

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 360**

4 (By Senators Tucker and Plymale)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;  
7 reported January 31, 2012.]  
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11  
12 A BILL 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 §38-1-16, 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 setting a  
20 thirty-day period for removal of personal property; 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 §38-1-16, 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; removal of**  
5 **personal property.**

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

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

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

28 (d) Removal of personal property. -- Following the execution

1 of a deed to real property pursuant to this section, and after the  
2 previous owner has vacated the property either voluntarily or  
3 following an eviction proceeding, any personal property remaining  
4 on the real property may be deemed abandoned if the purchaser of  
5 the real property provides notice, pursuant to this subsection, and  
6 the personal property remains on the real property at the  
7 conclusion of the notice period. The notice shall state that the  
8 personal property will be deemed abandoned if it is not removed  
9 from the real property before the end of the thirtieth day  
10 following the postmark date of the notice. The notice shall be  
11 sent to the former owner(s) of the real property at the address(es)  
12 listed on the lien and deed of trust, as well as the last known  
13 address, if different. If the purchaser has received notice in  
14 writing or by electronic record that personal property belongs to  
15 another or that another person or entity has a security interest in  
16 the personal property, and if that person's mailing address is also  
17 received by the purchaser in writing or by electronic record,  
18 notice shall be sent to that person or entity as well. The notice  
19 shall be made to all required persons, as stated in this section,  
20 by both certified mail and regular mail. The notice is complete  
21 when mailed, notwithstanding the fact that the notice may be  
22 returned as unclaimed or refused. If the notice period passes and  
23 the personal property remains on the real property, then the  
24 personal property shall be deemed abandoned and the purchaser of  
25 the real property may dispose of the remaining personal property in  
26 his or her discretion. The notice required by this section may not  
27 be waived before the property is vacated.

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**CHAPTER 38. LIENS.**

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

2 **§38-1-16. Personal property after foreclosure; abandonment.**

3       Following a foreclosure on residential real property pursuant  
4 to this article, and after the previous owner has vacated the  
5 property either voluntarily or following an eviction proceeding,  
6 any personal property remaining on the real property may be deemed  
7 abandoned if the purchaser of the real property provides notice,  
8 pursuant to this section, and the personal property remains on the  
9 real property at the conclusion of the notice period. The notice  
10 shall state that the personal property will be deemed abandoned if  
11 it is not removed from the real property before the end of the  
12 thirtieth day following the postmark date of the notice. The  
13 notice shall be sent to the former owner(s) of the real property at  
14 all the address(es) to which notice of foreclosure sale was sent as  
15 set forth in the trustee's report of sale, as well as the last  
16 known address, if different. If the purchaser has received notice  
17 in writing or by electronic record that personal property belongs  
18 to another or that another person or entity has a security interest  
19 in the personal property, and if that person's or entity's mailing  
20 address is also received by the purchaser in writing or by  
21 electronic record, notice shall be sent to that person or entity as  
22 well. The notice shall be made to all required persons, as stated  
23 in this section, by both certified mail and regular mail. The  
24 notice is complete when mailed, notwithstanding the fact that the  
25 notice may be returned as unclaimed or refused. If the notice  
26 period passes and the personal property remains on the real  
27 property, then the personal property shall be deemed abandoned and  
28 the purchaser of the real property may dispose of the remaining

1 personal property in the purchaser's discretion. The notice  
2 required by this section may not be waived before the property is  
3 vacated.