

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 FOR

4 **H. B. 3177**

5  
6 (By Delegates Lawrence, Marshall, Doyle, Pino, Hunt and Frazier)

7 [Passed March 8, 2012; in effect ninety days from passage.]

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9  
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §38-1-16, relating to  
12 the status and rights of parties under a preexisting tenancy  
13 and lease when residential rental property is sold by a  
14 trustee pursuant to a deed of trust; declaring the rights of  
15 new owner to terminate tenancy with notice; providing a right  
16 of existing tenant to terminate tenancy; creating minimum  
17 notice requirements; setting requirements for providing  
18 notice; declaring that the terms and conditions of the  
19 preexisting lease survive the trustee sale; naming certain  
20 exceptions; and setting effective date.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new section, designated §38-1-16, to read as  
24 follows:

25 **ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

26 **§38-1-16. Sale of real property pursuant to a deed of trust;**  
27 **preexisting tenancy.**

28 (a) Notwithstanding the notice requirements of section five,

1 article six, chapter thirty-seven of this code, following the  
2 conveyance of residential rental property to a purchaser by a  
3 trustee pursuant to a deed of trust, the tenancy of a tenant  
4 occupying the property under an unexpired written lease that is  
5 either not of record or was placed of record after the deed of  
6 trust under which the trustee sold the residential rental property  
7 was placed of record, may be terminated by giving ninety days  
8 written notice or by giving written notice not less than thirty  
9 days prior to the expiration of the lease, whichever is shorter.  
10 However, the tenancy of a tenant occupying the property under a  
11 month to month or other tenancy may be terminated by giving thirty  
12 days written notice. The terms and conditions of the lease of the  
13 property remain fully enforceable during the notice period. If the  
14 tenant fails to timely comply with the terms of the lease, the new  
15 owner, or the agent of the new owner, may proceed under article  
16 three-a of chapter fifty-five of this code, notwithstanding the  
17 provisions of this section. The tenancy of a factory built home  
18 may only be terminated as provided in section six, article fifteen,  
19 chapter thirty-seven of this code.

20 (b) The notice required by subsection (a) of this section  
21 shall, at a minimum, identify the residential real property  
22 occupied by the tenant, state the date of the trustee's sale at  
23 which the residential real property was purchased, state the book  
24 and page number at which the trustee's deed to the purchaser  
25 appears of record, state the date on which the tenancy will expire,  
26 and identify the purchaser, including information sufficient to  
27 contact the purchaser.

28 (c) Service of written notice upon the tenant, or anyone else

1 holding the leased premises, or any part thereof, under the tenant  
2 is sufficient if made by regular mail addressed to the tenant or  
3 person holding under the tenant at the address of the property and  
4 by either personal delivery to the tenant or person holding under  
5 the tenant, by posting a copy of the notice on the front door of  
6 the rental real property or by certified mail addressed to the  
7 tenant or person holding under the tenant at the address of the  
8 property. When notice is given by the tenant, it may be served  
9 upon any person owning the premises, in whole or in part, or the  
10 agent of an owner.

11 (d) The provisions of this section take effect on the first  
12 day of January, two thousand thirteen.