

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 358**

BY SENATORS TRUMP, SYPOLT AND BOSO

[Originating in the Committee on the Judiciary;

reported on March 3, 2017]

1 A BILL to amend and reenact §36-9-15 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §36-9-15a, all relating  
3 generally to the trustee sale of timeshare estates; providing that a managing entity may  
4 cause a trustee sale of the timeshare estate if the owner is delinquent to the managing  
5 entity for more than one year for assessments against the timeshare estate; requiring  
6 notice of a trustee sale be recorded; requiring that notice of a trustee sale be sent to the  
7 delinquent owner; requiring notice of trustee sale by publication; providing for a trustee  
8 sale at public auction if the delinquency is not cured within thirty days of notice of trustee  
9 sale; providing that a trustee sale may include multiple timeshare estates; providing that  
10 a trustee sale is prohibited if timeshare instrument expressly mandates judicial  
11 foreclosure; requiring a trustee to cause trustee's deed and disclosure to be recorded with  
12 the clerk of the county commission; and providing for a statute of limitations.

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

1 That §36-9-15 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that said code be amended by adding thereto a new section, designated §36-9-  
3 15a, all to read as follows:

**ARTICLE 9. WEST VIRGINIA REAL ESTATE TIMESHARING ACT.**

**§36-9-15. Liens for overdue assessments; mechanic's liens, insurance.**

1 (a) The managing entity has a lien on a timeshare period for any assessment levied  
2 against that timeshare period from the date such assessment becomes due.

3 (b) The managing entity may bring an action in its name to foreclose a lien for  
4 assessments, in the manner a mortgage of real property is foreclosed.

5 (c) The managing entity may cause a trustee sale of the timeshare estate if the owner is  
6 delinquent to the managing entity for more than one year for assessments against the timeshare  
7 estate: *Provided*, That a trustee sale shall be effectuated as provided in section fifteen-a, article  
8 nine, chapter thirty-six of this code.

9            (d) In addition to the remedies in subsections (b) and (c) of this section, the managing  
10 entity may also bring an action to recover a money judgment for the unpaid assessments without  
11 waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real  
12 property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

13            ~~(e)~~(e) The lien is effective from the date of recording a claim of lien in the public records  
14 of the county or counties in which the accommodations or facilities constituting the timesharing  
15 plan are located. The claim of lien shall state the name of the timesharing plan and identify the  
16 timeshare period for which the lien is effective, state the name of the purchaser, state the  
17 assessment amount due and state the due dates. The lien is effective until satisfied or until barred  
18 by law. The claim of lien may include only assessments which are due when the claim is recorded.  
19 A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity.  
20 Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

21            ~~(d)~~(f) A judgment in any action or suit brought under this section shall include costs and  
22 reasonable attorney's fees for the prevailing party.

23            ~~(e)~~(g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for  
24 the filing of a lien pursuant to the mechanic's lien law against the timeshare unit of any timeshare  
25 period owner not expressly consenting to or requesting the labor or materials.

26            ~~(f)~~(h) The seller, initially, and thereafter the managing entity, shall be responsible for  
27 obtaining insurance to protect the accommodations and facilities of the timesharing plan in an  
28 amount equal to the replacement cost of such accommodations and facilities.

29            A copy of each policy of insurance in effect shall be made available for reasonable  
30 inspection by purchasers and their authorized agents.

**§36-9-15a. Trustee's sale of timeshare estates.**

1            (a) An association or managing entity that desires to use a trustee sale shall prepare,  
2 execute and acknowledge a notice of trustee sale which shall include the following:

3            (1) The time and place of sale;

4 (2) The names of the parties to the deed under which it will be made;

5 (3) The date of the deed;

6 (4) The office and book in which it is recorded;

7 (5) The terms of sale;

8 (6) The nature and amount of the owner's current delinquency;

9 (7) The legal description of the owner's timeshare estate;

10 (8) The name and address of the association or other managing entity; and

11 (9) The name and address of the trustee designated by the association or managing entity  
12 to conduct the trustee sale.

13 (b) The association or managing entity shall record the notice of trustee sale with the  
14 county recorder of the county in which the timeshare property relating to the timeshare estate is  
15 located and shall mail by certified mail, return receipt requested, a copy of the notice of trustee  
16 sale to the owner listed in the notice at the last address for each delinquent owner according to  
17 the records of the association or managing entity. To the extent the owner is unable to be located,  
18 notice under this subsection is satisfied by notice by publication as provided in subsection (c) of  
19 this section.

20 (c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale shall  
21 be published as a Class II legal advertisement in compliance with the provisions of article three,  
22 chapter fifty-nine of this code and the publication area for such publication shall be the county  
23 where the property is located.

24 (d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a  
25 timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all  
26 requirements for the trustee to appear in the chain of title for the timeshare estate in order for the  
27 trustee to be entitled to issue a trustee deed on completion of a trustee's sale for the timeshare  
28 estate.

29 (e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days

30 after the association or managing entity mails the notice of trustee sale to the delinquent owner  
31 under subsection (b) of this section, and publication is made under subsection (c) of this section,  
32 the association or managing entity may cause the trustee to conduct a trustee's sale of the  
33 delinquent owner's timeshare estate at public auction.

34 (f) The trustee's sale may include multiple timeshare estates owned by an owner if the  
35 owner is delinquent in payment of assessments for all of the timeshare estates included in the  
36 trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple  
37 owners if the notice of trustee's sale provides all information required by this section for each  
38 owner and timeshare estate and each timeshare estate is sold separately.

39 (g) This section shall not apply to any timeshare property if the timeshare instrument  
40 expressly mandates that judicial foreclosure is the sole method for the managing entity to  
41 foreclose or liquidate a lien securing payment of assessments due to the managing entity.

42 (h) When a sale of property is made under any trustee deed, there shall, within two months  
43 after the sale, be returned by the trustee, to the clerk of the county commission of the county  
44 wherein such deed may have been first recorded, an inventory of the property sold and an account  
45 of the sale. The clerk of the county commission shall record the same, as provided in section nine,  
46 article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant  
47 to a trustee deed is placed on record by the trustee with the clerk of the county commission as  
48 provided in section eight of this article, the trustee shall include in a disclosure form submitted  
49 with and made a part of the report of sale the information identified in section eight-a, article one,  
50 chapter thirty-eight of this code, to the extent applicable.

51 (i) Provided that notice is given as provided in this section, no action or proceeding to set  
52 aside a trustee sale due to the failure to follow any notice, service, process or other procedural  
53 requirement relating to a sale of property under a timeshare instrument shall be filed or  
54 commenced more than one year from the date of the sale.

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