WEST VIRGINIA CODE CHAPTER 38 ARTICLE 1

WV Legislature

§38-1-1. Vendor's lien; its enforcement.

If any person convey real estate, or any interest, legal or equitable, therein, and the purchase money or any part thereof remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money unless such lien is expressly reserved on the face of the conveyance. A vendor's lien may be enforced by a suit in equity.

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§38-1-1a. Deeds of trust conveying real and/or personal property; limitations on application of article.

A deed of trust may convey both real property or some interest therein and personal property or only real property or some interest therein or only personal property in order to secure a debt. This article shall apply to deeds of trust that convey real property or some interest therein or both real property or some interest therein and personal property. Deeds of trust conveying only personal property are governed by article nine of chapter forty-six of this code. If the deed of trust conveys both real and personal property, a financing statement as to the personal property shall be required as specified in article nine, chapter forty-six of this code, and the trustee may proceed as to the sale or other disposition of the personal property involved under said article nine of chapter forty-six and of the real property involved under this article or he may proceed as to the sale or other disposition of both the real and personal property involved under this article. In all other respects this article is applicable to the conveyance of real property by deed of trust, and article nine of chapter forty-six is applicable to the conveyance of personal property by deed of trust.

For purposes of this section, personal property is any property right or interest in which a security interest under article nine of chapter forty-six of this code may be obtained or created.

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§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.

A deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect: "This deed made the ..... day of ....., in the year ....., between ..... (the grantor) of the one part, and ..... (the trustee) of the other part, witnesseth: That the said ..... (the grantor) doth (or do) grant unto the said ..... (the trustee) the following property (here describe it). In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon). Witness the following signature."

In lieu of the recording of a deed of trust, there may be recorded with like effect a memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed of trust entitled to be recorded shall contain at least the following information with respect to the deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to the indebtedness secured by the deed of trust including the amount of the indebtedness and the date the indebtedness was incurred or if the indebtedness is evidenced by a note or contract, the date the instrument was executed; (3) the date of execution of the deed of trust if different than the date the evidence of indebtedness was executed; (4) the date of maturity of the indebtedness; (5) the description of the real estate against which a lien is claimed to secure the indebtedness; (6) a title in compliance with subsection (b), section fourteen, article one, chapter thirty-eight of this code if the indebtedness is a line of credit; (7) a statement of whether advances are obligatory if the indebtedness is a line of credit; (8) provisions of the deed of trust regarding substitution of a trustee; (9) a summary of the applicable notice and publication requirements if there is a default; (10) whether the loan was originated or serviced pursuant to a program of the following agencies or organizations, and if so, any form number actually used: (a) Federal Housing Administration; (b) Veterans Administration; (c) Federal National Mortgage Association; (d) Federal Home Loan Administration; (e) United States Department of Agriculture; or (f) West Virginia Housing Development Fund; and (11) the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained. The memorandum shall constitute notice of only the information contained therein but, as against creditors and purchasers, it is as valid as if the complete deed of trust were recorded on the date the memorandum is admitted to record. Prior to the commencement of any foreclosure or other execution of the deed of trust, the original deed of trust shall be recorded.

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§38-1-3. Sales under trust deeds.

The trustee in any trust deed given as security shall, whenever required by any creditor secured or any surety indemnified by the deed, or the assignee or personal representative of any such creditor or surety, after debt due to such creditor or for which such surety may be liable shall have become payable and default shall have been made in the payment thereof, or any part thereof, by the grantor or other person owing such debt, and if all other conditions precedent to sale by the trustee, as expressed in the trust deed, shall have happened, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, having first given notice of such sale as prescribed in the following section.

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§38-1-4. Notice of sale.

Unless property is to be sold under a deed of trust executed and delivered prior to July 1, 1980, which contains a provision waiving the requirement of published notice, the trustee shall publish a notice of a trustee's sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the property is located: Provided, That any notice of sale published since July 1, 1980, and prior to the effective date of this section, shall be deemed to have met the requirements of the section if such were published as Class II legal advertisements, in compliance with the provisions of article three, chapter fifty-nine of this code, in that by the enactment of the acts of the Legislature, regular session, 1980, the Legislature intended that all notice of sales pursuant to trust deeds were to have been published as Class II legal advertisements.

Except as expressly provided in this section, no trust deed shall waive the requirements of publication of notice required by this section.

