WEST VIRGINIA CODE CHAPTER 38 ARTICLE 2

WV Legislature

§38-2-1. Lien of contractor.

Every person, firm or corporation who erects, builds, constructs, alters, removes or repairs any building or other structure, or other improvement appurtenant to any such building or other structure, or who alters or improves the real property whereon the same stands, or to which it may have been removed, or who provides services for any of the foregoing, under and by virtue of a contract with the owner for such erection, building, construction, alteration, removal or repair, either for an agreed lump sum or upon any other basis of settlement and payment, shall have a lien upon such building or other structure or improvement appurtenant thereto, and upon the interest of the owner thereof in the real property whereon the same stands, or to which it may have been removed, to secure the payment of such contract price or other compensation therefor.

WV Legislature

§38-2-2. Lien of subcontractor.

Every person, firm or corporation who, under and by virtue of a contract with such general contractor as is mentioned in section one of this article, or with a subcontractor for a part of such work, either for an agreed contract price or by day or by piece, or other basis of payment, shall furnish any part of the materials, machinery or other necessary supplies or equipment, or shall perform any labor, do any work or provide any services necessary to the completion of any general contract, such as is mentioned in section one of this article, shall have such a lien for his or her compensation, as is provided for in section one of this article.

WV Legislature

§38-2-3. Lien of materialman furnishing supplies to owner.

Every person, firm or corporation which shall furnish to any owner, for use in the erection, construction, alteration, repair or removal of any building or other structure or improvement appurtenant thereto, any materials, machinery or other equipment or supplies necessary to the completion of such building or other structure or improvement, shall have such a lien for his compensation as is mentioned in section one of this article.

WV Legislature

§38-2-4. Lien of materialman furnishing supplies to contractor or subcontractor.

Every person, firm or corporation, which shall furnish to any general contractor or to any subcontractor mentioned in sections one and two of this article, any materials, machinery or other equipment or supplies necessary to the completion of any building or other structure mentioned in this article, or improvement appurtenant thereto, for use in the erection, construction, repair or removal thereof, by virtue of a contract between such general contractor or subcontractor and the materialman or furnisher of machinery, or other supplies or equipment necessary to the completion of such general contract, shall have such a lien for his compensation as is mentioned in section one of this article.

WV Legislature

§38-2-5. Lien of mechanic or laborer working for owner.

Every workman, artisan, mechanic, laborer or other person who performs any work or labor or provides any service in the erection, construction, repair or removal of any building or other structure or improvement appurtenant thereto, or who alters or improves the real property whereon the same stands, or to which it may have been removed, by virtue of a contract for such work and labor directly with the owner thereof, shall have such a lien for his or her compensation as is mentioned in section one of this article.

WV Legislature

§38-2-6. Lien of mechanic or laborer working for contractor or subcontractor.

Every workman, artisan, mechanic, laborer or other person who performs any work or labor or provides any service under the employment of any general contractor or of any subcontractor in the erection, construction, repair or removal of any building or other structure, or improvement appurtenant thereto, or who alters or improves the real property whereon the same stands, or to which it may have been removed, necessary to the completion of such general contract, shall have such a lien for his or her compensation as is mentioned in section one of this article.

WV Legislature

§38-2-6a. Lien of architect, surveyor, engineer or landscape architect.

An architect, surveyor, engineer or landscape architect shall have a lien for his or her compensation as provided for in sections one through six, inclusive, of this article for all materials furnished and[B all work done, or all services provided by such architect, surveyor, engineer and landscape architect as a contractor, subcontractor, materialman, mechanic or laborer, as the case may be. The lien shall be perfected and preserved in accordance with, and shall otherwise be subject to, the provisions of this article governing liens for contractors, subcontractors, materialmen, mechanics or laborers, as the case may be.

WV Legislature

§38-2-7. Necessity and period for perfecting lien.

