WEST VIRGINIA CODE CHAPTER 38 ARTICLE 12

WV Legislature

§38-12-1. When release of lien required; requisites thereof.

(a) Every person entitled to the benefit of any lien on any estate, real or personal, or to the money secured thereby, whether the lien was created by conveyance, judgment, decree, lis pendens, notice of attachment, deed of trust, contract or otherwise, shall be required to furnish and execute an apt and proper written release thereof free of charge to the debtor whose obligation secured by such lien has been fully paid and satisfied, if the lien is of record in the proper county. Such release shall be executed and furnished to the debtor within thirty days after the debt has been satisfied.

(b) Such release of lien shall be executed by the lienholder and acknowledged before the clerk of the county commission in whose office the lien is recorded or before such other person authorized to take acknowledgments of deeds. Such written release shall be deemed sufficient if it describe the lien to be released by any words that will identify and show an intent to discharge the same. Releases may also be made according to the provisions of section two of this article.

WV Legislature

§38-12-2. When trustee may release lien of deed of trust; effect.

A trustee in a trust deed may release the lien of such trust deed:

(a) When the trust deed authorizes the trustee to release the same;

(b) When the trust deed creates a lien to secure debts to persons not named in the trust deed;

(c) When a trust deed creates a lien to secure more than five creditors, even though such creditors be named in the trust deed;

(d) When a trust deed creates a lien to secure notes or bonds or other instruments payable to bearer.

A release executed by the trustee in any of the cases mentioned herein, and properly recorded, shall, as to purchasers for value without notice, be valid and binding, whether the debt secured by such lien had in fact been paid or discharged or not.

WV Legislature

§38-12-3. Release by trustee when unnamed persons are secured; publication; effect.

If a trustee in a trust deed which secures persons not named in the trust deed shall publish, as hereinafter provided, a notice that he will, on a day named in such notice, such day to be not more than thirty nor less than ten days after the last publication of such notice, release such trust deed, such trustee may execute such release and make distribution of any funds in his hands as such trustee without any liability to any person not named in the trust deed nor known to the trustee to be a beneficiary of the trust. Such notice shall be published as a Class II 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 such trust deed is recorded.

WV Legislature

§38-12-4. Form of release; recordation of assignment with release by assignee.

Releases and their acknowledgments may be substantially in form or effect as follows:

(a) In case of a mortgage or trust deed: I, A..... B....., hereby release a mortgage (or trust deed) made by C..... D..... to me (or to E..... F....., my trustee, or to ....., and assigned to me) dated the ..... day of ....., recorded in the office of the clerk of the county court of ..... county, West Virginia, in trust deed book ....., page ..... (Or, in case the release is by the trustee, I, A..... B....., hereby release a trust deed made by C..... D..... to me as trustee, for the benefit of E..... F....., dated the ..... day of ....., recorded, etc., as in preceding form.) To be signed A..... B.....

Acknowledged before the subscriber, by A..... B....., this ..... day of ..... (or, in case the release be by a corporation, acknowledged before the subscriber, by ....., who signed the name of ....., a corporation, thereto, this ..... day of ....., ...)

(To be signed) G..... H....., a justice (or clerk of the county court, notary public, etc., as the case may be) of ..... county, West Virginia.

(b) In case of a lien for purchase money, reserved by conveyance:

I, A..... B....., hereby release the right reserved to me in a conveyance executed by me (or myself and wife) to C..... D....., dated the ..... day of ..... (Or, in case of an assignment, I, A..... B..... hereby release the right reserved by C..... D..... in a conveyance to E..... F....., dated the ..... day of ....., ..., which right was assigned by the said C..... D..... to me, the ..... day of ....., ...) To be signed and acknowledged as above.

(c) In case of a judgment or decree: I, A..... B....., hereby release a judgment (or decree) in my favor (or in favor of I..... K....., which has been assigned to me; or in favor of I..... K..... for my use) against C..... D....., for (stating the amount) with interest and costs, rendered by (stating the court by which, or the justice by whom, it was rendered, and the term or date at which it was rendered, to be signed and acknowledged as above.)

When such lien is released by the assignee thereof, the assignment thereof, whether of the lien or of the debt secured thereby, must be acknowledged in the same manner as the release, and recorded with such release: Provided, That if any such lien, or the debt secured thereby, shall have been assigned, the same may always be released by the assignee who receives satisfaction thereof, upon the assignor joining therein, without the recordation of the assignment as aforesaid.

WV Legislature

§38-12-5. Partial or limited release.

In case of a discharge of only a part of the lien debt, or a release of only a part of the property subject to the lien, or any other partial or limited release, the form of release prescribed in section four of this article may be modified to express the facts and the intention of the parties.

WV Legislature

§38-12-6. Liability of lienor for release after assignment.

Any person who shall have been entitled to the benefit of any lien and who shall have assigned such lien, or the benefit thereof, or any instrument secured by such lien, to any other person, shall be liable to any person injured by any release executed by such person first mentioned, after such assignment.

WV Legislature

§38-12-7. Release when lienor under disability.

In case of the death, insanity, or infancy of the person entitled to the lien, the release may be made by the personal representative, committee, or guardian of such person, as the case may be.

WV Legislature

§38-12-8. Recordation of release; effect.

When the release has been so signed and acknowledged, it may be presented for record to the clerk in whose office the lien thereby intended to be released is recorded or docketed, and from and after the time the same is so left for record (which time the clerk shall indorse thereon) such lien shall be discharged and extinguished, and the estate, of whatever kind, bound or affected thereby, shall be deemed to be vested in the former owner or those claiming under him as if such lien had never existed.

WV Legislature

§38-12-9. Duties of clerk.

The clerk of the county court shall record and properly index all releases and assignments admitted to record in his office under the provisions of this article, in a well-bound book to be kept exclusively for the purpose, and, when any such instrument is recorded, he shall note the fact on the margin of the record or docket of the lien affected or discharged thereby, with a reference to the book and page where such release or assignment is recorded.

WV Legislature

§38-12-10. Action on refusal of lienholder to execute release.

In case of the failure of the party holding such lien to furnish and execute an apt and proper release upon request of the party entitled thereto as required by section one of this article, the circuit court having jurisdiction may, on motion, after reasonable notice to the party so failing, and if no good cause be shown against it, direct the clerk of the county commission to execute such release, and it shall thereupon have the effect of releases executed under section one of this article. The proceedings shall be at the cost of the lienholder who so refuses without good cause and the court shall also award reasonable attorney fees and court costs to the person entitled to such release if such person be the prevailing party.

WV Legislature

§38-12-11. Construction of article.

Nothing in this article contained shall be construed to authorize the discharge of any lien contrary to the provisions of the instrument under which the lienor claims, or to impair or affect the validity of any deed of release, or other writing discharging any lien in this article mentioned, either heretofore or hereafter created or made.

WV Legislature

§38-12-12. Noting satisfaction of execution on judgment lien docket.

When an execution issued upon a judgment or decree, which has been entered in the judgment lien docket in the office of the clerk of the county court, is returned satisfied, the clerk, to whose office such return is made, shall certify the same to the clerk of the county court, and such return shall be entered by such clerk in the margin of the docket of such judgment or decree.

WV Legislature

§38-12-13. Penalty for failure of clerk or other officer.

If any clerk or other officer shall fail in any duty imposed upon him by this article, he shall be liable to any party injured for all damages caused by such failure, or the person injured may, at his option, recover the sum of $50 from such clerk.

WV Legislature