictions are ineffective in that the notice period to the tenant is too short, and that the tenant has no possessory rights during any appeal. The witness further stated that the requirement that tenant deposits bear interest was reasonable, and that the proposed regulations create a much needed enforcement mechanism for tenants.

Witnesses for both sides related "horror stories" of bad experiences concerning the landlord-tenant relationship.

RESPONSE TO PUBLIC COMMENTS

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

The Consumer Protection Division of the Office of West Virginia Attorney General has received written and oral comments on the above-styled proposed legislative rule.

The Consumer Protection Division has read and discussed every comment submitted. In many instances, the Division has modified the proposed rule in response to public comments or internal discussions, or both. In others, the Division has concluded that the proposed rule as modified is both necessary to adequately protect consumers and is authorized by pertinent provisions of West Virginia Code 142-26-6.

Security deposits were the subject of many comments. The rule has been substantially rewritten in response to these comments.

A separate account for security deposits is required only when total annual security deposits are in the amount of $5,000 or more, and interest must be paid the tenant only when the tenancy ends, and if such interest is allowed by law on the account. These changes remove any undue burden from small landlords, and still accomplishes the important goal of equity for many tenants, who are otherwise denied the benefit of funds held in trust for them. The deposit return time period has been modified to permit retention of funds by a landlord sufficient to cover outstanding utility bills that may be the landlord's obligation.

These changes are largely in response to changes requested by the regulated community. Minor typographical and grammatical errors may also be corrected.

The Attorney General wishes to thank the members of the public who took the time to study the proposed rule and comment on it.

These responses may not cover every change or respond to every comment. The reasons for most substantive changes are self-explanatory in the language changed or readily understood when read with the relevant oral and written comments on the rule. There are also typographical, grammatical and stylistic changes.

68 High Street
P.O. Box 635
Morgantown, WV 26505

BEL-CROSS
PROPERTIES

(304) 296-7930

August 8, 1994

Mr. Tom Rodd
Director - Consumer Protection Division
State of West Virginia
Office of The Attorney General
812 Quarrier Street
Charleston, WV 25301

Dear Mr. Rodd:

This letter is in response to Title 42 - Legislative Rule, Attorney General; Series 26- Legislative Rule Pertaining to Unfair or Deceptive Acts or Practices in Landlord-Tenant Transactions.

First let me state that I agree with the general direction and content of the above referenced topic. As a professional property manager, I have implemented, in some form, many of the proposals in this legislative rule. However, I do disagree with some parts of the proposed legislative rule;

The areas of concern are listed below:

142-26-2. Definitions

add 2.8 Habitable - define so both the landlord and the tenant are using and working with/under a uniform definition and standard.

add 2.9 Reasonable Time - define in number of days, ie. 20 days, 30 days, etc. or in a time frame such as 9:00 am to 8:00 pm for 142-26-9 paragraph 9.1.

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

3.7 Remove - after any representation that reimbursement would be made. Replace with - after landlord and tenant have agreed in writing that reimbursement would be made.

142-26-4. Notices and Demands

4.1 Questions ? Does this mean a landlord cannot send a notice on their letterhead which in essence states that if the rent is not paid by a certain date, legal action will be taken to collect the rent due, possession of the rental unit, or both.

142-26-5. Rental Agreements

5.2.3 This paragraph concerns me the mots, but not the fact that interest be paid on security deposits. What is of concern is placing the security deposits in separate interest-bearing accounts. As has happened in the past, banks can change the fees they charge to service an account at any time with little notice to the public. I feel certain if this procedure is required, you will see banks setting higher minimum balances on interest-bearing accounts so that the monthly interest paid by the bank is less than the monthly service charge to service the account. This would result in the tenant receiving less than the amount actually deposited as the service fee would be deducted from the account balance if the interest is not sufficient to off set these charges.

