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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

HOUSE BILL No. 4030

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



Passed February 11, 1998

In Effect from Passage

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OFFICE OF WEST VIRGINIA
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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.

- 1 (a) Any lien reserved by any conveyance of real estate
- 2 or created by any deed of trust or mortgage on real estate

3 expires after the following periods of time, unless suit to
4 enforce the lien is instituted prior to expiration of the time
5 period or unless the lien is extended as specified in
6 subsection (b) or (e) of this section:

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

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

18 (b) If an affidavit or extension notice executed by the
19 secured party or beneficiary of the lien instrument or an
20 amendment to the lien instrument executed by the grantor
21 or mortgagor and the secured party or beneficiary is
22 recorded prior to expiration of the original period of
23 limitation, as specified in subsection (a) of this section, the
24 period of limitation is extended as follows:

25 (1) If the final maturity date of the obligation, as
26 extended, secured by the lien instrument is ascertainable
27 from the affidavit, extension notice or amendment, the lien
28 expires five years after the date of final maturity of the
29 obligation, as extended.

30 (2) If the final maturity date of the obligation, as
31 extended, secured by the lien instrument is not
32 ascertainable from the affidavit, extension notice or
33 amendment, the lien expires thirty-five years after the date
34 of the lien instrument. However, if the lienholder
35 rerecords the lien instrument prior to thirty-five years
36 from the date of the lien instrument and includes a copy
37 of the obligation secured by the lien so that the final
38 maturity is ascertainable, the lien expires five years after
39 the date of maturity.

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

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

46 (2) The final maturity date of the obligation as
47 extended; and

48 (3) The book and page of recordation of the original
49 lien instrument.

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

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

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

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

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

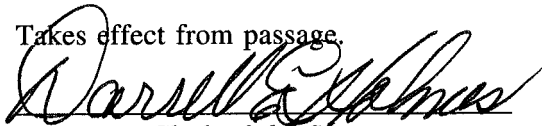
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

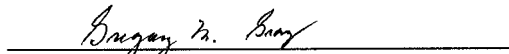

Chairman Senate Committee

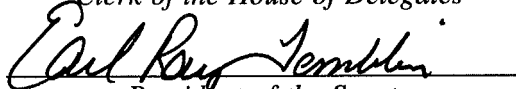

Chairman House Committee

Originating in the House.

Takes effect from passage.

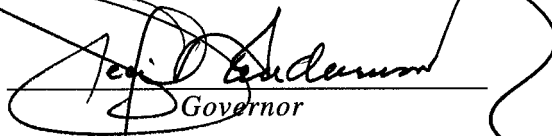

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

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


Governor

PRESENTED TO THE

GOVERNOR

Date 2/27/98

Time 2:40 pm

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