

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 358

BY SENATORS TRUMP, SYPOLT AND BOSO

[Introduced February 21, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §36-9-15 of the Code of West Virginia, 1931, as amended, relating
 2 to permitting a timeshare-managing entity to foreclose upon its statutory lien for
 3 assessments in the manner of sales under trust deeds; providing for the naming of a
 4 trustee by the managing entity to carry out the sale; and requiring notice.

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 to read as follows:

ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.

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

1 (a) The managing entity has a lien on a time-share period for any assessment levied
 2 against that time-share 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, or in the manner of sales
 5 under trust deeds, as provided in article one, chapter thirty-eight of this code, with the party
 6 against whom the assessment is levied by the managing entity taking the place of the grantor of
 7 a deed of trust: *Provided*, That the trustee provides notice to the party or the fiduciary of the party
 8 if he or she is deceased, and any heirs of the party; and may also bring an action to recover a
 9 money judgment for the unpaid assessments without waiving any claim of lien. However, in the
 10 case of a time-sharing plan in which no interest in real property is conveyed, the managing entity
 11 may bring an action under chapter forty-six of this code: *Provided*, That if the managing entity
 12 elects to foreclose its lien for assessment in the manner of sales under trust deeds, the managing
 13 entity shall first name a trustee in the manner of a substitute trustee as provided in section thirteen,
 14 article one, chapter thirty-eight of this code.

15 (c) The lien is effective from the date of recording a claim of lien in the public records of
 16 the county or counties in which the accommodations or facilities constituting the time-sharing plan
 17 are located. The claim of lien shall state the name of the time-sharing plan and identify the time-

18 share period for which the lien is effective, state the name of the purchaser, state the assessment
19 amount due, and state the due dates. The lien is effective until satisfied or until barred by law.
20 The claim of lien may include only assessments which are due when the claim is recorded. A
21 claim of lien shall be signed and acknowledged by an officer or agent of the managing entity.
22 Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

25 (e) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for
26 the filing of a lien pursuant to the mechanic's lien law against the time-share unit of any time-
27 share period owner not expressly consenting to or requesting the labor or materials.

28 (f) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining
29 insurance to protect the accommodations and facilities of the time-sharing plan in an amount
30 equal to the replacement cost of such accommodations and facilities.

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

NOTE: The purpose of this bill is to permitting a timeshare managing entity to foreclose upon its statutory lien for assessments in the manner of sales under trust deeds. It provides for the naming of a trustee by the managing entity to carry out the sale and require notice.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.