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A Tenant's Fate in the Mountain State: What State Ex Rel Morrisey v. Copper Beech Townhome Communities Means for Tenants as Consumers

Emily Ann Cramer
West Virginia University College of Law

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**A TENANT'S FATE IN THE MOUNTAIN STATE: WHAT STATE EX
REL MORRISEY V. COPPER BEECH TOWNHOME COMMUNITIES
MEANS FOR TENANTS AS CONSUMERS**

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I. INTRODUCTION¹

What is a home, and what does it mean to us? At its most basic, a home is seen as a place someone rests and lives. A home can take various forms—from studio apartments to trailer homes to four-bedrooms to mansions. But does having a home mean you have to own it? And if you don't own your home, does that mean you can't protect it?

Mary is a woman in her seventies and lives in a trailer park. She has lived there for 40 years, the last ten alone since her husband passed away. Mary is living on Social Security and the little bit of savings she and her husband were able to put away, but it is running out. Like in many other parks, she may own her trailer but not the land it sits on.² While there are protections to give lessors like Mary some peace of mind, apart from going in with neighbors to buy their park, they can't do anything when the park owners start raising the rent.³ Her trailer has been hooked up to the water, sewage, and electric lines for decades and has been through some rough storms, so she thinks it would fall apart if she tried to move to another lot. So, to meet the increase in rent, she is starting to cut other costs, like her medical visits and halving pills to make medicines last longer.⁴ But if this is how she has to keep her home, then Mary is ready to make the necessary sacrifices.

Daniel is a junior in college and can finally move out of the dorms. He just co-signed his first lease with his friends, and they put down a security deposit of a whole month's rent. As the semester starts back up, the boys go through a routine of studying, inviting friends over on the weekend, working part time, and paying their bills. Their parents wire them enough for rent and utilities each month, but the boys realized they were short the first time they went to pay. The landlord said there was an additional fee for paying with multiple checks because of the hassle. After checking their lease agreement, they all started adding \$15 to their rent checks to cover the extra processing fee. As the year went on, they had service requests that went unanswered. The worst was when their patio door leaked in the rain, which soaked their carpet and allowed mildew to grow. They also had to pay more than they were told they would in the winter for electricity because the house wasn't well insulated. But at least they are all working, so they manage to pay these extra costs without asking for more from their parents. However, Daniel realizes how much extra he has paid for extra

¹ See generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

² Amy Loftsgordon, *Manufactured Homes: What Happens If I'm Behind on My Land Lease Payments*, NOLO, <https://www.nolo.com/legal-encyclopedia/manufactured-homes-what-happens-if-im-behind-my-land-lease-payments.html> (last visited Nov. 4, 2019).

³ See generally *id.*

⁴ See Last Week Tonight with John Oliver, *Mobile Homes*, YOUTUBE (Apr. 7, 2019) <https://www.youtube.com/watch?v=jCC8fPQOaxU>, at 2:31.

utilities, rent costs, and lawn and garbage fees that were not actually included in their rent. He and his friends decide to find someplace else to live their senior year and tell the landlord. With a few months left in the semester, the landlord starts bringing around potential renters all morning and afternoon, never warning the boys when he might stop by and always entering with his own key. Daniel tells his parents he is worried about him coming when they aren't home. They suggest he put a lock on his door. But he checks his lease and with the landlord, and they both say he isn't allowed. When the boys go to move out, their parents all come to help them clean the house from top to bottom, patching tiny holes made from nails, deep cleaning the carpets, and scrubbing the fridge. But when they move out, the landlord says they won't get their security deposit back because he has to redo the carpets and the locks and paint the walls for the next renters. Daniel's parents tell him this is a valuable life lesson on how to double check a lease agreement before signing and to make things clearer with their next landlord so this doesn't happen again.

For people like Mary or Daniel, or anyone else who is renting where they live, can West Virginia protect their interests and their homes?

A. *How Hospitable Is the Mountain State?*

From “Open for Business” to “Wild and Wonderful,”⁵ West Virginia's different slogans throughout the years have all seemed to capitalize on our state's inviting nature. West Virginia has always been a state that focused on family values and a good, honest day's work.⁶ As the state has evolved, those values have still largely remained.⁷ However, like other rural states, there is an ever-growing issue of how to facilitate the growth of our population by inviting people to set down roots in the state.⁸

All kinds of ideas have been attempted to build local economies in West Virginia, from Downtown and Main Street⁹ organizations to entice businesses to

⁵ Kellen Henry, *West Virginia 'Wild, Wonderful,' Returns as State Slogan*, DAILY ATHENAEUM (Nov. 2, 2007), https://www.thedaonline.com/west-virginia-wild-wonderful-returns-as-state-slogan/article_9ce82dc5-46fe-5ec1-974e-58031512da4c.html.

⁶ See generally BILL BARKER, APPALACHIAN REG'L MINISTRY, *A STUDY OF WEST VIRGINIA VALUES AND CULTURE* 4–5 (2004), <http://www.cjhenderson.co/ACulturalViewofWVShort.pdf>.

⁷ *Id.* “West Virginians have developed the ability to function biculturally. Exposure to the values of the greater society in addition to those of their own heritage has provided them the opportunity to utilize whichever values give most meaning to the immediate situation.” *Id.* at 5.

⁸ *Id.* West Virginians are exceedingly friendly, helpful, and eager to invite you to a local ramps supper. Most of them love West Virginia and are proud to call themselves Mountaineers. However, they are realists. They know that the state's economy historically has been one of the weakest in the nation, that incomes are relatively low, and that their children will most likely have to leave the state to find good-paying jobs. *Id.* at 2.

⁹ DOWNTOWN PKB: A MAIN STREET COMMUNITY, <https://www.downtownpkb.com/about> (last visited Sept. 27, 2019).

put down roots and drum-up cultural events to entrepreneurship clinic forums targeting small business startups.¹⁰ Most recently, a popular video game for PC, as well as Xbox and PS4 gaming consoles, even partnered with the West Virginia tourism board to develop *Fallout 76*,¹¹ a game in which the landscape was modeled as a post-apocalyptic version of West Virginia.¹² This was meant to invite in game lovers from across the nation to see exactly where the game takes place, as important landscapes, such as the state's capitol, are showcased.¹³

Prosperity is “the condition of being successful or thriving, especially: economic well-being.”¹⁴ To be seen as successful, does someone need to have a steady, paying job? A car? A mortgage paid off? Success can be viewed in a monetary fashion or through the happiness of the individual.¹⁵ For a state though, it can be measured by the positive attention the state receives, the economy, the population rates, healthcare, or in many other ways.¹⁶ In spite of all of these interesting activities and economic developments in the West Virginia region, the issue of losing residents persists.¹⁷ This raises the question: Is there anything substantial that is preventing people from staying in or coming to the state in the first place? The answer is yes.

¹⁰ *Upcoming Workshop Aims to Help West Virginia Entrepreneurs*, WVUTODAY (Sept. 25, 2018), <https://wvutoday.wvu.edu/media-center-blog/2018/09/25/media-advisory-upcoming-workshop-aims-to-help-west-virginia-entrepreneurs>.

¹¹ Despite the longtime success of the *Fallout* franchise, gamers largely consider *Fallout 76* a failure, some even going so far as to call it “2018’s most controversial game” for things such as confusing gameplay and being too easy. *Fallout 76: 10 Reasons It Failed*, WHATCULTURE, <http://whatculture.com/gaming/fallout-76-10-reasons-it-failed> (last visited Sept. 26, 2019).

