WEST VIRGINIA CODE CHAPTER 38 ARTICLE 4

WV Legislature

§38-4-1. Executions against corporations.

Against a corporation such execution may issue as against a natural person.

WV Legislature

§38-4-2. Executions on joint judgments.

Where a judgment is against several persons jointly, executions thereon shall be joint against them all.

WV Legislature

§38-4-3. Execution for benefit of person other than plaintiff.

Where an execution issues on a judgment for the benefit, in whole or in part, of any person other than the plaintiff, if that fact appear by the record, the clerk shall, in the execution or an indorsement thereon, state the extent of the interest therein of such persons, and such person may, as a party injured, either in his own name or that of the plaintiff, prosecute a suit or motion against the officer.

WV Legislature

§38-4-4. Writs of possession and fieri facias on judgments for specific property.

On a judgment for the recovery of specific property, real or personal, a writ of possession may issue for the specific property, which writ shall conform to the judgment as to the description of the property, and the estate, title, or interest recovered. On such a judgment a writ of fieri facias or execution may also be issued for the damages or profits and costs.

WV Legislature

§38-4-5. Execution or fieri facias on money judgment.

On a judgment for money, there may be issued an execution known as a writ of fieri facias.

WV Legislature

§38-4-6. On what fieri facias may be levied.

By a writ of fieri facias, the officer shall be commanded to make the money therein mentioned out of the personal property of the person against whom the judgment is. The writ may be levied upon goods and chattels, current money and bank notes, stamps, certificates of stock in a corporation, negotiable warehouse receipts, negotiable instruments, or any other negotiable evidences of indebtedness calling for a liquidated sum of money, belonging to the person against whom the judgment is.

WV Legislature

§38-4-7. How currency or bank notes shall be accounted for.

If the levy be upon gold or silver coin or other currency which is legal tender in the United States, the same shall be accounted for at its par value as so much money made under the execution. If it be upon bank notes or currency which are not legal tender in the United States, and the creditor will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution.

WV Legislature

§38-4-8. Commencement and duration of lien of fieri facias.

A writ of fieri facias or execution shall create a lien, from the time it is delivered to the sheriff or other officer to be executed, upon all of the personal property, or the estate or interest therein, owned by the judgment debtor at the time of such delivery of the writ, or which he may acquire on or before the return day thereof, although such property was not levied on or capable of being levied on under the provisions of section six of this article. Such lien shall continue beyond the return day of the execution, whether the writ was levied or not, but shall cease whenever the right of the judgment creditor to levy the writ under which such lien arose, or to levy a new writ, ceases, under the provisions of section eighteen, article three of this chapter, or when such right is suspended by a forthcoming bond being given or forfeited, or by an appeal or otherwise. The lien created by this section shall be subject to the provisions of sections nine and ten of this article.

WV Legislature

§38-4-9. Purchaser for value and without notice before levy takes free of lien; payment or delivery to debtor without notice is without liability.

The lien of a writ of fieri facias shall not be good as against a purchaser or assignee of the property subject to the lien, for a valuable consideration and without notice of such lien, unless, at the time of such purchase or assignment, the writ shall have been actually levied upon the property, and the property shall have been in the actual possession of the officer or of some person, other than the judgment debtor, holding such property for the officer. If the property, upon which such writ is a lien, is a debt or liability of some third person to pay money or deliver property to the judgment debtor, any payment or delivery made by such third person to the judgment debtor or his assignee, before such third person has notice of the writ, shall be good, and such person shall be discharged, to the extent of such payment or delivery, from any liability to the judgment creditor: Provided, however, That if the evidence of such debt or liability of such third person is a writing of such a nature that it could be levied on under the provisions of section six of this article, and if such writing has been levied on and taken into the possession of the officer under the writ, such levy shall constitute notice to such third person of the lien of such fieri facias.

WV Legislature

§38-4-10. Docketing as constructive notice.

