

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 600

(SENATORS YOST, SNYDER, MILLER, LAIRD, EDGELL AND
FITZSIMMONS, *ORIGINAL SPONSORS*)

[PASSED MARCH 6, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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[Passed March 6, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, all relating to the registration, maintenance and regulation of dwellings unfit for human habitation and vacant buildings and properties by municipal governments; defining terms; clarifying the parties responsible for compliance with municipal ordinances regarding these dwellings, buildings and properties; and authorizing municipalities to enact maintenance of vacant buildings and properties ordinances.

Be it enacted by the Legislature of West Virginia:

That §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES AND ALLIED RELATIONS
OF MUNICIPALITIES, GOVERNING**

**BODIES AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST
MUNICIPALITIES.**

**§8-12-16. Ordinances regulating the repair, closing, demolition,
etc., of dwellings or buildings unfit for human
habitation; procedures.**

1 (a) Plenary power and authority are hereby conferred
2 upon every municipality to adopt ordinances regulating the
3 repair, alteration or improvement, or the vacating and closing
4 or removal or demolition, or any combination thereof, of any
5 dwellings or other buildings unfit for human habitation due
6 to dilapidation, defects increasing the hazard of fire,
7 accidents or other calamities, lack of ventilation, light or
8 sanitary facilities or any other conditions prevailing in any
9 dwelling or building, whether used for human habitation or
10 not, which would cause such dwellings or other buildings to
11 be unsafe, unsanitary, dangerous or detrimental to the public
12 safety or welfare.

13 (b) The governing body in formally adopting the
14 ordinances shall designate the enforcement agency, which
15 shall consist of the mayor, the municipal engineer or building
16 inspector and one member at large, to be selected by and to
17 serve at the will and pleasure of the mayor. The ranking
18 health officer and fire chief shall serve as ex officio members
19 of the enforcement agency.

20 (c) Any ordinance adopted pursuant to the provisions of
21 this section must provide fair and equitable rules of procedure
22 and any other standards deemed necessary to guide the
23 enforcement agency, or its agents, in the investigation of
24 dwelling or building conditions, and in conducting hearings:
25 *Provided*, That any entrance upon premises for the purpose
26 of making examinations is made in a manner as to cause the

27 least possible inconvenience to the persons in possession.

28 (d) The governing body of every municipality has plenary
29 power and authority to adopt an ordinance requiring the
30 owner or owners of any dwelling or building under
31 determination of the State Fire Marshal, as provided in
32 section twelve, article three, chapter twenty-nine of this code,
33 or under order of the enforcement agency of the municipality,
34 to pay for the costs of repairing, altering or improving, or of
35 vacating and closing, removing or demolishing any dwelling
36 or building.

37 (e) Every municipality:

38 (1) May file a lien against the real property in question
39 for an amount that reflects all costs incurred by the
40 municipality for repairing, altering or improving, or of
41 vacating and closing, removing or demolishing any dwelling
42 or building; and

43 (2) May institute a civil action in a court of competent
44 jurisdiction against the landowner or other responsible party
45 for all costs incurred by the municipality with respect to the
46 property and for reasonable attorney fees and court costs
47 incurred in the prosecution of the action.

48 (f) Not less than ten days prior to instituting a civil action
49 as provided in this section, the governing body of the
50 municipality shall send notice to the landowner by certified
51 mail, return receipt requested, advising the landowner of the
52 governing body's intention to institute such action.

53 (g) The notice shall be sent to the most recent address of
54 the landowner of record in the office of the assessor of the
55 county where the subject property is located. If, for any
56 reason, such certified mail is returned without evidence of

57 proper receipt thereof, then in such event, the governing body
58 shall cause a Class III-0 legal advertisement to be published
59 in a newspaper of general circulation in the county wherein
60 the subject property is located and post notice on the front
61 door or other conspicuous location on the subject property.

62 (h) If any landowner desires to contest any demand
63 brought forth pursuant to this section, the landowner may
64 seek relief in a court of competent jurisdiction.

65 (i) For purposes of this section, “owner” or “landowner”
66 means a person who individually or jointly with others:

67 (1) Has legal title to the property, with or without actual
68 possession of the property;

69 (2) Has charge, care or control of the property as owner
70 or agent of the owner;

71 (3) Is an executor, administrator, trustee or guardian of
72 the estate of the owner;

73 (4) Is the agent of the owner for the purpose of managing,
74 controlling or collecting rents; or

75 (5) Is entitled to control or direct the management or
76 disposition of the property.