In all cases, a copy of such notice shall be served on the grantor in such trust deed, or his agent or personal representative, by certified mail, return receipt requested, directed to the address shown by the grantors on the deed of trust or such other address given to the beneficiary of said trust deed or said beneficiary's agent or assignee in writing by the said grantor subsequent to the execution and delivery of the trust deed and notice shall be deemed complete when such notice is mailed to the aforesaid address, notwithstanding the fact that such mail may be returned as refused or undeliverable and shall be served by certified mail, at least twenty days prior to the sale, upon any subordinate lienholder who has previously notified the primary lienholder by certified mail of the existence of a subordinate lien. Every trust deed shall state the address to which such notice shall be mailed.

Every notice of sale by a trustee under a trust deed shall show the following particulars: (a) The time and place of sale; (b) the names of the parties to the deed under which it will be made; (c) the date of the deed; (d) the office and book in which it is recorded; (e) the quantity and description of the land or other property or both conveyed thereby; and (f) the terms of sale.

Notice to a subordinate lienholder shall be complete when such notice is mailed in accordance with the provisions of this section, directed to the address of the subordinate lienholder as provided by such subordinate lienholder in the notice of existence of a subordinate lien.

The provisions of this section relating to the methods of serving notice are not exclusive. In addition to, but not in lieu of, any service of notice required by the provisions of this section, service of such notice may be also made by any other method authorized for the service of original process in the circuit courts of this state by statute or by the rules of civil procedure for trial courts of record.

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An individual who purchases property at a trustee's sale is under no duty to ascertain whether notice was given to subordinate lienholders in accordance with the provisions of this section, and such right, title and interest as the purchaser may acquire shall not be affected by defects in such notice or the service thereof, if the purchaser is otherwise a bona fide purchaser for value.

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§38-1-4a. Statute of limitations for sales by trustees.

Provided the grantor on the deed of trust or the agent or personal representative of the grantor is provided notice as required by section four of this article, no action or proceeding to set aside a trustee's sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a trust deed shall be filed or commenced more than one year from the date of the sale.

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§38-1-5. Terms of sale.

Such sale shall be made upon such terms as are mentioned in such deed; and if no terms are therein mentioned, then upon the following terms, to-wit: If the property to be sold is real estate, one third of the purchase money cash in hand, one third thereof, with interest, in one year, and the residue thereof, with interest, in two years from the day of sale, taking from the purchaser his notes, with good security, for the deferred payments, and either retaining the legal title as further security or conveying the legal title and reserving in the deed of conveyance a lien for the deferred purchase money, or otherwise securing the same; if the property to be sold be personal estate, then for cash.

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§38-1-6. Form of trustee's deed.

Every deed for real estate sold under a trust deed may be made in the following form, or to the same effect: This deed, made the ..... day of ....., between A ..... B ....., trustee, of the first part, and C ..... D ..... of the second part: Whereas the said trustee, by virtue of the authority vested in him by the trust deed hereinafter mentioned, or by an order of the circuit court of the county of ....., made on the ..... day of ....., (as the case may be) did sell the real estate hereinafter described and conveyed, at which sale the said C ..... D ..... became the purchaser for the sum of ..... dollars. Now therefore this deed witnesseth: That the said A ..... B ....., trustee as aforesaid, doth grant unto the said C ..... D ..... a certain parcel of real estate situate in the county (or city, town or village, as the case may be) of ....., said real estate being the real estate conveyed by E ..... F ..... to the said A ..... B ....., trustee (or to G ..... H ....., trustee, as the case may be) by deed bearing date the ..... day of ....., 19 ...., and recorded (if it be recorded) in trust deed book ..... on page ..... in the office of the clerk of the county court of the county of ....., and bounded and described therein as follows: (here insert the description and quantity as set forth in the trust deed, and any other or further description deemed necessary. A reservation of a vendor's lien, a covenant of special warranty, or any other provision which is in accord with the terms of sale and the trustee's duty may also be inserted.)

Witness the following signature.

A ..... B ....., Trustee.

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§38-1-7. Application of proceeds; action to recover a deficiency.

(a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five percent on the first $300, and two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata, or in the order of priority, if any, prescribed by the trust deed, to the payment of the debts secured and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

(b) A trust deed grantor, the obligor on the debt secured by the deed of trust, including any maker, comaker, guarantor, surety or other accommodation party, or other defendant in a civil action seeking a deficiency judgment on the debt secured by the deed of trust, may not assert as a defense that the fair market value of secured real property was not obtained at a trust deed foreclosure sale conducted in accordance with this article.