The docketing of an execution as provided in the following section of this article shall constitute constructive notice to all persons, of such execution: Provided, however, That if the property upon which such execution is a lien be a negotiable instrument, a holder in due course of such instrument shall hold it free from the lien of such execution, whether such execution be docketed or not, and if the property be a debt or liability of a third person to the judgment debtor, whether such debt or liability be negotiable or not, any payment made by such third person to such judgment debtor shall discharge such third person from all further liability, to the extent of such payment, whether such execution be docketed or not, unless such third person had actual notice of such execution: Provided further, That any sale of property made by a merchant, dealer, or manufacturer in the regular course of the business of such person, shall pass such goods free from the lien of an execution, whether it be docketed or not.

WV Legislature

§38-4-11. Docketing of execution.

The clerk of the county court of every county shall keep in his office, in a well-bound book, an execution docket, in which he shall docket without delay, any execution in this state, when he shall be required so to do by any person interested, on such person delivering to him an authenticated abstract of it, for which he shall be entitled to the same fee as for docketing a judgment. In such abstract and docket there shall be stated in separate columns: (a) The full name of the plaintiff or plaintiffs, and of the defendant or defendants, and if the defendants are sued as partners, the name of the partnership; (b) the amount of the execution; (c) the date of the execution; (d) the day and hour when received by the sheriff or other officer; (e) when returnable; (f) the date of docketing.

WV Legislature

§38-4-12. Exemption from execution.

Such property as a husband or parent may have listed and set apart as exempt from distress and levy, under the provisions of law, shall not be subject to the lien of a fieri facias.

WV Legislature

§38-4-13. Indorsement of time of receipt by officer; penalty for failure to indorse.

Every officer shall indorse on each writ of fieri facias the year, month, day, and time of day, he receives the same. If he fail to do so, the judgment creditor may, by motion, recover against him and his sureties, jointly and severally, in the court in which the judgment was rendered, a sum not exceeding fifteen percent upon the amount of the execution.

WV Legislature

§38-4-14. Order of levy and satisfaction of several writs.

Of writs of fieri facias, that which was first delivered to the officer, though two or more be delivered on the same day, shall be first levied and satisfied; and where several such executions are delivered to the officer at the same time, they shall be satisfied ratably.

WV Legislature

§38-4-15. Rules concerning distress or levy.

The officer shall in no case make an unreasonable distress or levy. For horses or any livestock distrained or levied upon, he shall provide sufficient sustenance while they remain in his possession. Nothing distrained or levied upon shall be removed by him out of his county, unless it is otherwise specially provided.

WV Legislature

§38-4-16. Officer's return upon fieri facias.

Upon a writ of fieri facias the officer shall make a return showing whether or not the money therein mentioned has been or can be made, or whether any part thereof, and if so, what part, has been or can be made. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges; and such amount, except such fees and charges, he shall pay to the person entitled, or to his agent or attorney.

WV Legislature

§38-4-17. Resale upon default of purchaser.

If at any sale by an officer, the purchaser shall not comply with the terms of sale, the officer may resell the property, either forthwith or under a new advertisement, or return that the property was not sold for want of bidders. If, on a resale, the property be sold for less than it sold for before, the first purchaser shall be liable for the difference to the creditor, so far as is required to satisfy him and to the debtor for the balance. This section shall not prevent the creditor from proceeding as he might have done if it had not been enacted.

WV Legislature

§38-4-18. Writ of venditioni exponas; notice of sale.

When it appears by the return on an execution, that property taken to satisfy it remains unsold, a writ of venditioni exponas may issue; whereupon the like proceedings shall be had as might have been had on the first execution, except that if it issue upon a return of no sale for want of bidders, or of a sufficient bid, the notice shall state the fact, and that the sale will be made peremptorily.

WV Legislature

§38-4-19. Proceeding in case of death of officer before sale.

