WEST VIRGINIA CODE CHAPTER 38 ARTICLE 3

WV Legislature

§38-3-1. Effect of decrees and orders; enforcement.

A decree for land or specific personal property and a decree or order requiring the payment of money shall have the effect of a judgment for such land, property or money, and be embraced by the word "judgment" where used in this or in articles four, five, and six of this chapter. But a decree or order in chancery, other than for the payment of money, or a decree or order for alimony or maintenance, may be enforced as it might have been if this and the following section had not been enacted.

WV Legislature

§38-3-2. Decree or order for payment of money; enforcement by execution.

The persons entitled to the benefit of any decree or order requiring the payment of money shall be deemed judgment creditors, although the money may be required to be paid into a court or a bank or other place of deposit. In such case an execution on the decree or order shall make such recital thereof, and of the parties to it, as may be necessary to designate the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time.

WV Legislature

§38-3-3. Meaning of word "judgment."

In the following two sections the word "judgment" shall include any undertaking, bond or recognizance which has the force of a judgment.

WV Legislature

§38-3-4. Abstracts of judgments; damages or penalty for failure of clerk or justice to deliver.

The clerk of every court of this state shall, without delay, make out and deliver a duly certified abstract of every judgment rendered by such court, and every justice of the peace shall, without delay, make out and deliver a duly certified abstract of every judgment rendered by him or by any other justice, the docket of which judgment is in his possession and under his control, to any person interested therein who may demand the same, and pay or tender the fee therefor, in which abstract shall be stated: (a) The names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they appear in the papers and proceedings in the cause, and if the defendants are sued as partners, the individual names of such defendants, and also the partnership name shall be stated; (b) the amount of the judgment and the amount of the costs, stating each separately; (c) the value of the specific property (if any) recovered by it, and the damages, if any, for its detention; (d) the date of the judgment and the court in which, or the justice by whom, the judgment was rendered. Any clerk or justice who shall fail to deliver such abstract as herein required shall, together with the sureties in his official bond, be liable to the person injured by such failure for the amount of his injury, or such injured person may, at his option, recover $50 from such clerk or justice.

WV Legislature

§38-3-5. Docketing abstracts of judgments; indexing; damages or penalty for failure of clerk to perform duties.

The clerk of every county court shall keep in his office, in a well-bound book, a judgment docket, in which he shall docket without delay any judgment rendered by any justice of the peace or court of this state or by any court of the United States within this state, upon the delivery to him of an authenticated abstract thereof for that purpose, and the payment or tender of his fee therefor. In such docket there shall be stated, in separate columns: (a) The names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they are stated in such abstract, and if it appear by such abstract that the defendants were sued as partners, their partnership name as well as their individual names shall be stated; (b) the amount of the judgment and of the costs, stating each separately; (c) the value of any specific property recovered by the judgment, and the damages (if any) for its detention; (d) the date of the judgment; (e) the court in which or the justice by whom it was rendered; (f) the date of docketing the judgment; (g) there shall also be a column for the notation of executions, if any shall be issued, upon the judgment. Every judgment, docketed by the clerk of the county court as aforesaid, shall at the same time be indexed by him in an index to be kept in or annexed to such judgment docket, such index showing the full name of the defendant, and, if more than one defendant, the full name of each, as they appear in such abstract. If the defendants are sued as partners, it shall also be indexed in the partnership name appearing in such abstract. Any clerk of a county court failing to perform any duty required of him by this section, or by section eight of this article, shall, together with the sureties in his official bond, be liable to the person injured by such failure for the amount of his injury, or such injured person may, at his option, recover $50 from such clerk.

WV Legislature

§38-3-6. Lien of judgment on real estate.

Every judgment for money rendered in this state, other than by confession in vacation, shall be a lien on all the real estate of or to which the defendant in such judgment is or becomes possessed or entitled, at or after the date of such judgment, or if it was rendered in court, at or after the commencement of the term at which it was so rendered, if the cause was in such condition that a judgment might have been rendered on the first day of the term; but if from the nature of the case judgment could not have been rendered at the commencement of the term, such judgment shall be a lien only on or after the date on which such judgment or decree could have been rendered and not from the commencement of the term; but this section shall not prevent the lien of a judgment or decree from relating back to the first day of the term merely because the case shall be set for trial or hearing on a later day of the term, if such case was matured and ready for hearing at the commencement of the term, not merely because an office judgment in a case matured and docketed at the commencement of the term does not become final until a later day of the term. A judgment by confession in vacation shall also be a lien upon such real estate, but only from the time of day at which such judgment is confessed. Such lien shall continue so long as such judgment remains valid and enforceable, and has not been released or otherwise discharged.

