

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2053

(By Delegate Shott)

[Passed March 10, 2015; in effect ninety days from passage.]

10 AN ACT to amend and reenact §38-1-2 of the Code of West Virginia, 1931, as amended; and to
 11 amend and reenact §40-1-9 of said code, all relating to deeds of trust; permitting the
 12 recording of a memorandum of deed of trust in lieu of the deed of trust; setting requirements
 13 for content of memorandum of deed of trust; and requiring recording of original deed of trust
 14 prior to commencement of foreclosure action or other execution thereof.

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

16 That §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, be amended and
 17 reenacted to read as follows:

18 **CHAPTER 38. LIENS.**

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

20 **§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.**

21 A deed of trust to secure debts or indemnify sureties may be in the following form or to the
 22 same effect: "This deed made the day of, in the year, between

1 (the grantor) of the one part, and (the trustee) of the other part,
2 witnesseth: That the said (the grantor) doth (or do) grant unto the said
3 (the trustee) the following property (here describe it). In trust to secure (here describe the debts to
4 be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties
5 may agree upon). Witness the following signature."

6 In lieu of the recording of a deed of trust, there may be recorded with like effect a
7 memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust
8 and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed
9 of trust entitled to be recorded shall contain at least the following information with respect to the
10 deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee
11 and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to
12 the indebtedness secured by the deed of trust including the amount of the indebtedness and the date
13 the indebtedness was incurred or if the indebtedness is evidenced by a note or contract, the date the
14 instrument was executed; (3) the date of execution of the deed of trust if different than the date the
15 evidence of indebtedness was executed; (4) the date of maturity of the indebtedness; (5) the
16 description of the real estate against which a lien is claimed to secure the indebtedness; (6) a title in
17 compliance with subsection (b), section fourteen, article one, chapter thirty-eight of this code if the
18 indebtedness is a line of credit; (7) a statement of whether advances are obligatory if the
19 indebtedness is a line of credit; (8) provisions of the deed of trust regarding substitution of a trustee;
20 (9) a summary of the applicable notice and publication requirements if there is a default; (10)
21 whether the loan was originated or serviced pursuant to a program of the following agencies or
22 organizations, and if so, any form number actually used: (a) Federal Housing Administration; (b)

1 Veterans Administration; (c) Federal National Mortgage Association; (d) Federal Home Loan
2 Administration; (e) United States Department of Agriculture; or (f) West Virginia Housing
3 Development Fund; and (11) the name of the person from whom, upon written request from any
4 interested party, the original deed of trust, or a copy thereof, may be obtained. The memorandum
5 shall constitute notice of only the information contained therein but, as against creditors and
6 purchasers, it is as valid as if the complete deed of trust were recorded on the date the memorandum
7 is admitted to record. Prior to the commencement of any foreclosure or other execution of the deed
8 of trust, the original deed of trust shall be recorded.

9 **CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.**

10 **ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND PURCHASERS.**

11 **§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until**
12 **recorded.**

13 Every such contract, every deed conveying any such estate or term, and every deed of gift,
14 or deed of trust or memorandum of deed of trust pursuant to section two, article one, chapter thirty-
15 eight of this code, or mortgage, conveying real estate shall be void, as to creditors, and subsequent
16 purchasers for valuable consideration without notice, until and except from the time that it is duly
17 admitted to record in the county wherein the property embraced in such contract, deed, deed of trust
18 or memorandum of deed of trust or mortgage may be.