

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 358

SENATORS TRUMP, SYPOLT AND BOSO, *original sponsors*

[Passed April 5, 2017; in effect from passage]

1 AN ACT to amend and reenact §36-9-15 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §36-9-15a, all relating
3 generally to the trustee sale of timeshare estates; providing that a managing entity may
4 cause a trustee sale of the timeshare estate if the owner is delinquent to the managing
5 entity for more than one year for assessments against the timeshare estate; clarifying that
6 the statutory lien on the timeshare period is subordinate to any lien or security interest
7 voluntary granted upon the timeshare period by the owner; requiring notice of a trustee
8 sale be recorded; requiring that notice of a trustee sale be sent to the delinquent owner
9 and to certain holders of liens or security interests encumbering the timeshare period;
10 requiring notice of trustee sale by publication; providing for a trustee sale at public auction
11 if the delinquency is not cured within thirty days of notice of trustee sale; providing that a
12 trustee sale may include multiple timeshare estates; providing that a trustee sale is
13 prohibited if timeshare instrument expressly mandates judicial foreclosure; requiring a
14 trustee to cause trustee's deed and disclosure to be recorded with the clerk of the county
15 commission; and providing for a statute of limitations.

Be it enacted by the Legislature of West Virginia:

1 That §36-9-15 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new section, designated
3 §36-9-15a, all to read as follows:

ARTICLE 9. WEST VIRGINIA REAL ESTATE TIMESHARING ACT.

§36-9-15. Liens for overdue assessments; mechanic's liens, insurance.

1 (a) The managing entity has a lien on a timeshare period for any assessment levied
2 against that timeshare period from the date such assessment becomes due.

3 (b) The managing entity may bring an action in its name to foreclose a lien for
4 assessments, in the manner a mortgage of real property is foreclosed.

5 (c) The managing entity may cause a trustee sale of the timeshare estate if the owner is
6 delinquent to the managing entity for more than one year for assessments against the timeshare
7 estate: *Provided*, That a trustee sale shall be effectuated as provided in section fifteen-a, article
8 nine, chapter thirty-six of this code.

9 (d) In addition to the remedies in subsections (b) and (c) of this section, the managing
10 entity may also bring an action to recover a money judgment for the unpaid assessments without
11 waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real
12 property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

13 (e) The lien is effective from the date of recording a claim of lien in the public records of
14 the county or counties in which the accommodations or facilities constituting the timesharing plan
15 are located. The claim of lien shall state the name of the timesharing plan and identify the
16 timeshare period for which the lien is effective, state the name of the purchaser, state the
17 assessment amount due and state the due dates. The lien is effective until satisfied or until barred
18 by law. The claim of lien may include only assessments which are due when the claim is recorded.
19 A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity.
20 Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

21 (f) A judgment in any action or suit brought under this section shall include costs and
22 reasonable attorney's fees for the prevailing party.

23 (g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for
24 the filing of a lien pursuant to the mechanic's lien law against the timeshare unit of any timeshare
25 period owner not expressly consenting to or requesting the labor or materials.

26 (h) The seller, initially, and thereafter the managing entity, shall be responsible for
27 obtaining insurance to protect the accommodations and facilities of the timesharing plan in an
28 amount equal to the replacement cost of such accommodations and facilities.

29 (i) Notwithstanding any provision in this article, the lien granted pursuant to this section
30 shall not have priority over any voluntarily granted lien or security interest in the timeshare estate.

31 (j) A copy of each policy of insurance in effect shall be made available for reasonable
32 inspection by purchasers and their authorized agents.

§36-9-15a. Trustee's sale of timeshare estates.

1 (a) A managing entity that desires to use a trustee sale shall prepare, execute and
2 acknowledge a notice of trustee sale which shall include the following:

- 3 (1) The time and place of sale;
- 4 (2) The names of the parties to the deed under which it will be made;
- 5 (3) The date of the deed;
- 6 (4) The office and book in which it is recorded;
- 7 (5) The terms of sale;
- 8 (6) The nature and amount of the owner's current delinquency;
- 9 (7) The legal description of the owner's timeshare estate;
- 10 (8) The name and address of the association or other managing entity; and
- 11 (9) The name and address of the trustee designated by the association or managing entity
12 to conduct the trustee sale.

13 (b) The managing entity shall record the notice of trustee sale with the clerk of the county
14 commission of the county in which the timeshare estate is located and shall mail by certified mail,
15 return receipt requested, a copy of the notice of trustee sale to the owner listed in the notice at
16 the last address for each delinquent timeshare period according to the records of the managing
17 entity, and, to any holder of a lien or security interest against the timeshare estate being sold,
18 other than the state and the managing entity. To the extent the owner is unable to be located,
19 notice under this subsection is satisfied by notice by publication as provided in subsection (c) of
20 this section.

21 (c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale shall
22 be published as a Class II legal advertisement in compliance with the provisions of article three,

23 chapter fifty-nine of this code and the publication area for such publication shall be the county
24 where the property is located.

25 (d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a
26 timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all
27 requirements for the trustee to appear in the chain of title for the timeshare estate in order for the
28 trustee to be entitled to issue a trustee deed on completion of a trustee's sale for the timeshare
29 estate.

30 (e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days
31 after the managing entity mails the notice of trustee sale pursuant to subsection (b) of this section,
32 and publication is made under subsection (c) of this section, the managing entity may cause the
33 trustee to conduct a trustee's sale of the delinquent owner's timeshare estate at public auction.

34 (f) The trustee's sale may include multiple timeshare estates owned by an owner if the
35 owner is delinquent in payment of assessments for all of the timeshare estates included in the
36 trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple
37 owners if the notice of trustee's sale provides all information required by this section for each
38 owner and timeshare estate and each timeshare estate is sold separately.

39 (g) This section shall not apply to any timeshare property if the timeshare instrument
40 expressly mandates that judicial foreclosure is the sole method for the managing entity to
41 foreclose or liquidate a lien securing payment of assessments due to the managing entity.

42 (h) When a sale of property is made under any trustee deed, there shall, within two months
43 after the sale, be returned by the trustee, to the clerk of the county commission of the county
44 wherein such deed may have been first recorded, an inventory of the property sold and an account
45 of the sale. The clerk of the county commission shall record the same, as provided in section nine,
46 article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant
47 to a trustee deed is placed on record by the trustee with the clerk of the county commission as
48 provided in section eight of this article, the trustee shall include in a disclosure form submitted

49 with and made a part of the report of sale the information identified in section eight-a, article one,
50 chapter thirty-eight of this code, to the extent applicable.

51 (i) If notice is given as provided in this section, no action or proceeding to set aside a
52 trustee sale due to the failure to follow any notice, service, process or other procedural
53 requirement relating to a sale of property under a timeshare instrument, shall be filed or
54 commenced more than one year from the date of the sale.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2017.

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Governor