WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

HOUSE BILL No. 4030

(By Delegates Trump, L. White, Faircloth, Rowe, Staton and Johnson)

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Passed February 11, 1998

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4030

(BY DELEGATES TRUMP, L. WHITE, FAIRCLOTH, ROWE, STATON AND JOHNSON)

[Passed February 11, 1998; in effect 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 enforcing liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; permitting extensions of certain liens by the lienholder; providing that obligations payable on demand express no maturity date; and addressing the retroactive and prospective application of changes made.

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.

(a) Any lien reserved by any conveyance of real estate or created by any deed of trust or mortgage on real estate
expires after the following periods of time, unless suit to 

enforce the lien is instituted prior to expiration of the time 

period or unless the lien is extended as specified in 

subsection (b) or (e) of this section:

(1) If the final maturity date of the obligation is 

ascertainable from the lien instrument, the lien expires five 

years after that date.

(2) If the final maturity date of the obligation is not 

ascertainable from the lien instrument, the lien expires 

thirty-five years after the date of the lien instrument. 

However, if the lienholder rerecords the lien instrument 

prior to thirty-five years from the date of the lien 

instrument and includes a copy of the obligation secured 

by the lien so that the final maturity is ascertainable, the 

lien expires five years after the date of maturity.

(b) If an affidavit or extension notice executed by the 

secured party or beneficiary of the lien instrument or an 

amendment to the lien instrument executed by the grantor 

or mortgagor and the secured party or beneficiary is 

recorded prior to expiration of the original period of 

limitation, as specified in subsection (a) of this section, the 

period of limitation is extended as follows:

(1) If the final maturity date of the obligation, as 

extended, secured by the lien instrument is ascertainable 

from the affidavit, extension notice or amendment, the lien 

expires five years after the date of final maturity of the 

obligation, as extended.

(2) If the final maturity date of the obligation, as 

extended, secured by the lien instrument is not 

ascertainable from the affidavit, extension notice or 

amendment, the lien expires thirty-five years after the date 

of the lien instrument. However, if the lienholder 

rerecords the lien instrument prior to thirty-five years 

from the date of the lien instrument and includes a copy 

of the obligation secured by the lien so that the final 

maturity is ascertainable, the lien expires five years after 

the date of maturity.
(c) Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

1. The unpaid balance of the debt and interest secured by the lien instrument;

2. The final maturity date of the obligation as extended; and

3. The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit, extension notice or amendment in the same manner as the original lien instrument and shall note that filing on the margin of the page where the original lien instrument is recorded.

(d) If the lien instrument shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.

(e) For purposes of this section only, a lien instrument securing an obligation which is payable on demand expresses no maturity date.

(f) Nothing in this section extinguishes any lien which was reserved or created and in effect prior to the first day of July, one thousand nine hundred ninety-eight. With respect to any lien reserved or created and in effect prior to the first day of July, one thousand nine hundred ninety-eight, the lien is valid for twenty years after its stated maturity, or if no maturity date is stated in the lien instrument, for thirty-five years after the date of the lien instrument.

(g) The periods of limitation created by this section may be extended only as provided in this section and may not be extended by any other method or by operation of law.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within acknowledged this the 4th day of March, 1998.

Governor
PRESENTED TO THE
GOVERNOR.

Date: 27/1998
Time: 2:40 PM