

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 247

BY SENATOR WELD

[Introduced January 10, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §55-2-5 of the Code of West Virginia, 1931, as amended, relating
 2 to limitation of actions and suits; and amending the time frames for enforcement of certain
 3 liens reserved by conveyance or created by deed of trust or mortgage on real estate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

1 (a) Any lien reserved by any conveyance of real estate or created by any deed of trust or
 2 mortgage on real estate expires after the following periods of time, unless suit to enforce the lien
 3 is instituted prior to expiration of the time period or unless the lien is extended as specified in
 4 subsection (b) or (e) of this section:

5 (1) If Upon the final maturity date of the obligation is ~~is~~ if ascertainable from the lien
 6 instrument. ~~the lien expires five years after that date~~

7 (2) If the final maturity date of the obligation is not ascertainable from the lien instrument,
 8 the lien expires ~~thirty-five~~ 30 years after the date of the lien instrument. However, if the lienholder
 9 rerecords the lien instrument prior to ~~thirty-five~~ 30 years from the date of the lien instrument and
 10 includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the
 11 lien expires ~~five years after the~~ upon the final date of maturity.

12 (b) If an affidavit or extension notice executed by the secured party or beneficiary of the
 13 lien instrument or an amendment to the lien instrument executed by the grantor or mortgagor and
 14 the secured party or beneficiary is recorded prior to expiration of the original period of limitation,
 15 as specified in subsection (a) of this section, the period of limitation is extended as follows:

16 (1) If the final maturity date of the obligation, as extended, secured by the lien instrument
 17 is ascertainable from the affidavit, extension notice or amendment, the lien expires five years after
 18 the date of final maturity of the obligation, as extended.

19 (2) If the final maturity date of the obligation, as extended, secured by the lien instrument

20 is not ascertainable from the affidavit, extension notice or amendment, the lien expires 35 years
21 after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior
22 to 35 years from the date of the lien instrument and includes a copy of the obligation secured by
23 the lien so that the final maturity is ascertainable, the lien expires five years after the date of
24 maturity.

25 (c) Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this
26 section after the effective date of this section, shall include, but is not limited to, the following:

- 27 (1) The unpaid balance of the debt and interest secured by the lien instrument;
28 (2) The final maturity date of the obligation, as extended; and
29 (3) The book and page of recordation of the original lien instrument.

30 The clerk of the county commission shall record and index any affidavit, extension notice
31 or amendment in the same manner as the original lien instrument and shall note that filing on the
32 margin of the page where the original lien instrument is recorded.

33 (d) If the lien instrument shows that it secures an obligation payable in installments and
34 the maturity date of the final installment of the obligation is ascertainable from the lien instrument,
35 the time runs from the maturity date of the final installment.

36 (e) For purposes of this section only, a lien instrument securing an obligation which is
37 payable on demand expresses no maturity date.

38 (f) Nothing in this section extinguishes any lien which was reserved or created and in effect
39 prior to July 1, 1998. With respect to any lien reserved or created and in effect prior to July 1,
40 1998, the lien is valid for 20 years after its stated maturity, or if no maturity date is stated in the
41 lien instrument, for 35 years after the date of the lien instrument.

42 (g) The periods of limitation created by this section may be extended only as provided in
43 this section and may not be extended by any other method or by operation of law.

NOTE: The purpose of this bill is to amend the time frames in which to enforce certain liens reserved by conveyance or created by deed of trust or mortgage on real estate.

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