But the lien created and authorized by section one of this article shall be discharged from and after one hundred days from the completion of the contract and the lien created and authorized by section two of this article shall be discharged from and after one hundred days from the completion of the subcontract and the lien created and authorized by section three of this article shall be discharged from and after one hundred days from the furnishing of the last of the materials, machinery or other supplies and equipment and the lien created and authorized by section four of this article shall be discharged from and after one hundred days from the date of the furnishing of the last of the materials, machinery or other equipment or supplies and the lien created and authorized by section five of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor and the lien created and authorized by section six of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor, unless, within the respective periods, the claimant of any such lien shall have perfected and preserved the same, as hereinafter provided in this article.

WV Legislature

§38-2-8. Notice and recordation of contractor's lien.

For the purpose of perfecting and preserving his lien, any such general contractor as is mentioned in section one of this article shall, within one hundred days after the completion of his work provided for in such contract, cause to be recorded, in the office of the clerk of the county court of the county wherein such property is situate, a notice of such lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To.....

Notice is hereby given, in accordance with the laws of the State of West Virginia, that the undersigned claims a lien to secure the payment of the sum of $..... upon your interest in and to lot number ..... of block number ..... as shown on the official map of the city of ..... (or other adequate and ascertainable description of the real estate to be charged) and upon the following buildings, structures and improvements thereon: (List the buildings, structures or improvements sought to be charged.)

Given under my hand this ..... day of ....., 20.....

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements contained in the foregoing notice of lien are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20....

My commission expires .....

.....

(Official Capacity)

WV Legislature

§38-2-9. Notice and recordation of subcontractor's lien.

For the purpose of perfecting and preserving his or her lien, every subcontractor mentioned in section two of this article shall, within one hundred days after the completion of his or her subcontract, give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned ..... was and is subcontractor with ..... who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of (here describe the nature of the subcontract) on that certain building (or other structure or improvement as the case may be), owned by you and situate on lot number ..... of block number ..... as shown on the official map of ..... (or other definite and ascertainable description of the real estate) and that the contract price and value of said work and materials is $..... You are further notified that the undersigned has not been paid therefor (or has been paid only $..... thereof) and that he or she claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the said sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his or her oath says that the statements in the foregoing notice of mechanic's lien are true, as he or she verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

But the lien shall be discharged and avoided, unless, within one hundred days after the completion of his or her subcontract as aforesaid, the subcontractor shall cause to be recorded in the office of the clerk of the county commission of the county wherein the property is situate, a notice of the lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-10. Notice and recordation of lien for supplies furnished to owner.

For the purpose of perfecting and preserving his lien, every materialman or furnisher of machinery or other necessary equipment, under a contract with the owner, as mentioned in section three of this article, shall cause to be recorded in the office of the clerk of the county court of the county wherein such property is situate, within one hundred days from the date when he shall have ceased to furnish material or machinery or other necessary equipment, a notice of such lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

For the purpose of perfecting and preserving his or her lien, every materialman or furnisher of machinery or other necessary equipment who has furnished material, machinery or equipment under a contract with any contractor or with any subcontractor, as set forth in section four of this article, within one hundred days after he or she has ceased to furnish the material or machinery or other equipment shall give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of the lien. The notice will be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned ..... has furnished and delivered to ..... who was contractor with you (or subcontractor with ....., who was contractor with you, as the case may be) for use in the erection and construction (or repair, removal, improvement or otherwise, as the case may be) of (here list the buildings or other structure or improvement to be charged) on the real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and the said materials were of the nature and were furnished on the dates and in the quantities and at the price as shown in the following account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $..... (or that there is still due and owing to the undersigned thereon the sum of $.....) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon, to secure the payment of the said sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements in the foregoing notice of lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

WV Legislature

The lien shall be discharged and avoided unless, within one hundred days after the materialman or other furnisher of machinery or other necessary equipment ceased to furnish the materials or machinery or other equipment, he or she recorded in the office of the clerk of the county commission of the county wherein the property is situate a notice of the lien. The notice shall be sufficient if in form and effect as that provided in section eight of this article. The recorded notice need not include the itemized account.

WV Legislature

§38-2-12. Notice and recordation of lien of mechanic or laborer working for owner.