Another concern is that under Chapter 47, Article 12, Code of West Virginia, 1959; West Virginia Real Estate License Law and Administrative Rules; Section 47-12-18, Trust Fund Accounts; Records: "Said trust accounts shall designate him or her as trustee and all such trust accounts must provide for withdrawal of the funds without previous notice." This has been interpreted to mean that funds must be deposited into an account that is payable upon demand. The only account is one that does not pay interest. With this in mind, a licensed real estate broker in compliance with the West Virginia Real Estate License Law and managing real estate cannot place security deposits in an interest-bearing account nor collect interest on these deposits. The proposed legislative rule is in direct conflict with existing real estate license law.

What I propose is to require that interest be paid on the security deposit, calculated at the passbook savings account interest rate being paid by the bank where the owner has their business account and at the expiration of the lease. This would not be in conflict with the West Virginia Real Estate License Law nor would the tenant experience a loss in the security deposit because of bank charges.

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

6.3 See comments under 142-26-5. Rental Agreements, paragraph 5.2.3.

6.4/6.5 The twenty day time frame is too short. 30 days would be better, but I have found that 45 days is the ideal . This allows for all but the most extraordinary repair/damages to be corrected and the tenant provided with an accurate cost, actual bills, of any charges to the security deposit. In my lease it states the security deposit will be returned within 45 days of lease expiration.

142-26-7. Evictions and Termination of Tenancy

7.2 Why do we need this when before someone can be removed, legally, the owner/landlord must file a Petition for Summary Relief for Wrongful Occupation of Residential Rental Property with the county

Magistrate Court, have a hearing and then the magistrate decides what action to take based on the facts presented at the hearing.

Your proposal requires a 30 day notice before legal action can be taken to gain possession of the dwelling unit. This not only lengthens the eviction process but will also cause greater financial harm to the owner. Do you really think that someone you have to evict is going to reimburse the owner for back rent or damages.

142-26-8. Utilities

Rewrite the introductory paragraph as follows: It Shall be unfair and deceptive act or practice for any landlord who is obligated by written terms in the tenancy agreement pr addendum attached thereto to:

142-26-9. Unauthorized Entry and Tenants Personal Rights

9.2 Add to the end of this paragraph: Unless authorized by judicial proceedings.

This concludes my comments on Title 142, Series 26. However, I have one comment concerning Title 142, Series 23: Legislative Rules Pertaining to The Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks. Why doesn't this legislative rule have interest being paid on the tenant security deposit. Most mobile home parks charge a lot deposit and in my mind that is the same as a security deposit. Also, once someone moves into a mobile home park their occupancy tends to be longer than someone who resides in a residential rental unit and therefore the owner has use of the deposit for a longer time with less chance of repairs or damages.

If you would like to discuss my comments further, please contact me at my office. (304) 296-7930, so we can arrange a time that is agreeable to us both.

Sincerely,

William H. Burton, Jr. CRB, CRS, GRI
Broker
Bel-Cross Properties

Home Builders Association of West Virginia

700 Virginia Street, W.
Charleston, WV 25302
P.O. Box 6250
Charleston, WV 25362-0250
Phone: (304) 342-5176
FAX (304) 342-5177

August 10, 1994

Mr. Tom Rodd, Director
Consumer Protection Division
812 Quarrier Street
Charleston, WV 25301

RE: 142-26

Dear Mr. Rodd:

On Saturday, July 23, 1994, the Board of Directors of the Home Builders Association of West Virginia at a regular meeting and after due deliberation, acted unanimously to present testimony regarding the proposed rules pertaining to landlord / tenant transactions. This Association has observed that the proposed rules contain very little, if any, protection for landlords. In fact, the tenor of the writing presumes that the tenants are "good" and the landlords may be presumed "bad". We find that these proposed regulations provide for the presumption of a problem being one-sided. We believe that these proposed regulations were prepared with the intent of providing remedies for the tenant and with the presumption that no remedies are necessary for the landlord.

We find many of the provisions outlined in the proposed regulations are those offered in the Legislature during the mid 1970's through the mid 1980's. These were historically defeated because of their slant against a target group.

