

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 500

BY SENATORS WELD AND LINDSAY

[Introduced January 28, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-
3 16-8, and §37-16-9, all relating to real property conveyed by land installment agreement;
4 providing definitions; laying out land installment contract requirements; providing for
5 vendor requirements; providing for the condition of forfeiture, notice of default, and right
6 to cure; defining the effect of vendor's default on lien on property; spelling out contrary
7 provisions; defining interest; providing for remedies; and clarifying the Truth in Lending
8 Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. LAND INSTALLMENT CONTRACTS.

§37-16-1. Definitions.

1 The following definitions shall apply in this article:

2 (1) "Land installment contract" or "contract" means an executory agreement which by its
3 terms is not required to be fully performed by one or more of the parties to the agreement within
4 one year of the date of the agreement and under which the vendor agrees to convey title in real
5 property located in this state to the vendee and the vendee agrees to pay the purchase price in
6 installment payments, while the vendor retains title to the property as security for the vendee's
7 obligation. Bona fide option contracts for the purchase of real property, in which the vendee does
8 not live in the property during the period during the option period, are not land installment
9 contracts.

10 (2) "Property" means real property located in this State, upon which there is located or
11 there is to be located a structure or structures designed principally for single family occupancy
12 that is or will be occupied by the vendee as the vendee's principal dwelling.

13 (3) "Vendor" means any individual, partnership, corporation, association, trust, or any
14 other group of individuals however organized making a sale of real property by means of a land
15 installment contract.

16 (4) "Vendee" means the person who acquires an interest in property pursuant to a land
17 installment contract, or any legal successor in interest to that person.

§37-16-2. Land installment contract requirements.

1 (a) Requirements. – Every land installment contract shall be signed and acknowledged by
2 all parties to it in duplicate, and a copy of the contract shall be provided to the vendor and the
3 vendee and, if applicable, the attorneys for the vendor and vendee. The contract shall contain at
4 least the following provisions:

5 (1) A notice in at least twelve- point type, at the beginning of the contract, stating all of the
6 following:

7 (A) That the vendor is responsible for all of the following:

8 (i) The payment of real estate taxes and other charges against the property from the date
9 of the contract;

10 (ii) The payment of insurance premiums covering the value of the dwelling and the
11 underlying property, with benefits payable to the vendee during the vendee's tenure on the
12 property;

13 (iii) All repairs and maintenance on the property.

14 (B) That the vendee has a cause of action pursuant to section nine of this article if the
15 vendor does not comply with the provisions of this article or of the land installment contract, as
16 required by this article.

17 (2) The full names and then current mailing addresses of all the parties to the contract;

18 (3) The date when the contract was signed by each party;

19 (4) A legal description, and the postal address of the property conveyed;

20 (5) The total amount necessary for vendee to pay to purchase the property, referred to as
21 the "contract price" of the property conveyed;

22 (6) Any charges or fees for services that are includable in the contract separate from the
23 contract price;

24 (7) The amount of the vendee's down payment;

25 (8) The principal balance owed, which is the sum of subdivisions (5) and (6) of this
26 subsection less the specified in subdivision (7) of this subsection;

27 (9) The term of the contract, and the amount and due date of each installment payment;

28 (10) The interest rate on the unpaid balance, in accordance with section eight of this
29 article;

30 (11) A statement of any encumbrances against the property, along with a commitment by
31 the vendor to satisfy and remove these encumbrances before the scheduled end of the term of
32 the contract;

33 (12) A statement requiring the vendor to deliver a general or limited warranty deed on
34 completion of the contract;

35 (13) A provision that the vendor provide evidence of title in accordance with all applicable
36 laws before or at the time the land contract is signed;

37 (14) A provision that the vendor shall cause a copy of the contract to be recorded, and a
38 copy of the recorded contract shall be provided to the vendee and the vendee's attorney, if
39 applicable;

40 (15) A statement of any pending order of any public agency against the property, which
41 must be resolved and removed before any obligation of the vendee to make payments applies;

42 (16) That insurance for the property shall be obtained by the vendor, which shall list both
43 the vendor and vendee as insureds and shall be sufficient to cover the interests of both the vendor
44 and the vendee, payable first to the vendee up to the amount of the total of payments the vendee
45 has made pursuant to the contract;

46 (17) The vendee shall have the right to pay off the remaining outstanding balance due on
47 the contract at any time, plus any interest that has accrued to date, without any additional charges,
48 at which time the vendor must convey full title to the property to the vendee; and

49 (18) A statement of the rights of the vendee to cure a default, including that the vendee

50 has the right to cure a default once in any twelve-month period during the period of the covered
51 land installment contract.

52 (b) Recordation. – Within ten business days after the contract has been signed and
53 acknowledged by both the vendor and the vendee, the vendor shall cause the contract or a
54 memorandum of the contract to be recorded in the office of the clerk of the county commission in
55 the county in which the property is located. If a memorandum of the contract is recorded, it shall
56 be entitled “Memorandum of Land Installment Contract” and shall contain, at a minimum, the
57 names of the parties, the signatures of the parties, a description of the property, and applicable
58 amounts as described in subdivisions (5), (7), and (8) of subsection (a) of this section. A person
59 other than a vendor and vendee may rely on the recorded materials in determining whether the
60 requirements of this subsection have been met.

