WEST VIRGINIA CODE CHAPTER 37 ARTICLE 1

WV Legislature

§37-1-1. Renewal of lease by or to persons under disability.

Where an infant, insane person, or convict is entitled to or bound to renew any lease, any person on behalf of such infant, insane person, or convict, or any person interested, may apply by petition or motion in a summary way, to the circuit court of the county in which the land leased or some part thereof may lie, and by the order of such court, any person appointed by it may, from time to time, surrender or accept a surrender of such lease, or take or make a new lease of the same premises for such term, and with such provisions as the court shall direct. Such reasonable sums as may be incurred to renew any such lease shall, with interest thereon, be paid out of the profits of the leasehold premises and be a charge thereon until such payment.

WV Legislature

§37-1-2. Sale, lease or mortgage; bill; parties; definition.

If the guardian of any minor, or the committee of any insane person or convict, think that the interest of the ward or insane person or convict will be promoted by a lease or by a mortgage or by a trust deed upon or by a sale of his estates, or of an estate in which he is interested with others, infants or adults; or if the trustee of any estate, or any person interested in any estate in trust, whether he be interested with others or not, think the interest of those for whom the estate is held will be promoted by a lease of the same, mortgage or trust deed upon the same, or a sale thereof; such guardian, committee, trustee, or beneficiary, whether the estate of the minor or insane person or convict, or any of the persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, and whether the guardian, committee or trustee, or the minor, insane person, convict, or any of the persons interested, reside in this state or not, may, for the purpose of obtaining such sale, lease, mortgage or trust deed, file a bill in equity in the circuit court of the county in which the estate proposed to be leased, sold or encumbered by mortgage or trust deed or some part thereof may be, stating plainly all of the estate, real and personal, belonging to such infant or insane person or convict, or so held in trust, and all of the facts calculated to show the propriety of the sale, lease, mortgage, or trust deed. The bill shall be verified by the oath of the plaintiff; and the infant or insane person or convict, or the beneficiaries in such trust, when not plaintiffs, and all others interested, shall be made defendants. The word "lease" as used in this article shall include any mining or timber lease or any lease of any profit in land, and the word "sale" shall include the sale of any undivided interest, or any part of the corpus of land, or anything in or growing upon land.

WV Legislature

§37-1-3. Guardian ad litem.

A guardian ad litem shall be appointed for minors under the age of eighteen, inmates and protected persons subject to the requirements of section five, article three, chapter forty-four-a of this code. The guardian ad litem shall answer the petition under oath, be present at any summary proceeding or hearing and inform the court whether the sale of property is in the best interests of the minor, inmate or protected person. Minors over the age of fourteen may answer in person as well.

WV Legislature

§37-1-4. Depositions.

No deposition shall be read in the suit against any infant or insane or convict party, except by leave of the court, unless it be taken in the presence of the guardian ad litem or upon interrogatories agreed on by him

WV Legislature

§37-1-5. Decree.

If it be clearly shown, independently of any admissions in the answers, that the interest of the infant, insane person, convict or beneficiaries in the trust, as the case may be, will be promoted, and the court be of the opinion that the rights of no person will be violated thereby, it may decree that such estate or any part thereof be sold, leased, mortgaged or encumbered by a trust deed, on such conditions and upon such terms as to the court shall seem to the best interests of such infant, insane person, convict or beneficiary in a trust, as the case may be, and in case the sale of such land is decreed, the purchaser, when the sale is on credit, shall be required to give ample security, and, if the sale be of real estate, a lien shall be retained thereon to secure the payment of the purchase money.

WV Legislature

§37-1-6. Who not to be purchaser.

At such sale the guardian, or guardian ad litem, or committee, or trustee, shall not be a purchaser, directly or indirectly.

WV Legislature

§37-1-7. Investment of proceeds.

The proceeds of sale shall be invested under the direction of the court, for the use and benefit of the persons entitled to the estate, and, in case of a trust estate, subject to the uses, limitations, and conditions contained in the writing creating the trust. But into whosesoever hands such proceeds may be placed, the court shall take ample security and from time to time require additional security, if necessary, and make any other proper orders for the faithful application of the fund, and for the management and preservation of any property, or securities in which the same may be invested, and for the protection of the rights of all persons interested therein, whether such rights be vested or contingent.