This Association has traditionally supported fair and reasonable attempts to promote landlord / tenant relations. We do not now, nor have we in the past, endorsed unfair and unreasonable practices by landlords, property owners or businesses in general. Following are some of these specific concerns which we believe should be addressed in the consideration of any new legislation or rules promulgated by the Office of the Attorney General:

1. We find that the requirement of paying interest on security deposits in separate accounts at a bank are more costly than any benefit which could be realized by a tenant. Indeed, some banks would refuse to pay interest on such small accounts. In fact, some banks would charge a fee for handling such accounts. Security deposits under a joint tenancy would be further complicated as to the reporting of interest by social security numbers required of financial institution. (See 5.2.3 and 6.3).

2. A "fit and habitable condition" has never been defined by the Legislature. It should be noted that the late Senator William Morelend from Monongalia County frequently attempted to amend landlord/tenant legislation to define what is fit and habitable. We believe that housing codes more appropriately address what a fit and habitable condition should be.

3. The prohibition in these regulations against collecting rent in advance or any amounts in excess of one month, plus a security deposit equal to not more than one month, makes it very difficult to collect for a twelve month lease in college towns where the normal school year is less than nine months. In fact, some landlords provide for payment of first month's rent and a security deposit, with the last months rent on an installment basis to ensure that at least some rent is collected for the period between May and August. In addition, some landlords provide for a discount for payment for a term such as six months or a year in advance. It is clear that no rent in advance can be legitimately claimed by a landlord beyond the terms provided in the contract. This Association does not condone or support any practice which would diminish the rights of the tenant to fit and habitable housing at a fair price. However, when a student or any other tenant fails to honor a commitment within a contract, it necessarily adds to the cost of doing business and the tenants who honor a contract are required to make up the difference in any free market society. (See 6.1)

4. As previously noted, this Association supports fair dealings in all landlord/tenant contracts and relations. We support the refunding of security deposits in all instances except where legitimate deductions are made for items of damage by a tenant or failure to pay amounts due under the contract. We do not believe that a time limit of twenty days for the refund of a security deposit is always reasonable. We are aware of many landlords whose contracts all run either on a calendar year, a school year, or other term peculiar to a specific location. Therefore, when multiple tenancies end in a compressed time frame, it is reasonable to assume that there would be an undue burden on the staff of a company or any landlord to compile the necessary data for the return of a deposit in such a short period of time. We believe that other states recognize the generally accepted period for the refund of security deposits as thirty days. We have always urged our members to make an effort to make such refunds in an expeditious and timely manner. We believe thirty days is an acceptable period to refund a security deposit. We further believe that a damage deposit should rightfully be applied to excessive cleaning required by a tenant whose living habits have caused excessive wear and tear. But we do not condone withholding a security deposit simply to collect additional rent. (See 6.4 and 6.5)

5. We are strictly opposed to any rule which would allow tenants to perform work on property of a landlord. The proposed rules would allow a tenant to replace a tile roof. We believe there are adequate remedies under law to permit tenants to seek relief without attempting to do plumbing repairs, electrical repairs, heating and cooling repairs, carpentry or other construction which they are most likely not qualified to perform. Nor should a tenant be permitted to select a contractor which is not acceptable to the property owner. (See 3.7)

6. We find that the proposed regulations would prohibit accelerations of rent payments in the event of default or breach of contract. Common business practice would permit a bank to accelerate payment on a note, but somehow acceleration of rent payments is found by these proposed regulations to be unacceptable. We also find that the section relating to Evictions and Termination of Tenancy is generally restrictive. West Virginia law provides for a process for eviction for wrongful

occupation. We believe this section attempts to extend the time necessary for obtaining possession even during unlawful occupation. We believe this section further requires a land owner to provide utilities during unlawful occupation. We find this to be unreasonable. (See 5.2.3 and 7.1 through 7.5)

7. We agree with the provisions of the regulations which would prevent denying a tenant the use of utilities during any lawful occupation. We strenuously oppose the requirement that all utilities shall be furnished during unlawful occupation. We object to any arrangement which would require a land owner to provide utilities when funds are being withheld by tenants in breach of a contract. (See 7.5 and 8.2)

8. We believe the requirement of at least twelve hours advance notice to show premises to prospective tenants or purchasers is unreasonable when both the landlord and tenant agree otherwise in writing. This would deny prospective tenants who are in town for only one day the opportunity to view a living unit where arrangements were not made some time in advance. (See 9.1)

These comments are provided in the interest of promoting fair and reasonable landlord and tenant relations and dealings. We believe that the proposed rules and regulations are silent concerning landlord rights or attempt to remove legitimate rights which the landlord may already have. It must be noted that there are no unfair and deceptive acts cited which can be attributed to the tenant. An example of this inconsistency is the provision that it is an unfair and deceptive act for a landlord "to fail or refuse to accept any notice" but there is no provision which finds the tenant in violation for the same act.