For the purpose of perfecting and preserving his lien every such workman, artisan, mechanic, laborer or other person as is mentioned in section five of this article who shall have done any work or performed any labor upon any such building or improvement, under a contract with the owner thereof, shall cause to be recorded in the office of the clerk of the county court of the county wherein such property is situate, within one hundred days after he shall have ceased to perform any such work or labor, a notice of his lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

For the purpose of perfecting and preserving his or her lien, every workman, artisan, mechanic, laborer or other person who has performed any work or labor upon the building or improvement thereto, under a contract with any general contractor or with any subcontractor, as set forth in section six of this article, shall give to the owner, or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons within one hundred days after he or she ceased to perform any work or labor a notice of the lien. The notice shall be sufficient, if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned has performed work and labor under a contract with ..... who was general contractor with you (or who was subcontractor with ....., who was general contractor with you) in the erection and construction (or removal, repair, improvement or otherwise, as the case may be) of a certain building (or other structure or improvement) on real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and that the work and labor was of the kind, was performed on the dates, for the purposes and at the prices, as shown in the following itemized account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $..... (or that there is still due and owing to the undersigned thereon the sum of $.....) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

WV Legislature

The lien shall be discharged unless the workman, artisan, mechanic, laborer or other person shall record in the office of the clerk of the county commission wherein the property is situate, within one hundred days after he or she ceased to do work or perform labor upon the building or improvement thereto, a notice of the lien. The notice shall be sufficient if in form and effect as that provided in section eight of this article. The recorded notice need not include the itemized account.

WV Legislature

§38-2-14. Discharge of lien for failure to comply with article.

The failure of any person claiming a lien under this article to give such notice as is required by sections nine, eleven and thirteen of this article, or to record such notice as is required by sections eight, nine, ten, eleven, twelve and thirteen of this article, in the manner and within the time specified in such sections, or the failure of any such claimant of any such lien to comply substantially with all of the requirements of this article for the perfecting and preservation of such lien, within the time provided therefor in this article, shall, except as provided in section twenty of this article, operate as a complete discharge of such owner and of such property from all liens for claims and charges of any such contractor, subcontractor, materialman or laborer, for any work claimed to have been performed and for any materials, machinery or other necessary equipment claimed to have been furnished in connection with such work.

WV Legislature

§38-2-15. Publication and posting of notice to nonresident owner or owner not found.

In the event that any owner, upon whose real estate or improvement thereof it is desired to take a lien under this article, should be a nonresident of this state, or in the event that any officer of this state authorized by law to execute legal process should make return "not found" upon any notice of a mechanic's lien which may be presented to him for service, then it shall be sufficient service of any such notice of mechanic's lien upon such nonresident owner, or upon such owner as to whom any such return, of "not found" shall be made by any such officer, to publish a copy of such notice 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 wherein the real estate lies. A copy of such notice shall also be posted in a conspicuous place upon the property sought to be charged thereby, which publishing and posting shall be sufficient, if commenced within the period provided by this article for the filing of such notice. The costs of such publication may be added to the account for which the lien is claimed, and, if included in the amount mentioned in the recorded notice, the lien shall cover such costs.

WV Legislature

§38-2-16. What deemed included in one contract.

For the purposes of this article, all materials furnished, all work done, and all services provided by any one person, firm or corporation, upon any one building or the improvements appurtenant thereto, or upon the real property whereon the same stands, or to which it may have been removed, shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise.

WV Legislature

§38-2-17. Priority of mechanics' liens over other liens.

A lien authorized and created by this article shall, when perfected, attach as of the date such labor, material, machinery or other necessary equipment shall have begun to be furnished, and shall have priority over any other lien secured by a deed of trust or otherwise which is created subsequent to such date. Each lien authorized and created by this article shall be subordinate to any other lien created by a deed of trust or otherwise which is duly recorded or otherwise perfected to constitute constructive notice prior to the date labor, material, machinery or other necessary equipment giving rise to such lien shall have begun to be furnished, notwithstanding the fact that some other lien authorized and created by this article may have priority over such other lien created by deed of trust or otherwise which is so recorded or otherwise perfected.