¹² Jay Castello, *Fallout 76 and West Virginia Tourism Board Team Up to Promote Both Game and State*, ROCK PAPER SHOTGUN (Oct. 13, 2018, 4:00 PM), <https://www.rockpapershotgun.com/2018/10/13/fallout-76-and-west-virginia-tourism-board-team-up-to-promote-both-game-and-state/>.

¹³ *Id.*

¹⁴ *Prosperity*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/prosperity> (last visited Oct. 3, 2019) (emphasis omitted).

¹⁵ Leslie Riopel, *Success Versus Happiness – What Is More Important?*, POSITIVEPSYCHOLOGY.COM (Jan. 31, 2019), <https://positivepsychology.com/success-versus-happiness/>.

¹⁶ See Krystal Steinmetz, *America’s Most and Least ‘Successful’ States*, MONEYTALKSNEWS (Aug. 30, 2016), <https://www.moneytalksnews.com/americas-most-and-least-successful-states/>; see also Zameena Mejia, *What the Top 10 States in America for 2018 Have in Common*, CNBC: MAKE IT (Mar. 5, 2018), <https://www.cnbc.com/2018/03/05/u-s-news-world-report-the-top-10-states-in-america.html>.

¹⁷ Brad McElhinny, *West Virginia Drops 11,216 More Residents, Census Reports*, W. VA. METRONews (Dec. 20, 2018, 10:18 AM), <http://wvmetronews.com/2018/12/20/west-virginia-drops-11216-more-residents-census-reports/>.

This Note will argue that the *State ex rel Morrisey v. Copper Beech Townhome Communities*¹⁸ (“*Copper Beech*”) holding was an improper West Virginia Supreme Court of Appeals decision which ignored state precedent and had the consequence of removing protection for tenant occupants, hurting our state and putting West Virginia outside of the norm in regards to surrounding states’ landlord–tenant regulatory efforts.

The focus of this Note is addressing the issue in West Virginia that tenants no longer have appropriate protections after the state Supreme Court of Appeals’ decision to remove landlord–tenant issues from the purview of the West Virginia Consumer Credit and Protection Act (“WVCCPA”). Section II.A will give a holistic overview of the status of renting in the United States, going as far as to compare renting regimes in different states in order to give the reader an idea of where West Virginia falls alongside other states. Section II.B will focus specifically on West Virginia’s landlord–tenant laws that are currently in place and what rights they give to tenants. Section II.C will explain the *Copper Beech* decision, what was relied on in the case, and how such a simple decision could so drastically affect the rights of tenants in the state. Section II.D will take a step back from West Virginia to look at other similarly situated states and how they protect their tenants. Part III will analyze two alternatives for tenant protections the state could adopt going forward after the *Copper Beech* decision—alternative dispute resolution efforts to give tenants an avenue for relief and statutory changes to overrule the *Copper Beech* language-based holding.

As such a new holding, it is unlikely that *Copper Beech* could be overturned, leaving two practical protection avenues to explore: alternative dispute resolution, i.e., mediation efforts between landlords and tenants, and amending current tenant laws to provide statutory provisions governing the fees which concerned the state Attorney General in the *Copper Beech* decision.

II. BACKGROUND

A. *What It Means to Rent in the United States*

Property and tenancy disputes are nothing new to courts or society in general. For centuries all over the world, people have negotiated and traded to obtain goods necessary for survival and pleasant living conditions.¹⁹ The main changes in the system came from civilization’s own evolution.²⁰ Contracts

¹⁸ 806 S.E.2d 172 (W. Va. 2017).

¹⁹ The history of bartering dates back as far as 6000 B.C. *The History of the Trade and Barter System*, SQUAREUP: TOWN SQUARE, <http://squareup.com/us/en/townsquare/a-history-of-the-trade-and-barter-system> (last visited Sept. 27, 2019).

²⁰ *Id.* What was started by the Mesopotamian tribes was handed to other cultures and developed to exchange anything from food and clothing to goods and services. It became especially

allowed for cut-and-paste terms and conditions which aided regulation and streamlining of landlord and tenant obligations for residential leases.²¹ But has this evolution actually helped diminish any type of landlord–tenant disputes?

Owning a home is a major lifetime achievement all over the world,²² despite how financially difficult it is to reach.²³ Many young adults starting careers and coming out of college with loans²⁴ look for rental properties in an effort to save up, as well as not be tied down to a specific property until they learn exactly where they want to set their roots or see it as an economically feasible option.²⁵ A 2018 study found that 58% of Americans have less than \$1,000 in their savings account and 32% have no savings at all.²⁶ Looking solely at millennials, 57% of those ages 25 to 34 have less than \$1,000, alongside 54% ages 18 to 24 having less than \$1,000 in savings.²⁷ This has grown significantly from the same study conducted in 2017 showing 46% of millennials had saved \$0.²⁸ Regardless of the reason for low savings, be it loan debts or exorbitant spending, it is obvious that buying a home is out of the question, leaving apartment rentals or leases as the only viable option.

Across the United States, there can be a large difference between the rental cost of a one-bedroom in San Francisco and a one-bedroom in New

popular in the United States during the Great Depression between groups or between people who acted as banks. *Id.*

²¹ Websites like eForms allow people to create their own rental contracts, saying what should be in it as a minimum and providing examples. *See, e.g., Short-Term (Vacation) Rental Lease Agreement*, EFORMS, <https://eforms.com/rental/vacation-short-term-rental-lease-agreement/> (last visited Sept. 26, 2019).

²² This is evidenced by the percentages of home ownership across the globe. The United States is actually on the low end of the homeownership spectrum at roughly 65%, with other countries having rates as high as the 90th percentile. *Home Ownership Rate*, TRADING ECON., <https://tradingeconomics.com/country-list/home-ownership-rate> (last visited Sept. 26, 2019).

²³ Jung Hyun Choi et al., *The State of Millennial Homeownership*, URB. INST. (July 11, 2018), <https://www.urban.org/urban-wire/state-millennial-homeownership>.

²⁴ Abigail Hess, *Here's How Much the Average Student Loan Borrower Owes When They Graduate*, CNBC: MAKE IT (Feb. 15, 2018, 9:30 AM), <https://www.cnbc.com/2018/02/15/heres-how-much-the-average-student-loan-borrower-owes-when-they-graduate.html>.

²⁵ *See generally* Ellen Chang, *Young Adults Still Choose to Rent*, REAL PROP. MGMT. (May 15, 2015), <https://www.realpropertymgmt.com/young-adults-still-choose-to-rent/>; Bob Sullivan, *Renting Homes Is Overtaking the Housing Market. Here's Why*, USA TODAY (Nov. 11, 2017, 1:23 PM), <https://www.usatoday.com/story/money/personalfinance/real-estate/2017/11/11/renting-homes-overtaking-housing-market-heres-why/845474001/>.

²⁶ Cameron Huddleston, *More Than Half of Americans Have Less Than \$1,000 in Savings in 2017*, GO BANKINGRATES, (May 24, 2019), <https://www.gobankingrates.com/saving-money/savings-advice/58-of-americans-have-less-than-1000-in-savings/>. GoBanking surveyed more than 8,000 people using the same platform as its past studies, allowing it to survey all 50 states and Washington, D.C. through a Google Consumer Survey. *Id.*

²⁷ *Id.*

²⁸ *Id.*

Jersey.²⁹ West Virginia has a relatively lower cost of living, at an average of \$690 a month, when compared to the U.S. median rate, \$1,012.³⁰ For a state that is looking to keep young adults and attract more people to come live and work in the state, this low rent rate can be enticing. However, that low rate seems to come at a cost.