It is our opinion that the adoption of these rules will discourage the development of affordable rental housing in West Virginia. Accordingly, these rules will not promote job growth or good lanlord / tenant relations.

Respectfully Submitted,

David H. Yoder, Chairman
Legislative Sub-Committee

Emile & Brenice Frere
268 Normandy Street
Star City, WV 26505
304-599-7368

August 5, 1994

Tom Rodd, Director
Consumer Protection Division
812 Quarrier Street
Charleston, WV 25301

Dear Mr. Rodd:

My wife and I have a small number of rental units and I wish to express my concern on the proposed legislation of WV Code Section 56A-6-103 WV Code Section 46A-7-102 (1) (e).

I have listed some of my concerns below:

Title 142-26-3 Conditions & Maint. of a Dwelling Unit

3.1 (B) "fit and habitable condition"- who will defind the guidelines for "fit and habitable"-our units are already inspected by the City Building Inspector and the Fire Department.

3.5 What defines a "reasonable time" after receipt of notice from tenant to make repairs needed to render premises in a "fit and habitable condition".

Title 142-26-5 Rental Agreement

5.2.3)
5.2.4) Where are the LANDLORDS' rights?
5.2.5)

Title 142-26-6 Security Deposits & Rent in Advance

6.1 What happens when a tenant takes off without paying.

6.2 Receipts of deposits given are listed on ALL of our Leases therefore this would be more paperwork.

6.3 To hold security deposit(s) in interest bearing acct. requires a seperate account for each renter.More paperwork.

6.4 Why do we only have 20 days to return deposit and not 30? What if damages and unpaid rents come to more than the security deposit?

Title 142-26-7 Eviction & Termination of Tenancy

7.2 We have tenants who do NOT pay <u>any</u> rent(they'll pay "<u>next week</u>")-Are we to wait another <u>30</u> days for the <u>unlawful</u> tenant to be removed? (Another months' rent <u>not paid</u>.

Lesislation

Title 142-26-8 Utilities

8.2 If tenant does not pay rents owed, are we, the Landlords, suppose to continue to furnish them with Gas, Water, and Electric, when we are paying the Utilities on their apartment? This would just add to the amount of the uncollected rent moneys owed us.

Title 142-26-9 Unauthorized Entry and Tenant Personal Property.

9.2 How are the Landlords suppose to get the Tenants to honor their debts if we are unable to, at least, put a lein against their personal property as they own nothing else.

As the owners of a few rental units in a University town, we rent 99% of our units to students, the rest to low income families. Some of our tenants are very good, but a good many have compleatly distroyed our units and, being low income and students, we have taken some pretty heavy losses-there is No Way to Collect from these renters.

It would really be a great hardship for myself and my wife to open accounts for each of our units for security deposits and the paperwork involved. Below I have listed some questions for you to ponder:

1. Are these accounts to be in the Landlords names, or the Tenants?

2. Who pays the Income TAX on the interest earned?

It is difficult now, with higher Property Taxes, due to the Property reapraisals, B & O Tax increase, Fire Service Fees, Insurances, and stricter Fire Codes, not to mention, the City Building Inspections, to stay Above Water. Taking into account losses from tenants who don't pay rents, then skip out, leaving an apartment or house a dirty wreck (who cleans it up? the landlord does or else he has to pay to have it cleaned-More expense for the Landlord.)

I would like to see some legislature that will protect the Landlords from the 'skip' renter, as well as the tenant. This legislation is very one-sided in that it gives all the rights to the the tenant and gives no rights or protection to the Landlords.

I urge you to consider the above.

