

## **West Virginia Landlord Tenant Law**

The purpose of this site is to provide landlords and tenants with information about their responsibilities and legal rights. This site is not intended to be a substitute for professional legal advice. Because factual circumstances vary in each case, detailed legal research or opinion may be necessary to resolve any problems.

State of West Virginia Eviction Law

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

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

### **37-6-6. Desertion of premises; entry; recovery of rent.**

If any tenant from whom rent is in arrear and unpaid shall abandon the demised premises, and leave the same uncultivated or unoccupied, without goods thereon subject to distress sufficient to satisfy such rent, the lessor or his agent may post a notice in writing in a conspicuous part of the premises, requiring the tenant to pay such rent within one month. If the same be not paid within that time, the lessor shall be entitled to possession of the premises, and may enter thereon, and the right of such tenant thereto shall thenceforth be at an end. But the landlord may recover the rent up to the time when he became entitled to the possession.

### **37-6-7. Reletting by landlord.**

The landlord, or other person entitled to the rent may, however, at his election, incorporate, in the notice provided for in the preceding section, the further notice that he will, after he shall have taken possession of the demised premises, lease the premises to some other person, in which case the tenant will still remain liable upon his lease, for the unexpired portion of his term, for the difference between the amount of rent received by the landlord from the new tenant, and the amount payable under the lease of the original tenant, and upon any other covenants or agreements contained in the original lease.

### **37-6-8. Tenant's right to recover possession.**

If the landlord shall have elected to continue to hold the tenant liable upon his lease, as provided in the preceding section, the tenant shall be entitled, upon the payment of all arrears of rent, and the satisfaction of any liabilities which shall have accrued upon the covenants or agreements contained in his lease, and any other liabilities with which he is chargeable by virtue of his lease, to the possession of the premises, except to the extent that some other person is already in possession of the premises, or is entitled to such possession, by virtue of a lease made by the landlord to such other person pursuant to the notice given under the preceding section, before the tenant shall have notified the landlord in writing of his intention to resume possession of the premises, and shall have satisfied, or tendered an amount sufficient to satisfy, his liabilities under his lease as aforesaid. No tenant whose lease has been lawfully forfeited, under the second preceding section, shall be entitled to any right, either at law or in equity, to be relieved of such forfeiture, or to reenter the premises, except as provided in this section.

**37-6-9. Recovery of rent by distress or action; evidence; interest.**

Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover a reasonable satisfaction for the use and occupation of lands, and, on the trial of such action, if any parol demise, or any agreement wherein a certain rent was reserved, shall appear in evidence, the plaintiff shall not for that reason be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts.

**37-6-12. Distress for rent; time and place; warrant.**

Rent may be distrained for within one year after the time it becomes due, and not afterwards, whether the lease be ended or not. The distress shall be made by any sheriff or constable of the county wherein the premises yielding the rent or some part thereof may be or the goods liable to distress may be found, under a warrant from a justice founded upon the affidavit of the person claiming the rent, or his agent, that the amount of money or other thing to be distrained for (to be specified in the affidavit), as he verily believes, is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed.

**37-6-13. Property subject to distress.**

The distress may be levied on any goods of the lessee, or his assignee or undertenant, found on the premises, or which may have been removed therefrom not more than thirty days. If the goods of such lessee, assignee or undertenant, when carried on the premises, are subject to a lien which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon while they are upon the leased premises, they shall be liable to distress, but for not more than one year's rent, whether it shall have accrued before or after the creation of the lien: Provided, That if the goods are subject to a perfected purchase money security interest, as defined in section one hundred seven, article nine, chapter forty-six of this code, and that such purchase money security interest is in effect under the terms set forth in section four hundred three, article nine of chapter forty-six of this code, then the goods are liable to distress only to the extent of the unencumbered interest of the lessee, assignee or undertenant. No goods shall be liable to distress other than such as are declared to be so liable in this section.

