

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4433

BY DELEGATES NELSON (BY REQUEST) AND CRISS

[Originating in the Committee on the Judiciary;

February 20, 2020.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §38-1-2a, all relating to deeds of trust; establishing rules of construction for
3 deeds of trust; establishing certain rights, duties and obligations of parties to a deed of
4 trust; and setting forth exceptions to rules of construction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-2a. How deeds of trust construed; duties and rights of parties.

1 Every deed of trust to secure debts or indemnify sureties is in the nature of a contract and
2 shall be construed according to its terms to the extent not in conflict with applicable state and
3 federal law. Unless the deed of trust or applicable law provides otherwise, it shall be construed to
4 impose and confer upon the parties and beneficiaries the following duties, rights, and obligations
5 in like manner as if the same were expressly provided for by such deed of trust:

6 (1) The deed shall be construed as given to secure the performance of each of the
7 covenants entered into by the grantor as well as the payment of the primary obligation;

8 (2) The grantor shall be deemed to covenant that he or she will pay all taxes, levies, and
9 other governmental assessments and charges upon the property, so long as any obligation upon
10 the grantor under the deed of trust remains undischarged;

11 (3) The grantor shall be deemed to covenant that he or she will keep the improvements
12 on the property in tenantable condition, whether such improvements were on the property when
13 the deed of trust was given or were placed there at a later time;

14 (4) The grantor shall be deemed to covenant that no waste shall be committed or suffered
15 upon the property and shall maintain, preserve, and protect the value of the collateral;

16 (5) The grantor shall be deemed to covenant that in the event of his or her failure to meet
17 any obligations imposed upon him or her, then the trustee or any beneficiary may, at his or her
18 option, satisfy such obligations to the extent reasonable or appropriate to protect the beneficiary's
19 interest in the property and rights under a security instrument. The money so advanced, with

20 interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust,
21 in the event of sale to be paid next after the expenses of executing the trust, and shall be otherwise
22 recoverable from the grantor as a debt. This section is not intended to create personal liability for
23 a grantor that did not execute the note or debt instrument secured by the deed of trust;

24 (6) A covenant to pay interest shall be deemed a covenant to pay interest on the principal
25 balance as such rate may vary or be modified from time to time by the parties under the original
26 instruments or agreements or a written agreement of modification, whether or not recorded, and
27 all the interest on the principal secured by the deed of trust shall be on an equal priority with the
28 principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses
29 of executing the trust;

30 (7) Any covenant, otherwise authorized by law, that the lender shall be entitled to share in
31 the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the
32 property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event,
33 shall be on an equal priority with the principal debt secured by the deed of trust, in the event of
34 sale to be paid next after the expenses of executing the trust, and shall be specified in the
35 recorded deed of trust or other recorded document in order to be notice of record as against
36 subsequent parties. This subdivision does not apply to consumer loans as defined in the West
37 Virginia Consumer Credit and Protection Act or residential deeds of trust, unless expressly
38 provided for in the applicable deed of trust or by applicable law.

NOTE: The purpose of this bill is to codify how deeds of trust are construed and to codify rights and obligations of parties to a deed of trust.

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