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§38-1-8. Return of account of sale; forfeiture of commissions on failure to account.

When a sale of property is made under any trust deed otherwise than under a decree, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county court of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. Any trustee failing to comply with this section shall forfeit his commissions on such sale, which commissions may be recovered in an action by the grantors in such deed, or of any beneficiary when the proceeds of sale were insufficient to pay the debt secured.

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§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.

(a) This section applies to deeds of trust if the property conveyed therein includes real property that is occupied, or is intended to be occupied as a residence by the grantor at time the deed of trust is executed and delivered.

(b) Beginning July 1, 2009, when a report of the sale of the property sold pursuant to a deed of trust is placed of record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include the following information on a disclosure form submitted with and made a part of the report of sale:

(1) Name or names of the grantor of the deed of trust;

(2) Street address, city, state and zip code of real property subject to the trust;

(3) Original trustee name;

(4) Substitute trustee name, if any, and date of appointment;

(5) The address, telephone number and electronic contact information for the trustee making the sale;

(6) Date, time and place advertised for sale;

(7) Name of original secured lender;

(8) Current holder of deed of trust, and the current holder's address;

(9) Original principal amount of the secured debt;

(10) Original interest rate;

(11) Whether the loan was adjustable and if so current rate;

(12) Total secured indebtedness at time of sale;

(13) The number of months the loan is delinquent at time of notice of sale; and

(14) The date, time and place of sale;

(15) The name of the purchaser;

(16) The appraised value at the time of loan, if available;

(17) The net amount applied to the secured loan;

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(18) The date the report of sale is recorded; and

(19) Any other information the West Virginia Housing Development Fund may require.

(c) The West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code shall publish a form setting out the information required by subsection (b) and instructions as to how this information is to be filed with the report of sale.

(d) Notwithstanding any other provision of this code, nothing in this section shall be deemed to create a responsibility by the West Virginia Housing Development Fund to provide any report other than a compilation into an electronic data base of the data that is required to be submitted pursuant to subsection (b) of this section and the compiled raw data submitted from each county clerk. The West Virginia Housing Development Fund is not required to verify and is not responsible for the veracity of the accuracy of the data submitted.

(e) Failure to comply with this the provisions of this section shall not affect the validity of the sale or the title to the property sold by the trustee.

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§38-1-9. Recordation of account of trustee.

When an account required by the next preceding section is returned, the clerk of the county court shall record the same in a well-bound book to be kept for that purpose, to be called "Reports of Sales Under Trust Deeds," and properly index the same, for which service such clerk shall receive the fee provided by law.

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§38-1-10. Who may require trustee to give bond; new trustee on failure to give; notice.

The grantor or his assignee, or any cestui que trust, may at any time after the execution of the trust deed, by notice in writing, require any trustee to give the bond mentioned in the following section of this article, and, upon his failure to do so for twenty days after such notice, the power of such trustee shall cease and another trustee may be appointed by the circuit court of any county wherein such deed of trust is recorded, or by the judge thereof in vacation, to execute such trust, upon the application of any cestui que trust, or the grantor or any assignee of the grantor, if, upon the hearing of such application, the failure of the trustee to give such bond be made to appear to the satisfaction of such court or judge, by affidavits or otherwise. At least ten days' notice in writing of such application shall be given to the trustee, grantor, or assignee of the grantor, and to all cestuis que trust in such deed if they be residents of the county, stating the court or judge before whom such application is to be made. If such trustee and grantor or assignee of the grantor, or either of them, are not residents of such county, the notice as to them, or the one not a resident, may be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county.

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§38-1-11. Amount and approval of bond of trustee; recordation; effect of failure to give.

