

COMING OF AGE

In West Virginia

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Lawyers Section of the West Virginia State Bar**

**(Updates courtesy of Legal Aid of West Virginia and
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Coming of Age in West Virginia

By

Young Lawyers Section
Of the West Virginia State Bar

Special thanks to Sheila R. Retana and the Wisconsin Bar Foundation for providing the Young Lawyers Section with its publication “On Being 18” as a guide for this publication.

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INTRODUCTION

This booklet describes the changes in your legal rights and responsibilities that occur when you become 18 and are considered an adult.

The booklet provides a summary of legal principles in effect at the time of publication. It does not offer legal advice. If you have a specific question you should check the sources mentioned in the booklet or talk with a lawyer.

GENERAL PRINCIPLES

When does a person become an “adult”? In West Virginia, as in most states, at age 18.

What does it mean to become an “adult”? As an adult, you have new rights: to vote, make contracts in your own name and become completely independent. You also have new responsibilities and are held personally accountable for your actions.

When I reach age 18, am I automatically given all the rights of an adult? In West Virginia, the answer now is “yes”, except as to drinking.

What are some of the rights I have after age 18 that I didn’t have before? Voting, to make a will, to sue in your own name, to make a contract (rent an apartment, buy a car, take out a loan) in your own name, obtain medical treatment without parental consent, to be completely independent from parental control.

What are some of the responsibilities I have after age 18 that I didn’t have before? Criminal charges will be tried in adult criminal court rather than juvenile court, Parents no longer required to support you, you may be eligible for jury duty, you may be sued by others on contracts you made, you’re eligible for jury duty, and all males are required for military draft.

VOTING

What are the requirements for voting? You must be 18 or older at the time of the election, a U.S. citizen and a resident in the voting district.

Where do I vote? Your local government establishes voting locations (“polling places”), usually at a school, city hall or similar place.

Where do I register to vote? You can register to vote in the county clerk’s office where you reside or by mail by contacting the county clerk’s office. Your local government may establish other registration places.

May I vote if I have not registered before Election Day? No. You must have registered at least 30 days before the election to be eligible to vote at that election.

May college students vote in the city where they go to school? Yes, if they register in that city or show a change of residence from their home town.

May I vote if I will not be in my voting district on Election Day or cannot appear at the polling place? Yes, you can vote by absentee ballot after making application for an official ballot in the circuit clerk’s office in the county where you are registered.

JURY DUTY

If called to serve on a jury, do I have to go? Yes, unless you are excused by the judge for some special reason. This is one of the responsibilities of being an adult.

What are the qualifications for serving on a jury? You must be 18 years or older, a U.S. citizen, a resident of the county in which you would serve, not so ill or disabled as to interfere with jury duty, and be able to read and understand the English language. You cannot serve if you have lost your right to vote due to criminal conviction, been convicted of perjury, of false swearing or served on a jury in the preceding two years.

Do all people who are in the jury panel actually serve on a jury? No. More people are chosen that will be needed because some people are automatically excluded and others might be excluded by the judge or the attorneys.

Are people with certain jobs – fireman, policeman, and teacher- automatically excused from jury service? There are no automatic excuses based on occupation.

May high school students over 18 serve on juries? Yes.

Do people on a jury lose their salary? It depends on the employer. Employers are required to give employees time off for jury service but are not required to continue wage payments.

Are jurors paid by the county? Yes, currently \$40.00 per day and round-trip mileage reimbursement.

How long can people be required to serve on a jury? Normally no more than 30 days within a two-year period unless more time is required for a specific case or unless local judges adopt a rule requiring a longer period, which cannot exceed 10 days within a two-year period.

DRIVING

Is driving a right or a privilege? It is a privilege that the State may regulate.

Are all drivers required to have car insurance? Yes, all drivers are required to have liability insurance in the amount of at least \$20,000.00 for bodily injury to or death of one person in any one accident, at least \$40,000.00 for bodily injury to or death of two or more persons in any one accident, and at least \$10,000.000 for injury to or destruction of property of others in any one accident. Each driver should carry with him a certificate of insurance certifying that there is in effect a motor vehicle liability policy upon your motor vehicle.

If you do not have the required liability insurance when you are driving in West Virginia, you may be subject to a penalty fee, suspension of your driver's license and your vehicle registration plate. For additional offenses, the penalties increase.