Sincerely,

Emile & Brenice Frere

Emile & Brenice Frere

* Deliquent Accounts turned into the Magistrate Court is a WASTE of Time and a MINIMUN of $40.00, after a 30 day notice given and 20plus days by the court to evict a Tenant; then a MINIMUM of $40.00 MORE to get a JUDGEMENT to try to Collect the Money owed.(Good Luck).

Florence Crittenton
HOME & SERVICES
Post Office Box 7061 • Wheeling, WV 26003-7061
304/242-7060 • FAX 304/242-7076

August 11, 1994

Mr. Andrew Maier
Office of the Attorney General
Consumer Protection Division
812 Quarrier Street
Charleston, WV, 25301

RE: Title 142, Series 26, Legislative Rule
Pertaining to Landlord Tenant Transactions

Dear Mr. Maier:

Your extension of the period for written comment permits me to offer several points of exception and rebuttal to the objections raised against the proposed landlord-tenant housing reform legislation during yesterday's public hearing.

Security deposits are properly held as a guarantee of performance, that the landlord's property will be maintained and that the last month's rent will be paid. They are properly held by the landlord in trust for the tenant, but remain an asset of the tenant. In principle, a tenant should not lose the economic benefit of interest earnings in exchange for granting a landlord the limited control of that asset. The opportunity cost of foregone interest on the security deposit does in a very real sense constitute an additional fee or charge imposed upon the tenant.

Having checked this morning with two major West Virginia banks, Bank One and Wesbanco, I have learned that contrary to statements made by legislation opponents yesterday, banks <u>will</u> pay interest on savings and NOW accounts opened by landlords to hold security deposits on behalf of their tenants. According to these banking sources, it does not matter whether the "landlord" is a sole proprietor, a partner or a corporation.

Minimum account balance requirements vary from bank to bank, but as our experience indicates that landlords almost universally require a deposit equal to one month's rent, it seems exceedingly likely that the minimum balance can be met in virtually every case. Rare is the case in which a landlord assesses a security deposit in the amount of a mere $20, which was cited in yesterday's testimony.

While it may be inconvenient for a landlord to keep separate accounts for each tenant's security deposit, it is difficult to believe that it would be overly administratively burdensome. Ownership of rental property is a business, after all, and running a business requires a certain amount of basic record-keeping. It is hard to believe that any landlord, whether the owner of one or one hundred rental units, fails to keep complete and current records of rent payment, and it seems that notations of deposit balances fit nicely and naturally into such a format. A depreciable investment in a now-commonplace piece of business equipment, the personal computer, makes the process simpler still.

The proposal voiced by legislation opponents to extend the mandated refund period for security deposits from the proposed twenty days to a total of sixty days would, we feel, imposed a considerable hardship on low-income renters. When a tenancy terminates, tenants typically need access to their deposits in order to secure another residence. Also, setting the refund deadline at sixty days would seem to have the effect of encouraging tenants to default on their final month's rent, since the funds on deposit with the landlord might not be available within a reasonable time to assist with the new rental.

Once again, if the landlord is operating in a business-like manner there is no need for a deposit to be retained for sixty days in order for the landlord to ascertain damage and obtain bids for repair work. There should be enough economic incentive for a landlord to move ahead with the assessment and repair process without resort to the punitive extremity of freezing tenant funds for sixty days.

With regard to eviction under present law, contrary to opponents' testimony, our client's experience has been that eviction is a swift and sure process. In Wheeling, Thursday night is "eviction night" in magistrate court. Landlords can secure evictions in the time it takes to file court papers, wait for Thursday to roll around and serve the resulting eviction order. Continuances are rarely granted and there are no extenuating circumstances that tenants may plead in the case of non-payment of rent. This is true even in those cases in which tenants are unable to make rent payments as a direct result of the extraordinary expenses they incur due to landlord property neglect.

Finally, with regard to the postulated economic backlash that would ensue from passage of the consumer protection legislation, with landlords "forced" to increase rents, thereby necessarily decreasing the supply of housing units available to low-income tenants, we would note that this is an argument that is almost universally advanced by opponents to any type of proposed reform that imposes a duty of compliance. It implies that if landlords are held to any minimal standard of housing quality or fiduciary responsibility they will automatically punish the low-income tenant-consumers by pricing their product beyond the tenant-consumer' means to pay.

