

1                                   **Senate Bill No. 256**

2                                    (By Senator Tucker)

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4    [Introduced January 8, 2014; referred to the Committee on the

5                                    Judiciary.]

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10 A BILL to amend and reenact §55-2-5 of the Code of West Virginia,

11       1931, as amended, relating to limitation of actions and suits;

12       enforcement of liens reserved by conveyance or created by deed

13       of trust or mortgage or real estate; and providing that a lien

14       instrument securing an obligation payable on demand expires

15       twenty years from the date of recording the lien instrument.

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

17       That §55-2-5 of the Code of West Virginia, 1931, as amended,

18 be amended and reenacted to read as follows:

19 **ARTICLE 2.   LIMITATION OF ACTIONS AND SUITS.**

20 **§55-2-5.   Enforcement of liens reserved by conveyance or created by**

21                                   **deed of trust or mortgage on real estate.**

22       (a) Any lien reserved by any conveyance of real estate or

1 created by any deed of trust or mortgage on real estate expires  
2 after the following periods of time, unless suit to enforce the  
3 lien is instituted prior to expiration of the time period or unless  
4 the lien is extended as specified in subsection (b) or (e) of this  
5 section:

6       (1) If the final maturity date of the obligation is  
7 ascertainable from the lien instrument, the lien expires five years  
8 after that date.

9       (2) If the final maturity date of the obligation is not  
10 ascertainable from the lien instrument, the lien expires thirty-  
11 five years after the date of the lien instrument. However, if the  
12 lienholder rerecords the lien instrument prior to thirty-five  
13 years from the date of the lien instrument and includes a copy of  
14 the obligation secured by the lien so that the final maturity is  
15 ascertainable, the lien expires five years after the date of  
16 maturity.

17       (b) If an affidavit or extension notice executed by the  
18 secured party or beneficiary of the lien instrument or an amendment  
19 to the lien instrument executed by the grantor or mortgagor and the  
20 secured party or beneficiary is recorded prior to expiration of the  
21 original period of limitation, as specified in subsection (a) of  
22 this section, the period of limitation is extended as follows:

1           (1) If the final maturity date of the obligation, as extended,  
2 secured by the lien instrument is ascertainable from the affidavit,  
3 extension notice or amendment, the lien expires five years after  
4 the date of final maturity of the obligation, as extended.

5           (2) If the final maturity date of the obligation, as extended,  
6 secured by the lien instrument is not ascertainable from the  
7 affidavit, extension notice or amendment, the lien expires thirty-  
8 five years after the date of the lien instrument. However, if the  
9 lienholder rerecords the lien instrument prior to thirty-five years  
10 from the date of the lien instrument and includes a copy of the  
11 obligation secured by the lien so that the final maturity is  
12 ascertainable, the lien expires five years after the date of  
13 maturity.

14           (c) Any affidavit, extension notice or amendment filed  
15 pursuant to subsection (b) of this section after the effective date  
16 of this section, shall include, but is not limited to, the  
17 following:

18           (1) The unpaid balance of the debt and interest secured by the  
19 lien instrument;

20           (2) The final maturity date of the obligation, as extended;  
21 and

22           (3) The book and page of recordation of the original lien

1 instrument.

2       The clerk of the county commission shall record and index any  
3 affidavit, extension notice or amendment in the same manner as the  
4 original lien instrument and shall note that filing on the margin  
5 of the page where the original lien instrument is recorded.

6       (d) If the lien instrument shows that it secures an obligation  
7 payable in installments and the maturity date of the final  
8 installment of the obligation is ascertainable from the lien  
9 instrument, the time runs from the maturity date of the final  
10 installment.

11       (e) ~~For purposes of this section only, a~~ If the lien  
12 instrument ~~securing~~ secures an obligation which is payable on  
13 demand ~~expresses no maturity date~~ , the lien expires twenty years  
14 from the date the lien instrument was recorded.

15       (f) Nothing in this section extinguishes any lien which was  
16 reserved or created and in effect prior to July 1, 1998. With  
17 respect to any lien reserved or created and in effect prior to July  
18 1, 1998, the lien is valid for twenty years after its stated  
19 maturity, or if no maturity date is stated in the lien instrument,  
20 for thirty-five years after the date of the lien instrument.

21       (g) The periods of limitation created by this section may be  
22 extended only as provided in this section and may not be extended

1 by any other method or by operation of law.

NOTE: The purpose of this bill is to provide that a lien instrument securing an obligation payable on demand expires twenty years from the date of recording the lien instrument.

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