

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2053

(BY DELEGATE SHOTT)

(Originating in the House Committee on Judiciary)

[January 26, 2015]

A BILL to amend and reenact §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, all relating to the form of trust deeds; and permitting the recording of a memorandum of deed of trust in lieu of the deed of trust.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

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

1 A trust deed to secure debts or indemnify sureties may be in
2 the following form or to the same effect: "This deed made the
3 day of, in the year, between
4 (the grantor) of the one part, and
5 (the trustee) of the other part, witnesseth:
6 That the said (the grantor) doth (or do) grant unto
7 the said (the trustee) the following property (here
8 describe it). In trust to secure (here describe the debts to be
9 secured or the sureties to be indemnified, and insert covenants,
10 or any other provisions the parties may agree upon). Witness the
11 following signature."

12 In lieu of the recording of a deed of trust, there may be
13 recorded with like effect a memorandum of the deed of trust,
14 executed by all persons who are grantors under the deed of trust
15 and acknowledged in the manner to entitle a conveyance to be
16 recorded. A memorandum of deed of trust entitled to be recorded

17 shall contain at least the following information with respect to
18 the deed of trust: (1) The name and the address of each grantor,
19 the name and the address of each trustee and the name and the
20 address of each beneficiary as set forth in the deed of trust; (2)
21 a reference to the indebtedness secured by the deed of trust
22 including the amount of the indebtedness and the date the
23 indebtedness was incurred or if the indebtedness is evidenced by
24 a note or contract, the date the instrument was executed; (3) the
25 date of execution of the deed of trust if different than the date the
26 evidence of indebtedness was executed; (4) a description of the
27 real estate against which a lien is claimed to secure the
28 indebtedness; (5) entitled in compliance with subsection (b),
29 section fourteen, article one, chapter thirty-eight of this code if
30 the indebtedness is a line of credit; (6) a statement of whether
31 advances are obligatory if the indebtedness is a line of credit;
32 and (7) a summary of the applicable notice and publication
33 requirements if there is a default. The memorandum shall
34 constitute notice of only the information contained therein but,
35 as against creditors and purchasers, it is as valid as if the

36 complete deed of trust were recorded on the date the
37 memorandum is admitted to record.

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

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

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

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