WEST VIRGINIA CODE CHAPTER 38 ARTICLE 16

WV Legislature

PART I. DEFINITIONS.

§38-16-101. Definitions; application of definitions.

For the purposes of this article, the words and phrases defined in the following sections of this part I, and any variation of those words and phrases required by the context, have the meanings ascribed to them in this part I. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

§38-16-102. Court of competent jurisdiction defined.

"Court of competent jurisdiction" means a circuit court, magistrate court or administrative agency within this state or a court or administrative agency of another state, or a court or administrative agency of the federal government having jurisdiction and due legal authority to establish a charge against or an interest in real or personal property by ordering or authorizing the imposition of a lien against the property.

WV Legislature

§38-16-103. Federal government defined.

"Federal government" means the government of the United States of America and includes the executive, legislative and judicial branches; and the term also includes quasi-public corporations and independent commissions or authorities primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

WV Legislature

§38-16-104. Federal official or employee defined.

"Federal official or employee" means an officer or employee of the federal government temporarily or permanently in the service of the United States, members of the military or naval forces of the United States, members of the National Guard, and persons acting on behalf of the United States in an official capacity, whether with or without compensation.

WV Legislature

§38-16-105. Lien defined.

"Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

WV Legislature

§38-16-106. Nonconsensual common law lien defined.

"Nonconsensual common law lien" means a fraudulent lien that is misrepresented as a valid lien because it:

(1) Is not provided for by a specific statute;

(2) Does not derive its existence from the consent of the owner of the affected property; and

(3) Is not an equitable lien or other lien imposed by a court of competent jurisdiction.

WV Legislature

§38-16-107. Purported court defined.

"Purported court" means a so-called common law court or other purported court or purported judicial entity that is not expressly created or established under the Constitution or the laws of this state or of the United States.

WV Legislature

§38-16-108. State or local official or employee defined.

"State or local official or employee" means a person, whether appointed or elected, providing services to a branch of state government or to a political subdivision of this state, whether with or without compensation.

WV Legislature

PART II. COMMON LAW LIENS.

§38-16-201. Bonafide liens are not affected by this article.

Regardless of whether such liens may also be considered to be common law liens, nothing in this article is intended to affect:

(1) Statutory liens arising under an enactment of the Legislature;

(2) Equitable liens, constructive liens and other liens that are imposed by a court of competent jurisdiction; or

(3) Consensual liens now or hereafter recognized under the common law of this state.

WV Legislature

§38-16-202. Real property common law liens unenforceable; personal property common law liens limited.

(a) A common law lien against real property is invalid and is not recognized or enforceable in this state.

(b) A common law lien claimed against personal property is invalid and is not recognized or enforceable if, at the time the lien is claimed, the claimant does not have:

(1) Actual possession, lawfully acquired, of specific personal property against which the lien is asserted; or

(2) Exclusive control, lawfully acquired, of specific personal property against which the lien is asserted.

(c) A valid common law lien claimed against personal property is destroyed or terminated if the person entitled to the lien fails to retain possession or control of the property, unless the person against whom the lien is asserted agrees, in writing, that the lien may continue after delivery of the property from the possession of the lienholder.

WV Legislature

PART III. PROVISIONS GOVERNING THE FILING OF CLAIMS OF COMMON LAW LIENS.

§38-16-301. Filing or recording a claim of nonconsensual commonlaw lien is of no force or effect.

A nonconsensual common law lien is invalid and does not constitute a charge against property or create an interest in property. The filing or recording of a document that purports to evidence a nonconsensual common law lien is a nullity and is of no force or effect.

WV Legislature

§38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.

A clerk of a county commission or other person has no duty to accept for filing or recording any purported claim of a common law lien, because a common law lien is neither authorized by statute nor imposed by a court of competent jurisdiction. A clerk of a county commission or other person has no duty to reject for filing or recording any claim of a common law lien, and the inadvertent or negligent recordation of a claim of a common law lien by a clerk of a county commission or other recorder does not create a cause of action against that official.

WV Legislature

§38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.

(a) Any claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties is invalid unless it arises from a specific order of a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.

(b) A person is not obligated to accept for filing any purported claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties unless the claim is accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. A person has no duty to reject for filing or recording any claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties, and the inadvertent or negligent recordation of such a claim by a clerk of a county commission or other recorder does not create a cause of action against that official.

(c) If a claim of lien as described in subsection (a) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney or other counsel representing the federal agency of which the individual is an official or employee; the assistant Attorney General or other counsel representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the prosecuting attorney or municipal attorney or other counsel representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien, at his or her last known address. The clerk of the county commission shall file and index the notice of invalid lien in the same class of records in which the purported claim of lien was originally filed.

WV Legislature

§38-16-304. No duty to disclose record of common law lien.

No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court of competent jurisdiction.

WV Legislature

§38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.

A clerk of the county commission or other person is not liable for the acceptance for filing of an invalid claim of a nonconsensual common law lien, nor for the acceptance for filing of a notice of invalid lien. A clerk of the county commission or other person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a purported common law lien of record.

WV Legislature

§38-16-306. No duty to disclose fraudulent lien record; lien of purported court is a nullity.

(a) An attorney, title insurance company or other title examiner does not have a duty to disclose a fraudulent court record, document, or instrument purporting to create a nonconsensual common law lien asserting a claim on real property or an interest in real property in connection with a sale, conveyance, mortgage, or other transfer of the real property or interest in real property.