WV Legislature

§38-2-18. Priority as among mechanics' lienors.

Of the persons acquiring liens by virtue of this article and solely for determining priorities as among such persons, laborers, artisans, mechanics, workmen and furnishers of material, machinery and other necessary equipment, shall have first liens, and the lien of such persons, when perfected and preserved as required by this article, shall take precedence over any lien taken or to be taken by the contractor or subcontractor indebted to them for labor, material, machinery or other equipment, to the extent of the amount of the lien of such contractor or subcontractor, and the lien of a subcontractor shall take precedence over any lien taken or to be taken by a contractor indebted to him upon his subcontract, to the extent of the amount of the lien of such contractor, and every assignment or transfer by any such head contractor of his contract with the owner or by any such subcontractor of his contract with the contractor, or any proceeding in attachment or otherwise against such head contractor or subcontractor, with the purpose of encumbering or subjecting his interest in such contract, shall be subject and subordinate to the liens of all such subcontractors, laborers, workmen, artisans, materialmen and furnishers of machinery and other necessary equipment who shall perfect their liens according to the provisions of this article. But all of such perfected liens of such laborers and workmen and of such materialmen and furnishers of machinery and of such contractors and subcontractors, respectively, shall be of equal dignity without priority among themselves, except as otherwise provided in this article.

WV Legislature

§38-2-19. Demand of account by owner; discharge of lien for failure to file account.

The owner may, at any time, by notice in writing, require such subcontractor, laborer, mechanic, workman or other person doing, or causing to be done, work or labor upon such building or other structure or improvement appurtenant thereto, or any such materialman or other person furnishing materials, machinery or other necessary equipment for such work, to file with such owner an itemized account of the work done or caused to be done by such laborer or other person, or of the materials or machinery or other equipment furnished by such materialman or other person for such work, which account shall show the dates upon which such work was done, or such materials were furnished, the price charged therefor, and the nature of such work or materials, and the neglect or failure of any such laborer, mechanic or other person furnishing materials, machinery or other necessary equipment for the doing of the same, so to file such itemized statement with such owner, within ten days after the receipt by him of such written notice so to do, shall release such owner from all responsibility and his property from all lien or charge for all labor done and for all materials furnished by the person so failing to file such required itemized statement, prior to the giving of such notice.

WV Legislature

§38-2-20. Preliminary notice to owner; effect.

Any laborer or other person employed to do any work or furnish any materials or machinery for the erection, construction, alteration, repair or removal of any building or other structure, or any improvement appurtenant thereto, by another who may have contracted with the owner therefor may, before doing any work or furnishing any material or machinery, give the owner of such building or other structure or improvement thereto notice in writing that if he is not paid therefor by the person employing him he will look to the owner for payment; and it shall not be necessary for the person who has given such notice in writing to file the account and notice with the owner within sixty days of the date of the doing of the last work or of the furnishing of the last of such materials or machinery, unless he is required by the owner in writing within such sixty days to do so, and his neglect or failure to file such notice and account within sixty days, unless so required to do so, shall in no way affect or impair his lien if it be otherwise perfected and preserved, as provided in this article.

WV Legislature

§38-2-21. Effect of payment by owner to contractor or subcontractor.

(a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any building, structure or improvement appurtenant to a building, structure or improvement or for any part or section of a work may affect, impair or limit the lien of the subcontractor, laborer, or materialman or furnisher of machinery or other necessary material or equipment, as provided in this article, except as otherwise provided in this article.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner's primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

WV Legislature

§38-2-22. Limitation of owner's liability by recordation of contract and bond of general contractor.