77 (j) All orders issued by the enforcement agency shall be
78 served in accordance with the law of this state concerning the
79 service of process in civil actions, and be posted in a
80 conspicuous place on the premises affected by the complaint
81 or order: *Provided*, That no ordinance may be adopted
82 without providing for the right to apply to the circuit court for
83 a temporary injunction restraining the enforcement agency
84 pending final disposition of the cause.

85 (k) In the event such application is made, a hearing
86 thereon shall be had within twenty days, or as soon thereafter
87 as possible, and the court shall enter such final order or
88 decree as the law and justice may require.

§8-12-16a. Registration of uninhabitable property.

1 (a) The governing body of a municipality may, by
2 ordinance, establish a property registration for any real
3 property improved by a structure that is uninhabitable and
4 violates the applicable building code adopted by the
5 municipality. An owner of real property subject to the
6 registration shall be assessed a fee as provided by the
7 ordinance.

8 (b) The mayor of the municipality shall appoint a code
9 enforcement officer to investigate and determine whether real
10 property violates provisions of the applicable building code
11 of the municipality.

12 (c) After inspecting the property, if the officer determines
13 the property is uninhabitable and violates the applicable
14 building code, then:

15 (1) The officer shall post a written notice on the property
16 which shall include:

17 (A) An explanation of the violation(s);

18 (B) A description of the registration;

19 (C) The date the fee will be assessed;

20 (D) An explanation of how to be removed from the
21 registration;

22 (E) An explanation of the appeals process; and

23 (F) A statement that if the fee is not paid, then the
24 property is subject to forfeiture; and

25 (2) Within five business days of the inspection and the
26 posting of the property, the officer shall, by certified mail,
27 send a copy of the notice that was posted to the owner(s) of
28 the property at the last known address according to the
29 county property tax records.

30 (d) Within forty-five days of receipt of the notification by
31 the owner(s), the property owner may:

32 (1) Make and complete any repairs to the property that
33 violate the applicable building code; or

34 (2) Provide written information to the officer showing
35 that repairs are forthcoming in a reasonable period of time.

36 (e) For purposes of this section, “owner” or “property
37 owner” means a person who individually or jointly with
38 others:

39 (1) Has legal title to the property, with or without actual
40 possession of the property;

41 (2) Has charge, care or control of the property as owner
42 or agent of the owner;

43 (3) Is an executor, administrator, trustee or guardian of
44 the estate of the owner;

45 (4) Is the agent of the owner for the purpose of managing,
46 controlling or collecting rents; or

47 (5) Is entitled to control or direct the management or
48 disposition of the property.

49 (f) After the repairs are made, the owner may request a
50 reinspection of the property to ensure compliance with the
51 applicable building code. If the officer finds the violations
52 are fixed, the owner is not subject to the registration and no
53 fee will be incurred.

54 (g) The officer may reinspect the property at any time to
55 determine where in the process the repairs fall.

56 (h) Within ninety days of receipt of the notification by the
57 owner(s), the property owner has the right to appeal the
58 decision of the officer to the enforcement agency, created in
59 section sixteen, article twelve of this chapter.

60 (i) If an appeal is not filed within ninety days, the
61 property is registered and the fee is assessed to the owner(s)
62 on the date specified in the notice. The notice of the fee shall
63 be recorded in the office of the clerk of the county
64 commission of the county where the property is located and
65 if different, in the office of the clerk of the county
66 commission of the county where the property is assessed for
67 real property taxes.

68 (j) If the enforcement agency affirms the registration and
69 assessment of the registration fee, the property owner has the
70 right to appeal the decision of the enforcement agency to the
71 circuit court within thirty days of the decision. If the decision
72 is not appealed in a timely manner to the circuit court, then
73 the property is registered and the fee is assessed on the date
74 specified in the notice. The notice of the fee shall be
75 recorded in the office of the clerk of the county commission
76 of the county where the property is located and if different, in
77 the office of the clerk of the county commission of the county
78 where the property is assessed for real property taxes.

79 (k) A fee assessed under this section shall be recorded in
80 the same manner as a lien is recorded in the office of the
81 clerk of the county commission of the county.

82 (l) If the fee is paid, then the municipality shall record a
83 release of the fee in the office of the clerk of the county
84 commission of the county where the property is located and
85 if different, in the office of the clerk of the county
86 commission of the county where the property is assessed for
87 real property taxes.

88 (m) If an owner fails to pay the fee, then the officer shall
89 annually post the written notice on the property and send the
90 written notice to the owner(s) by certified mail.

