

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 360**

5 (SENATORS TUCKER AND PLYMALE, *original sponsors*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
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12 AN ACT to amend and reenact §11-10-13f of the Code of West
13 Virginia, 1931, as amended; and to amend said code by adding
14 thereto a new section, designated §38-1-17, all relating to
15 creating a procedure for deeming personal property abandoned
16 following a transfer of real property by tax sale or
17 foreclosure; requiring notice to the owner of personal
18 property remaining on real property after the previous owner
19 has vacated; creating a procedure for notice and removal of
20 personal property within a thirty-day period; giving the
21 purchaser of real property the authority to remove personal
22 property after proper notice and waiting period; and
23 prohibiting waiver of notice requirement prior to vacation of
24 property.

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

26 That §11-10-13f of the Code of West Virginia, 1931, as
27 amended, be amended and reenacted; and that said code be amended by
28 adding thereto a new section, designated §38-1-17, all to read as

1 follows:

2 **CHAPTER 11. TAXATION.**

3 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

4 **§11-10-13f. Certificate of sale; deed to real property; notice and**
5 **access to recover personal property; abandonment and removal**
6 **of personal property.**

7 (a) *Certificate of sale.* - In the case of property sold as
8 provided in section thirteen-c the Tax Commissioner shall provide
9 to the purchaser a certificate of sale upon payment in full of the
10 purchase price. In the case of real property, such certificate
11 shall set forth the real property purchased, for whose taxes the
12 same was sold, the name of the purchaser and the price paid
13 therefor.

14 (b) *Deed to real property.* - In the case of any real property
15 sold as provided in section thirteen-c and not redeemed in the
16 manner and within the time provided in section thirteen-e, the Tax
17 Commissioner shall execute, in accordance with the laws of this
18 state pertaining to sales of real property under execution, to the
19 purchaser of that real property at the sale, upon his or her
20 surrender of the certificate of sale, a deed to the real property
21 so purchased by him or her reciting the facts set forth in the
22 certificate.

23 (c) *Real property purchased by the state.* - If real property
24 is declared purchased by the State of West Virginia at a sale
25 pursuant to section thirteen-c, the Tax Commissioner shall, at the
26 proper time, execute a deed therefor, and without delay cause the
27 deed to be duly recorded in the office of the clerk of the county
28 in which the real property is located.

1 (d) *Removal of personal property.* – Following the execution
2 of a deed to real property pursuant to this section, and after the
3 previous owner has vacated the property either voluntarily or
4 following an eviction proceeding, any personal property remaining
5 on the real property may be deemed abandoned if the purchaser of
6 the real property provides notice, pursuant to this subsection, and
7 the personal property remains on the real property at the
8 conclusion of the notice period. The notice shall state that the
9 personal property will be deemed abandoned if it is not removed
10 from the real property before the end of the thirtieth day
11 following the postmark date of the notice. If the locks are
12 changed or the previous owner is otherwise prevented from accessing
13 the personal property, the purchaser shall provide the previous
14 owner access to the personal property on reasonable terms. The
15 notice shall state a phone number, a mailing address, and a
16 physical address where the purchaser or an agent for the purchaser
17 who can provide access to the personal property can be contacted;
18 and shall further state that the previous owner may contact the
19 purchaser, and that purchaser will provide the previous owner
20 access to the personal property on reasonable terms. The notice
21 shall be sent to the former owner(s) of the real property at their
22 usual place of business or their usual place of abode or last known
23 address. If the purchaser has received notice in writing or by
24 electronic record that personal property belongs to another or that
25 another person or entity has a security interest in the personal
26 property, and if that person's mailing address is also received by
27 the purchaser in writing or by electronic record, notice shall be
28 sent to that person or entity as well. The notice shall be made to

1 all required persons, as stated in this section, by both certified
2 mail and regular mail. The notice is complete when mailed,
3 notwithstanding the fact that the notice may be returned as
4 unclaimed or refused. If the notice period passes and the personal
5 property remains on the real property, then the personal property
6 shall be deemed abandoned and the purchaser of the real property
7 may dispose of the remaining personal property in his or her
8 discretion. The notice required by this section may not be waived
9 before the property is vacated.

10 **CHAPTER 38. LIENS.**

11 **ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

12 **§38-1-17. Personal property after foreclosure; notice and access**
13 **to recover personal property; abandonment.**

14 Following a foreclosure on residential real property pursuant
15 to this article, and after the previous owner has vacated the
16 property either voluntarily or following an eviction proceeding,
17 any personal property remaining on the real property may be deemed
18 abandoned if the purchaser of the real property provides notice,
19 pursuant to this section, and the personal property remains on the
20 real property at the conclusion of the notice period. The notice
21 shall state that the personal property will be deemed abandoned if
22 it is not removed from the real property before the end of the
23 thirtieth day following the postmark date of the notice. If the
24 locks are changed or the previous owner is otherwise prevented from
25 accessing the personal property, the purchaser shall provide the
26 previous owner access to the personal property on reasonable terms.
27 The notice shall state a phone number, a mailing address, and a
28 physical address where the purchaser or an agent for the purchaser

1 who can provide access to the personal property can be contacted;
2 and shall further state that the previous owner may contact the
3 purchaser, and that purchaser will provide the previous owner
4 access to the personal property on reasonable terms. The notice
5 shall be sent to the former owner(s) of the real property at all
6 the address(es) to which notice of foreclosure sale was sent as set
7 forth in the trustee's report of sale, as well as the last known
8 address, if different. If the purchaser has received notice in
9 writing or by electronic record that personal property belongs to
10 another or that another person or entity has a security interest in
11 the personal property, and if that person's or entity's mailing
12 address is also received by the purchaser in writing or by
13 electronic record, notice shall be sent to that person or entity as
14 well. The notice shall be made to all required persons, as stated
15 in this section, by both certified mail and regular mail. The
16 notice is complete when mailed, notwithstanding the fact that the
17 notice may be returned as unclaimed or refused. If the notice
18 period passes and the personal property remains on the real
19 property, then the personal property shall be deemed abandoned and
20 the purchaser of the real property may dispose of the remaining
21 personal property in the purchaser's discretion. The notice
22 required by this section may not be waived before the property is
23 vacated.