Any owner may limit his liability upon a contract such as is mentioned in section one of this article, to the sum agreed therein to be paid therefor, by recording his contract with such general contractor, in the office of the clerk of the county court of the county wherein such building or other structure is situate, prior to the beginning of the building, erection and construction thereof, and by requiring to be given by his general contractor, and by recording with such general contract, a valid and solvent bond, in a penalty equal to the contract price, with solvent surety, conditioned that in the event any laborer, materialman or other person, having perfected his lien as allowed by this article, be deprived by the recordation of the owner's contract from receiving from such owner the amount of his lien, then such bond and the surety thereon shall be responsible to such lienor for the amount of such lien account, or for any balance thereof not collected by such lienor from such owner and from such property. Any such owner who shall cause his general contract to be recorded in such clerk's office and who shall cause to be executed and recorded the bond therewith as hereinbefore provided shall be exempt from the payment of more than such contract price, and his property shall likewise be exempt therefrom, and all such liens created by this article as are not fully satisfied and discharged by such owner, by reason of such recordation, shall be paid by such contractor and his surety on such bond. If liens in excess of the contract price are perfected as provided in this article, the owner shall be liable to each lien claimant pro rata, in the proportion which the contract price bears to the total amount of the liens so perfected.

WV Legislature

§38-2-23. Effect of failure of owner to record contract and bond.

In the event any such owner should fail to record such contract and bond, or in the event the penalty of such bond should not be equal to the contract price, or in the event such bond should not be solvent at the time when given, then such contractor shall be deemed to be the agent of such owner and the building or other structure and the improvements appurtenant thereto, together with the interest of the owner thereof in and to the lot of land whereon the same stands or to which it is removed, shall be held liable and subject to such perfected liens, for the full and true value of all work and labor done and of all materials, machinery and equipment furnished therefor, although the same may exceed in the aggregate the price stipulated in the contract between the owner and the contractor.

WV Legislature

§38-2-24. Form of bond.

The bond referred to in section twenty-two of this article shall be sufficient if in form and effect as follows:

Know all men by these presents:

That ..... as principal, and ..... as sureties (or surety) are held and firmly bound unto ..... in the just and full sum of $....., to the payment whereof well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this ..... day of ....., 19....

The condition of the above obligation is such:

That whereas, the said ..... has entered into a certain contract with ..... for the building and erection by the said ..... for the said ..... of a certain ....., to be situated .....; and whereas, it is agreed between the above-named principal and surety that no change or modification of such contract

shall operate to discharge the surety upon this bond; now, therefore, if the said ..... shall well and truly perform his said contract, shall pay off, satisfy and discharge all claims of subcontractors, laborers, materialmen and all persons furnishing material or doing work upon said building and shall save the said ..... and his property harmless from any and all liability, over and above the contract price thereof, between the said owner and the said contractor, for all of such labor and materials, and shall fully pay off and discharge and secure the release of any and all mechanics' liens which may be placed upon said property by any such subcontractor, laborer or materialman, then this obligation shall be null and void. Otherwise to remain in full effect.

(Seal)

(Seal)

(Seal)

Acknowledged before the subscriber, a notary public, in and for the State of West Virginia and County of ....., this ..... day of ....., 19....

My commission expires .....

Notary Public.

No change or modification of any such contract between such owner and such general contractor shall operate to discharge or release the obligation of the surety or sureties upon

WV Legislature

any such bond.

WV Legislature

§38-2-25. Amount of rural land subject to lien.

Whenever a lien, perfected and preserved under this article is sought to be enforced against any property outside of any city, town or village, it shall be the duty of the court before which any suit for the enforcement of such lien is pending, to determine in its discretion how much land surrounding any such building shall be subject to such lien. In any event, not more of such land shall be so subject to such lien than shall be reasonably necessary to the full enjoyment of such building or other improvement.

WV Legislature

§38-2-26. Enforcement of contractor's bond in suit to enforce lien.

Whenever it shall be necessary for suit to be brought as hereinafter provided, for the enforcement of any of the liens contemplated by this article, such contractor and the sureties upon such bond mentioned in sections twenty-two, twenty-three and twenty-four of this article, shall be made parties thereto and all matters arising upon such bond and the liabilities thereunder shall be litigated and determined in such suit to enforce the lien and it shall not be necessary for judgment upon such bond to be taken at law, but all such proceedings as are necessary to enforce liability upon such bond shall be had in such court of chancery, according to the usual and ordinary course of proceeding therein.