If an officer, taking property under execution, dies before the sale thereof, and there be no deputies of such officer acting in the case, a writ of venditioni exponas may, upon a suggestion of the fact, be directed to such sheriff or other officer of the county wherein the property was taken as may be in office at the time the writ issues. Whereupon the officer to whom the writ is directed shall take possession of the property previously levied upon, whether the same be in the possession of the representative of the deceased officer or the execution debtor, and proceed to advertise and sell it and account for the proceeds thereof in like manner as if the levy had been made by himself

WV Legislature

§38-4-20. Time and place for sale of personal property under distraint, levy or order of court; posting or publishing notice; conduct and terms of sale.

In any case where an officer shall distrain or levy upon personal property, otherwise than under an execution or order issued by a justice, or under an attachment, and in any case in which he may be directed to sell personal property by an order of a court or judge, unless such order prescribes a different course, he shall fix upon a time and place for the sale thereof, and publish notice of such sale at least ten days by posting the same at the door of the courthouse of his county and some other conspicuous place near the residence of the owner, if he resides in the county: Provided, That any sheriff or other officer proceeding to sell under a writ of fieri facias or venditioni exponas, if the property be of the value of $500 or more, shall advertise the sale as a Class II-0 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. If the property be perishable or expensive to keep, it may be sold by order of the court, or the judge thereof in vacation, upon such notice as the court or judge may direct.

At the time and place so appointed the officer shall sell to the highest bidder for cash, except as hereinafter provided in section twenty-three of this article, such personal property, or so much thereof as may be necessary.

WV Legislature

§38-4-21. Adjournment of sale.

When for any cause the sale is not completed on the day appointed therefor it may be adjourned from day to day until it shall be completed.

WV Legislature

§38-4-22. Appraisal before sale.

If, before any such sale is made, the judgment debtor, his agent or attorney, or in their absence, his or her spouse, so desires, the property to be sold shall be appraised by separate items by two disinterested householders of the district in which the levy is made, or where the debtor resides, if he resides in the county, one to be selected by the judgment debtor, his agent or attorney, or, in their absence, his or her spouse, and the other by the judgment creditor, his agent or attorney, or in their absence, by the officer in whose hands the execution, order of sale or other process is, who, after being duly sworn for the purpose, shall appraise, at its fair cash value, each item of property to be sold, reduce their appraisement to writing, sign the same and deliver it to the officer whose duty it is to make the sale. If they do not agree as to the value of any item of property to be sold, such officer shall, on his official oath, act as umpire in the case and his decision and that of one of such appraisers shall determine the value of such items. Such appraisement shall be returned by the officer with his execution, order of sale or other process.

WV Legislature

§38-4-23. Method and terms of sale of appraised property.

The property appraised under the provisions of the preceding section shall be sold by the officer in separate items, or in parcels, or as a whole, whichever method will secure the highest price therefor. The property so appraised shall be first offered for sale for cash, and, if the highest aggregate bids therefor amount to two thirds or more of its appraised value, the sale thereof shall be for cash; but if no bid be made therefor aggregating two thirds of its appraised value, the same shall then be offered for sale, one half on a credit of four months and the residue on a credit of eight months, the purchaser giving his note with good security bearing interest from date. If when so offered on a credit a greater aggregate sum be bid therefor than was offered in cash, the sale shall be made upon credit as aforesaid, otherwise the cash bid shall be accepted.

WV Legislature

§38-4-24. Payments on purchase money notes.

All moneys paid to the officer, on any note taken under the preceding section shall be regarded as so much money received by him on the execution, order of sale, or other process under which the sale was made, and the officer shall indorse the same on the execution, order of sale or other process, whether the same has been returned or not, at the time such payment is made.

WV Legislature

§38-4-25. Judgment on defaulted purchase money notes.

