

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4433**

BY DELEGATES NELSON (BY REQUEST) AND CRISS

[Introduced January 20, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §38-1-2a, all relating to deeds of trust; form of deeds of trust; recording of  
 3 memorandum of deeds of trust; how deeds of trust are construed; and the duties and  
 4 rights of parties to a deed of trust.

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

**ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.**

**§38-1-2a. How deeds of trust construed; duties and rights of parties.**

1 Every deed of trust to secure debts or indemnify sureties is in the nature of a contract and  
 2 shall be construed according to its terms to the extent not in conflict with the requirements of law.  
 3 Unless the deed of trust provides otherwise, it shall be construed to impose and confer upon the  
 4 parties and beneficiaries the following duties, rights, and obligations in like manner as if the same  
 5 were expressly provided for by such deed of trust:

6 (1) The deed shall be construed as given to secure the performance of each of the  
 7 covenants entered into by the grantor as well as the payment of the primary obligation;

8 (2) The grantor shall be deemed to covenant that he or she will pay all taxes, levies,  
 9 assessments, and charges upon the property, including the fees and charges of such agents or  
 10 attorneys as the trustee may deem advisable to employ at any time for the purpose of the trust,  
 11 so long as any obligation upon the grantor under the deed of trust remains undischarged;

12 (3) The grantor shall be deemed to covenant that he or she will keep the improvements  
 13 on the property in tenantable condition, whether such improvements were on the property when  
 14 the deed of trust was given or were placed there at a later time;

15 (4) The grantor shall be deemed to covenant that no waste shall be committed or suffered  
 16 upon the property and shall maintain, preserve, and protect the value of the collateral;

17 (5) The grantor shall be deemed to covenant that in the event of his or her failure to meet  
 18 any obligations imposed upon him or her, then the trustee or any beneficiary may, at his or her  
 19 option, satisfy such obligations. The money so advanced, with interest as provided in the deed of

20 trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be paid next  
21 after the expenses of executing the trust, and shall be otherwise recoverable from the grantor as  
22 a debt. In addition, to the extent not otherwise covered, the grantor shall be deemed to covenant  
23 that amount advanced or incurred by the trustee or any beneficiary under a deed of trust: (A) With  
24 respect to an obligation secured by a lien or encumbrance prior to the lien of the deed of trust; or  
25 (B) for the protection of the lien secured by the deed of trust, together with interest as provided in  
26 the deed of trust, shall be a part of the debt secured by the deed of trust, to be paid next after  
27 expenses of executing the trust;

28 (6) A covenant to pay interest shall be deemed a covenant to pay interest on the principal  
29 balance as such rate may vary or be modified from time to time by the parties under the original  
30 instruments or agreements or a written agreement of modification, whether or not recorded, and  
31 all the interest on the principal secured by the deed of trust shall be on an equal priority with the  
32 principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses  
33 of executing the trust;

34 (7) Any covenant, otherwise authorized by law, that the lender shall be entitled to share in  
35 the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the  
36 property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event,  
37 shall be on an equal priority with the principal debt secured by the deed of trust, in the event of  
38 sale to be paid next after the expenses of executing the trust, and shall be specified in the  
39 recorded deed of trust or other recorded document in order to be notice of record as against  
40 subsequent parties.

NOTE: The purpose of this bill is to codify how deeds of trust are construed and to codify rights and obligations of parties to a deed of trust.

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