When moving, a state is either one of two things: renter-friendly or landlord-friendly. According to a national study by RentCafe, Vermont ranked first³¹ in the nation among renter-friendly states, followed closely by Hawaii and Delaware.³² And West Virginia? West Virginia tied with Arkansas for the lowest renter-friendly score at 12.5%, ranking it as extremely landlord friendly.³³ The following are the statistics of West Virginia that qualified it to rank as one of the least renter-friendly states:

- No statute on maximum security deposits for an unfurnished apartment on a one-year lease;
- 60-day deadline for returning a security deposit when no deductions are imposed by landlord;

²⁹ Andrew Lasane, *The Average Cost of One Bedroom Apartments in 50 Major U.S. Cities*, MENTAL FLOSS (June 8, 2016), <http://mentalfloss.com/article/81296/average-cost-one-bedroom-apartments-50-major-us-cities>.

³⁰ *West Virginia Residential Rate and Rental Statistics*, DEP'T NUMBERS, <https://www.deptofnumbers.com/rent/west-virginia/> (last visited Sept. 26, 2019).

³¹ Nadia Balint, *Which States Have the Best and Worst Laws for Renters?* RENTCAFÉ BLOG (Mar. 14, 2018), <https://www.rentcafe.com/blog/renting/states-best-worst-laws-renters/>. The following are the statistics on the number one ranked state of Vermont, in order to give the reader a good understanding of the image a renter-friendly state portrays:

- No statute on maximum security deposits for an unfurnished apartment on a one-year lease;
- 14-day deadline for returning a security deposit when no deductions are imposed by the landlord;
- 60-day notice required for rent increase on month-to-month contracts;
- Tenant has the option to withhold rent for a landlord's failure to provide essential services;
- Tenant is allowed to repair and deduct costs from rent;
- 48-hour required notice needed from landlord before entry;
- 14-day termination notice required for nonpayment of rent;
- 30, 45, or 60-day regular termination notice for month-to-month leases, depending on length of tenancy;
- 30-day termination notice required for lease violation; and
- 60-day limit for the tenant to recover abandoned property after receiving notice.

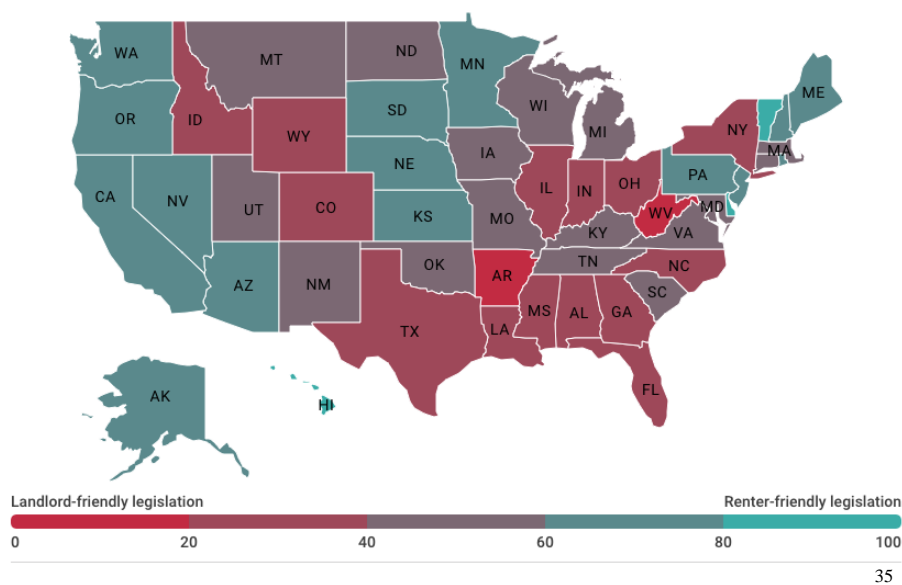
Id.

³² *Id.*

³³ *Id.* Arkansas technically was given the lowest ranking because it is the only state where tenants can face criminal charges for failure to vacate.

- No statute on rent increase notice for month-to-month contracts;
- No statute stating the tenant has the option to withhold rent for failure to provide essential services;
- No statute stating the tenant is allowed to repair their unit and deduct the costs from their rent;
- Immediate termination is possible for nonpayment of rent (i.e., no termination notice required);
- 30-day regular termination notice for month-to-month leases;
- Immediate termination is possible for a lease violation (i.e., no termination notice required); and
- 30-day limit for tenant to recover abandoned property after receiving notice.³⁴

Renter-Friendly vs Landlord-Friendly States



Renter-friendly states versus landlord-friendly states developed as a result of the economic and regional cultures.³⁶ Southern states are classified as

³⁴ *Id.* It is important to note that many lease agreements, such as this author's own, assign themselves notice for entry or longer notice periods for termination or increases in rent, which makes it important to read the fine print of any West Virginia lease.

³⁵ *Id.*

³⁶ *Id.*

those that used to rely on agriculture primarily for their livelihoods, value land ownership above all else, and subsequently shape their laws to protect landlords and their properties.³⁷ Northern states are classified as those who used to focus more on manufacturing and trade, which encouraged constant immigration.³⁸ This invited in young talent and those looking for a fresh start to crowded city environments, leading the way to develop more law which regulated renting to benefit the transient working population.³⁹ West Virginia, as one of the mountain states, leans more toward favoring landlords, not for any land ownership reasons, but more for the fact that renting was less common as population density was sparser.⁴⁰

B. Wild or Wonderful? What's the State of the Landlord–Tenant Relationship in West Virginia?

West Virginia landlord–tenant law is governed by West Virginia Code Chapter 37, Article 6.⁴¹ This chapter devotes its rules to the rights of the parties in relation to real property, when distress for rent is applicable, rights for entry, and clerk fees for recording, among others.⁴² These laws are based on the principle of warranty of habitability—i.e., the tenant has the right to decent, habitable housing.⁴³ Tenants under this article⁴⁴ have the right to a fit and habitable rental premises for the full period of the lease, which the landlord is obligated to maintain as long as rent is received on time from the tenant and any deterioration of the premises was not caused by the negligence or carelessness of the tenant.⁴⁵

West Virginia renters have the right to:

- Decent housing, as defined by the warranty of habitability, at all times;
- Complain about and report inhabitable housing to the landlord or local government without retaliation;
- Enforce the warranty of habitability through a civil suit, with or without an attorney;
- Ask for money damages in such a civil suit;

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See* W. VA. CODE ANN. §§ 37-6-1 to -30 (West 2019).

⁴² *See id.* §§ 37-6-1, -16, -25.

⁴³ *Id.* § 37-6-30.

⁴⁴ *Id.*

⁴⁵ *Id.*; *see also* *West Virginia Landlord Tenant Law*, *supra* note 41.

- Maintain all personal property, even when tenant owes back rent;
- Privacy, including the right to sufficient notice of landlord's intent to enter the premises;
- Remove an eviction suit from magistrate court to circuit court; and
- Appeal a magistrate court decision.⁴⁶

However, for low-income tenants, such as impoverished families or college students, who will take their cases when these rights are infringed upon?

The old adage “My House, My Rules” is the current state of West Virginia landlord–tenant law. Currently, West Virginia’s warranty of habitability statutes do not include any provisions for the collection of attorney’s fees,⁴⁷ precluding any incentive for private attorneys to take up the cases. Landlord–tenant disputes can be tedious contractual disputes or he-said-she-said arguments, both amounting in long, drawn-out legal battles not worth attorneys’ time. Tenants ultimately must bring cases themselves *pro se*, contact Legal Aid,⁴⁸ or just live with what the landlord says.