**37-6-14. Forcible entry by officer.**

The officer having such distress warrant or an order of attachment, based upon rent, if there be need for it, may, in the daytime, break open and enter into any house or close in which there may be goods liable to the distress or order, and may, either in the day or nighttime, break open and enter into any house or close wherein there may be any goods so liable, which have been fraudulently or clandestinely removed from the demised premises.

**37-6-17. Attachment for rent.**

On complaint by any landlord or person entitled to rent, or his agent, to a justice, that any person liable to him for rent intends to remove, or is removing, or has within thirty days removed his effects from the leased premises, if such landlord or person entitled to rent, or his agent, make oath to the truth of such complaint to the best of his belief, and to the rent which is reserved (whether in money or other thing) and will be payable within one year, and the time or times when it will be payable, and also make oath either that there is not, or he believes, unless an attachment issues, there will not be, left on such premises, property liable to distress sufficient to satisfy the rent so to become payable, such justice shall, if the landlord or person entitled to rent, or his agent, shall execute before such justice a bond in the penalty and with the conditions prescribed in section eight, article seven, chapter thirty-eight of this code, issue an order of attachment for such rent against the personal estate of the person so liable therefor. If the

amount of rent claimed by the landlord or person entitled to the rent, or his agent, exclusive of interest, is fifty dollars or less than that amount, the order of attachment shall be returnable before the justice issuing the order, or another justice; if the amount of rent so claimed, exclusive of interest, is more than fifty dollars and not more than three hundred dollars, the order of attachment may be returnable before the justice issuing the order, or another justice, or to the next term of the circuit court thereafter; and if the amount of rent so claimed, exclusive of interest, attachment shall be returnable to the next term of the circuit court thereafter. If the order of attachment is returnable to the circuit court, it shall be in form or effect as follows:

"District of ..... County, to-wit:

A..... B....., Plaintiff) Order

vs. ) of

C..... D....., Defendant) Attachment.

The above-named plaintiff having filed with me the affidavit and bond required by law, the sheriff of the County of ....., or any constable therein to whom this order may come, is hereby required, in the name of the State of West Virginia, to attach and take into his possession the personal estate of the defendant, C..... D....., sufficient to pay the sum of ..... dollars (the sum affiant states will be due), and the costs of this attachment, and to make return of his proceedings under this order to the next term of the circuit court of the said county.

Given under my hand this ..... day of ....., 19.... E..... F....., Justice."

The defendant, in an attachment issued under the next preceding paragraph, may make defense thereto in the same manner and to the same extent as in other cases of attachment; and the same, as to the rent claimed, shall be proceeded in, tried and determined, as if it were an original action brought in said circuit court, and place of a declaration in the case. The affidavit in such case shall be returned to the clerk of the circuit court by the justice. The provisions of sections seven to forty-six, both inclusive, except sections thirty-seven, thirty-eight, and thirty-nine, article seven, chapter thirty-eight of this code, shall be applicable to attachments issued hereunder and returnable to the circuit court.

If the order of attachment is returnable before a justice, it shall be in form or effect as follows:

"District of ....., ....., County, to-wit:

"A..... B....., Plaintiff, ) Order vs. ) of C..... D....., Defendant. ) Attachment

The above-named plaintiff having filed with me the affidavit and bond required by law, any constable in the County of ....., to whom this order may come, is hereby required, in the name of the State of West Virginia, to attach and take into his possession the personal estate of the defendant, C..... D....., sufficient to pay the sum of ..... dollars (the sum affiant states will be due), and the costs of this attachment, and to make return of his proceedings under this order to me (or, if the order is made returnable before another justice, to G..... H.....), a justice of the peace in ..... County.

Given under my hand this ..... day of ....., 19.... E..... F....., Justice."

The provisions of sections seven to twenty-four, both inclusive, article nine, chapter fifty of this code shall be applicable to attachments issued hereunder and returnable before a justice.