WV Legislature

§37-1-8. Joinder of spouse, or sale free of dower.

When a decree or order is made under this article, or under article nine, chapter twenty-seven of this code, for the sale or other conveyance of the real estate of an insane or infant or convict spouse, the other spouse may, if he or she think fit, join in the conveyance and thereby release dower and shall in such case, if he or she so demand, receive out of the proceeds of sale the value of his or her inchoate dower, computed according to the provisions of article two, chapter forty-three of this code, or such land may be sold free and clear of inchoate dower under the provisions of section five, article one, chapter forty- three of this code.

WV Legislature

§37-1-9. Release of dower under order of court; conveyance without joinder of spouse.

If the spouse of an infant or insane or convict husband or wife wish to sell real estate and to have the right of dower of such incompetent therein released to the purchaser, he or she may petition for that purpose the circuit court of the county in which such estate or some part thereof is, and if it appear to the court to be proper, an order may be made for the execution of such a release of dower, by a commissioner to be appointed by the court for the purpose, which release shall be effectual to pass such right of dower. And in making such order the court shall secure to such infant or insane or convict spouse, a sum in gross, computed according to the provisions of article two, chapter forty-three of this code as compensation for such right of dower.

WV Legislature

§37-1-10. Proceeds of sale to descend as lands.

What may be received under this article for the real estate of an infant or insane person, sold or divided, or so much thereof as may remain at his death intestate, shall, if he continue till his death incapable of making a will, pass to those who would have been entitled to the land if it had not been so sold or divided.

WV Legislature

§37-1-11. Summary proceedings for sale, lease or mortgage; petition; notice.

In addition to the proceedings authorized by section two of this article, the guardian of any minor, or the committee of any insane person or convict, if he deem that the interests of his ward or insane person or convict will be promoted by a sale, lease or mortgage of, or trust deed upon, his estate, or of any estate in which he with others, infants or adults, is interested, whether the estate of the minor, or insane person or convict, or of any of the other persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, may apply by petition, in a summary way, to the circuit court, or to the judge thereof in vacation, or to any court of concurrent jurisdiction with the circuit court, or to the judge thereof in vacation, or to any juvenile court, or to the judge thereof in vacation, of the county in which the estate proposed to be sold, leased, or encumbered, or some part thereof may be, describing all the estate, real and personal, belonging to the minor, or insane person or convict and setting forth plainly all the facts calculated to show the propriety of the sale, lease, mortgage, or deed of trust. The petition shall be verified by the oath of the plaintiff, 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 any notice or service required by this section to be made upon any infant under fourteen years of age shall be made by delivering a copy of such notice and petition to his guardian resident in this state; or, if there be no such guardian, then either to his father or mother if they be found. If there is no such guardian and if the father or mother cannot be found, service of such notice and petition shall be made upon a guardian ad litem appointed in the manner provided by law.

WV Legislature

§37-1-11a. Jurisdiction of court in proceedings under article; process; investment not required if funds unavailable.

In any suit or proceeding under this article the court shall have jurisdiction to hear, decide and dispose of any matter which involves the property or welfare of any person under legal disability who may be a party to a suit or proceeding, which matter, but for this section, would otherwise be the subject of a separate suit, or suits, under section thirteen, article ten, chapter forty-four of this code. Rules of equity governing service of process generally shall apply to all proceedings under this article, and section seven of this article shall not require the investment of funds of any person under disability in those cases where such funds, as a result of the court's action, may not be available for such purpose.

WV Legislature

§37-1-12. Guardian ad litem in summary proceeding.

For every such minor or insane person or convict the court shall appoint a guardian ad litem who must be present at the hearing of the summary proceeding mentioned in the preceding section.

WV Legislature

§37-1-13. Order; sale.