CONTRACTS

What is a contract? Any agreement between two people where each receives some benefit.

What are some common contracts for young adults?

- Employment contracts
- Loan for school or to buy a car
- Installment purchase of some product
- Apartment rental
- Insurance
- Marriage
- Medical care

Do all contracts have to be in writing? No. Many contracts (employment, some apartment leases, and promise to pay for medical care) are rarely in writing. But contracts must be in writing to be enforceable, including:

- Any purchase of an item costing more than \$500.00
- Any contract to buy or sell land
- Any contract which is not to be completely performed within a year

What are some of the advantages of a written contract?

- Protection against dishonesty by the other person over what you had agreed to
- Protection against poor memories – after time people will often have different recollections of their agreement even if there is no dishonesty.
- Protection against misunderstandings – when terms are reduced to writing, it is less likely that there will be any misunderstandings as to the specific terms and/or any assumed terms of the agreement.

What are some general rules to follow when I am asked to sign a contract?

- Don't sign anything until you have read and are sure you understand the agreement.
- If you don't understand a provision of the agreement, don't guess at what it means, but ask the other person what they believe it means.
- Cross out parts of the contract that conflict with your agreement.
- Write in parts of your agreement that are not in the contract.
- Don't sign a contract if it contains any blank spaces. Either fill them in or cross them out if they do not apply.
- Be concerned if someone asks you to sign a contract without reading it.
- Do not sign without carefully reading the contract.
- Don't be intimidated by sales people; don't accept their representations of what the agreement means, particularly the phrase "don't worry – its standard"; instead exercise your own independent judgment.
- Don't assume that just because a form is pre-printed, that it must be O.K.
- Never sign anything unless you understand why you are being asked to sign and what you are agreeing to do.
- Remember that if it is important enough to sign, it's important enough to have a complete, accurate, signed copy of the contract.

What can happen if I do not perform a contract – miss a payment or other obligation I have agreed to? You can be sued in a court of law. If sued, you are required to appear before a judge or jury, and as in any court proceeding, you will have the opportunity to defend yourself. However, if the judge or jury determines that you have not fulfilled your contractual obligations, a "judgment" will exist against you. This judgment allows the court to garnish up to 25% of your

wages until the judgment is paid off. In addition, the court often allows interest of the amount owed to be added. If you are sued and fail to appear in court, in all probability you will lose your case and a judgment will exist against you.

If I miss a payment, can the company turn my account over to a collections agency? Yes, however, the collection agency has no more power or authority to collect the debt than did the company you owed. In addition, any debt collector, whether it is the company or a collection agency, must abide by certain rules when collecting a debt. They may not:

- Publicize the debt by relaying the information to employers or other family members
- Use profanity, threats, or coercion in attempting to collect
- Garnish your wages without securing a judgment in a court of law
- Add additional finance or penalties that go beyond those established by consumer credit laws.

What other consumer rights do I have?

There are many federal consumer laws in addition to those set forth in the West Virginia Consumer Credit and Protection Act. These laws are numerous, but basically require businesses to act fairly when dealing with consumers. Should you have any questions regarding your consumer rights or should you have a consumer problem contact:

West Virginia Attorney General's Office
Consumer Protection Division
P.O. Box 1789
Charleston, West Virginia 25326
1-800-368-8808

CREDIT

How do I get credit? Credit is established when a seller allows you to pay for a product or service in installments or monthly payments, usually with an additional charge or interest, instead of paying for the product at one time. Credit is granted based upon your ability to pay. Your ability to pay is based upon your employment status, other expenses you currently have and a record of your completing payments in the past. By opening accounts at small, local firms, who may be more willing to give you credit without a credit history, you can establish a credit rating so that you may purchase larger items or get credit from larger companies in the future. Renting an apartment and making your monthly payments on time is a good way to establish a good credit rating.

How do I get a good credit rating? There are a number of ways, including: maintaining a savings account, buying low priced items on time, getting a job and using credit cards. A credit rating is intended to measure your ability to repay a debt. This can be established by a past record of completing payments or by indications of a stable income or other sources of money.

How long does it take to clear up a bad credit report? It depends on the seriousness of the past problems and the amount and purpose of the new loan. Credit reporting agencies often seem to want references on loans and employment for the past five years. Even a past bad credit rating can probably be avoided if the collateral for the present loan is sufficient.