If any note so taken be not paid to the officer when due, he shall indorse thereon any payments made to him and return it to the office of the clerk of the court from which such execution, order of sale or other process issued, who shall indorse thereon the date of such return, whereupon the clerk shall, without process or further proceedings, enter, in the law order book, judgment in favor of the officer upon such note for the amount remaining unpaid with interest. Such judgment shall be as final and valid as if entered by the court, except only that the court shall have such control of it as is given by article two, chapter fifty-eight of this code.

WV Legislature

§38-4-26. Form of judgment on notes.

The judgment entered by the clerk under the provisions of the preceding section shall be in the following form or to the following effect:

Whereas on the ..... day of ....., 19....., a judgment (or decree or order) was rendered by the ..... court of ..... County, West Virginia, in favor of ....., and against ....., for the principal sum of ..... dollars, upon which an execution was, on the ..... day of ....., 19 ....., issued and placed in the hands of ....., sheriff of said county, to be executed, and

Whereas said execution has been returned showing that, by virtue thereof, personal property of the said ....., was sold to ....., at the price of ..... dollars, on a credit for four and eight months, and that said ..... executed to the said sheriff his two interest bearing notes dated on the ..... day of ....., 19 ....., payable as aforesaid, with ....., as surety, and

Whereas the note falling due on the ..... day of ....., 19 ....., has, by said sheriff, been returned to this office unsatisfied, and it appearing therefrom that the principal and interest remaining due and unpaid amounts to ..... dollars.

Now, therefore, in pursuance of the statute in such cases made and provided, it is ordered that ....., sheriff, do recover of ..... and ....., the sum of ..... dollars.

Given under my hand this ..... day of ....., 19 .....

Clerk.

WV Legislature

§38-4-27. Disposition of surplus received by officer; disposition of money not paid over when execution stayed.

Where an officer has received money under execution, if any surplus remain in his hands after satisfying the execution, such surplus shall be repaid to the debtor; and if the debtor or his personal representative obtain an injunction or appeal staying an execution, in whole or in part, before money received under it, or any part of it, is paid over to the creditor, the officer shall repay such debtor the money so received and not so paid over, or so much thereof as the injunction or appeal may extend to, unless otherwise directed by law, or the order of the court.

WV Legislature

§38-4-28. Liability of officer for money received under execution payable to nonresident of county.

No officer, receiving money under execution, when the person to whom it is payable resides in a different county from that in which the officer resides, shall be liable to have any judgment rendered against him or his sureties for the nonpayment thereof, until a demand of payment be made of such officer in his county by such creditor or his attorney at law, or some person having a written order from the creditor.

WV Legislature

§38-4-29. Successive executions.

Subject to the limitations prescribed by law, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived; and may sue out other executions at the defendant's costs, where, on a former execution, there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process, which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing.

WV Legislature

§38-4-30. New execution when property sold is recovered from obligor on indemnifying bond or purchaser.

When property sold under execution, or its value, is recovered from an obligor in an indemnifying bond given before such sale, or from a purchaser having a right of action on such bond, the person having such judgment or execution, or his personal representative may, by scire facias, or motion after reasonable notice to the person or the personal representative of the person against whom the judgment or execution was, obtain a new execution against him in the latter case, for the amount for which the property sold, with interest from the day of sale, and in the other cases, for so much of the judgment as remains unpaid. Such scire facias shall be sued out, or such motion made, within five years after the right to sue out or make the same.

WV Legislature

§38-4-31. Motion to quash execution.

A motion to quash an execution may, after reasonable notice to the adverse party, be heard and decided by the court whose clerk issued the execution, or by the judge thereof in vacation; and such court or judge may, without such notice, make an order staying proceedings on the execution until such motion can be heard and determined. A copy of the order so made must be served upon the officer in whose hands the execution is.

WV Legislature

§38-4-32. Limitation on motion for failure to return execution.

A motion against an officer or his sureties, or his or their representatives, for a failure to return an execution, shall be made within ten years from the return day thereof and not after.

WV Legislature