If it be clearly shown by the petition, exhibits, and evidence adduced, that the interest of the minor or insane person or convict will be promoted by the sale, lease or encumbrance by mortgage or trust deed, and the court be of opinion that the rights of no person will be affected thereby, it may order such estate, or any part thereof, to be sold, lease, or encumbered by mortgage or trust deed; and in such manner and on such terms and in such parcels as may be deemed most beneficial to the minor or insane person or convict; and, in case the same be decreed to be sold, shall take from the purchaser bond, with ample security, when the sale is on credit. And, in case of sale or lease, the same may be decreed to be made either at public or private sale or lease. At such sale or lease neither the guardian, committee, nor guardian ad litem shall be a purchaser directly or indirectly. But no estate of any minor or insane person or convict shall be sold contrary to the provisions of any will or conveyance by which such estate was devised or granted to such person, if such provision would be valid if contained in a conveyance or devise to a person sui juris.

WV Legislature

§37-1-14. Bond for proceeds.

In case such sale or lease be made, the guardian or committee shall enter into bond, with approved security, conditioned for the faithful application of the proceeds of sale or lease. And in case of a mortgage or trust deed such guardian or committee shall enter into bond, with approved security, conditioned for the faithful application of any moneys which may come into his hands from the encumbrancing. In either case such bonds shall be taken in open court, or before the judge in vacation, or before the clerk, and shall be payable to the state, in such penalty as shall be prescribed by the court; and the court may thereafter order a new bond, with other security, to be given if deemed necessary. If the court shall find that the bond already given by the guardian or committee is sufficient, no additional bond need be required.

WV Legislature

§37-1-15. Application of proceeds; costs.

The provisions of section seven of this article shall govern as to the application of the proceeds of sale. The cost of the proceedings may be paid out of such proceeds, but no attorney's fee shall be taxed therein, except where, in the discretion of the court, it be reasonable and just.

WV Legislature

§37-1-16. Confirmation; conveyance.

Whenever a sale, lease, mortgage or trust deed is ordered as herein provided, the court shall order the proceedings under such sale, lease, mortgage or trust deed, to be reported for confirmation; and, in case of sale, may direct a conveyance with covenant of special warranty to be made by the guardian, the committee or a commissioner. And every such conveyance shall be as effectual in law as if the same were made by the minor when of lawful age, or by the insane if compos mentis, or by the convict if competent; and, in case of a lease, the court shall direct the same to be made by the guardian or committee applying for the same, and to be reported to the court for confirmation. And, in case of a mortgage or trust deed, the guardian or committee, as the case may be, shall report to the court in full particulars concerning the making of such mortgage or trust deed and the moneys received under the same.

WV Legislature

§37-1-17. Validation of certain sales.

No sale of the real estate of an infant, convict, or insane person, heretofore made and confirmed, under and by the judgment, order or decree of a court of competent jurisdiction, nor any conveyance of such real estate made or to be made under any such judgment, order, or decree, and no lease, mortgage, or trust deed upon the real estate of any such person, heretofore made under any such judgment, order or decree, shall in any manner be affected or invalidated by reason of the bill or petition in the case not having been verified, or by reason of the persons who would be the heirs or distributees of such infant, convict or insane person, if he were dead, not having been made parties to the suit or proceedings, or by reason of any other error or defect in the proceeding or deed, not affecting the very right of the case, or by reason of any action of the court in dealing with, in such suit or proceedings, matters which would otherwise have been the subject matter of a separate suit under section thirteen, article ten, chapter forty-four of this code. All such sales and conveyances are hereby legalized and made valid; and all such leases, mortgages and deeds of trust, heretofore made, or to be made under any such judgment, order or decree in those cases where the welfare and property of the person under legal disability has been sufficiently protected are hereby legalized and made valid. Sales, leases, mortgages, or deeds of trust heretofore made pursuant to judgments, orders or decrees in suits or proceedings under this article shall not hereafter be invalidated for the reason that the court, in disposing of the case, failed to require such persons, property and estate to be burdened with the expense of a separate suit or proceedings under section thirteen, of article ten, of chapter forty-four of this code, where it appears from the record that the court did adequately protect the welfare and property of the person under legal disability.

WV Legislature