What is collateral? Collateral is anything which has value that can be given as security for a loan. The lender wants to identify the property which has a value of at least equal to the amount of the loan so that the property can be used to pay back the debt if you are unable to repay the loan.

If I buy a product and have problems with the product, and the store refused to fix the product, should I stop my payments? Probably not. The warranty you received when

you bought your new product is your protection against faulty merchandise. You should contact your local retailer and ask that the product be repaired or replaced. If your local retailer will not help you, you should contact the Consumer Protection Division of the State Attorney General's Office for mediation of the problem. Most of the time you will get your product repaired or replaced by following the aforementioned steps; however, should you remain unsuccessful, the Attorney General's Office may advise you to seek the help of a private attorney for legal action.

What if I buy a car that's a lemon? The State of West Virginia has enacted special legislation with regard to new motor vehicle warranties. If the manufacturer or dealer is unable to repair the new motor vehicle after a reasonable number of attempts, then the manufacturer must replace the new motor vehicle with a comparable new motor vehicle which does work properly.

If the manufacturer does not replace the lemon, the consumer has right to sue the manufacturer and may recover all or any portion of:

1. Revocation of acceptance of the vehicle and refund of the purchase price;
2. Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
3. Damages for the loss of use of the vehicle and for annoyance of inconvenience resulting from the nonconformity, including reasonable expenses for replacement transportation during any period when the vehicle is out of service; and
4. Reasonable attorney fees.

You should always keep records of every problem you have with a new motor vehicle, the number of times you take the vehicle to be repaired for the same problem and the number of days the vehicle is out of service during the warranty period (or one year, if longer). To take advantage of your rights, you must first notify the manufacturer of the problem in writing and provide the manufacturer an

opportunity to repair the vehicle. If you aren't satisfied, you may seek the help of a lawyer.

EMPLOYMENT

Must an employer give employees a written contract?

No. Most contracts are verbal.

For what reasons can an employee be fired? Unless there are specific provisions in a written contract or employee policy handbook, an employer can generally fire someone at anytime for no reason. However, there are some exceptions. An employer may not fire or discriminate against someone on the basis of disability, race, sex, religion or because a workers compensation claim was filed.

Whom should I contact if I think I have been

discriminated against? Contact the Human Rights Commission in Charleston, West Virginia. (304) 558-2616.

MARRIAGE, DIVORCE & CHILDREN

When can a person marry without consent of parents or legal guardian? At age 18.

What is the youngest age at which a person can marry with consent of parents or legal guardian? Sixteen. The parental consent must be in writing, acknowledged before a notary public and presented to the clerk of the county commission when the marriage license is applied for. You may not marry legally in the State of West Virginia if you are less than 16 years of age except upon order of the circuit judge and with the consent of the parents or legal guardian.

How does one get a marriage license? You apply to the county clerk in the county where either party usually

resides and pay the application fee. The license is good for 60 days. The marriage must be solemnized within 60 days or the license will become null and void.

What is required for a valid marriage?

- A valid marriage license
- An authorized official (generally a clergyman or judge)
- Mutual declarations by the people being married that they take each other as husband and wife.

In a marriage, who has to provide support? Both husband and wife have an obligation to provide for the support of the other and of all minor children. Either the spouse may be held liable for necessities furnished to the other, or to minor children.

Does a non-working spouse have any share in the family's income or assets? Yes. All property acquired during the marriage is generally considered to be "marital property" and each spouse is entitled to 50 percent of the marital property, including income earned during the marriage. This is a complex subject. You should talk with a lawyer or call the West Virginia State Bar if you want more information about marriage law.

What happens in a divorce? A judge will consider child custody, child support, financial maintenance of either spouse and/or property division. As a general rule, all assets are divided equally, without regard to alleged misconduct by either spouse.

What are the grounds for divorce? In West Virginia, grounds for divorce include adultery, conviction of a felony, desertion, cruel treatment, habitual drunkenness, and drug addiction, living separate for one year, child abuse and irreconcilable differences.

Can a father be required to support a child of his if he is not married? Yes. A father can be sued by the child's primary caretaker or guardian, the child's mother or a child support agency. A wage assignment can be obtained that will automatically deduct the support amount from the father's paycheck.