As we see it, increased consumer costs are by no means a certain result of the implementation of the reform legislation. That is due first to the fact that rental housing is often a very profitable business. It is a business that enjoys very favorable tax treatment and one that benefits from a market environment of low West Virginia property values and low secular interest rates. So it would appear that there is more than a little likelihood that landlords' profit margins could absorb much if not all of the costs of compliance associated with the proposed legislation.

Secondly, the assertion that there would be an punitive effect on low-income tenants assumes, in the absence of proof, that there is insufficient price elasticity in the rental market to restrain market prices. We question the assumption that tenant-consumer demand is sufficiently vigorous in this instance to weather significant price increases. The existing supply of vacant units may well curb the ability of landlords to take peremptory action.

We reaffirm our support of your efforts to provide consumer law protection to tenants in their relationships with landlords. The reforms that you have presented are reasonable, equitable and overdue.

Sincerely,

William D. Gossett

William D. Gossett
Housing Resource Coordinator

Florence Crittenton
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July 28, 1994

Office of the Attorney General
Consumer Protection Division
812 Quarrier Street
Charleston, WV 25301

RE: Title 142, Series 26: Legislative Rule
Pertaining to Landlord Tenant Transactions

Gentlemen:

Our organization provides a broad range of supportive services including health care, counseling, day care, life skills training, and case management services to pregnant and parenting young women and their families throughout West Virginia. Most of our clients are low-income and subsist on a combination of AFDC and Food Stamps.

Among the approximately 1,000 families enrolled in our community-based programs, substandard rental housing is a major problem. With subsidized housing often unavailable, our clients frequently face the prospect of renting barely affordable units on the private market that are unsafe, unsound and unsanitary.

The tenant-landlord legislation under consideration would provide protection that is basic yet commonly unavailable to an under-educated and unempowered economic minority. Landlords, like any other provider of a product or service in the public marketplace, should be required to adhere to fundamental truth-in-marketing standards. They should not be permitted to offer a product or service that is hazardous to health or safety, nor should they be permitted to misappropriate funds held as security.

Enforcement of minimum quality standards in rental housing under present law is intermittent and reactive in nature, and this reality affords little incentive for landlords to become code-compliant. Even those tenants who are able to negotiate the complex procedures and endure the delays that are commonplace in dealings with local code administrators remain exposed to financial risk while seeking redress for even the most glaring of housing deficiencies. It is therefore all too common that a tenant becomes subject to eviction for non-payment of rent by virtue of choosing to incur expenses attributable to owner neglect, such as the cost of plumbing repairs or an exorbitant heating bill.

Regulation of security deposits would serve to rectify a major area of conflict in the tenant-landlord relationship. Many of our clients have had trouble securing the return of their deposits, whether or not damages are alleged. In cases of alleged damages, documentation of the damages or evidence of repair costs is rarely made available for the tenant to review or question.

The other provisions of the legislative proposal requiring basic disclosures and prohibiting deceptive language in the drafting of notices and rental agreements, requiring due process in the case of evictions and terminations of tenancy, prohibiting abuse of utility service, and prohibiting unreasonable property searches and seizures are basic steps on the road to establishing an equilibrium in the tenant-landlord relationship that has been notably one-sided under West Virginia law.

Unfortunately, legislative action often arises from a need to correct abuses, and it is certain that the tenant-landlord relationship under present state law stands as an area of pervasive and often aggravated abuses in need of remedial legislative action. If justice is a process of balancing conflicting interests, in this instance a highly-protected property interest and a virtually unprotected consumer interest, then equity requires a leveling of the tenant-landlord relationship by law.

It is on behalf of our client families who are living in substandard housing under oppressive circumstances, as well as on behalf of others who are similarly situated within the many West Virginia communities that we serve, that we strongly support the proposed housing regulatory legislation. Experience convinces us that this legislation is timely, fair and reasonable.

