

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 71

By Senator Weld

[Introduced January 11, 2023; 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 to
 6 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 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 that
 12 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 other
 14 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 article;

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

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

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

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

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

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

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

48 (18) A statement of the rights of the vendee to cure a default, including that the vendee has
49 the right to cure a default once in any twelve-month period during the period of the covered land
50 installment contract.

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

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

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

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

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

72 (e) Every contract shall conform to the formalities required by law for the execution of
 73 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, the
19 vendor shall provide to the vendee at least quarterly a copy of the vendor's most recent monthly
20 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 building
34 code exists, or if no building code is applicable, that the property is not habitable, the vendor shall
35 be responsible for the repair and remediation any violation prior to entering into a contract with the
36 vendee. The vendor shall have the property inspected again to determine that all repairs have
37 been made and the property complies with the applicable building code prior to executing the
38 contract. If the property complies with the applicable building code, the entity providing the
39 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 any
44 fees associated with the inspection, and for any repairs necessary to resolve the issues identified
45 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 the
48 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 the
10 vendor or, if applicable, the attorney for the vendor. Any notice of default and intent to forfeit must
11 be delivered to the vendee by hand delivery or by any manner authorized by Rule 4, West Virginia
12 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 to
15 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 is
17 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 a
24 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 be
31 introduced in a proceeding pursuant to subsection (f) of this section before the court to determine

32 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, the
 2 vendee may elect to purchase the property or cancel and rescind the contract and, in addition to
 3 any other remedies available at law or equity, seek the immediate return of all moneys paid by the
 4 vendee, along with the value of any repairs or improvements made by the vendee to the property.
 5 If the vendee elects to purchase the property subject to the lien, then the amount due to transfer
 6 title under the land contract shall be reduced by the balance owed on the lien, and the vendee shall
 7 be entitled to take over the remaining payments due on the lien, subject to the agreement of the
 8 lien holder. If the vendee elects to rescind the contract, the vendor is entitled to an offset of an
 9 amount equal to the fair rental value of the use of the property during the duration of the vendee's
 10 possession of the property plus an amount necessary to compensate the vendor for any damages
 11 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 §37-16-2 and §37-16-3 of this code, but may only do so if both the vendor and the vendee are each
 3 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 of
11 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, the
3 West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 et seq., and the
4 West Virginia Residential Mortgage Lender, Broker And Servicer Act, §§ 31-17-1 et seq. shall
5 apply.