91 (n) If a registration fee remains delinquent for two years
92 from the date it was placed on record in the clerk of the
93 county commission in which the property is located and
94 assessed, the municipality may take action to receive the
95 subject property by means of forfeiture. Should the
96 municipality take the steps necessary to receive the subject
97 property, the municipality then becomes the owner of record
98 and takes the property subject to all liens and real and
99 personal property taxes.

**§8-12-16c. Registration of vacant buildings; registration fees;
procedures for administration and enforcement.**

1 (a) The governing body of a municipality shall have
2 plenary power and authority to establish by ordinance a
3 vacant building and property registration and maintenance
4 program.

5 (b) For purposes of this section:

6 (1) "Owner" or "property owner" means a person who
7 individually or jointly with others:

8 (A) Has legal title to the property, with or without actual
9 possession of the property;

10 (B) Has charge, care or control of the property as owner
11 or agent of the owner;

12 (C) Is an executor, administrator, trustee or guardian of
13 the estate of the owner;

14 (D) Is the agent of the owner for the purpose of
15 managing, controlling or collecting rents; or

16 (E) Is entitled to control or direct the management or
17 disposition of the property.

18 (2) “Vacant building” means a building or other structure
19 that is unoccupied, or unsecured and occupied by one or more
20 unauthorized persons for an amount of time as determined by
21 the ordinance. A new building under construction or a
22 building that by definition is exempted by ordinance of the
23 municipality, is not deemed a vacant building. The
24 governing body of a municipality, on a case-by-case basis,
25 upon request by the property owner, shall exempt a vacant
26 building from registration upon a finding for good cause
27 shown that the person will be unable to occupy the building
28 for a determinative period of time.

29 (3) “Vacant property” means a property on which no
30 building is erected and no routine activity occurs.

31 (c) An owner of real property subject to registration and
32 maintenance requirements may be charged a fee or fees as
33 provided by ordinance. The ordinance shall provide
34 administrative procedures for the administration and
35 enforcement of registration and payment and collection of
36 registration fees.

37 (d) The ordinance may require that when the owner of the
38 vacant building or property resides outside of the state that
39 the owner provide the name and address of a person who
40 resides within the state who is authorized to accept service of
41 process and notices of fees due under this section on behalf
42 of the owner and who is designated as a responsible, local
43 party or agent for the purposes of notification in the event of
44 an emergency affecting the public health, safety or welfare.

45 (e) The ordinance may authorize the municipality to
46 institute a civil action against the property owner and/or file
47 a lien on real property for unpaid and delinquent vacant
48 building registration fees. Before any lien is filed, the
49 municipality shall give notice to the property owner or
50 owner's agent, by certified mail, return receipt requested, that
51 the municipality will file the lien unless the delinquent fees
52 are paid by a date stated in the notice, which must be no less
53 than thirty days from the date the notice is received by the
54 owner or the owner's agent, which shall be the date of
55 delivery shown on the signed certified mail return receipt
56 card. The ordinance may provide for alternative means of
57 service when service cannot be obtained by certified mail.

58 (f) The ordinance may require that the owner maintain the
59 vacant building or property to a standard deemed reasonable
60 by the governing body. The ordinance may include authority
61 for the municipality, following notice to the owner, to act to
62 bring the vacant building or property into compliance with
63 the standard, or otherwise eliminate the public nuisance
64 caused by any noncomplaint conditions: *Provided*, That
65 nothing in this section is to be interpreted to impose a duty,
66 obligation or requirement that a municipality must undertake
67 such repairs, demolition or maintenance measures which
68 remain as obligations and responsibilities of the owner. Cost
69 of the repairs, demolition and maintenance and related legal
70 and administrative costs incurred by the municipality are to

71 be paid by the owner. Collection of these costs may be
72 enforced in civil proceedings against the owner.

73 (g) The ordinance shall permit a property owner to
74 challenge any determination made pursuant to the ordinance.
75 The administrative procedures adopted pursuant to the
76 ordinance shall include the right to appeal to the circuit court
77 of the county in which the property is located.

78 (h) The governing body of a municipality shall deposit
79 the fee into a separate account, which shall be used to:

80 (1) Improve public safety efforts, especially for police
81 and fire personnel, who most often contend with the
82 dangerous situations manifested in vacant properties;

83 (2) Monitor and administer this section; and

84 (3) Repair, close or demolish a vacant structure as
85 authorized by section sixteen of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor