

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 42

BY SENATORS WOELFEL, WELD, STOLLINGS, AND

JEFFRIES

[Introduced February 10, 2021; referred
to the Committee on Economic Development]

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 a “vacant
 5 and abandoned residential property”; designating the Zombie Property Remediation Act
 6 of 2021; and 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) If a property has been determined to be unsafe, unsanitary, dangerous, or detrimental
 4 to the public safety or welfare pursuant to an ordinance adopted pursuant to §8-12-16 of this code,
 5 or determined vacant and abandoned pursuant to §8-12-22(b) of this code, the municipality in
 6 which the property is located may commence a proceeding in a court of competent jurisdiction in
 7 the county in which the property is located to compel any or all mortgagees to:

8 (1) If the note is in default, the trustee or mortgagee shall commence a foreclosure
 9 procedure within three months and shall meet all deadlines to ensure the case is ready to be
 10 moved to judgment within a reasonable time period but not to exceed one year;

11 (2) If a foreclosure has already been commenced, file the necessary motions and within
 12 three months paperwork to move the case to judgment foreclosure within three months; or

13 (3) Issue a certificate of discharge of the trust deed lien or mortgage within three months
 14 and file a satisfaction of the lien or mortgage with the appropriate local office.

15 (c) (1) As used in this section, vacant and abandoned residential property means
16 residential real property with respect to which the plaintiff has proven, by preponderance of the
17 evidence, that it has conducted at least three consecutive inspections of the property, with each
18 inspection conducted 25 to 35 days apart and at different times of the day, and at each inspection:

19 (A) No occupant was present and there was no evidence of occupancy on the property to
20 indicate that any persons are residing there; and

21 (B) The residential real property was not being maintained in a manner that it is in violation
22 of any specific requirement or prohibition applicable to any dwelling, building, or structure provided
23 by the approved building or fire code of the jurisdiction;

24 (2) Residential real property shall also be considered vacant and abandoned if:

25 (A) A court or other appropriate state or local governmental entity has formally determined,
26 following due notice to the borrower at the property address and any other known addresses, that
27 the residential real property is vacant and abandoned; or

28 (B) Each borrower and owner has separately issued a sworn written statement, expressing
29 his or her intent to vacate and abandon the property and an inspection of the property shows no
30 evidence of occupancy to indicate that any persons are residing there.

31 (3) Evidence of lack of occupancy shall include, but not be limited to, the following
32 conditions:

33 (A) Overgrown or dead vegetation;

34 (B) Accumulation of newspapers, circulars, flyers or mail;

35 (C) Past due utility notices, disconnected utilities, or utilities not in use;

36 (D) Accumulation of trash, refuse, or other debris;

37 (E) Absence of window coverings such as curtains, blinds, or shutters;

38 (F) One or more boarded, missing, or broken windows;

39 (G) The property is open to casual entry or trespass; or

40 (H) The property has a building or structure that is or appears structurally unsound or has

41 any other condition that presents a potential hazard or danger to the safety of persons.

42 (4) Residential real property may not be considered vacant and abandoned if there is on
43 the property:

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

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

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

49 (D) A building damaged by a natural disaster and one or more owner intends to repair and
50 reoccupy the property; or

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

53 (d) For any foreclosure resulting under this section or otherwise pursuant to any trust deed
54 of record, if the successful bidder is the mortgagee, the trustee shall transfer by recorded deed,
55 the property to the mortgagee within 30 days of the foreclosure sale. Any municipality wherein
56 the property is located may, by injunction proceeding, require the trustee, acting on behalf of the
57 mortgagee, to convey the property to the mortgagee by recorded deed of record. Any municipality
58 filing such an action and obtaining relief by injunction may recover attorney fees and costs related
59 to the action.

NOTE: The purpose of this bill is to authorize a municipality to commence a proceeding in a court of competent jurisdiction, in the county in which the abandoned property is located, to compel a foreclosure to assist municipalities to be able to better address the “zombie properties” that are plaguing communities across the state.

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