### **37-6-18. Removal of goods by third party having lien.**

If, after the commencement of any tenancy, a lien be obtained or created by trust deed, mortgage, or otherwise, upon the interest or property in goods on premises leased or rented, of any person liable for the rent, the party having such lien may remove such goods from the premises on the following terms, and not otherwise, that is to say: On the terms of paying to the person entitled to the rent, so much as is in arrear, and securing to him so much as is to become due; what is so paid or secured not being more altogether than a year's rent in any case: Provided, That if the party removing such goods has perfected a purchase money security interest in the goods, as defined in section one hundred seven, article nine, chapter forty-six of this code and that such purchase money security interest is in effect under the terms set forth in section four hundred three, article nine, chapter forty-six of this code, then the goods are liable to distress only to the extent of the unencumbered interest of the lessee, assignee or undertenant. If the goods be taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear; and, as to what is to become due, he shall sell a sufficient portion of

the goods on a credit till then, taking from the purchaser bond, with good security, payable to the person so entitled, and delivering such bond to him. If the goods be not taken under legal process, such payment and security shall be made and given before their removal. Neither this nor any other section of this article shall affect any lien for taxes or levies.

**37-6-19. Right of reentry; ejectment; unlawful detainer; judgment by default.**

Any person who shall have the right of reentry into the lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, where there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any messuage, or at any other conspicuous place on the premises, which service shall be in lieu of a demand and reentry; or may commence an action of unlawful detainer, and obtain service either in person or by publication, as in other such actions, which service shall be in lieu of a demand and reentry; and upon proof to the court, by affidavit in case of judgment by default, or upon proof on the trial that the rent claimed was due, and there was not sufficient property subject to distress upon the premises to satisfy the claim for rent due, or that the covenant or condition was broken before the service of the declaration in ejectment, or the commencement of the action of unlawful detainer, and that the plaintiff had power thereupon to reenter, he shall recover judgment, and have execution for such lands. In case the time for reentering be specified in the instrument creating the rent, covenant or condition, the proceedings in ejectment or unlawful detainer shall not be begun until such time shall have elapsed.

**37-6-20. Relief against forfeiture.**

Should the defendant, or other person for him, not pay the rent in arrear, with interests and costs, nor file a bill in equity for relief against such forfeiture, within twelve months after execution executed, he shall be barred of all rights, in law or equity, to be restored to such lands or tenements.

**37-6-22. Injunction against ejectment or unlawful detainer.**

If the tenant of such lands, or any person having a right or claim thereto, shall, within the time aforesaid, file his bill for relief in the circuit court of the county wherein the lands are situated, he shall not have or continue any injunction against the proceedings at law on the ejectment or unlawful detainer, unless he shall, within thirty days next after a full and perfect answer filed by the plaintiff in ejectment, or unlawful detainer, bring into court or deposit in some bank within the state, to the credit of the cause, such money as the plaintiff in ejectment or unlawful detainer shall, in his answer, swear to be due and in arrear over and above all just allowances, and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to such plaintiff on good security, subject to the decree of the court.

**37-6-23. Effect of payment of rent or relief in equity.**

If any party having a right or claim to such lands shall, at any time before the trial in such action of ejectment or of unlawful detainer, pay or tender to the party entitled to such rent, or to his attorney in the cause, or pay into court, all the rents and arrears, with interest and costs, all further proceedings in the action shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance.

**37-6-24. Record of reentry; publication of certificate.**

Where actual reentry shall be made, the party, by or for whom the same shall be made, shall return a written act of reentry, sworn to by the sheriff or other officer acting therein, to the clerk of the county court of the county wherein the lands or tenements shall be, who shall record the same in the deed book, and shall deliver, to the party making the reentry, a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded, which certificate shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be such county. Such publication shall be proved

by affidavit to the satisfaction of such clerk, who shall note the fact on the margin of the deed book against the record of the act of reentry in the words, "Publication made and proved according to law, A ..... B ....., Clerk," and shall return the original act of reentry to the party entitled thereto. Such written act of reentry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence in all cases of the facts therein set forth.