

**ENROLLED**

**Senate Bill No. 418**

(By Senators Nohe and Gaunch )

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[Passed March 13, 2015; in effect ninety days from passage.]  
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AN ACT to amend and reenact §38-1-7 of the Code of West Virginia, 1931, as amended, relating to providing that a defendant in a civil action to recover a deficiency after a sale under a deed of trust may not assert as a defense that fair market value was not obtained for property sold at foreclosure sale.

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

That §38-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§38-1-7. Application of proceeds; action to recover a deficiency.**

1           (a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the  
2 execution of the trust, including a commission to the trustee of five percent on the first \$300, and  
3 two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata, or  
4 in the order of priority, if any, prescribed by the trust deed, to the payment of the debts secured and  
5 the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor,

1 his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

2 (b) A trust deed grantor, the obligor on the debt secured by the deed of trust, including any  
3 maker, comaker, guarantor, surety or other accommodation party, or other defendant in a civil action  
4 seeking a deficiency judgment on the debt secured by the deed of trust, may not assert as a defense  
5 that the fair market value of secured real property was not obtained at a trust deed foreclosure sale  
6 conducted in accordance with this article.