WEST VIRGINIA CODE: §38-16-403

§38-16-403. Action on fraudulent lien on property.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property, and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent, may complete and file with the clerk of the circuit court a verified motion that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF ..... , WEST VIRGINIA

In Re: A Purported Lien or Claim Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION

PURPORTING TO CREATE A LIEN OR CLAIM

Now comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, West Virginia, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation.

II.

On (date), in the exercise of official duties as Clerk of the county commission of (county name) County, West Virginia, the county clerk received and filed and recorded the documentation attached hereto and containing (number) pages. The documentation purports to have created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by W.Va. Code, §38-16-101, et seq., and that the documentation or instrument

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should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Rule 11 of the West Virginia Rules of Civil Procedure for Trial Courts of Record, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,

COUNTY OF _____, To-wit:

I, _____, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that _____, whose name (or names) is (or are) signed to the attached motion, dated the _____ day of _____, _____, has (or have) this day acknowledged the same before me, in my said _____.

Given under my hand this _____ day of _____, ____.

_____

Notary Public, State of West Virginia

Notary's printed name:

My commission expires:

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(c) A motion under this section may be ruled on by a circuit judge in the county where the subject document was filed. The court's finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence. The court's review may be made ex parte without delay or notice of any kind.

(d) The clerk of the circuit court may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the findings of fact and conclusions of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under W.Va., Code, §38-16-101, et seq.

The court finds as follows (only an item checked and initialed is a valid court ruling):

[ ] The documentation or instrument attached to the motion herein IS asserted against real or personal property or an interest in real or personal property and:

(1) IS provided for by specific state or federal statutes or Constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by consent of an agent, fiduciary, or other representative of that person; or

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(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the Constitution or laws of this state or of the United States.

[ ] The documentation or instrument attached to the motion:

(1) IS NOT provided for by specific state or federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the Constitution or laws of this state or the United States; or

(4) IS NOT asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by this documentation or instrument.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

Signed this _____ day of _____, _____.

Judge,

circuit court of County, West Virginia

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