

Senate Bill No. 418

(By Senators Nohe and Gaunch)

[Introduced February 5, 2015;
referred to the Committee on the Judiciary.]

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 property sold at 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.

1 (a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the
2 execution of the trust, including a commission to the trustee of five percent on the first \$300, and
3 two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata, or
4 in the order of priority, if any, prescribed by the trust deed, to the payment of the debts secured and
5 the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor,
6 his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

[S. B. NO. 418]

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