What if a man denies that he is a child's father? A paternity suit can be started by the child, the child's mother, guardian or custodian or a child support agency. If the man cannot afford a lawyer, one will be appointed for him. He has the right to require blood tests. A very accurate blood test now exists. The question of paternity may be settled by a paternity agreement. If the question is not settled, a trial will be held to determine who the child's father is.

May a parent's rights be terminated? Yes. A court may terminate parental rights for the following reasons: abandonment, abuse and/or neglect of a child together with the parent's inability or unwillingness to correct the conditions of the neglect or abuse and provide for the child's needs.

What does termination mean? Termination of parental rights means that all rights, powers, privileges, duties and obligations existing between a parent and child are forever ended by a court order.

Does an abused spouse have to start a divorce action to get help from the courts? No. If you are abused, you can get a restraining order from either the magistrate court or circuit court if either you or your children are in immediate physical danger. The order may restrain your spouse from coming onto your premises, from abusing you, establish temporary custody and visitation rights for your children and provide for temporary support for you and your children.

What kind of protection can an abused spouse receive from a court while a divorce action is pending? The court can order the parties not to interfere with each other's personal liberty or the custody or visitation rights of the other. For instance, the court might order one spouse to leave the home for a short time. Anyone disobeying such an order can be punished for contempt of court.

Can an abused spouse have a criminal complaint pursued against the offending spouse? Yes. If you are abused, immediately call the police or file a complaint in a

magistrate court. Get hospital treatment and keep records of injuries, witnesses, police officers and medical attendants. Get copies of medical reports.

CRIMINAL CHARGES

If I am arrested for a criminal offense, what will happen?

If arrested, you can expect to be searched for weapons by the police and take to a police station or court. If you are questioned you should be advised of your rights under the United States Constitution, in what is commonly called your Miranda warnings. As soon as you request an attorney, the police are not supposed to question you further. Important rights to remember are the right not to talk to police and right to have an attorney present. If you cannot afford an attorney, the court will appoint one for you.

What basic things should I remember if arrested? You should remember your right to have an attorney present. Once you have identified yourself, you may refuse to make any statement or discuss the case with anyone. On the other hand, you may choose to answer questions, sign papers or take tests. However, any information you give voluntarily can be used as evidence against you in court. Law enforcement officers cannot force or threaten you into answering questions and cannot offer leniency in exchange for any written or oral statements.

How soon after an arrest must that person appear before a judge? After you are arrested and processed, an “initial appearance” before a judge must occur within a reasonable and prompt time.

What does it mean to be released on bail? Bail is designed to guarantee your appearance in court. The court will require a specific amount of money or property to be deposited with the clerk of the court in which you appear. Usually a member of the family must obtain the funds, deposit the money and then show receipt in order

to get you released. Your bail may be posted by a professional “bondsman” who, for a fee, will pledge his property to guarantee your appearance.

What is a person cannot afford to hire an attorney? The first thing to tell the court at your initial appearance is that you wish to have counsel appointed for you. The court will postpone your case until counsel is appointed and you have an opportunity to discuss your case with them. It will be necessary for you to complete a financial statement to determine if you are eligible for appointed counsel.

MILITARY SERVICE

Who is required to register for the draft? Every male citizen and male alien residing in the United States born on or after January 1, 1960, who has attained his 18th birthday, must register within 30 days of his 18th birthday. This is known as Selective Service registration. If you are hospitalized, incarcerated or otherwise institutionalized at the time required to register you must register within 30 days of your discharge or release.

At what age can a person enlist in the Armed Forces? At 17 with parental consent. Without parental consent, at age 18 to 35.

How do I register? Go to a local post office and fill out a registration form giving your name, address, sex, birthday and social security number. Physical examinations will not be conducted and classifications will not be issued when you register. You may register up to 120 days before your birthday.

Will draft cards be issued when I register? No. If a draft occurs, you will be notified by Western Union mailgram. The mailgram will order you to report for a physical examination and processing. It will also provide information on possible exemptions and deferments. A

“tear off” portion of the letter you receive acknowledging your registration may be used as proof of registration.

What are the penalties if I do not register? Failure to register is a federal crime punishable by up to five years imprisonment and/or a fine of up to \$250,000. Eligibility for federal college financial assistance and federal job training assistance programs may require proof of registration.

APARTMENTS

What are the landlord’s rights in an apartment? A property owner has the right to set the amount of rent, set rules for occupancy, collect for damages to the property and sell the rental unit (but a written lease continues to its expiration date).

