WEST VIRGINIA CODE CHAPTER 36 ARTICLE 2

WV Legislature

§36-2-1. Sale or lease of real or personal property subject to future interests.

Whenever there is, either at law or in equity, in any personal property, or in any land, timber, oil, gas, coal, or other minerals, any contingent remainder, or any vested remainder, which is liable to open and let in afterborn children or to open and let in members of any class, or any executory interest, or executory devise, or any base, qualified, conditional or limited fee, or any other qualified, conditional, limited or determinable estate, or interest, it shall be lawful for the circuit court of the county in which the personal property, land, timber, oil, gas, coal, or other minerals, or any part thereof, are situate, upon a bill filed by any of the persons specified in section two of this article, to decree a sale, lease, mining lease, or other conveyance of such personal property, land, timber, oil, gas, coal, or other minerals, or any one or more of them, or of any interest in them, as hereinafter provided.

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§36-2-2. Persons who may file bill.

Such bill may be filed by any person having any interest hereinafter mentioned in this section, in the personal property, land, timber, oil, gas, coal, or other minerals sought to be sold, leased or otherwise conveyed:

(a) Any person who alone or with others has, either at law or in equity, any vested freehold estate, whether in possession, remainder or otherwise;

(b) Any person in whom alone or with others a contingent remainder would vest, either at law or in equity, if the contingency or event upon which the remainder is to vest, or determining who the remainderman or remaindermen are, should happen at the time of the commencement of the suit;

(c) Any one or more of the remaindermen in being at the time of commencement of the suit, when there is, either at law or in equity, a vested remainder liable to open and let in afterborn children, or to open and let in members of any class;

(d) Any person who alone or with others has, either at law or in equity, a base, qualified, conditional or limited fee, or any other qualified, limited or determinable freehold estate, or any freehold estate which is subject or liable to be terminated or defeated by the vesting of any executory interest or executory devise or by the happening or nonhappening of any condition, limitation or event, or to whom an executory interest or executory devise of a freehold estate, not following an estate in fee simple, is granted or devised;

(e) Any trustee whose estate or interest is such that he might have filed such bill had he held such estate or in his own right; and also any beneficiary of any such trust. Any beneficiary of any such trust whose estate or interest is such that he might have filed such bill, if such estate or interest were a legal estate or interest; and also the trustee of any such trust;

(f) Any purchaser or assignee, at law or in equity, from any person of any estate or interest which would entitle such latter person to file such bill had he not sold or assigned such estate or interest;

(g) A married woman, as if she were feme sole, if otherwise entitled to file such bill;

(h) The guardian of any infant, or the committee of any insane person or convict, if such infant or insane person or convict would, but for such infancy, insanity or conviction, be entitled to file such bill.

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§36-2-3. Parties to such suit.

All persons in being who have any vested, contingent, or executory estate or interest, either at law or in equity, in such personal property, land, timber, oil, gas, coal, or other minerals to be sold, leased, or otherwise conveyed, shall be made parties even though any of such persons should be infant, insane, or convict, and if any such person shall be an infant, having a guardian, such guardian shall also be made a party, and if any such person shall be an insane person or convict as aforesaid, having a regularly appointed committee, such committee shall be made a party; and when a bill is filed by the guardian of such infant, or the committee of such insane person or convict, such infant or insane person or convict shall also be made defendant: Provided, however, That the joinder of any person having only a contingent or executory estate or interest may be dispensed with where the person not joined is virtually represented by any other party or parties to the suit; and where such virtual representation exists no order or decree or sale or lease made thereunder shall be deemed erroneous or void because of such nonjoinder.

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§36-2-4. Order of publication.

An order of publication may be entered and summons may be served against nonresident defendants in like manner and with like force and effect as in other cases, and where it is stated in the bill and affidavit is made of the fact that there are interested persons whose names are unknown, or of the fact that it is not known whether there are any other persons interested, such persons, if any, may be made parties defendant by the general description of parties unknown, and an order of publication may be entered and proceedings had as in other cases of parties unknown.

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§36-2-5. Guardian ad litem.

When a defendant in any suit brought under the provisions of this article is an infant or insane person, a guardian ad litem shall be appointed as provided by section ten, article four, chapter fifty-six of this code, and shall be governed by the provisions of said section, and when a defendant is a convict, a guardian ad litem shall be appointed by the court, who shall have the same rights and duties as those of a guardian ad litem for an infant or insane person: Provided, That no guardian ad litem need be appointed for parties unknown, though they be infant, insane or convict.

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§36-2-6. Contents of bill.