Sincerely,

William D Gossett

William D. Gossett
Housing Resource Coordinator

WDG/bb

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

September 19, 1994

Mr. Thomas W. Michels, Rental Manager
Old Colony Management Services, Inc.
1210 Kanawha Boulevard, E
Charleston, WV 25301

Dear Mr. Michels:

I received your letter today regarding the **Attorney General's** series 26 rules "Prevention of Unfair or Deceptive Acts or Practices in Landlord Tenant Transactions."

The Secretary of State's office had no part in promulgating these rules, and we have no more input in what is contained in these rules than the rest of the public.

However, the Attorney General's office did file this set of rules on July 7, 1994 and had both a public hearing and public comment period which ended on August 10, 1994. On August 15, the Attorney General's office filed agency approved rules with both this office and Legislative Rule Making Review Committee (LRMRC). LRMRC will put this rule on their agenda at a future date and the public will have another opportunity to make comments. Therefore, I am forwarding your letter to this Committee. If you would like to have more information on when this rule will be on their agenda, you may call Marie Nickerson at 340-3405.

Sincerely,

Ken Hechler

Ken Hechler
Secretary of State

cc: Marie Nickerson, Legislative Rule Making Review Committee

Old Colony Management Services, Inc.
1210 KANAWHA BLVD.,E. CHARLESTON, WV 25301
TELEPHONE (304) 344-8051

September 6, 1994

The Honorable Ken Hechler
W.V. Secretary Of State
Adminstrative Law Division
Charleston West Virginia

Dear Mr. Hechler,

In response to the recently filed legislative Rules filed by the Office of the Attorney General I offer my opinion regarding Landlord Tenant Legislative Rules.

In my position as a property manager for Old Colony Management Services I represent approximately 250 landlords and approximately 450 tenants. It is very important to me that both the tenants and land owners be represented in an honest and fair manner. Our service objectives are dedicated around that principal. I was very surprised and disappointed in the lack of equal interest by not protecting the interest of the landlords.

These Rules can be interpreted as implying that the land owner is responsible for all the wrong doings and leaves the tenant holding the bag. It has been my experience that the opposite is much more prevalent They also seem much to vague in many areas and seems to put the land owner in jeopardy in situations that are beyond the land owners control. Is there not currently enough enforceable legislation that protects the landlords and tenants. I feel there is.

Title 142, series 26, states that the rule would protect the consumer from unfair and deceptive act or practice. The objective is "Promotion of Consumer Protection".

In each requirement it starts with "It shall be an unfair and deceptive act or practice for a landlord to..." All these rules are directed towards the landlord only! Certainly the author is not unaware to the facts that both the landlord and the tenants violate rules and usually only the landlord comes up short. Please understand that land owners need protection from bad tenants too!!! Land owners risk s are greater because of a major investment as compared to tenants risk which is much less.

You may think that 142-26-5.2.3. referring to the Security Deposits would be helping tenants receive interest from their security deposits when in fact it will increase their rental amount to cover the additional bookkeeping required to handle the small return a tenant would receive.

The above represents my opinion which is shared by many of those owners and colleagues which I have had conversations regarding this topic.

In summary it is my opinion that your new proposed rules are extremely one sided, vague, unnecessary and costly to the landowners and tenants. I suggest that existing laws accomplish adequate protection for tenants and additional legislation will only create more problems then it would ever solve. Please revamp your thinking to protect everyone not just one segment of the population.

Respectfully yours,

Thomas W. Michels

Thomas W. Michels,
Rental Manager

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

August 15, 1994

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Hechler:

Please accept this letter as my authorization for the filing of the enclosed proposed legislative rules with the Secretary of State's Office and the Legislative Rule Making Review Committee. A public hearing was held on these rules on August 10, 1994. Written comments were also received.

The enclosed proposed legislative rules to which my authorization extends are:

(a) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks;

(b) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Advertising and Sales;

(c) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Landlord Transactions;

(d) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Motor Vehicle Repairs;

(e) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Motor Vehicle Sales;

(f) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Proprietary Institution;

(g) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Door-to-Door Sales.

Thank you for your cooperation.

Very truly yours,

Darrell V. McGraw, Jr.

DVM/mgc
Enclosures