C. *The Blue and Gold Landlord Hold—Landlords Reigning Supreme in West Virginia*

1. *Copper Beech: What It Was, What Went Wrong, and What That Meant for Consumers*

Copper Beech Townhome Communities is a developer, owner, and operator of residential rental housing for students.⁴⁹ The entity continues to own and operate residential property for students affiliated with West Virginia University in and around the Morgantown, West Virginia, area.⁵⁰ While Morgantown is its main area for business, Copper Beech Townhome Communities is one of the largest residential lessors in the state.⁵¹

⁴⁶ See W. VA. CODE ANN. § 37-6A-5.

⁴⁷ See generally *id.* § 37-6-30 (“Landlord to Deliver Premises; Duty to Maintain Premises in Fit and Habitable Conditions” section).

⁴⁸ Legal Aid is West Virginia’s primary provider of civil legal aid and advocacy services and is capable of handling housing disputes of low-income families. See *About Us*, LEGAL AID W. VA., <http://www.lawv.net/About-Us> (last visited Nov. 15, 2019).

⁴⁹ Complaint for Injunction, Consumer Restitution, Disgorgement, Civil Penalties, and Other Appropriate Relief at 2, State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C., No. 15-C-1699 (W. Va. Sept. 9, 2015).

⁵⁰ Respondent’s Brief at 2, State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C., No. 17-0228 (W. Va. Aug. 7, 2017).

⁵¹ State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C., 806 S.E.2d 172, 174 (W. Va. 2017).

At issue in *State ex rel. Morrisey v. Copper Beech Townhome Communities Twenty-Six, L.L.C.*⁵² were the following seven fees that Copper Beech charged tenants:⁵³

Cause of Action	Type of Fee	Alleged Purpose of Fee	W. Va. Code §§ Allegedly Violated
1st	Non-refundable decoration fee	Not intended to cover damage but to cover the costs of painting and cleaning of the leased premises (cost up to \$800)	§ 46A-6-104
2nd	Debt collection fees and charges	\$22 fee added to delinquent accounts before referring to a third party for collection	§ 46A-2-127(g) § 46A-2-28(c), (d) § 46A-6-104
3rd	Attorney's fees	Attorney's fees if account is referred for collection or if the consumer is sued for eviction	§ 46A-2-127(g) § 46A-2-128(c), (d) § 46A-6-104
4th	Returned check fee	\$35 for each dishonored check	§ 61-3-39e § 46A-2-127(g) § 46A-2-128(c), (d) § 46A-6-104
5th	"Unfair" late fees	\$25 fee if rent was not paid by fifth day of each month, plus additional \$5 per day until rent was paid	§ 46A-6-104
6th	Fee for written rent receipt	Fee of unknown amount for providing consumers with written receipt for rent payment	§ 46A-2-127(g) § 46A-2-128(c), (d) § 46A-2-114(1) § 46A-6-104

⁵² *Id.*

⁵³ Respondent's Brief, *supra* note 50, at 2–3; Petitioner's Brief at 2–3, *State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C.*, No. 17-0228 (W. Va. July 7, 2017).

7th	Multiple check fee	Fee of \$20 or more for each instance when multiple tenants in same unit paid their rent by multiple checks rather than by single check	§ 46A-2-127(g) § 46A-2-128(c), (d) § 46A-6-104
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Copper Beech was a case brought by the West Virginia Attorney General's Office's Consumer Protection Division involving the collection of \$604,602 in non-refundable decoration fees alone from 1,197 signed West Virginia tenant leases brought to the attention of the Consumer Protection Division.⁵⁴

The civil action was brought in the Kanawha County Circuit Court against Copper Beech for unfair debt collection practices and unfair or deceptive acts or practices based on the aforementioned fees.⁵⁵ After the denial of Copper Beech's motion to dismiss,⁵⁶ the defendant moved to certify a question to the West Virginia Supreme Court of Appeals,⁵⁷ which was granted after a renewed motion.⁵⁸ The certified question was as follows: "Does the West Virginia Consumer Credit and Protection Act (including W. Va. Code §§ 46A-2-122 to -129a and §§ 46A-6-101 to -106) apply to the relationship between a landlord and tenant under a lease for residential property?"⁵⁹ Justice Ketchum, writing for the court, answered this question in the negative.⁶⁰

The Attorney General's Office argued that the West Virginia Consumer Credit and Protection Act ("WVCCPA") applied to residential leases, to all debt collectors seeking to collect a claim from a consumer, and to any act or practice, in any trade or commerce, covering landlord-tenant transactions.⁶¹ Copper Beech argued and ultimately won its case on the premise that the WVCCPA meant to exclude residential leases from the WVCCPA due to the ambiguity of the provisions and lack of clear legislative intent.⁶²

The result of answering this question in the negative is that any sort of landlord-tenant disputes, except those specifically referenced in the

⁵⁴ Respondent's Brief, *supra* note 50, at 3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C., 806 S.E.2d 172, 175 (W. Va. 2017).

⁶⁰ *Id.* at 174.

⁶¹ Respondent's Brief, *supra* note 50, at 3.

⁶² Petitioner's Brief, *supra* note 53, at 3.

WVCCPA,⁶³ were taken out of the hands of the Consumer Protection Division.⁶⁴ Unless explicitly under those referenced sections, or under West Virginia Code Chapter 37, Article 6, which governs a few landlord–tenant issues, the state government now has no purview to act on behalf of consumers to bring claims against landlord entities.⁶⁵

2. Statutes at Issue

Debt collection provisions are laid out in Article 2 of the WVCCPA.⁶⁶ For the appropriate “[a]pplication” of the act, one need only look to Article 1:

(1) This chapter applies if a *consumer*, who is a resident of this state, is induced to enter into a consumer credit sale made pursuant to a revolving charge account, to enter into a revolving charge account, to enter into a consumer loan made pursuant to a revolving loan account, or *to enter into a consumer lease*, by personal or mail solicitation, and the *goods, services* or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state.⁶⁷

Under this general statement of applicability, for a consumer protection claim to apply through the WVCCPA, three elements need to be satisfied: (1) a creditor (2) induces a consumer (3) to enter into a consumer credit sale, a consumer loan, or a consumer lease.⁶⁸ The court in *Copper Beech* quickly got rid of the third element in a footnote, stating that residential leases were not sales, loans, or “a lease of goods,”⁶⁹ as seemingly required by the WVCCPA.⁷⁰

With respect to the collection of these consumer transactions, the debt collection provisions state that “[n]o debt collector shall use any fraudulent, deceptive or misleading representation or means to collect . . . claims.”⁷¹ Additionally, West Virginia Code section 46A-2-128 provides that “[n]o debt

⁶³ *Copper Beech*, 806 S.E.2d at 183 n.14.

⁶⁴ The state Consumer Protection Division was created by the WVCCPA. As a result, if an action cannot be enforced through the WVCCPA, the Consumer Protection Division cannot be the agency to handle it. *See generally* W. VA. CODE ANN. § 46A-7-101 (West 2019).

⁶⁵ *See generally Copper Beech*, 806 S.E.2d 172; W. VA. CODE ANN. § 37-6-7.

⁶⁶ W. VA. CODE ANN. §§ 46A-2-122 to - 129a.

⁶⁷ *Id.* § 46A-1-104 (emphasis added).

⁶⁸ *Copper Beech*, 806 S.E.2d at 178.

⁶⁹ *Id.* at 179 n.9.

