

**H. B. 2655**

(By Delegates Walters, Hartman and Westfall)

[Introduced February 6, 2015; referred to the

Committee on the Judiciary then Finance.]

A BILL to amend and reenact §38-1-7 of the Code of West Virginia, 1931, as amended, relating to providing that a defendant in a civil action to recover a deficiency after a sale under a deed of trust may not assert as a defense that fair market value was not obtained for the property sold at the foreclosure sale.

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

That §38-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.**

**§38-1-7. Application of proceeds; action to recover a deficiency.**

(a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five percent on the first \$300, and two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata (or

1 in the order of priority, if any, prescribed by the trust deed) to the payment of the debts secured and  
2 the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor,  
3 his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

4 (b) A trust deed grantor, the obligor on the debt secured by the deed of trust, including any  
5 maker, comaker, guarantor, surety or other accommodation party, or other defendant in a civil action  
6 seeking a deficiency judgment on the debt secured by the deed of trust, may not assert as a defense  
7 that the fair market value of secured real property was not obtained at a trust deed foreclosure sale  
8 conducted in accordance with this article.

NOTE: This bill provides that the defendant in a civil action brought to recover a deficiency remaining after a foreclosure, may not assert as a defense that the fair market value of the property sold was not obtained at the trust deed foreclosure sale, and addresses Sostaric v. Marshall, decided November 12, 2014, by the West Virginia Supreme Court of Appeals. This bill further is consistent with the holding in Pence v. Jamison, et al., 80 W.Va. 761, 94 S.E. 383 (1917), that a sale of real estate by a trustee under a deed of trust will not be set aside upon the ground of inadequacy of price, unless such inadequacy is so great as to shock the conscience of the court.

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