61 (c) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and
62 intent to forfeit and failure of the vendee to substantially cure the default, the vendee's equitable
63 right of redemption shall be extinguished by:

64 (1) A mutual termination executed by the parties and recorded in the office of the clerk of
65 the county commission of the county in which the property is located, or

66 (2) A final judgment or court order entered by a court of competent jurisdiction that
67 terminates the vendee's rights to the property and extinguishes the equity of redemption. A
68 certified copy of the order shall be recorded in the office of the clerk of the county commission of
69 the county in which the property is located.

70 (d) Instrument Ineffective. – No instrument purporting to extinguish the equity of
71 redemption that is executed as a condition of the transaction or prior to a default, or purporting to
72 diminish the rights of the vendee under this article, shall be effective

73 (e) Every contract shall conform to the formalities required by law for the execution of
74 deeds of trust.

§37-16-3. Vendor requirements.

1 (a) A vendor shall pay off any liens on the property prior to executing a contract with the
2 vendee: *Provided*, That a vendor may enter into a land installment contract with respect to a
3 property that has been granted as security through a deed of trust, provided that the amount owed
4 on the debt secured by the deed of trust is always less than the balance owed on the land contract,
5 the vendee has the right to make monthly payments directly to the deed of trust creditor and
6 subtract that amount from the monthly land contract payment, and the deed of trust debt will be
7 fully satisfied by the vendor at the time title is transferred pursuant to the land contract, and the
8 following information is provided, in writing to the vendee or, if applicable, the vendee's attorney:

9 (1) The name and address of the lien holder;

10 (2) The principal amount owed;

11 (3) The terms of payment;

12 (4) A copy of the vendor's most recent monthly mortgage statement, and

13 (5) A clear and conspicuous disclosure, provided to the buyer on a separate page
14 immediately followed by the terms of the deed of trust listed in this subsection, explaining that the
15 deed of trust creditor is not required to communicate with the vendee and may not permit an
16 assumption of the deed of trust by the vendee without a review of the vendee's credit
17 qualifications.

18 (b) If a vendor holds a deed of trust on a property subject to a land installment contract,
19 the vendor shall provide to the vendee at least quarterly a copy of the vendor's most recent
20 monthly mortgage statement.

21 (c) No vendor shall place a deed of trust on the property during the course of the contract.

22 (d) A vendor shall pay the fee to record the contract or the memorandum of the contract.

23 (e) A vendor shall do the following during the course of the contract:

24 (1) Comply with the requirements of any applicable building code; and

25 (2) Make all repairs and do whatever is reasonably necessary to put and keep the
26 premises in a fit and habitable condition.

27 (f) Prior to the execution of the contract the vendor shall do the following:

28 (1) Contact the local building department or other entity responsible for code enforcement
29 in the jurisdiction where the property is located and request an inspection; and

30 (2) Verify that the property complies with the requirements of the applicable building code;

31 (3) If there is no applicable building code, then the vendor shall employ the services of an
32 independent home inspector who shall apply reasonable standards of habitability and safety;

33 (g) If, after an inspection, the inspector determines that a violation of the applicable
34 building code exists, or if no building code is applicable, that the property is not habitable, the
35 vendor shall be responsible for the repair and remediation any violation prior to entering into a
36 contract with the vendee. The vendor shall have the property inspected again to determine that
37 all repairs have been made and the property complies with the applicable building code prior to
38 executing the contract. If the property complies with the applicable building code, the entity
39 providing the inspection shall issue a certificate to the vendor indicating this fact.

40 (h) The vendor shall provide to the vendee, prior to the execution of the contract, the
41 certificate issued by the entity providing the inspection that indicates the property complies with
42 the applicable building code.

43 (i) The vendor shall be responsible for any fines associated with any code violation and
44 any fees associated with the inspection, and for any repairs necessary to resolve the issues
45 identified in the inspection report.

46 (j) Prior to executing a land installment contract, the vendor shall obtain and pay for an
47 appraisal of the property by a certified real estate appraiser. The vendor shall provide a copy of
48 the appraisal report to the vendee prior to execution of the contract.

§37-16-4. Condition of forfeiture; notice of default; and right to cure.

1 (a) A contract cannot be forfeited unless a breach has occurred in one or more of the
2 vendee's express obligations under the contract and the contract provides that as a result of the
3 breach the vendor is entitled to forfeit the contract. The vendee is entitled to the right to cure a

4 default once during each calendar year during the term of the contact.

5 (b) An action may not be brought pursuant to this article until 45 days after the vendor has
6 informed the vendee in writing of the alleged violation and the factual basis for the violation. A
7 notice of default and intent to forfeit pursuant to this section shall specify the nature of the default,
8 the amount of the payment necessary to cure any monetary default, the date after which the
9 contract shall be forfeited if the vendee does not cure the default, and the name and address of
10 the vendor or, if applicable, the attorney for the vendor. Any notice of default and intent to forfeit
11 must be delivered to the vendee by hand delivery or by any manner authorized by Rule 4, West
12 Virginia Rules of Civil Procedure.

