

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2053

(BY DELEGATE SHOTT)

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

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

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 deed of trust; memorandum of deed of trust may be recorded.

1 A deed of trust to secure debts or indemnify sureties may be
2 in 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) the date of maturity
27 of the indebtedness; (5) the description of the real estate against
28 which a lien is claimed to secure the indebtedness; (6) a title in

29 compliance with subsection (b), section fourteen, article one,
30 chapter thirty-eight of this code if the indebtedness is a line of
31 credit; (7) a statement of whether advances are obligatory if the
32 indebtedness is a line of credit; (8) provisions of the deed of trust
33 regarding substitution of a trustee; (9) a summary of the
34 applicable notice and publication requirements if there is a
35 default; (10) whether the loan was originated or serviced
36 pursuant to a program of the following agencies or
37 organizations, and if so, any form number actually used: (a)
38 Federal Housing Administration; (b) Veterans Administration;
39 (c) Federal National Mortgage Association; (d) Federal Home
40 Loan Administration; (e) United States Department of
41 Agriculture; or (f) West Virginia Housing Development Fund;
42 and (11) the name of the person from whom, upon written
43 request from any interested party, the original deed of trust, or a
44 copy thereof, may be obtained. The memorandum shall
45 constitute notice of only the information contained therein but,
46 as against creditors and purchasers, it is as valid as if the
47 complete deed of trust were recorded on the date the
48 memorandum is admitted to record. Prior to the commencement
49 of any foreclosure or other execution of the deed of trust, the
50 original deed of trust shall be recorded.

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 deed of trust or memorandum
3 of deed of trust pursuant to section two, article one, chapter
4 thirty-eight of this code, or mortgage, conveying real estate shall

5 be 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, deed of trust or memorandum
9 of deed of trust or mortgage may be.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