WV Legislature

§38-2-27. Clerk of county court to record notices of liens, contracts and bonds; record book; indexing.

It shall be the duty of the clerk of the county court of the county to enter every notice of lien mentioned in this article upon the filing in his office of such notice in a book by him to be kept for that purpose, to be called "Mechanic's Lien Record," which book shall be well and properly indexed, so as to show the names of the parties, the amount and character of the claim, when filed, and the description of the property to be charged by such lien. The contract and bond mentioned in section twenty-two of this article shall also, when filed in the office of such clerk, be entered in the mechanic's lien record and indexed.

WV Legislature

§38-2-28. Proof of sale and delivery prima facie proof of use of materials.

Proof of the sale to any owner, contractor or subcontractor of any materials, machinery or other equipment for use in the performance of any contract mentioned in this article, and of the delivery of such materials, machinery or other equipment to such contractor or subcontractor, shall be prima facie proof of the use of such materials, machinery or equipment in the erection and construction of such building or other structure and of the improvements appurtenant thereto, and upon the proving of such facts, the burden of showing that such materials, machinery and equipment were not used in such building or other structure or improvement appurtenant thereto shall be upon the owner or other person disputing such use thereof.

WV Legislature

§38-2-29. Lien on several structures.

Any materialman or furnisher of machinery or other equipment necessary to the performance of any one such general or subcontract, who shall furnish such materials, machinery or other equipment in quantities for use in more than one building or other structure or improvement appurtenant thereto, and any workman, laborer or other person who shall perform work or labor upon more than one such building or other structure or improvement appurtenant thereto, provided for in such contract, shall have a lien upon all of such buildings and other structures and improvements into which his materials were put or upon which his work and labor was expended and upon the interest of the owner in and to the lot of ground upon which all of such buildings and structures stand or to which they may be removed, and such lien may be perfected and preserved by one notice thereof to such owner and by one recordation thereof, and it shall not be necessary for such lienor to give and record a notice as to each separate building or structure or improvement thereto.

WV Legislature

§38-2-30. Compensation and lien of contractor on default of owner.

When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to reasonable compensation for so much as he shall have performed, in proportion to the price stipulated for the whole, and shall have such a lien as is provided in this article, to secure payment thereof, when such lien is properly perfected and preserved according to the provisions of this article.

WV Legislature

§38-2-31. Lien against corporation for work or labor; priority.

Every workman, laborer or other person who shall do or perform any work or labor, for an incorporated company doing business in this state, by virtue of a contract either directly with such incorporated company or with its general contractor, or with any subcontractor, shall have a lien for the value of such work or labor upon all real estate and personal property of such company; and, to the extent and value of one month's such work or labor, said lien shall have priority over any lien created by deed or otherwise on such real estate or personal property subsequent to the time when such work or labor was performed: Provided, however, That there shall be no priority of lien as against conditional sales of, or reservation of title to, machinery sold to such company; nor shall there be priority of lien as between the parties claiming under the provisions of this section.

WV Legislature

§38-2-32. Perfecting lien for work or labor against corporation.

Such lien shall be discharged unless the person desiring to avail himself thereof, within ninety days from the time he shall have ceased to work or labor for such incorporated company or for such contractor, shall file with the clerk of the county court of the county in which such work or labor was performed, or in which the principal office, works, real estate or personal property of such incorporated company is situated, a notice of lien containing the amount due him after allowing all credits, which notice shall be sworn to by the person claiming such lien, or by someone in his behalf.

WV Legislature

§38-2-33. Clerk to record notices of liens against corporations for work and labor.

The clerk of the county court, to whom the notice of lien mentioned in the preceding section is presented, shall record the same in the mechanic's lien record. If the amount of the claim is for more than one month's work or labor, the record shall show, separately, the full amount of the claim and in addition thereto the amount of the claim for such month for which such prior lien is claimed.