If the grantor in the trust deed, or any person to whom such grantor shall have granted or assigned the property covered by such deed, or any cestui que trust of such trust deed, shall as provided in the preceding section, require the trustee to give bond, such trustee shall, before making any sale, or receiving any of the proceeds of such sale, give bond in a penalty at least equal to the full value of the property to be sold, with good security, before the clerk of the county court of the county where such property is, which bond and security shall be approved by such clerk, conditioned that he will faithfully perform his duty as such trustee, and account for and pay over, as required by law, all money that may come into his hands in the execution of such trust. Every such bond shall be filed by such clerk in his office, and recorded by him in the book in which the bonds of administrators are recorded. Every notice of sale by a trustee under a trust deed shall have appended to it the certificate of such clerk, that bond and security has been given by the trustee as required by law, if such bond be required as aforesaid, but the failure to give such bond shall not affect the title of any purchaser of such property at the trustee's sale, for value, and without notice of the fact that such bond had been required.

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§38-1-12. Bond of new trustee appointed by court; recordation.

Of a trustee appointed by the court under the provisions of section ten of this article, bond shall be required in the penalty of at least the full value of the property which may come into his hands, which bond may be given before and approved by such court or judge, or be given before and approved by the clerk of the county court of such county, upon the order of such circuit court or judge, and shall be filed by such clerk in his office, and recorded as provided in section eleven of this article, and shall be with like condition as the bond given by a trustee named in the trust deed.

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§38-1-13. Substitution of trustees under a trust deed securing a debt.

(a) When a trust deed to secure a debt or obligation does not by its terms prescribe a method for substitution, the party secured by the trust deed, or any surety indemnified by the deed, or the assignee or personal representative of any secured party or surety may, if there is a death, removal, declination, resignation, refusal or inability of the original trustee or trustees named in the instrument, substitute a trustee or trustees in his or her, or its place by a writing duly signed and acknowledged and recorded in the office of the clerk of the county commission where the real estate covered by the trust deed is situate.

(b) When a substitution is made under this section of a trustee or trustees of a trust deed securing a debt or obligation, the substitution is effected when the party secured, or a surety indemnified by the deed, or the assignee or personal representative of any such secured party or surety has deposited true copies of the notice of the substitution in the United States mail, first class postage prepaid, addressed to the last known addresses of the grantor or grantors or any other person owing the debt or obligation, and has presented the original of the notice to the clerk of the county commission in whose office the trust deed is recorded, causing the notice to be recorded and indexed in a general lien book or other appropriate book in which trust deeds or assignments of trust deeds are recorded. There shall be appended to the notice presented for recording a certificate by the party making the substitution, certifying that copies of the notice were mailed as required by this subsection and showing the date of the mailing.

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§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.

(a) Definitions: For purposes of this section, the following definitions shall apply:

(1) "Credit line deed of trust" is a deed of trust securing any obligation arising out of a loan agreement, a promissory note, a sales contract, a performance contract, or any other agreement or writing, under the terms of which the indebtedness or other obligation created may increase and/or decrease from time to time.

(2) "Future advance" means any form of increase in the indebtedness or obligation owed to the secured party under the terms of the credit line deed of trust, including, but not limited to, an increase arising from, but not limited to, an application for the same by the obligor; the advancement of loan proceeds pursuant to the terms of the credit line deed of trust or other agreement; the payment of any taxes, insurance premiums, interest, or other obligations pursuant to the terms of the credit line deed of trust or other agreement; or the occurrence of any condition, event or circumstance set forth in the credit line deed of trust.

(3) "Obligatory advance" means any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other such event. Obligatory advances include, but are not limited to, advances which the secured party has agreed to make as a term or condition of the credit line deed of trust or other related agreement; obligations arising out of the occurrence of a condition, event or circumstance contemplated by the agreement; obligations arising on a specified date or time; or advances made upon application therefor by the grantor under the credit line deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

(b) A credit line deed of trust shall comply with all the provisions of this article and shall either (i) have clearly entitled at the beginning thereof either in capital letters or in language underscored, the words, "A CREDIT LINE DEED OF TRUST", or (ii) state conspicuously either immediately above or beneath the caption at the top of the first page of the credit line deed of trust the words, "This instrument secures an obligation that may increase and decrease from time to time."

A credit line deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness or other obligations secured thereby at the time of recording and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the credit line deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the credit line deed of trust or whether the secured party under the credit line deed of trust readvances principal sums repaid. The credit line deed of trust shall also be security for interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the credit line deed of trust or in the related loan agreement, note, contract, or other agreement or evidences of

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indebtedness or obligations secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the obligations outstanding at any time may increase the amount secured by the credit line deed of trust above the stated maximum amount.

