

COMMITTEE SUBSTITUTE

FOR

**H. B. 2053**

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(BY DELEGATE SHOTT)

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(Originating in the House Committee on Judiciary)

[January 26, 2015]

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A BILL to amend and reenact §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, all relating to the form of trust deeds; and permitting the recording of a memorandum of deed of trust in lieu of the deed of trust.

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

That §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**CHAPTER 38. LIENS.**

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

**§38-1-2. Form of trust deed; memorandum of deed of trust may be recorded.**

1       A trust deed to secure debts or indemnify sureties may be in  
2 the following form or to the same effect: "This deed made the  
3 ..... day of ....., in the year ....., between  
4 ..... (the grantor) of the one part, and  
5 ..... (the trustee) of the other part, witnesseth:  
6 That the said ..... (the grantor) doth (or do) grant unto  
7 the said ..... (the trustee) the following property (here  
8 describe it). In trust to secure (here describe the debts to be  
9 secured or the sureties to be indemnified, and insert covenants,  
10 or any other provisions the parties may agree upon). Witness the  
11 following signature."

12       In lieu of the recording of a deed of trust, there may be  
13 recorded with like effect a memorandum of the deed of trust,  
14 executed by all persons who are grantors under the deed of trust  
15 and acknowledged in the manner to entitle a conveyance to be  
16 recorded. A memorandum of deed of trust entitled to be recorded

17 shall contain at least the following information with respect to  
18 the deed of trust: (1) The name and the address of each grantor,  
19 the name and the address of each trustee and the name and the  
20 address of each beneficiary as set forth in the deed of trust; (2)  
21 a reference to the indebtedness secured by the deed of trust  
22 including the amount of the indebtedness and the date the  
23 indebtedness was incurred or if the indebtedness is evidenced by  
24 a note or contract, the date the instrument was executed; (3) the  
25 date of execution of the deed of trust if different than the date the  
26 evidence of indebtedness was executed; (4) a description of the  
27 real estate against which a lien is claimed to secure the  
28 indebtedness; (5) a statement of whether advances are obligatory  
29 if the indebtedness is a line of credit; and (6) a summary of the  
30 applicable notice and publication requirements if there is a  
31 default. The memorandum shall constitute notice of only the  
32 information contained therein but, as against creditors and  
33 purchasers, it is as valid as if the complete deed of trust were  
34 recorded on the date the memorandum is admitted to record.

**CHAPTER 40. ACTS VOID AS TO CREDITORS AND  
PURCHASERS.**

**ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND  
PURCHASERS.**

**§40-1-9. Contracts, deeds and mortgages invalid as to creditors  
and purchasers until recorded.**

1       Every such contract, every deed conveying any such estate  
2   or term, and every deed of gift, or trust deed or memorandum of  
3   deed of trust pursuant to section two, article one, chapter thirty-  
4   eight of this code, or mortgage, conveying real estate shall be  
5   void, as to creditors, and subsequent purchasers for valuable  
6   consideration without notice, until and except from the time that  
7   it is duly admitted to record in the county wherein the property  
8   embraced in such contract, deed, trust deed or memorandum of  
9   deed of trust or mortgage may be.