WV Legislature

§38-2-34. Time within which suit to enforce lien may be brought; right of other lienors to intervene.

(a) Unless an action to enforce any lien authorized by this article is commenced in a circuit court within six months after the person desiring to avail himself or herself of the court has filed his or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an action commenced by any person having a lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and persons may intervene in the action for the purpose of enforcing their liens.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his or her primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

(c) As used in subsection (b):

(1) >Dwelling' or >residence' means any building or structure intended for habitation, in whole or part, and includes, but is not limited to, any house, apartment, mobile home, house trailer, modular home, factory-built home and any adjacent outbuildings.

(2) >Outbuilding' means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

WV Legislature

§38-2-35. Decree of sale in suit to enforce lien; personal decree.

If the lien or liens be established in favor of any of the creditors whose claims are presented in the suit mentioned in the preceding section, the court shall order a sale of the property on which the liens are established, or so much thereof as may be sufficient to satisfy such claims, in like manner as in other suits in chancery, and the court may, in addition, give a personal decree in favor of such creditors for the amount of their claims against any party against whom they may be established, and such decree shall have the effect of, and be enforced as, other decrees for money.

WV Legislature

§38-2-36. Discharge or release of lien; recordation; escrow; disbursement of escrow.

(a) When a debt secured by any lien mentioned in this article is fully paid at any time after the lien creditor shall have filed his notice of such lien in the office of the clerk of the county commission, such creditor assignee shall cause the clerk to enter a discharge of such lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(b) (1) At any time after a lien creditor has given notice of lien as required by the provisions of this article and has subsequently duly filed such notice of lien with the clerk of the county commission as provided for in this article, the owner or any person against whom the lien is claimed may apply to the circuit court having jurisdiction to enforce such lien, by petition, for an order authorizing such owner or other person against whom the lien is claimed to deposit, in escrow, with the clerk of the circuit court, an amount equal to the sum set out as due in the notice of lien, and directing the circuit clerk to execute a release of the lien. Previous to the filing of such petition, the petitioner shall cause to be served upon the lien creditor a notice of the time and place that such application will be made, which notice shall be served by registered mail, return receipt requested, addressed to the lien creditor or his authorized agent at the address set forth in the notice of lien: Provided, That if no such address is set forth in the notice of lien, the petitioner shall serve the notice, setting forth the time and place that his application will be made, in the same manner as original process is served for the commencement of civil actions.

(2) At the hearing upon the petition, the court shall ascertain what interest, if any, might reasonably be expected to accrue on the sum claimed to be due, either by contract or by operation of law, and subsequently be payable to the lien creditor, should he prevail upon his claim. The court shall also determine the current rate of return upon investments made by the general receiver of the court at the time of the hearing, and ascertain what rate of interest might reasonably be earned upon the petitioner's escrow deposit when paid into the court. To the extent that the anticipated interest due to the lien creditor exceeds the anticipated return upon the investment of the escrow deposit, the court may require an additional deposit beyond the sum set forth in the notice of lien, as the interests of the parties may require. The order authorizing the deposit and directing the execution of the release shall, if the court anticipates that complex or extended litigation may arise in resolving the issue of the validity of liens or claims in the case, require that the petitioner or other parties give security before the court, or the clerk thereof, for payment of the costs which may be awarded in the court, and of the fees due, or to become due, in any action to determine such issue.

(3) If an escrow deposit is authorized by the court, such deposit shall be made by cash, and when paid into court, shall be received by the general receiver of the court, who shall take charge of and invest the money deposited in the manner provided for in section one, article six, chapter fifty-one of this code until otherwise ordered to pay out or dispose of the same by the circuit court. Upon presentation to the clerk of the county commission wherein the

