

HB 2793

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2793

(By Delegate Staton, Fleischauer and Trump)



Passed April 12, 1997

In Effect Ninety Days From Passage

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OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2793

(BY DELEGATES STATON, FLEISCHAUER AND TRUMP)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of actions and suits for liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; changing the expiration of any such lien obligation where the final maturity date is ascertainable; providing an expiration for any lien obligation where the final maturity date is not ascertainable; providing certain exceptions thereto; changing the expiration of any affidavit or extension agreement of such a lien obligation where the final maturity date is ascertainable; providing an expiration for any affidavit or extension agreement of such a lien obligation where the final maturity date is not ascertainable; providing requirements for future affidavits or extension agreements filed and method of recordation by the clerk of the county commission; providing that where a lien instrument secures an obligation in installments the time runs from the date of the final installment; providing a grace period for enforcement or recordation of liens reserved or created and in effect on the effective date; providing that the time shall be extended only as provided in this section; and providing that this section applies to all such liens, existing and hereafter re-

served or created.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

1 (a) Any lien reserved by any conveyance of real
2 estate or created by any deed of trust or mortgage on real
3 estate expires after the following periods of time, unless
4 suit to enforce the lien is instituted prior to expiration of
5 the time period or unless the lien is extended as specified
6 in subsections (b) or (e) of this section:

7 (1) If the final maturity date of the lien obligation is
8 ascertainable from the record instrument, the lien expires
9 five years after that date.

10 (2) If the final maturity date of the lien obligation is
11 not ascertainable from the record instrument, the lien
12 expires thirty-five years after the date of the lien instru-
13 ment. However, if the lienholder rerecords the lien instru-
14 ment prior to thirty-five years from the date of the lien
15 and includes a copy of the obligation secured by the lien
16 so that the final maturity is ascertainable, the lien expires
17 five years after the date of maturity.

18 (b) If an affidavit or extension agreement executed
19 by the secured party and the grantor or mortgagor to the
20 lien obligation is recorded prior to expiration of the origi-
21 nal period of limitation, as specified in subsection (a) of
22 this section, the time is extended as follows:

23 (1) If the final maturity date of the lien obligation,
24 as extended, secured by the lien is ascertainable from the
25 record of the affidavit or extension agreement, the lien
26 expires five years after the date of final maturity of the
27 obligation, as extended.

28 (2) If the final maturity date of the lien obligation,

29 as extended, secured by the lien is not ascertainable from
30 the record of the affidavit or extension agreement, the lien
31 expires thirty-five years after the date of the lien instru-
32 ment. However, if the lienholder rerecords the lien instru-
33 ment prior to thirty-five years from the date of the lien
34 and includes a copy of the obligation secured by the lien
35 so that the final maturity is ascertainable, the lien expires
36 five years after the date of maturity.

37 (c) Any affidavit or extension agreement filed pur-
38 suant to subsection (b) of this section after the effective
39 date of this section, shall include, but is not limited to, the
40 following:

41 (1) The unpaid balance of the debt and interest
42 secured by the lien instrument;

43 (2) The final maturity date of the obligation of the
44 lien, as extended; and

45 (3) The book and page of recordation of the origi-
46 nal lien instrument.

47 The clerk of the county commission, shall record and
48 index any affidavit or extension agreement in the same
49 manner as the original lien instrument and note that filing
50 on the margin of the page where the original lien instru-
51 ment is recorded.

52 (d) If the record instrument of the lien obligation
53 shows that it secures an obligation payable in installments
54 and the maturity date of the final installment of the obli-
55 gation is ascertainable from the lien instrument, the time
56 runs from the maturity date of the final installment.

57 (e) Nothing in this section extinguishes any lien
58 obligation which was reserved or created and in effect
59 prior to the effective date of this section: *Provided, That,*
60 if any such lien should be extinguished by this section,
61 then any action to enforce such liens shall be brought or
62 recordation of any extended lien obligation pursuant to
63 subsection (b) of this section shall be made before the first
64 day of July, one thousand nine hundred ninety-eight.

65 (f) The time shall be extended only as provided in

66 this section and shall not be extended by any other meth-
67 od or by operation of law.

68 (g) Subject to the provisions of subsection (e) of this
69 section, the provisions of this section apply with like effect
70 to every such lien now existing as well as to every such
71 lien hereafter reserved or created.

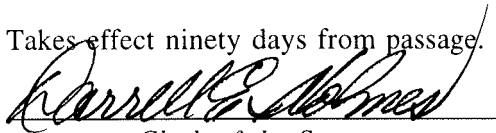
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

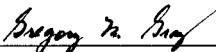

Chairman Senate Committee

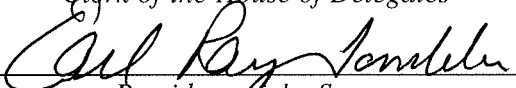

Chairman House Committee

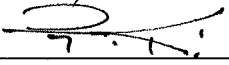
Originating in the House.

Takes effect ninety days from passage.

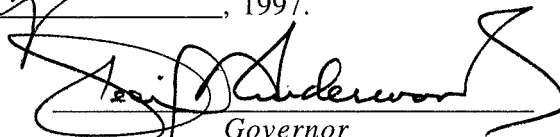

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 18th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date

4/28/97

Time

8:19 pm