

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

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) 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 subsection (c) of this section, the municipality
6 in which the property is located may commence a proceeding in the circuit court located in the
7 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 other
12 filings needed 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 office of the clerk of the county commission
15 in the county where the property is located.

16 (c) (1) As used in this section, “vacant and abandoned property” means real property with
17 respect to which the plaintiff has proven, by a preponderance of the evidence, that it has
18 conducted at least three consecutive inspections of the property, with each inspection conducted
19 25 to 35 days apart and at different times of the day, and at each inspection:

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

22 (B) The real property was in violation of municipal ordinances regarding vacant properties,
23 dilapidated or unsafe structures, vegetation growth, or local applicable building or fire codes.

24 (2) 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 mortgagor made in accordance with Rule 4 of the West Virginia Rules
27 of Civil Procedure, sent to the address of the property in question and any other known addresses,
28 stating that the real property is vacant and abandoned; or

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

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

34 (A) Overgrown or dead vegetation;

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

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

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

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

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

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

41 (H) The property has a building or structure that is or appears structurally unsound or has
42 any other condition that presents a potential hazard or danger to the safety of persons.

43 (4) Residential real property may not be considered vacant and abandoned if a structure
44 located on the property meets any of the following:

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

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

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

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

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

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

61 (e) Any property fitting the criteria described in subsections (b) and (c) of this section which
62 is not situated within the boundaries of any incorporated municipality may be served in the manner
63 described in subsections (b) through (d) of this section by the county commission of the county in
64 which the property is located.

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