(c) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The credit line deed of trust shall contain specific provisions permitting or requiring future advances and stating whether the future advances are intended to be obligatory or nonobligatory;

(2) At no time may the unpaid principal balance of the obligation or indebtedness secured by the credit line deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (b) of this section; and

(3) The original credit line deed of trust must be executed and recorded after June 6, 1984.

(d) Except as otherwise provided herein, a credit line deed of trust, to the extent of the principal amount of the loan indebtedness or obligation secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced on the date and at the time the credit line deed of trust is recorded.

(e) Any mechanic's lien, abstract of judgment, notice of lis pendens, other deed of trust or other lien of encumbrance, which affects the property encumbered by the credit line deed of trust and which is duly recorded and perfected as required by law after the recording of the credit line deed of trust, shall have priority over any advances secured by the credit line deed of trust that are not obligatory and that are made by the secured party under the credit line deed of trust after receipt by the secured party, at the address provided for the purpose of notification in the credit line deed of trust, of written notice of such mechanic's lien, judgment lien, notice of lis pendens, other deed of trust or other lien or encumbrance. However, any obligatory advances made by the secured party that are secured by the credit line deed of trust or any other related agreement, and any taxes, insurance premiums and obligations which the secured party has agreed to pay, or which under the credit line deed of trust or otherwise the secured party has the right to pay in connection with such credit line deed of trust, shall continue to have the priority created under subsection (b) of this section over a mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance.

(f) Notwithstanding any other provision of this code, the secured party under a credit line deed of trust subject to this section shall be obligated to release the credit line deed of trust at such time as all indebtedness or other obligations secured thereby have been paid in full or otherwise satisfied and the secured party has been duly released from any further

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obligation to make future advances under any note or agreement secured by the credit line deed of trust. This release shall become effective upon the recording of the release and the secured party shall be released and discharged from any further obligation.

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§38-1-15. Validity of deed of trust upon renewal of loan.

Upon the renewal of a loan agreement in the instance when no additional principal is advanced, the original deed of trust is sufficient for the purpose of securing the loan, regardless of any change in the rate of interest.

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§38-1-16. Sale of real property pursuant to a deed of trust; preexisting tenancy.

(a) Notwithstanding the notice requirements of section five, article six, chapter thirty-seven of this code, following the conveyance of residential rental property to a purchaser by a trustee pursuant to a deed of trust, the tenancy of a tenant occupying the property under an unexpired written lease that is either not of record or was placed of record after the deed of trust under which the trustee sold the residential rental property was placed of record, may be terminated by giving ninety days written notice or by giving written notice not less than thirty days prior to the expiration of the lease, whichever is shorter. However, the tenancy of a tenant occupying the property under a month to month or other tenancy may be terminated by giving thirty days written notice. The terms and conditions of the lease of the property remain fully enforceable during the notice period. If the tenant fails to timely comply with the terms of the lease, the new owner, or the agent of the new owner, may proceed under article three-a of chapter fifty-five of this code, notwithstanding the provisions of this section. The tenancy of a factory built home may only be terminated as provided in section six, article fifteen, chapter thirty-seven of this code.

(b) The notice required by subsection (a) of this section shall, at a minimum, identify the residential real property occupied by the tenant, state the date of the trustee's sale at which the residential real property was purchased, state the book and page number at which the trustee's deed to the purchaser appears of record, state the date on which the tenancy will expire, and identify the purchaser, including information sufficient to contact the purchaser.

(c) Service of written notice upon the tenant, or anyone else holding the leased premises, or any part thereof, under the tenant is sufficient if made by regular mail addressed to the tenant or person holding under the tenant at the address of the property and by either personal delivery to the tenant or person holding under the tenant, by posting a copy of the notice on the front door of the rental real property or by certified mail addressed to the tenant or person holding under the tenant at the address of the property. When notice is given by the tenant, it may be served upon any person owning the premises, in whole or in part, or the agent of an owner.

(d) The provisions of this section take effect on the first day of January, two thousand thirteen.

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§38-1-17. Personal property after foreclosure; notice and access to recover personal property; abandonment.

Following a foreclosure on residential real property pursuant to this article, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides notice, pursuant to this section, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at all the address(es) to which notice of foreclosure sale was sent as set forth in the trustee's report of sale, as well as the last known address, if different. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person's or entity's mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of the real property may dispose of the remaining personal property in the purchaser's discretion. The notice required by this section may not be waived before the property is vacated.

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