13 (c) Upon receiving the notice of alleged violation, the vendee shall have 45 days from
14 receipt of the notice of violation to cure the default or make a cure offer, which shall be provided
15 to the vendor or the vendor's attorney if applicable, by certified mail, return receipt requested:
16 Provided, That the vendor has 20 days from receipt of the cure offer to accept the cure offer or it
17 is deemed refused and withdrawn.

18 (d) If a cure offer is accepted, the vendee has 20 days to begin effectuating the agreed
19 upon cure and the cure must be completed within a reasonable time.

20 (e) Any applicable statute of limitations is tolled for the 45-day period set forth in subsection
21 (a) of this section or for the period the effectuation of the cure offer is being performed, whichever
22 is longer.

23 (f) Nothing in this section prevents a vendor that has accepted a cure offer from bringing
24 a civil action against a vendee for failing to timely effect the cure offer.

25 (g) Where an action is brought under this section, it is a complete defense that a cure offer
26 was made, accepted, and the agreed upon cure was performed. If the court determines that the
27 cure offer was accepted and the agreed upon cure performed, the vendee is entitled to reasonable
28 attorney's fees and costs attendant to defending the action.

29 (h) A cure offer is not admissible in any proceeding initiated pursuant to the provisions of

30 this article, except that if the cure offer is timely delivered by the vendee, then the cure offer may
31 be introduced in a proceeding pursuant to subsection (f) of this section before the court to
32 determine an award of attorney's fees and expenses, if any, following entry of a judgment.

§37-16-5. Effect of vendor's default on lien on property.

1 If, at any time during the term of the contract, a default occurs on a lien on the property,
2 the vendee may elect to purchase the property or cancel and rescind the contract and, in addition
3 to any other remedies available at law or equity, seek the immediate return of all moneys paid by
4 the vendee, along with the value of any repairs or improvements made by the vendee to the
5 property. If the vendee elects to purchase the property subject to the lien, then the amount due to
6 transfer title under the land contract shall be reduced by the balance owed on the lien, and the
7 vendee shall be entitled to take over the remaining payments due on the lien, subject to the
8 agreement of the lien holder. If the vendee elects to rescind the contract, the vendor is entitled to
9 an offset of an amount equal to the fair rental value of the use of the property during the duration
10 of the vendee's possession of the property plus an amount necessary to compensate the vendor
11 for any damages caused to the property by the vendee beyond normal wear and tear.

§37-16-6. Contrary provisions.

1 The parties to a land installment contract may agree to terms contrary to any provisions in
2 sections two and three of this article, but may only do so if both the vendor and the vendee are
3 each separately represented by an attorney licensed to practice law in this state.

§37-16-7. Interest.

1 No interest shall be charged on a land installment contract that is more than two per cent
2 above the treasury bill rate for loans of the same maturity on the date of the contract, and such
3 interest shall only be charged on the outstanding balance as that amount is reduced by the
4 vendee's payments.

§37-16-8. Remedies.

1 (a) Upon the failure of any vendor to comply with the provisions of this article or the

2 contract, the vendee may enforce such provisions in the circuit court of the county where the
3 property is located. Upon the determination of the court that the vendor has failed to comply with
4 these provisions, the court shall grant appropriate relief, which shall include relief described in
5 subsection (b) of this section.

6 (b) A court shall award a vendee who is successful in an action against a vendor for
7 violation of a provision of this article both of the following:

8 (1) Monetary damages that shall include any of the following:

9 (A) Five per cent of the principal amount of the contract debt;

10 (B) The vendee's equity in the property, including but not limited to the increase in value
11 of the property over time, and the repairs and improvements made by the vendee;

12 (C) Return of all moneys paid by vendee; and

13 (2) Court costs and reasonable attorney fees.

14 (c) A court may also grant an injunction, order specific performance, or other relief,
15 including rescission of the contract.

16 (d) No vendor may initiate a forfeiture of a land contract without full compliance with this
17 article.

18 (e) Nothing in this section shall prevent a vendor or vendee from settling disputes through
19 mediation or arbitration.

§37-16-9. Truth in Lending Act.

1 For purposes of this article, land installment contracts shall be considered loans secured
2 by an interest in real property, in which the "Truth in Lending Act," 82 Stat. 146, 15 U.S.C. 1602,
3 the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 et seq., and
4 the West Virginia Residential Mortgage Lender, Broker And Servicer Act, §§ 31-17-1 et seq. shall
5 apply.

NOTE: The purpose of this bill is to regulate land installment contracts for the sale of real

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estate. The bill provides for definitions. The bill lays out land installment contract requirements. The bill provides for vendor requirements. The bill provides for the condition of forfeiture, notice of default, and right to cure. The bill defines the effect of vendor's default on lien on property. The bill defines contrary provisions. The bill defines interest. The bill provides for remedies. Finally, the bill clarifies the Truth in Lending Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.