What are the tenants’ rights? A tenant has the right to use the rental unit in accordance with the rules, occupy the rental unit without unjust interference by the landlord, and expect the property to be kept in reasonably good repair.

Is there anything I should do before renting a property? You should inspect the unit you rent, note its condition, report any need for painting/cleaning/repairing, be sure you want to rent the unit, and understand that rental of the unit in the condition it is in when you rent it without further agreement as to repairs, etc. means that the landlord must do nothing more as he is not responsible for any defects unless they violate health or building codes.

What is a lease and what should it state? A lease is an agreement between you and the landlord. It may or may not be in writing. A written lease is good protection because it prevents any change in rental conditions such as an increase in rent during the term of the lease. Before you sign the lease, read it carefully, do not leave any blank spaces unfilled, make sure you understand its terms, and make sure all additional conditions or promises not included in the lease form presented to you are written on

the lease or paper attached to the lease, and make sure you understand who pays for such things as utilities, gas, electricity, water, garbage and the like. Make sure you keep an exact copy of the original lease signed by both yourself and the owner.

Must a lease be written to be enforceable? No, unless the lease is for longer than one year.

What are the advantages to having a written lease?

- You will have a better idea of all of your rights and obligations.
- You will have protection against dishonesty.
- You will have protection against poor memories.

What are the disadvantages of a written lease?

- Printed form leases usually favor the landlord.
- The lease could change some of the rules that would otherwise favor the tenant.

What is a security deposit, how much money is it usually and what is it used for? It is an amount of money (often equal to one month's rent, but it can be any amount) which the landlord holds as security against property damages, unclean conditions and unpaid rent. A written lease usually outline the way a security deposit will be handled and what a tenant should do to have it returned.

Do I earn interest on a security deposit? Generally no, but this is something for which you should consider asking.

What can I do to make sure I get back my security deposit?

When you move into the apartment, list any damages, necessary repairs and the general cleanliness of the unit. Have the list dated and signed by the landlord and give the landlord a photocopy. Keep the original. When you leave the apartment, repair any damage you caused and clean the unit. Your landlord should immediately return your security deposit or give you a written statement accounting for any amounts withheld. As a general rule, the security deposit may only be withheld to pay for damages, rent or unpaid utilities. It cannot be withheld for ordinary wear and tear.

In a monthly lease can I end the lease by just leaving at the end of the month? No. If renting under an oral or written lease month to month, you must give notice at least one full month before the end of a rental period, unless the written lease provides specifically a period of time for giving notice.

If I sign a lease with three friends and they move out, do I have to pay the full rent or only my ¼ share? It depends on what the lease says. You will probably have to pay the full rent. You would then have a claim against your friends and could sue them.

If I break a lease, for what amount can I be sued? You can probably be sued for all unpaid rent, for any physical damage including unusual cleaning expenses, for advertising expenses and other costs of re-renting the apartment, and perhaps for the landlord's attorney fees if the written lease provides for that.

Should I have renter's insurance? The landlord's insurance will likely cover only the building, not your possessions. Renter's insurance is relatively inexpensive.

How does a landlord terminate a tenancy for nonpayment of rent? If you do not pay rent when due, a landlord may give you at least five days notice of a hearing in Magistrate Court. Following that hearing, a tenant may be evicted by the Magistrate at any time, even that same day. Otherwise, a landlord may evict a tenant simply by providing the tenant written notice one full rental period (usually one month) in advance of the eviction date. If a tenant is being sued for eviction upon nonpayment of rent, the law provides that the lawsuit must be dismissed if the tenant offers the landlord, prior to the time of hearing, full payment of rent due and the landlord's costs in filing suit.

Under what circumstances can a landlord enter my premises? Generally, a landlord has the right to enter your premises at reasonable times to inspect, make repairs, or show them to prospective tenants. The landlord may enter only with notice or without notice in unusual situations to

preserve or protect the premises. Any other such entry may be trespass.

What can I do if a landlord refuses to make repairs to the premises? In every written or oral lease of residential premises, there is an implied warranty that the landlord will deliver the premises in a fit and habitable condition and shall thereafter maintain the leased premises in such condition provided that the tenant is not at fault. If a landlord fails to meet this obligation, the tenant may leave the premises thereby terminating his/her obligation to pay rent or may continue to pay rent and bring a lawsuit against the landlord.