The bill shall describe the property sought to be sold or leased with reasonable certainty, and set forth the names of all persons interested in such property, together with their respective estates or interests, either vested, contingent or executory, so far as is known by the plaintiff. The bill shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale or lease. The bill shall be verified by the oath of the plaintiff or one of the plaintiffs.

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§36-2-7. Evidence.

Evidence may be taken as in other suits in chancery, or the court may hear the evidence in open court. If heard in open court, the court may, and on the motion of any party shall, require the evidence to be taken down in shorthand by a stenographer, and transcribed, and certify such evidence and make the same part of the record in the cause, in the same manner and within the same time as bills of exceptions are now certified and made part of the record: Provided, however, That no exceptions need be taken to any ruling of the court.

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§36-2-8. When sale or lease may be made.

If it be clearly shown by the pleadings and proof that the interest of the person filing such bill will be promoted by the sale, lease or other conveyance of the property, and the court shall be of the opinion that the interests of no other person or persons in the property will be materially injured or prejudiced by such sale, lease, or other conveyance, the court may, with the consent of all persons in being having any vested estate or vested interest in such property, except in certain cases provided for in section nine of this article, in which case such consent shall not be necessary, decree the sale, lease, or mining lease of such property, or of any interest in such property, in such manner and on such terms, and in such parcels, as may be deemed beneficial to all persons interested: Provided, That where any party having a vested estate or vested interest is an infant, or insane, or convict, the guardian of such infant, whether testamentary or appointed by a county court or the clerk thereof, or the committee of such insane person or convict, may consent for such infant or insane person or convict, as the case may be; and any married woman having an interest in the property may consent without the consent of her husband: Provided further, That the consent of no person having a merely contingent or executory estate or interest shall be necessary in order to enable the court to decree such sale, even though such person having such contingent or executory estate or interest is a necessary party to such suit: And provided further, That the consent of no holder of any lien or encumbrance created since the twenty-second day of May, nineteen hundred and eleven, shall be necessary to any sale, lease, mining lease, or other conveyance made under the provisions of this article: And provided further, That if any person in being having any vested interest in such property shall not consent to such sale, lease, mining lease or other conveyance, the court may nevertheless decree such sale, lease, mining lease or other conveyance, to be made subject to the interest of such person in being so refusing to consent.

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§36-2-9. Sale or lease of timber, oil, gas, coal or other minerals.

If the property sought to be sold or leased under the provisions of this article is gas, oil, or other volatile or fugitive substance, and it shall clearly appear that such substance is being, or in danger of being, withdrawn or drained away through other lands and so wasted and lost, to the injury of any person who has any interest in such substance; or if the property to be sold or leased is timber, and it shall clearly appear that such timber is ripe and will decay or deteriorate if not cut within a short time, or that, because of the fact that the timber upon neighboring lands is being cut or is about to be cut, and that, if the timber sought to be conveyed is not cut at the same time as, or in connection with, the timber upon such neighboring lands, it will be difficult and less profitable to sell or convey it at any other time, and that, on account of these circumstances, such timber will probably deteriorate in value unless it is sold or leased immediately; or if the property to be sold or leased is coal, or other mineral of fixed location, and it shall clearly appear that, because of the fact that the coal or other mineral under the surrounding or adjoining lands is being mined or is about to be mined, and that if the coal or other mineral sought to be sold or leased is not mined or produced at the same time as, or in connection with, the coal or other mineral under the surrounding lands, it will be difficult and less profitable to mine or produce it at any other time, and that on account of these circumstances such coal or other mineral will probably deteriorate in value unless it is sold or leased immediately; then, although any person in being having a vested estate or vested interest in such oil, gas, or other volatile or fugitive substance, or in the lands in which the same are contained, or in such timber, coal, or other minerals, does not consent as aforesaid, the court may decree the sale or lease of such property, notwithstanding the provisions of the preceding section of this article: Provided, That no conveyance or lease of the timber, oil, gas, coal, or other minerals mentioned in this section, made by an owner in fee simple absolute, before the creation of the estates mentioned in section one of this article, shall be divested by any proceeding under this article: Provided further, That the consent of no holder of any lien or encumbrance created since the twenty-second day of May, nineteen hundred and eleven, shall be necessary to any sale, lease, or mining lease, or any decree thereof under this article.

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§36-2-10. Execution of decree by commissioner.

If such sale, lease, mining lease or other conveyance shall be decreed, the court shall appoint a special commissioner or special commissioners to make the same. The special commissioner or commissioners before making any such sale, lease, mining lease or other conveyance, shall in open court enter into bond, with approved security in such penalty as the court shall prescribe, conditioned for the faithful application of the proceeds of the sale, lease or mining lease, which may come into his or their hands, which bond shall be payable to the state, and the court may thereafter order a new or additional bond, with other security, to be given, if deemed necessary. Such sale, lease, mining lease or other conveyance may be decreed to be made upon such terms as the court shall direct, and at either public or private sale or leasing, and shall be subject to confirmation by the court and be reported for such confirmation. If any such sale be made on credit, a lien shall be retained on the property sold and such other security as the court may direct shall be taken to secure the deferred purchase money.