WV Legislature

notice of lien is filed of an order of the court and a receipt executed by the clerk of the circuit court for the amount required to be deposited by the terms of the order, the clerk of the county commission shall file the order and shall enter a discharge of the lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(4) Unless an action to determine the validity of the creditor's claim is commenced within six months after the creditor shall have filed his notice of lien in the office of the clerk of the county commission as provided for in this article, the court shall, upon motion of the depositor, order the general receiver to pay out to the depositor the sum deposited, together with any dividends and interest, if any, earned upon the investment of the deposit, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of section seven, article six, chapter fifty-one of this code. If the claim is satisfied or settled and compromised at any time while secured by the deposit made with the general receiver but before an action is commenced, the court shall, upon proof of satisfaction or settlement and compromise, order the general receiver to pay out the deposit to the depositor in the same manner as though suit was not commenced within the requisite period of six months as described above. If an action is commenced, the general receiver shall thereafter pay out the money deposited and the dividends and interest, if any, earned upon the investment of the deposit, as the court may order or decree, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of said section seven.

WV Legislature

§38-2-37. Ordering clerk to execute release when lienholder refuses.

In case of the refusal of the party holding such lien to cause such clerk to enter a discharge of such lien, or to execute a release of such lien, in the manner provided in the preceding section of this article, upon the request of the party entitled to such discharge or release, the circuit court of the county, or the judge thereof in vacation, in which such lien is recorded may, on motion, after reasonable notice of the party so refusing, and if no good cause be shown against it, direct the clerk of the county court to enter such discharge, which shall thereupon have the effect of a discharge entered under the provisions of the preceding section. Such proceeding shall be at the cost of the party so refusing.

WV Legislature

§38-2-38. Enforcement of lien by executor, administrator or assignee.

The executor or administrator of any person entitled to a lien under this article, or any assignee of the claim upon which such lien is based, shall be entitled to such lien, and to the right to perfect and enforce such lien, in the same manner and to the same extent as the testator, intestate, or assignor could have done, had he remained the owner of such claim.

WV Legislature

§38-2-39. Public building; bond of contractor; recordation of bond; no lien in such case.

It shall be the duty of the state commissioner of public institutions, and of all county courts, boards of education, boards of trustees, and other legal bodies having authority to contract for the erection, construction, improvement, alteration or repair of any public building or other structure, or any building or other structure used or to be used for public purposes, to require of every person to whom it shall award, and with whom it shall enter into, any contract for the erection, construction, improvement, alteration or repair of any such public building or other structure used or to be used for public purposes, that such contractor shall cause to be executed and delivered to the secretary of such commissioner or other legal body, or other proper and designated custodian of the papers and records thereof, a good, valid, solvent and sufficient bond, in a penal sum equal at least to the reasonable cost of the materials, machinery, equipment and labor required for the completion of such contract, and conditioned that in the event such contractor shall fail to pay in full for all such materials, machinery, equipment and labor delivered to him for use in the erection, construction, improvement, alteration or repair of such public building or other structure, or building or other structure used or to be used for public purposes, then such bond and the sureties thereon shall be responsible to such materialman, furnisher of machinery or equipment, and furnisher or performer of such labor, or their assigns, for the full payment of the full value thereof.

No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

All such bonds shall have as surety thereon either some incorporated bonding and/or surety company authorized to carry on business in this state, or in lieu of such corporate surety the contractor may deposit as security for such bond with the said state commissioner of public institutions, county court, Board of Education, board of trustees or other legal body having authority so to contract, a sum in cash or bonds and securities of the United States of America or of the State of West Virginia of sufficient amount and value equal at least to the reasonable cost of materials, machinery, equipment and labor required for the completion of such contract. Immediately upon the acceptance of either of said bonds by the state commissioner of public institutions, county court, Board of Education and board of trustees, or other legal body, the bond shall be recorded by the secretary of such commissioner or other legal body, or by the proper designated custodian of the papers or records thereof, in the office of the clerk of the county court of the county or counties wherein such work is to be done and where such materials, machinery or equipment are to be delivered, and no such contract shall be binding and effective upon either party or parties thereto until such bond has been executed, delivered and recorded as aforesaid.

Nothing in this article shall be construed to give a lien upon such a public building or

WV Legislature

improvement as is mentioned in this section, or upon the land upon which such public building or improvement is situated.

WV Legislature