⁷⁰ *Id.*

⁷¹ *Id.* at 177 (citing W. VA. CODE ANN. § 46A-2-12).

collector may use unfair or unconscionable means to collect or attempt to collect any claim.”⁷²

While the WVCCPA contains a “general definitions” section in Article 1, the debt collection provisions in Article 2 contain additional definitions specifically for the purposes of the statute:

- (a) “Consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (b) “Claim” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (c) “Debt collection” means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.
- (d) “Debt collector” means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims⁷³

This court has “recognized the dual legislative purposes of protecting consumers and promoting sound and fair business practices”⁷⁴ as the glasses with which it must look at claims that arise under the WVCCPA, particularly landlord–tenant disputes, to see if the Act applies.

There is one explicit reference to “the rental of space to be occupied for residential purposes” in the WVCCPA.⁷⁵ This reference is in a section providing that a written agreement entered into by a consumer be written in plain language,⁷⁶ and the lack of this explicit reference in other parts of the Code is what *Copper Beech* relied on to say the legislature didn’t mean for the WVCCPA to apply “transaction” to residential leases.

Justice Ketchum’s *Copper Beech* opinion said that tenants were not consumers under the WVCCPA.⁷⁷ However, an amicus written by Legal Aid for

⁷² *Id.* (citing W. VA. CODE ANN. § 46A-2-12).

⁷³ W. VA. CODE ANN. § 46A-2-122 (emphasis added).

⁷⁴ *Copper Beech*, 806 S.E.2d at 175 (citing *White v. Wyeth*, 705 S.E.2d 828, 836 (W. Va. 2010)).

⁷⁵ W. VA. CODE ANN. § 46A-6-109.

⁷⁶ *Id.*

⁷⁷ *See generally Copper Beech*, 806 S.E.2d 172.

the case was contradictory, arguing “[t]o a lay-person it is probably axiomatic that a renter is a consumer. They purchase housing, accompanying services and accompanying goods.”⁷⁸ Legal Aid expresses the problem the best—there seems to be a disconnect between how the court thought the original writers of the WVCCPA may or may not have thought to exclude tenants from consumer protections and what consumers expect to be afforded as protections. But was this really a disconnect from the original legislatures? Or was this an improper reading of the statutes and precedential case law?

3. *Teller v McCoy*—A Precedent Forgotten

Ketchum repeatedly articulated in his opinion that “in the forty-three years since the WVCCPA was enacted, [Copper Beech wa]s the first occasion in which any party ha[d] asserted before th[e] Court that the Act applie[d] to and regulate[d] the landlord–tenant relationship.”⁷⁹ This was what allowed the court to be focused on statutory construction, saying that there was no precedent that applied to the certified question. In fact, there was a case of relevant precedent; it was just dismissed by the court.⁸⁰

In *Teller v. McCoy*,⁸¹ the court, via an opinion written by Justice McGraw, concluded that a residential lease was a contract for a bundle of goods and services rather than an interest in land,⁸² which would directly put it under the auspices of the WVCCPA. In 1978, the West Virginia Legislature had discarded the common law rule that a lease of a dwelling was a “conveyance or sale of an estate in land” by requiring dwellings to contain “sources of water supply” and “sewerage facilities.”⁸³ The court had explained that the modern tenant was looking for a “package of goods and services” that included more than just walls and a ceiling, but also “heat, light, and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.”⁸⁴ These expectations accordingly led this court to decide that the “covenant to pay rent and the warranty of habitability [we]re mutually dependent.”⁸⁵

⁷⁸ Legal Aid of West Virginia’s Amicus Curia Brief at 6, *State ex rel. Morrisey v. Copper Beech Townhome Cmty. Twenty-Six, L.L.C.*, No. 17-0228 (W. Va. Aug. 7, 2017).

⁷⁹ *Copper Beech*, 806 S.E.2d at 176.

⁸⁰ *Id.* at 182 (discussing *Teller v. McCoy*, 253 S.E.2d 114 (W. Va. 1978)).

⁸¹ 253 S.E.2d 114, 131 (W. Va. 1978).

⁸² *Id.*

⁸³ *Id.* at 117–21.

⁸⁴ *Id.* at 125 (quoting *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1074–75 (D.C. Cir. 1970)).

⁸⁵ *Id.*

The court in *Copper Beech* used *Teller*, relying on the portion of the *Teller* opinion where the court discussed the common law rule,⁸⁶ while ignoring the entire section where the court acknowledged the legislature had gotten rid of that rule.⁸⁷ *Copper Beech* then went on to rely on a tax case pre-*Teller*,⁸⁸ further muddying the precedential waters of the court's rulings.

Since *Teller*, 23 other states followed West Virginia's lead and acknowledged that consumer protection statutes covered residential leases.⁸⁹ It was only recently that West Virginia went back on the trend it had set.

D. *The State of Landlord–Tenant Disputes in the States*

1. Who Is Protecting the Tenants?

With everything that has been going on in West Virginia, from the Supreme Court of Appeals scandals to teacher strikes and state budget issues,⁹⁰ it can all sound confusing, when not kept in perspective, to understand how much tenants matter. Pennsylvania is a state that is a great parallel for West Virginia. When the Supreme Court of Pennsylvania addressed the issue, they reasoned that a renter who purchased the bundle of goods involved in a lease was as much a consumer as someone who purchased an automobile,⁹¹ following the *Teller* precedent, much like other states:

In most significant respects, the modern urban tenant is in the same position as any other normal consumer of goods. Through a residential lease, a tenant seeks to purchase “housing” from his landlord for a specified period of time [and] [t]he landlord “sells” housing⁹²

⁸⁶ *Copper Beech*, 806 S.E.2d at 182; Petitioner's Brief, *supra* note 53, at 26.

⁸⁷ *Copper Beech*, 806 S.E.2d at 182; *Teller*, 253 S.E.2d at 120–23.

⁸⁸ *Copper Beech*, 806 S.E.2d at 182 (discussing *Greene Line Terminal Co. v. Martin*, 10 S.E.2d 901 (W. Va. 1940)).

⁸⁹ Legal Aid of West Virginia's Amicus Curia Brief, *supra* note 78, at 8.

⁹⁰ West Virginia's legislature has had to deal with a few scandals over the past few years. *See generally* Campbell Robertson, *A Coup or a Couch? What's Behind the Impeachment of West Virginia's Supreme Court*, N.Y. TIMES (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/us/west-virginia-impeachment-supreme-court.html>; Associated Press, *W. Va. Gov. Justice Approves \$4. Billion State Budget*, WSAZ (Mar. 14, 2019), <https://www.wsaz.com/content/news/West-Virginia-House-passes-46-billion-budget-bill-506610941.html>; WOWK Staff, *The 2019 West Virginia Teachers' Strike*, WOWK (Feb. 25, 2019, 11:00 AM), <https://www.wowktv.com/news/inside-wv-politics/the-2019-west-virginia-teachers-strike-iwvp-podcast/>.

⁹¹ *Commonwealth ex rel. Creamer v. Monumental Props., Inc.*, 329 A.2d 812 (Pa. 1974).

⁹² *Green v. Superior Court*, 517 P.2d 1168, 1175 (Cal. 1974) (citation omitted).

The list of states that include landlord–tenant relationships under consumer protection laws goes on,⁹³ but it is also important to note how the states differ in what they allow landlords to do.

For states that are particularly renter-friendly, the main topics are security deposits, termination notices, and rent increase notices. Ten states limit the security deposit amount to the equivalent of one month's rent.⁹⁴ When it comes to getting your security deposit back, after any applicable deductions, some states have periods as short as 10 days, a stark contrast to West Virginia's 60 days.⁹⁵ If you are down on your luck and run out of money right before your rent is due, some states have a grace period before termination notices for nonpayment are allowed.⁹⁶ Another rent-friendly benefit is a mandatory period for a notice of a rent increase, with some states allowing a generous 30 days for month-to-month contracts.⁹⁷ With the exception of West Virginia's extended security deposit return timeline, our state does not do any of the above-mentioned renter-friendly provisions.