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§36-2-11. Title of purchaser.

Where a sale, lease, mining lease or other conveyance is decreed under the provisions of this article, the title of the purchaser to such interest as was decreed to be conveyed to him shall be indefeasible by any party to the suit, or by any person who was virtually represented according to the provisions of section three of this article by any party to the suit, or by any person who was not in being at the time the suit was commenced. And if a sale, lease, mining lease or other conveyance made under such a decree shall be confirmed, although such decree be afterwards reversed or set aside, the title of the purchaser or lessee shall not be affected thereby; but all subsequent orders and decrees shall affect only the proceeds of sale, or the reversion subject to such lease, or mining lease, together with the proceeds, rents and royalties of the lease or mining lease. All sales, leases and mining leases shall be free and acquit of all liens and encumbrances created since the twenty-second day of May, nineteen hundred and eleven, and inchoate dower, held by any party to the suit; but such liens and encumbrances, and consummate dower, when it shall vest, shall attach to the estate or interest of any person in the proceeds of sale, or in the reversion subject to any such lease or mining lease, or other conveyance, together with the proceeds, rents and royalties accruing from such lease or mining lease, to the same extent that such liens, encumbrances and dower attached or would have attached to his estate or interest in the property if no sale, lease or mining lease had been made. And after the confirmation of any such sale, lease or mining lease, the court, with or without an order of reference, may ascertain and fix the priority of any such liens and encumbrances, and assign consummate dower when the same shall vest.

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§36-2-12. Disposition of proceeds.

The proceeds of sale, and the reversion subject to any such lease or mining lease, together with the proceeds, rents, and royalties accruing from any such lease or mining lease, shall, in all respects, be substituted for and stand in the place of the property sold or leased as regards the ownership and enjoyment thereof, and all persons shall have the same estates or interests, vested, contingent, or executory, in such proceeds of sale, or in the reversion subject to any such lease or mining lease, together with the proceeds, rents and royalties accruing from any such lease or mining lease, as they had or would have had in the property sold or leased. And the proceeds of sale shall be invested and the proceeds, rentals and royalties accruing from such lease or mining lease shall be invested or applied, and the principal and income of any such investment shall be applied under the direction of the court, for the use and benefit of the persons having any such estate or interest, vested, contingent or executory, in accordance with, and to the extent to which they are entitled by virtue of, their respective estates and interests, vested, contingent or executory. From any one in whose hands the proceeds of sale, or the proceeds, rents and royalties accruing from any such lease or mining lease shall be placed or come, the court shall take ample security, and from time to time require additional security, if necessary; and the court shall make all proper orders and decrees for the faithful application of the funds and for the management and preservation of any property or securities in which the same may be invested, for the protection of the rights of all persons having any estate or interest, whether vested, contingent or executory.

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§36-2-12a. Summary proceedings for sale or lease; petition.

In addition to the proceedings authorized by the first section of this article, any person having any interest mentioned in section two of this article in the personal property, land, timber, oil, gas, coal or other minerals sought to be sold, leased or otherwise conveyed, may apply by petition, in a summary way, to the circuit court, or to any court of concurrent jurisdiction with the circuit court, of the county in which the estate proposed to be sold, leased or otherwise conveyed, or some part thereof, may be. Such petitions shall describe the property sought to be sold, leased or otherwise conveyed with reasonable certainty and shall set forth the names of all persons interested in such property, together with their respective interests or estates, either vested, contingent or executory, so far as is known by the plaintiff. Such petition shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale, lease or other conveyance of such property. The petition shall be verified by the oath of the plaintiff or one of the plaintiffs, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, That in the case of nonresident defendants, or unknown or unascertainable parties, or both, an order of publication may be entered, on proper affidavit as in any other chancery proceeding, requiring publication of such notice with respect to any nonresident defendants, or any unknown or unascertainable parties, or both, who may have or claim any interest or estate in such property, as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the property or the greater part of the property concerned is situate. Such published notice, with the certificate of publication, when filed with the record in said proceedings, shall be and constitute valid and sufficient notice herein. All other provisions of this article not inconsistent herewith shall apply to and implement the procedures provided in this section.

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§36-2-13. Remedies herein provided cumulative.

This article and the rights and remedies herein provided for shall be cumulative and in addition to other existing rights.

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