ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2053

(By Delegate Shott)

Passed March 10, 2015

In effect ninety days from passage.
ENROLLED

COMMITTEE SUBSTITUTE

for

H. B. 2053

(BY DELEGATE SHOTT)

[Passed March 10, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §38-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §40-1-9 of said code, all relating to deeds of trust; permitting the recording of a memorandum of deed of trust in lieu of the deed of trust; setting requirements for content of memorandum of deed of trust; and requiring recording of original deed of trust prior to commencement of foreclosure action or other execution thereof.

Be it enacted by the Legislature of West Virginia:

That §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§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.

CHAPTER 40. ACTS VOID AS TO 
creditors and purchasers.

ARTICLE 1. ACTS GENERALLY VOID AS TO 
CREDITORS AND PURCHASERS.

§40-1-9. Contracts, deeds and mortgages invalid as to creditors 
and purchasers until recorded.

Every such contract, every deed conveying any such estate 
or term, and every deed of gift, or deed of trust or memorandum 
of deed of trust pursuant to section two, article one, chapter 
 thirty-eight of this code, or mortgage, conveying real estate shall
be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, deed of trust or memorandum of deed of trust or mortgage may be.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within approved this the 25th day of March, 2015.

Governor
PRESENTED TO THE GOVERNOR

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