2. Who Is Protecting the Landlords?

Arkansas was given as low of a ranking as West Virginia, only beating West Virginia for the last spot in the renter-friendly rankings because they have criminal fines against tenants.⁹⁸ With Arkansas and West Virginia on the extreme end, instead of comparing them to extremely renter-friendly states such as Pennsylvania and Vermont, it is more prudent to compare them to the middle-tier, average states to evidence how outside the norm West Virginia still remains.

⁹³ This includes Alabama, Arizona, Connecticut, Delaware, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Vermont, Washington, and Wisconsin. *See* Legal Aid of West Virginia's Amicus Curia Brief, *supra* note 78, at 9; *see also* Fuqua v. Linsey Mgmt. Co., No. CIV-07-827-HE, 2008 U.S. Dist. LEXIS 55482, at *10 (W.D. Okla. July 22, 2008); *Detling v. Edelbrock*, 671 S.W.2d 265, 272–73 (Mo. 1984); *Woodhaven Apartments v. Washington*, 942 P. 2d 918, 923–24 (Utah 1997); *Wade v. Jobe*, 818 P. 2d 1006, 1015 (Utah 1991).

⁹⁴ *Balint*, *supra* note 31. This is for unfurnished apartments on a one-year lease (states such as Hawaii, D.C., Rhode Island, Massachusetts, and Kansas).

⁹⁵ *Id.* Montana is ten days. Hawaii, South Dakota, Nebraska, Arizona, and Vermont are 14 days.

⁹⁶ *Id.* D.C. allows 30 days. Other states like Vermont, Wisconsin, Minnesota, Massachusetts, and Tennessee have 14 days.

⁹⁷ *Id.* Georgia, Vermont, and Delaware allow for 60 days. Maine, Hawaii, and Nevada have 30-day notice periods.

⁹⁸ *Id.*

Vermont, while ranked number one for renters, is also one of 24 states that does not have a set limit for security deposits.⁹⁹ Being able to withhold rent for failure to provide essential services, such as heat, hot water, and electricity, is a law that seems like common sense, yet there are 11 states which don't specifically allow this.¹⁰⁰ Fourteen states empower their landlords to use harsh measures like serving an "Unconditional Quit Notice" against renters who violate their lease.¹⁰¹ This means that landlords can require the tenant to vacate the premises without giving them any chance to pay the rent due or correct any lease violating behavior.¹⁰² To be fair, most of the situations where this is actually allowed usually relate to serious breaches such as illegal drugs, prostitution, or other criminal activities.¹⁰³ However, there are three states where this type of notice can be used for anything, such as simply being late on the payment of rent—West Virginia is in fact one of the three.¹⁰⁴

III. ANALYSIS

A. *How to Protect the Tenant and Respect the Landlord*

According to a *New York Times* article, 90% of landlords in the District of Columbia were represented by lawyers in court, while 90% of tenants were not.¹⁰⁵ If this correlation is even remotely similar in West Virginia, then just how can tenants' rights be properly protected?

1. What Protection Options Remain?

Now that the Consumer Protection Division no longer has any authority to bring cases on behalf of the tenants of the state, it is important to highlight just who is left. With the *Copper Beech* decision controlling, tenants can now only bring their own claims, get pro-bono help from attorneys, or reach out to the Legal Aid Office of West Virginia.

⁹⁹ *Id.* This is the same case with Georgia, Washington, Texas, Illinois, and New York.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Some states are Arizona, Hawaii, Virginia, Rhode Island, and South Carolina.

¹⁰² Belle Wong, *How to Evict a Tenant from a Rental Property*, LEGALZOOM.COM, <https://www.legalzoom.com/articles/how-to-evict-a-tenant-from-a-rental-property> (last visited Sept. 27, 2019).

¹⁰³ Balint, *supra* note 31.

¹⁰⁴ *Id.* Georgia and South Carolina are the other two states.

¹⁰⁵ Brian Gilmore, "Give Tenants Lawyers," N.Y. TIMES (Oct. 9, 2018) <https://www.nytimes.com/2018/10/09/opinion/evictions-homelessness-legal-aid.html>.

Legal Aid of West Virginia has over 100 full-time staff in 12 offices,¹⁰⁶ which could lead one to believe that there are many accessible resources for tenants. However, in 2017 alone, they handled 10,178 cases with their limited resources.¹⁰⁷ They helped 1,244 families settle housing issues that might have resulted in homelessness, with no mention in this statistic if these were lease disputes or not.¹⁰⁸ Even being generous in assuming they were all landlord-tenant disputes, that would mean that landlord-tenant cases only make up approximately one-tenth of Legal Aid's case load.

Following this logic, with only 10% of cases involving landlord-tenant disputes, that means that 90% of Legal Aid attorneys' time would be spent on other matters for veterans, low-income households, children, abused spouses, etc.¹⁰⁹ Their resources are clearly stretched thin, so they have made a listing of frequently asked tenant questions so that tenants can try to handle their issues on their own first.¹¹⁰ This resource covers the following topics for tenants:

- Abandoned Personal Property in Rental Housing;
- Appealing an Eviction Case to Circuit Court;
- Assistance in Rental Housing;
- Bed Bugs in Rental Housing;
- Court Eviction Process;
- Eviction from Section 8 Housing;
- How Much Notice is Required in a Month-to-Month Tenancy?;
- How to Get Your Security Deposit Back in West Virginia;
- Installment Land Sale Contracts;
- Pay and Dismiss in Eviction Cases;
- Pets in Rental Housing; and
- When There is a Natural Disaster: Landlord/Tenant Law in West Virginia¹¹¹

With such a complete listing of all major tenant issues, it is clear that Legal Aid wants tenants to first help themselves if possible, coming to Legal Aid advocates and attorneys only when necessary as a last resort. With Legal Aid,

¹⁰⁶ *Seeking Justice, Changing Lives*, LEGAL AID W. VA., <http://www.lawv.net/> (last visited Sept. 27, 2019).

¹⁰⁷ *2018 Financial Overview: Legal Aid of West Virginia*, LEGAL AID W. VA., <http://www.lawv.net/annualreport> (last visited Sept. 27, 2019).

¹⁰⁸ *Id.*

¹⁰⁹ *See generally Seeking Justice, Changing Lives*, *supra* note 106.

¹¹⁰ *Housing*, LEGAL AID W. VA., <http://www.lawv.net/Resources/Self-Help-Library/Housing> (last visited Sept. 27, 2019). This resource even includes audio clips that are two to three minutes long and summarize each topic, if the tenant wants to start there instead.

¹¹¹ *Id.*

the last viable institution for tenants to access, already delaying when they step in by providing these resources and only having enough resources for the tough cases, where does that leave the student tenant, who just needs some help figuring the rules out? Or the median-income family who doesn't qualify for aid but knows that they aren't being treated fairly according to the law?