WV Legislature

§38-3-7. Judgment lien not good as against bona fide purchasers unless docketed, etc.; effect of issuing and filing execution.

No judgment shall be a lien as against a purchaser of real estate for valuable consideration without notice, unless it be docketed according to the fifth section of this article, in the county wherein such real estate is, before a deed therefor to such purchaser is delivered for record to the clerk of the county court of such county; nor shall such judgment, though it be docketed as aforesaid, be a lien, after ten years from its date as against such a purchaser who purchases after such ten years, unless within such ten years an execution shall have issued on such judgment and such execution or a copy thereof be filed in the office of such clerk, or, unless such purchaser have actual notice of the fact that such execution was issued, though it was not so filed; nor shall such judgment, though it be docketed as aforesaid, and though one or more executions shall have issued thereon and shall have been filed as aforesaid, be a lien, after ten years from the date of the last execution so filed, as against such a purchaser who purchases after such ten years, unless such purchaser have notice of the issuing of an execution within ten years preceding the date of such purchase.

WV Legislature

§38-3-8. Notation of executions on judgment lien docket.

It shall be the duty of the clerk of the county court, upon the filing of the execution, or a copy thereof, as provided in the preceding section or upon the filing of any execution issued by any court of the United States within this state, to note on the judgment lien docket, in the column provided for such notation, or on the margin of the record of such judgment, the date on which such execution issued and the date of the filing thereof.

WV Legislature

§38-3-9. Enforcement of judgment lien by suit.

The lien of a judgment may be enforced in a court of equity after an execution or fieri facias thereon has been duly returned to the office of the court or to the justice from which it issued showing by the return thereon that no property could be found from which such execution could be made: Provided, That such lien may be enforced in equity without such return when an execution or fieri facias has not issued within two years from the date of the judgment. If it appear to such court that the rents and profits of the real estate subject to the lien will not satisfy the judgment in five years, the court may decree such real estate, or any part thereof, to be sold and the proceeds applied to the discharge of the judgment.

WV Legislature

§38-3-10. Same -- Parties.

In every suit in equity to enforce a judgment, all persons having liens on the real estate sought to be subjected, by judgment or otherwise, shall be made parties plaintiff or defendant, or if the number of such persons exceed ten, the suit may be brought by any one or more of them, for the benefit of himself and such other lienholders as will come in and contribute to the expenses of the suit. And whether the suit be so brought or not, every such lienholder, whether he be named as a party to the suit or not, or whether he be served with process therein or not, may present, prove and have allowed any claim he may have against the judgment debtor, which is a lien on such real estate, or any part thereof, and from and after the time he presents any such claim he shall be deemed a party plaintiff in such suit.

WV Legislature

§38-3-11. Same -- Publication of notice to lienholders.

No decree for the distribution of the proceeds of real estate in a suit in equity to enforce a judgment shall be made until a notice to all persons holding liens on the real estate of the judgment debtor be published, under a decree of the court, as hereinafter provided. Such notice shall be sufficient if it be in form or effect as follows:

To all persons holding liens by judgment or otherwise, on the real estate, or any part thereof, of A ..... B .....:

In pursuance of a decree of the circuit court of ..... county, made in a cause therein pending, to subject the real estate of the said A ..... B ..... to the satisfaction of the liens thereon, you are hereby required to present all claims held by you and each of you against the said A ..... B ....., which are liens on his real estate, or any part of it, for adjudication to me, at my office in the county (or city, town or village, as the case may be) of ..... on or before the ..... day of .....

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

C..... D ....., Commissioner.

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. Publishing of such notice shall be equivalent to the personal service thereof on all persons holding liens, on any such real estate, unless the court shall, in the decree directing such notice to be so published, otherwise order.

WV Legislature

§38-3-12. Same -- Duties of commissioner.

The commissioner to whom the case is referred by such decree shall, as soon as possible after such notice is published as aforesaid, or served in such manner as the court may order, proceed to ascertain and report all the liens, on the real estate or any part thereof of the judgment debtor, the holders of such liens, the amount due to each, and the priorities thereof, and such other matters and things as the court by its decree may direct, and the same proceeding shall be had on such report as in other suits in chancery.

WV Legislature

§38-3-13. Same -- Confirmation of report; decree of rental or sale and distribution.

