

CHAPTER 13. LAND TITLES

[From ROBERT M. BASTRESS, JR., THE WEST VIRGINIA STATE CONSTITUTION 337-37 (2nd ed., Oxford University Press, 2016).]

Article XIII deals with various aspects of titles to land. It was described by one commentator as "highly technical," "a constitutional enigma," and an article that has "no place in the Constitution."¹ As long ago as 1909, an expert described its contents as the "antiquated clauses of the constitution."² In response to these and many other criticisms, as well as to wasteful litigation, the Legislature, finally and mercifully, put before the people in 1992 a proposed amendment to repeal the most superfluous sections of Article XIII.³ The amendment passed; it deleted §§ 3 through 6, which dealt with forfeited and delinquent lands (§3), waste and unappropriated lands (§ 4), former owner's privilege (§ 5), and land books (§ 6).

Section 1, however, remains. It sustained the validity of preexisting interests in land and provided stability in property law following the formation of the State in 1863 and the adoption of the new constitution in 1872. The section is substantially the same as Article IX, § 1 of the 1863 Constitution, except the earlier version obviously made no reference to any prior West Virginia constitution or laws. The 1863 provision was modeled on one of the ordinances adopted by the Restored Government of Virginia after Virginia seceded but before West Virginia became a state.⁴ The ordinances dealt with fundamental matters that needed immediate attention and could not await statehood. Due to the turbulent nature of events of that era, the ordinance, and later the constitutional provisions, were considered necessary "to guard against, first, the repudiation of the lawful acts of the old Commonwealth, with respect to land titles; and second, any discrimination against nonresident owners of land."

¹ALBERT L. STURM, THE NEED FOR CONSTITUTIONAL REVISION IN WEST VIRGINIA 58 (Morgantown, W.Va.: West Virginia Univ., 1950).

²MAUD F. CALLAHAN, EVOLUTION OF THE CONSTITUTION OF WEST VIRGINIA 35 (Morgantown, W.Va.: West Virginia Univ., 1909).

³The purpose of the amendment, as summarized for the voters, was "[t]o amend the state constitution by repealing outdated provisions relating to tax-delinquent property. Repeal of these sections will allow for the implementation of laws to protect landowner interests and to simplify the redemption or purchase of tax-delinquent property." H.R.J.Res. 113, 70th Leg., 2nd Reg. Sess., 1992 ACTS OF THE LEGISLATURE OF WEST VIRGINIA 1623.

⁴Ord. No. 9, ORDINANCES OF THE CONVENTION 58 (1861); see State v. Gray, 132 W.Va. 472, 52 S.E.2d 759, appeal dismissed, 338 U.S. 855 (1949).