2. What's Done Is Done—The Decision Has Been Made. How Do We Move Forward to Protect Consumers Long-Term?

After such a landmark decision for tenant rights, other than a single article by the *Charleston Gazette-Mail*, no one really paid attention.¹¹² By shining light on the issue and taking time to regroup, it is important to recognize the remaining avenues, such as the resources of Legal Aid, which are left to protect consumers.¹¹³ More than just establishing the remaining protections and protectors, tenants need to be made aware of the current state renters are living in.¹¹⁴ Now that we know what tenant rights are left, basically the right to protect themselves, it is up to the legal community to allow for protective paths to entice renters, e.g., young adults, to the state.

i. *Alternative Dispute Resolution—A Balm or a Short-Term Solution?*

Disputes over land, property, and terms of living contracts are not new concepts. Issues can come from both sides—landlords want to ensure they annually receive rent and that their tenants are not bothering their neighbors while tenants want to make sure their living conditions are habitable and taken care of by the property owner. When issues arise frequently enough though, a party can be tempted to seek resolution by filing a lawsuit. Whether it be about rent payments or security deposits, rights of entry or maintenance, disputes are better off being resolved before full-scale litigation is necessary, both for the benefit of each party's mind as well as each party's wallet.

¹¹² Jake Jarvis, *WV Supreme Court Guts Case Against Student Landlords*, CHARLESTON GAZETTE-MAIL (Oct. 12, 2017), https://www.wvgazette.com/news/cops_and_courts/wv-supreme-court-guts-case-against-student-landlords/article_6eee4cb4-82c6-5a27-8467-b4bd31902ed7.html.

¹¹³ See *Housing*, *supra* note 110.

¹¹⁴ Some groups affected are the college students who are unaware of their rental rights or whose parents write checks without looking at the fees, and poor families who can't afford all the fees but also can't afford to be out on the street. To date, consumers still call the Consumer Protection Division about landlord-tenant issues, but all they can do is direct them to Legal Aid or send them a brochure—which can be found on their official website. *Consumer Protection*, OFFICE W. VA. ATT'Y GEN. PATRICK MORRISEY, <https://ago.wv.gov/consumerprotection/Pages/default.aspx> (last visited Sept. 27, 2019).

Alternative Dispute Resolution, or ADR, acts like three magic words for any lawyer or judge. The ADR system is all about asking if there is a way the parties can settle things on their own, without a court's interference. After all, 95% of cases settle pre-trial,¹¹⁵ due to court-mandated mediation or simply talking to the other party, so why not landlord-tenant disputes? According to the West Virginia Supreme Court of Appeals clerks responsible for Magistrate Court filings,¹¹⁶ a few years ago, around the same time as the *Copper Beech* ruling, landlord-tenant cases became declassified and lumped in with all civil filings, making it impossible to know exactly how many cases are filed in the state each year.¹¹⁷

ADR requires time and resources, as do landlord-tenant cases themselves. Legal Aid may handle some cases, but with so many different areas of the law that fall onto their lap, it is impossible for them to accept every client, especially in regard to long, drawn-out legal battles. Apart from firms and solo practitioners offering to do work pro-bono, low-income tenants have no way to fight for their own rights apart from appearing *pro se* in court since the costs of these long cases would be exorbitant. For these reasons, it would be most appropriate to delegate landlord-tenant cases to the West Virginia College of Law and Marshall University's new Center for Consumer Law and Education ("Consumer Center").¹¹⁸ The Consumer Center is meant to "address emerging issues in consumer law and policy,"¹¹⁹ such as landlord-tenant disputes now that consumers can no longer turn to the Consumer Protection Division for support after *Copper Beech*.

As one of only three Consumer Centers in the nation,¹²⁰ it may seem hard to start such a program. However, the University of Houston Center for Consumer Law is already doing this exact thing.¹²¹ The Houston Consumer Center says on the homepage that their mission is "to advance the rights of

¹¹⁵ *What Percentage of Lawsuits Settle Before Trial? What Are Some Statistics on Personal Injury Settlements?*, THE LAW DICTIONARY, <https://thelawdictionary.org/article/what-percentage-of-lawsuits-settle-before-trial-what-are-some-statistics-on-personal-injury-settlements/> (last visited Sept. 27, 2019).

¹¹⁶ E-mail from Brenda Combs, Court Statistics Coordinator, Magistrate Court Servs. Div. at the Supreme Court of Appeals of W. Va., to author (Nov. 12, 2018, 11:54 EST) (on file with author).

¹¹⁷ *Id.*

¹¹⁸ *WVU College of Law and Marshall University Launch Center for Consumer Law and Education*, WVUTODAY, (Nov. 30, 2018), <https://wvutoday.wvu.edu/stories/2018/11/30/wvu-college-of-law-and-marshall-university-launch-center-for-consumer-law-and-education>.

¹¹⁹ *Id.* (quoting Marshall University President Jerome A. Gilbert).

¹²⁰ Jonathan Marshall, Dir., Ctr. for Consumer Law and Educ., Opening Address (Nov. 28, 2018).

¹²¹ *Center for Consumer Law*, U. HOUS. L. CTR., <http://www.uhcccl.org/WjLmZ/> (last visited Oct. 11, 2019).

consumers . . . to help ensure a safe and efficient marketplace.”¹²² They have a program called “The People’s Law School,” which has education presentations on a variety of topics, such as landlord–tenant issues,¹²³ and they have a forum for Texas consumers to file complaints—one category listed is “apartments.”¹²⁴ These educational and informational steps open the door for state consumers to learn about their rights and attempt to exercise them, no matter their economic class.

Many different types of dispute resolution could be utilized by consumer centers.¹²⁵ Whether it be a simple negotiation, multiple levels of mediation, or the filing of a claim in magistrate court, all avenues could be handled by these student-run and attorney-backed clinic programs. While the lease agreements or rental contracts terms would be vital if they speak to the way disputes should be handled, there is an advantage to involving a neutral third-party and eliminating exorbitant trial costs.

Mediation can be an informal process or a facilitated and more structured one.¹²⁶ Law students would be able to bring parties together to air their concerns and openly talk about what they would like to see happen going forward, all with the advice of neutral and knowledgeable third-parties. The mediation can be a single session in a calm environment to allow the parties to speak, or it can be multiple sessions to clarify and handle the problems at hand and any that might be imminent. The main purpose of mediation is to let the feelings of the parties within the dispute cool so that they can listen and come to a mutually satisfactory solution. Mediation would be the best alternative for many small-claim landlord–tenant issues so long as both parties have the genuine intent to reach an agreement.

This clinic, like the other clinics already fully functioning at the WVU College of Law, could also handle real cases from real clients who otherwise could not afford representation, allow for an exercise of the client’s rights, and give students the opportunity to practice consumer law before they graduate. Since the WVU Consumer Center is already opening with the intent to educate and protect consumers,¹²⁷ recognizing this mission by implementing ADR

¹²² *Id.*

¹²³ *Id.*; see also *People’s Law School*, CTR. FOR CONSUMER L.: U. HOUS. L. CTR., <http://www.law.uh.edu/peopleslaw/> (last visited Sept. 27, 2019).

¹²⁴ *Texas Consumer Complaint Center*, CTR. FOR CONSUMER L.: U. HOUS. L. CTR., <http://texasccc.com/> (last visited Sept. 27, 2019).

¹²⁵ See generally Gerald Lebovits & Lucero Ramirez Hidalgo, *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, 11 CARDOZO J. CONFLICT RESOL. 437 (2009).

¹²⁶ See generally *id.* at 439–41.

