

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2053**

4 (By Delegate Shott)

5 (Originating in the House Committee on Judiciary)

6 [January 26, 2015]

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

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

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

16 **CHAPTER 38. LIENS.**

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

18 **§38-1-2. Form of trust deed; memorandum of deed of trust may be recorded.**

19 A trust deed to secure debts or indemnify sureties may be in the following form or to the
20 same effect: "This deed made the day of, in the year, between
21 (the grantor) of the one part, and (the trustee) of the other part,
22 witnesseth: That the said (the grantor) doth (or do) grant unto the said"

1 (the trustee) the following property (here describe it). In trust to secure (here describe the debts to
2 be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties
3 may agree upon). Witness the following signature."

4 In lieu of the recording of a deed of trust, there may be recorded with like effect a
5 memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust
6 and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed
7 of trust entitled to be recorded shall contain at least the following information with respect to the
8 deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee
9 and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to
10 the indebtedness secured by the deed of trust including the amount of the indebtedness and the date
11 the indebtedness was incurred or if the indebtedness is evidenced by a note or contract, the date the
12 instrument was executed; (3) the date of execution of the deed of trust if different than the date the
13 evidence of indebtedness was executed; (4) a description of the real estate against which a lien is
14 claimed to secure the indebtedness; (5) a statement of whether advances are obligatory if the
15 indebtedness is a line of credit; and (6) a summary of the applicable notice and publication
16 requirements if there is a default. The memorandum shall constitute notice of only the information
17 contained therein but, as against creditors and purchasers, it is as valid as if the complete deed of
18 trust were recorded on the date the memorandum is admitted to record.

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

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

21 **§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until**
22 **recorded.**

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

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