WEST VIRGINIA CODE CHAPTER 38 ARTICLE 1A

WV Legislature

§38-1A-1. "Security trust" defined.

For the purposes of this article, the term "security trust" shall include a deed of trust, mortgage, bond or other instrument, entered into after the effective date of this article under which the title to real and personal property, or either of them, wholly situate in and including no property situate outside of the State of West Virginia, is conveyed, transferred, encumbered or pledged to secure the payment of money or the performance of an obligation: Provided, however, That the provisions of this article shall not apply to supplements to existing security trust instruments now of record executed pursuant to the provisions of said existing security trust instruments.

WV Legislature

§38-1A-2. Nonresident of state not to be named trustee; corporations eligible to be trustees.

No person not a resident of this state may be named or act, in person or by agent or attorney, as the trustee of a security trust, either individually or as one of several trustees, the other or others of which are residents of this state. No corporation may be named or act as the trustee or as one of the trustees of a security trust unless it is chartered under the laws of this state or of the United States of America, and unless its principal office is within this state.

WV Legislature

§38-1A-3. Validity of sales and titles conveyed by nonresident trustees.

The nonresidency of a trustee shall not invalidate or cloud the title passing under a security trust. Any conveyance made by a nonresident trustee pursuant to foreclosure of a security trust shall be as valid as though such trustee were a resident of this state.

WV Legislature

§38-1A-4. Enjoining sales or conveyances by nonresident trustees.

The circuit court of the county in which the property is situate, or the judge thereof in vacation, shall have jurisdiction in equity, on the application of any party interested, to enjoin a sale, a conveyance pursuant to a sale, or proceedings preliminary to a sale under any security trust by a trustee not a resident of the State of West Virginia.

WV Legislature

§38-1A-5. Recovery of commissions, costs and expenses following sale by nonresident trustee.

In the event a nonresident trustee shall sell under a security trust, the grantor in the security trust may, within one year from the day of such sale, in the circuit court of the county where the sale was held or where the property was situate at the time of sale, recover from such trustee all commissions, costs and expenses of sale deducted by such trustee from the proceeds of such sale or received by the trustee on account of such sale, with interest at six percent from the date of such sale.

WV Legislature

§38-1A-6. Security trust not to be recorded unless trustee's address stated; sufficiency thereof.

No county clerk shall hereafter admit any security trust for recordation or filing which does not state the residence address of the trustee or trustees named therein: Provided, however, That the county in this state in which the said trustee resides shall be sufficient statement of the residence address thereof.

WV Legislature

§38-1A-7. Secretary of state attorney-in-fact for service on nonresident trustees.

The naming in a security trust of a person not a resident of this state as a trustee, or as one of several trustees thereof, shall be deemed equivalent to an appointment by such nonresident of the Secretary of State as attorney-in-fact of such nonresident trustee upon whom may be served all process and notices in any suit, action, motion or proceeding in any court of record in this state, and such service shall have the same effect as process or notice duly served in person upon such person in this state.

WV Legislature

§38-1A-8. How service of process or notice made.

Service of process or notice shall be made by mailing or delivering to the office of the Secretary of State three copies of the process or notice, with a notation on the process or notice of the residence address of the trustee upon whom service is being had, as stated in the security trust; if the address of the trustee is not stated in the security trust, the notation shall state the address of the beneficiary of the trust as given in the security trust; and service of the process or notice is complete upon the receipt in the office of the Secretary of State of the notice or process bearing the notation and accompanied by the fee required by section two, article one, chapter fifty-nine of this code, which shall be taxed as costs in the suit, action or proceeding. The Secretary of State shall keep one copy of all process and notices, with a record of the day and hour of service of the process or notice.

WV Legislature

§38-1A-9. Action by Secretary of State following service.

Forthwith upon such service, said Secretary of State shall send to such trustee the second copy of such process or notice, by registered or certified mail, return receipt requested, to the address stated in such notation. The third copy of such process or notice, bearing the acknowledgment of the Secretary of State of the fact of service on him with his notation of the mailing of the second copy as above provided, shall be transmitted by the Secretary of State to the clerk of the court issuing the process or to the person giving the notice, as the case may be.

WV Legislature

§38-1A-10. Other manner of serving process or notice.

The foregoing provisions for service of process and notices are cumulative. Process and notices may also be served upon any such nonresident trustee in any manner provided by law.

WV Legislature

§38-1A-11. Appointment of resident trustee by court; powers and duties of substituted trustee.

The circuit court, or the judge thereof in vacation, of the county in which the property is situate, may, on motion of any party interested, appoint a trustee or trustees in the place of any nonresident trustee named in any security trust. Any trustee or trustees so appointed, if he or they accept, shall be vested with all the estates, rights and powers, and charged with all the duties and responsibilities, of the trustee or trustees named in the security trust.

WV Legislature

§38-1A-12. Notice of motion for appointment of resident trustee; guardians ad litem.

Ten days' prior notice of the motion under the preceding section shall be given to the grantor of the security trust, his heirs, devisees or personal representatives, to the trustee or trustees named in the security trust, and to the person appearing by such security trust or by a recorded assignment thereof to be the party secured or his personal representatives. If any of the parties upon whom such notice is required to be served be under disability, the notice shall be served on his guardian or committee or, if he have none, the court shall appoint a discreet and competent attorney at law as guardian ad litem, upon whom notice may be served.

WV Legislature

§38-1A-13. Provisions of article severable and remedial.

The provisions of this article are severable, and the unconstitutionality of one portion shall not affect other portions. The provisions of this article are remedial, and shall be liberally construed to the relief of the owners of property in this state.

WV Legislature