When the report of any such commissioner is confirmed, if the claims therein reported (if any) be not paid, the court shall decree that so much of the real estate of the judgment debtor as may be necessary, and which is subject to such lien or liens, shall be rented or sold, and the proceeds thereof distributed among the several lienholders who have appeared and proved their liens and claims, according to their several priorities, if any; which decree shall be a bar to the claim of any lienholder who has not appeared and presented his claim to such commissioner, as required by such notice, except that if a surplus remain after the payment of the claims so presented and proved and confirmed by the court, the lienholder so failing to appear may share in such surplus, upon proving his claim at any time before a final decree in the case, in such manner as the court shall direct. But if he fail to present his claim before such final decree, he shall be forever barred of all right to participate in the proceeds of such real estate so far as the other creditors of such judgment debtor, holding liens on such real estate, who have not so failed, are concerned.

WV Legislature

§38-3-14. Same -- Judgment against debtor pending suit.

If, pending any such suit, a judgment at law be recovered by any person against such judgment debtor, such person may present his claim to the commissioner and have it adjudicated and allowed in the same manner and to the same extent as if the judgment had been obtained before the institution of such suit. And he may present such claim to the court after the report is made, and before the entering of a decree distributing the proceeds of the sale of such real estate, and have the same adjudicated and passed upon by the court, and if found to be correct and a lien upon such real estate, the court shall allow and confirm the same, and provide for the payment thereof in the decree of sale and distribution.

WV Legislature

§38-3-15. Same -- Other proceedings commenced pending suit.

If, after the commencement of suit to enforce a judgment lien, any lienholder commence any other suit or proceeding in or out of court to enforce a lien claimed by him on the real estate, or any part thereof, of the judgment debtor, upon which a lien is sought to be enforced by such suit, the court, or the judge thereof in vacation, may enjoin him from so doing and require him to come in and assert his lien in such suit, or make such order or decree in relation thereto as to such court or judge may seem right and proper to protect the interest of all parties having such liens.

WV Legislature

§38-3-16. Order of liability of real estate.

Where the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it, or any part of it, has been aliened, as between the alienees, that which was aliened last shall, in equity, be first liable, and so on with other successive alienations until the whole judgment is satisfied, except that where any prior alienee has not recorded his deed or conveyance another parcel of the judgment debtor's land, subsequently aliened to a purchaser for value and without notice of the prior alienation, shall be considered as having been aliened prior to the aforesaid unrecorded alienation. But any part of such real estate retained by the debtor himself shall be first liable to the satisfaction of the judgment.

WV Legislature

§38-3-17. Judgment liens commencing on same day.

Where two or more judgments are rendered against the same person, and the liens thereof on his real estate commerce on the same day, the creditors having such judgments shall be entitled to satisfaction out of such real estate ratably.

WV Legislature

§38-3-18. Limitations on enforcement of judgments.

(a) On a judgment, execution may be issued within ten years after the date thereof. Where execution issues within ten years as aforesaid, other executions may be issued on such judgment within ten years from the return day of the last execution issued thereon, on which there is no return by an officer, or which has been returned unsatisfied.

(b) For any order for child support in an action filed on and after the amendment and reenactment of this section during the 2008 legislative session, an execution may be issued upon a judgment for child support, as those terms are defined in chapter forty-eight of this code, within ten years after the emancipation of the child: Provided, That in cases where the support order is for more than one child, the limitations set forth in subsection (a) of this section commence when the youngest child who is the subject of the order on which the execution is based reaches the age of eighteen or is otherwise legally emancipated.

(c) An action, suit or scire facias may be brought upon a judgment where there has been a change of parties by death or otherwise at any time within ten years next after the date of the judgment; or within ten years from the return day of the last execution issued thereon on which there is no return by an officer or which has been returned unsatisfied. But if such action, suit or scire facias be against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative.

WV Legislature

§38-3-19. Exceptions to limitations.

No execution shall issue, nor any action, suit or scire facias be brought on any judgment in this state after the time prescribed in the preceding section, except that in computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted from the computation; and sections fifteen, sixteen, seventeen and eighteen, article two, chapter fifty-five of this code shall apply to the right to bring such action, suit or scire facias, in like manner as to any right, action, suit or scire facias mentioned in those sections; and except that when the judgment is for a sum ascertained, and such further sums as may be afterwards assessed, or be found due upon a scire facias assigning a further breach, as provided in section thirty, article six, chapter fifty-six of this code, such scire facias may be brought within ten years after such breach.

WV Legislature