¹²⁷ Director Jonathan Marshall has highlighted in conversation the importance of the WVCCPA for the protection of tenant rights. This exact area of law is already being looked at by those interested in working at the Consumer Center, so it should not be a big leap to allow for landlord–tenant cases to be handled by student attorneys through the Consumer Center.

measures along with the potential for student case representatives would be the most feasible action to begin correcting the *Copper Beech* decision.

ii. *Amending What We Have to Make Way for What Can Come*

It is not common practice for landlords to charge non-refundable fees (such as the redecoration fees seen in *Copper Beech*) and especially not exorbitant fees without purpose other than as a handling fee.¹²⁸ On top of these fees, *Copper Beech* took sums for alleged damages from the security deposit rather than the “nonrefundable fee” that had been taken.¹²⁹ It is also not a common practice to charge separate check fees. For example, if four roommates each pay their portion of the rent with a separate check, they have the potential to pay a penalty of up to 10% of the rent amount.¹³⁰ Provisions stipulating how high security deposits can be or whether a landlord can make a tenant pay for defects left by previous tenants can easily be fixed by amending current statutes under Article 6 of the WVCCPA. West Virginia Code sections 46A-6-101 to 46A-6-106 are the sections of the WVCCPA which focus on unfair or deceptive acts or practices.¹³¹ There are two sections which could specifically allow for small amendments if the legislature allowed.

Section 46A-6-102 proffers a list of definitions used to give context to what the WVCCPA can apply. Under section 46A-6-102(5), “‘sale’ includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.”¹³² One of the main arguments made by the West Virginia Supreme Court of Appeals was that the rental of a unit on a property did not constitute a consumer sale or transaction.¹³³ Although the logic may have been hard to follow, with the state and national precedent leaning the other way as well, a minor amendment to this section could negate the Court’s ruling in *Copper Beech* and again allow the Attorney General’s Consumer Protection Division the authority to protect consumers of rental leases. A possible amendment would be as follows:

(5) “Sale” includes any **monetary transaction**, offer for sale or attempt to sell any goods **or package of goods** for cash or credit or any services or offer for services **or package of services** for cash or credit.

¹²⁸ Blint, *supra* note 31 (chart).

¹²⁹ Legal Aid of West Virginia’s Amicus Curia Brief, *supra* note 78, at 13.

¹³⁰ *Id.*

¹³¹ W. VA. CODE ANN. §§ 46A-6-101–106 (West 2019).

¹³² *Id.* § 46A-6-102(5).

¹³³ *See supra* Section II.C.2.

While this addition might seem superfluous and possibly redundant, it would directly link to *Copper Beech* while also make sure to broaden the scope of what transactions can be linked to the WVCCPA. Also, the intent of the legislature in making these amendments would be founded in pulling landlord–tenant issues back under the purview of the Act, further supporting our Attorney General in reining in unfair fees from landlords.

Another area open for amendment would be that of Article 2 governing debt collection practices. If the legislature is unwilling or unable to reach a consensus on whether or not landlord or tenant fees themselves should be regulated, it seems like it might be easier to argue that at least the way landlords collect them should be. The ways that landlords can collect on late fees or payments should have a line that cannot be crossed, especially when the possibility for eviction and court orders can come into play. Amendments to this article would again give the Attorney General authority through the WVCCPA, but would confine it solely to the collection of debts in relation to the tenancy, a smaller scope that is less likely to ruffle the feathers of landlords. Section 46A-2-122(b) defines a “claim” as an obligation “arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes.”¹³⁴ To make it clear that the legislature intends to allow landlord or tenant fees to be included in this definition post-*Copper Beech*, the following could be a possible amendment:

(b) “Claim” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, ~~or~~ service, **or package of goods or services** which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

This again highlights language from state precedent that the Court had ignored as being inconsequential, highlighting legislative intent to overrule that ruling in *Copper Beech*. However, with the WVCCPA in its entirety under fire at the legislature, amendments to the code are unlikely at the present time.

iii. *The Role of Cities in Regulating for the Renter*

City municipalities have the distinct position of being able to effect change for a smaller population. Citizens in a community can complain to their local government, making these smaller legislative bodies poised to regulate for their small community needs. “Cities have been overlooked as a source of

¹³⁴ W. VA. CODE ANN. § 46A2-122(b).

consumer protection.”¹³⁵ Big cities, such as Morgantown, overflow with renters as West Virginia University college students change every year. These larger cities can focus on rental unit laws to protect tenants, doing away with multiple check fees or more closely regulating the timeline landlords have to return a security deposit and requiring an itemized list of expenses if they are holding onto it, ensuring they are being upfront with the money and not holding onto it to fix up apartments that don't need it. More suburban and rural areas can focus on more long-term issues. The regulation of long-term leases, whether it is a condo or the property a trailer sits on, is yet another way cities and towns can attract renters to the area and protect the citizens that have been living there.

From small towns to large cities, the best option to move forward and protect tenants in the state of West Virginia might be to start small but look to the future.

IV. CONCLUSION

Copper Beech was an improper decision which had adverse effects on tenants in West Virginia. But what's done is done. It's not as if *Copper Beech* said that tenants don't deserve to be protected; it just said that the Consumer Protection Division had no right to do the protecting. Whichever side you fall on in regard to the opinion, it is evident that tenants were left with little to no avenues of protection after that decision. And the worst part? No one knew. Lay people don't follow the West Virginia Supreme Court of Appeals dockets frequently, not even all practicing lawyers in the state do. And as only one media outlet did one story on it,¹³⁶ the issue was left in the shadows.

Tenant issues are important ones to address. As a state constantly seeking ways to bring young adults into the state or keep the ones that are already here, it is our duty to appeal to them—the student-loan riddled average adult. Not only that, it is also our duty to protect the impoverished of our state, those who live paycheck to paycheck in a rental apartment, constantly looking for ways to cut costs. These are the groups most affected by the *Copper Beech* decision. Something as miniscule as fees may not seem like a major problem, but to these groups of people the fees can really add up and become a burden and a debt, hurting their credit scores, leading to evictions, and ultimately ending up on their records if court proceedings occur for eviction. These fees can have lifelong consequences.

As the legal profession is dedicated to upholding justice and fairness, attorneys are duty-bound to protect both landlords and tenants alike. Major legislative overhauls to further this goal, while ideal, aren't practical and, even if

¹³⁵ Susan Block-Lieb, *Cities As A Source of Consumers' Financial Empowerment*, 34 EMORY BANKR. DEV. J. 387, 387 (2018) (discussing the role of cities in protecting consumers through empowerment).

¹³⁶ Jarvis, *supra* note 112.

they were, would take too long to put into effect. Just as we try to protect the little man, we must similarly start with the little things. Initiating alternative dispute resolution proceedings can be spearheaded by our local College of Law and be a great way to simultaneously mediate and allow up-and-coming lawyers the chance to get real-world practice with matters that hit close to home. Minor statutory limits to safety deposits or redecorating fees, enacted through amending current statutes, can accommodate a landlord's need to cover these fees without allowing a tenant to be taken advantage of when they are not familiar with an area or typical building fees.

Cities can make the first steps to protect renters like Mary and Daniel by implementing regulations and facilitating ADR programs. It may be just a start, but if the community doesn't make an effort to protect tenants, then who will?

*Emily Ann Cramer**

* J.D. Candidate, West Virginia University College of Law, 2020; B.S. Public Relations and Advertising, Duquesne University, 2017; Executive Publications Editor, Volume 122, *West Virginia Law Review*. The Author would like to extend her greatest thanks to Norman Googel, Attorney in West Virginia Attorney General's Consumer Protection Division; Jonathan Marshall, Director of the Center for Consumer Law and Education; and Melanie Stimeling, Director of the College of Law's Writing Center, for all of their expertise and guidance with this Note. Special thanks go to the Author's family for their support as she wrote this Note. The Author would also like to thank her friends and colleagues on the *West Virginia Law Review* for their hard work and dedication in preparing this Note. Any errors contained herein are the Author's alone.