

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 42

BY SENATORS WOELFEL, WELD, STOLLINGS, JEFFRIES,

AND LINDSAY

[Originating in the Committee on Economic

Development; reported on February 19, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §8-12-22, relating to foreclosure actions involving abandoned properties;
3 authorizing a municipality to commence a proceeding in a court of competent jurisdiction
4 in the county in which the property is located to compel a foreclosure; defining “vacant and
5 abandoned property”; designating the Zombie Property Remediation Act of 2021; and
6 requiring conveyance of the deed following foreclosure.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, AND MUNICIPAL
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

§8-12-22. Foreclosure actions involving abandoned properties.

1 (a) This section shall be known and may be cited as the Zombie Property Remediation
2 Act of 2021.
3 (b) No action may be brought pursuant to this section until the municipality has informed
4 any and all mortgagees in writing and by certified mail, return receipt requested, to the
5 mortgagee’s registered agent identified by the mortgagee at the office of the West Virginia
6 Secretary of State or, if not registered with the West Virginia Secretary of State, then to the
7 mortgagee’s principal place of business, of the municipality’s intent to file a proceeding pursuant
8 to subsection (c) of this section and provide the mortgagee 45 days from receipt by the agent or
9 at the principal place of business referenced above of the notice of intent to file an action pursuant
10 to subsection (c) of this section to respond to the notice and notify the municipality of the status
11 of the property, the status of the note and the mortgagee’s response to the notice: *Provided, That*
12 the municipality may not issue a notice pursuant to this subsection or bring an action pursuant to
13 subsection (c) of this section if the owner of the property is in bankruptcy without the express
14 consent of the bankruptcy court.

15 (c) If a property has been determined to be unsafe, unsanitary, dangerous, or detrimental
16 to the public safety or welfare pursuant to an ordinance adopted pursuant to §8-12-16 of this code,
17 or determined vacant and abandoned pursuant to subsection (d) of this section, the municipality
18 in which the property is located may commence a proceeding in which the property is located to
19 compel any or all mortgagees to:

20 (1) If the mortgagee has classified that the note is in default, the trustee or mortgagee shall
21 commence a foreclosure procedure within four months and shall meet all deadlines to ensure the
22 case is ready to be moved to a trustee sale within a reasonable time period but not to exceed one
23 year;

24 (2) In the case of a loss mitigation application being filed by the borrower, all provisions of
25 this section shall be tolled until such time as the note is again in default and the time period
26 described in subdivision (1) of this subsection has passed, or otherwise until the mortgagee has
27 determined that the borrower is ineligible for loss mitigation;

28 (3) If a foreclosure has already been commenced, submit the necessary notices and
29 documentation needed to move the foreclosure to a trustee sale within four months; or

30 (4) Issue a certificate of discharge of the trust deed lien or mortgage within three months
31 and file a release of the lien or mortgage with the office of the clerk of the county commission in
32 the county where the property is located.

33 (d) As used in this section, “vacant and abandoned property” means real property with
34 respect to which the plaintiff has proven, by a preponderance of the evidence, that it meets any
35 of the following requirements:

36 (1) No person or persons actually and currently conduct a lawfully licensed business, or
37 lawfully reside, dwell, or live in any part of the building as the legal or equitable owner(s), tenant-
38 occupant(s), owner-occupant(s), or tenant(s) on a permanent, nontransient basis; or

39 (2) If the exterior maintenance and major systems of the building and the surrounding real
40 property thereof are in violation of applicable building codes or health and sanitation codes and
41 there is no continual utility service evidencing actual use of electric, gas, water service, etc.; or

42 (3) Each mortgagor has separately issued a sworn written statement, expressing his or
43 her intent to vacate and abandon the property and an inspection of the property shows no
44 evidence of occupancy to indicate that any persons are residing there.

45 (4) As used in this section, “continual” shall mean to be without more than one 30-day
46 interruption in any given 360-day period and must be more than merely registered to the owner
47 for purposes of billing and must be utilized, at a minimum, in order to keep the property and the
48 major systems of the building in compliance with applicable building and safety codes.

49 (5) Residential real property may not be considered vacant and abandoned if a structure
50 located on the property meets any of the following:

51 (A) An unoccupied building that is undergoing construction, renovation, or rehabilitation
52 that is proceeding diligently to completion;

53 (B) A building occupied on a seasonal basis, but otherwise secure;

54 (C) A building that is secure, but is the subject of a probate action, action to quit title, or
55 other ownership dispute of which the mortgage servicer has actual notice;

56 (D) A building damaged by a natural disaster and one or more of its owners intends to
57 repair and reoccupy the property; or

58 (E) A building occupied by the mortgagor, a relative of the mortgagor, or a tenant lawfully
59 in possession.

60 (e) For any foreclosure resulting under this section or otherwise pursuant to any trust deed
61 of record, if the successful bidder is the mortgagee, the trustee shall transfer by recorded deed,
62 the property to the mortgagee within 30 days of the foreclosure sale. Any municipality wherein
63 the property is located may seek an injunction to require the trustee, acting on behalf of the
64 mortgagee, to convey the property to the mortgagee by recorded deed of record. Any municipality
65 filing such an action and obtaining relief by injunction may recover attorney’s fees and costs
66 related to the action.

67 (f) Any property fitting the criteria described in subsection (d) of this section which is not
68 situated within the boundaries of any incorporated municipality may be served in the manner
69 described in subsections (b) and (c) of this section by the county commission of the county in
70 which the property is located, with all attendant duties thereto.

71 (g) Nothing in this section may be construed to limit or restrain any incorporated
72 municipality's powers to dispose of unencumbered properties that are unsafe, unsanitary,
73 dangerous, or detrimental to the public safety or welfare pursuant to §8-12-16 of this code.