(b) A purported judgment lien or document establishing or purporting to establish a judgment lien against property in this state, that is issued or purportedly issued by a court or a purported court other than a court established under the laws of this state or the United States, is a nullity and has no effect in the determination of any title or right to the property.

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PART IV. ACTIONS TO STRIKE OR REMOVE NONCONSENSUAL COMMON LAW LIEN.

§38-16-401. Notice by clerk of fraudulent lien.

(a) If a clerk of the county commission has a reasonable basis to believe in good faith that a document or instrument purporting to evidence an invalid nonconsensual common law lien has been filed or recorded or offered for filing or recording, the clerk shall provide a written notice as follows:

(1) If the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, the clerk shall provide written notice of the filing, recording, or submission for filing or recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) If the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b)(1) If the document is not yet filed or recorded, the clerk shall provide written notice under subsection (a) not later than the second business day after the date that the document is submitted for filing or recording; or

(2) If the document or instrument has been previously filed or recorded, the clerk shall provide written notice under subsection (a) not later than the second business day after the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) The document is styled as a judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court; or

(2) The document or instrument purports to create a lien or security interest or otherwise create a charge against real or personal property and:

(A) It is not a document or instrument provided for by the Constitution or laws of this state or of the United States;

(B) It is not created by implied or express consent or agreement of the alleged 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

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representative of that person; or

(C) It is not an equitable, constructive, or other lien imposed by a court of competent jurisdiction.

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§38-16-402. Action on fraudulent judgment lien.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the clerk of the circuit court a motion, verified by affidavit, that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF _____COUNTY, WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF A DOCUMENT

PURPORTING TO CREATE A JUDGMENT LIEN

Now comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a purported judgment lien filed in the office of the clerk of the county commission, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

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 or filed and recorded the attached documentation containing (number) pages. The documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called "(name of purported court)" against one (name of purported debtor).

III.

Movant alleges that the purported court referred to in the attached documentation is one described in W.Va. Code, §38-16-108, as not legally created or established under the Constitution or laws of this state or of the United States, and that the document therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

WV Legislature

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:

(c) A motion filed under this section may be ruled on by a circuit judge in the county where the subject documentation was filed. The court's finding may be made solely on a review of the documentation attached to the movant's 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 charge 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.

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

WV Legislature

(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 attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

[ ] The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions 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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§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 should therefore not be accorded lien status.

IV.

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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:

(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

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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

(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.

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[ ] 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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§38-16-404. Costs and attorneys' fees.

If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the movant.

WV Legislature

§38-16-405. Warning sign.

A clerk of the county commission shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk's office stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.

WV Legislature

§38-16-406. Documents filed with Secretary of State.

(a) If the lien or other claim that is the subject of judicial findings of fact and conclusions of law authorized by this article is one that is authorized by law to be filed with the Secretary of State, any person may file a certified copy of the judicial findings of fact and conclusions of law in the records of the Secretary of State, who shall file the certified copy of the finding in the same class of records as the subject document or instrument was originally filed and index it using the same names that were used in indexing the subject document or instrument.

(b) The Secretary of State may charge a filing fee of $5 for filing a certified copy of judicial findings of fact and conclusions of law under this section.

WV Legislature

PART V. LIABILITY FOR FRAUDULENT COURT RECORD OR A FRAUDULENT LIEN.

§38-16-501. Liability.

(a) A person may not make, present, or use a document or other record with:

(1) Knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;

(2) Intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Constitution or laws of this state or the United States, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and

(3) Intent to cause another person to suffer:

(A) Physical injury;

(B) Financial injury; or

(C) Mental anguish or emotional distress.

(b) A person who violates subsection (a) is liable to each injured person for:

(1) The greater of:

(A) $10,000; or

(B) The actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney's fees; and

(4) Exemplary damages in an amount determined by the court.

WV Legislature

§38-16-502. Cause of action.

The following persons may bring an action to enjoin violation of this article or to recover damages under this article:

(1) In the case of a fraudulent judgment lien, the person against whom the judgment is rendered; and

(2) In the case of a fraudulent lien or claim against real or personal property or an interest in real or personal property, the obligor or debtor, or a person who owns an interest in the real or personal property.

WV Legislature

§38-16-503. Venue.

An action under this part 5 may be brought in any circuit court in the county in which the recorded document is recorded or in which the real property is located.

WV Legislature

§38-16-504. Filing fees.

(a) The fee for filing an action under this chapter is $15. The plaintiff must pay the fee to the clerk of the court in which the action is filed. Except as provided by subsection (b), the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with the action.

(b) The fee for service of notice of an action under this section charged to the plaintiff may not exceed:

(1) Twenty dollars if the notice is delivered in person; or

(2) The cost of postage if the service is by registered or certified mail.

(c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay.

(d) Since the fee imposed under subsection (a) of this section is less than the filing fee the court imposes for filing other similar actions, if the plaintiff prevails in the action, the court may order a defendant to pay to the court the differences between the fee paid under subsection (a) and the filing fee the court imposes for filing other similar actions.

WV Legislature

§38-16-505. Plaintiff's costs.

(a) The court shall award the plaintiff the costs of bringing the action if:

(1) The plaintiff prevails; and

(2) The court finds that the defendant, at the time the defendant caused the recorded document to be recorded or filed, knew or should have known that the recorded document is fraudulent.

(b) For purposes of this section, the costs of bringing the action include all court costs, attorney's fees, and related expenses of bringing the action, including investigative expenses.

WV Legislature

§38-16-506. Effect on other law.

This part 5 is cumulative of other law under which a person may obtain judicial relief with respect to a recorded document or other record.

WV Legislature