WEST VIRGINIA CODE CHAPTER 38 ARTICLE 5

WV Legislature

§38-5-1. Ascertainment by interrogatories of estate upon which fieri facias or execution is a lien and of real estate to which judgment debtor is entitled.

To ascertain the estate on which a writ of fieri facias issued by any court of record, or an execution issued by a justice of the peace, is a lien, and to ascertain any real estate in or out of this state to which a debtor named in such fieri facias or execution is entitled, upon application of the execution creditor, the clerk of the court from which the execution issued, or, if it was issued by a justice of the peace, the clerk of the circuit court of the county in which such justice resides, shall issue a summons against the execution debtor, or any officer of a corporation execution debtor having an office in this state, or any debtor or bailee of him or it, requiring the execution debtor to appear before a commissioner in chancery of the county from which the summons issued, or, if the execution creditor so directs, before a commissioner in chancery of the county in which such execution debtor resides, such commissioner and his county to be named in the summons; or against any debtor or bailee of such execution debtor, requiring such debtor or bailee to appear before a commissioner in chancery of the county where such debtor or bailee resides, such commissioner and his county to be named in the summons, such appearance to be made at a time and place to be designated therein, to answer upon oath such questions as shall be propounded at such time and place by counsel for the execution creditor, or by the commissioner.

WV Legislature

§38-5-2. Time of return of summons and appearance of debtor.

The summons mentioned in the preceding section shall be directed to an officer of the county in which the commissioner before whom it is returnable resides, and shall be served in such county. Such summons shall be returnable not more than sixty days from its date. The debtor or other person served with such summons shall appear at the time and place mentioned and make answer under oath to the questions propounded.

WV Legislature

§38-5-3. Record of examination by commissioner; objections and rulings thereon.

Such questions and answers shall, if required by any party, be taken down in writing at the expense of the party requesting it and certified by the commissioner at the conclusion thereof. The commissioner shall enter in his proceedings, and report to the court whose clerk issued the summons aforesaid any and all objections taken by such debtor against answering any questions, and if the court afterwards sustain any one or more of such objections, the answers given, as to which objections are sustained, shall be held for naught in that or any other cause.

WV Legislature

§38-5-4. Conveyance of real estate outside state and delivery or assignment of personal estate to officer.

Any real estate outside this state, to which it may appear by such examination that the execution debtor is entitled, shall be forthwith conveyed by him to the officer to whom was delivered such fieri facias or execution; and any money, bank notes, securities, evidences of debt, or other personal estate, which it may appear by such examination are in the possession or under the control of such debtor, though in the hands of some other person, shall be delivered by him as far as practicable, to the same officer, or by such other person and in such manner as may be ordered by the commissioner; and any chose in action or other intangible property shall be assigned or conveyed to the officer.

WV Legislature

§38-5-5. Compelling debtor to answer.

If any person summoned under the four preceding sections shall fail to appear and answer, or shall make any answers which are deemed by the commissioner to be evasive, or if having answered shall fail to make such conveyance, assignment and delivery as is required by such sections, such commissioner shall issue a writ directed to the sheriff of the county requiring such sheriff to take the debtor or other person summoned and to keep him safely until he shall make proper answers, or such conveyance, delivery or assignment as the case may be, and upon making such answer or such conveyance, delivery or assignment, he shall be discharged by such commissioner. He may also be discharged by the court from whose clerk's office the fieri facias or execution issued, or by the judge thereof in vacation, in any case, if the court or judge shall be of opinion that he was improperly or unlawfully detained in custody.

WV Legislature

§38-5-6. Report by commissioner.

The commissioner shall return all questions and answers taken down in writing before or filed with him and shall report all of the proceedings under the preceding sections to the court in which the judgment is, or, if the judgment be before a justice, to the circuit court of the county in which such justice resides.

WV Legislature

§38-5-7. Orders concerning disposition of property conveyed, delivered or assigned to officer.

The court to which the commissioner returns his report, as required by the preceding section, may make any order it may deem right as to the sale and proper application of the estate conveyed, delivered or assigned under section four of this article.

WV Legislature

§38-5-8. Sale of real estate conveyed to officer.

Real estate conveyed to an officer under this article shall, unless such court direct otherwise, be sold, after giving at least thirty days' notice, by posting the same at the door of the courthouse of such officer's county and some other conspicuous place, near the residence of the owner, if he be a resident of the county, and by publishing the same 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. The real estate shall be conveyed to the purchaser by the officer or his deputy.

WV Legislature

§38-5-9. Disposition of personal property and collection of debts.

An officer to whom there is a delivery under this article, when the delivery is of personal property which is subject to levy under the provisions of section six, article four of this chapter, shall dispose of the same as if levied on by him under a writ of fieri facias or execution, or when the property delivered or assigned is an evidence of debt, he may receive payment of such debt within sixty days after such delivery. Any evidence of debt or security in his hands which is not so subject to levy shall, at the end of sixty days, be returned by him to the clerk's office of such court. The court shall make such order to enforce the payment of such debt or other security, as is deemed best. Upon failure to make such return, such officer may be proceeded against as if an express order of such court for such return had been disobeyed.

WV Legislature

§38-5-10. Suggestion on judgment; summons against person suggested.

(a) Upon a suggestion by the judgment creditor that a person is indebted or liable to the judgment debtor or has in the person's possession or control personal property belonging to the judgment debtor, which debt or liability could be enforced when due, or which property could be recovered when it became returnable by the judgment debtor in a court of law and which debt or liability or property is subject to the judgment creditor's writ of fieri facias, a summons against such person may be issued out of the office of the clerk of the circuit court or of the magistrate court of the county in which the judgment creditor obtained the writ of fieri facias, requiring such person to answer the suggestion in writing and under oath. Service of a summons issued under this section may be made as provided by subdivision (1), subsection (d) of rule four of the rules of civil procedure for trial courts of record. The return day for a summons issued under this section is governed by the provisions of rule sixty-nine of the rules of civil procedure for trial courts of record.

(b) The suggestion by the judgment creditor provided for in this section shall include, to the extent possible, the present address, the last four digits of the Social Security number and date of birth of the judgment debtor, which information shall be made available to the person suggested for purposes of identifying the judgment debtor and facilitating a proper answer to the suggestion.

WV Legislature

§38-5-11. Officer's return of summons.

The officer serving such summons upon a person suggested shall make a return of the time and manner of service on each person suggested.

WV Legislature

§38-5-12. Discharge of liability of person suggested on negotiable instrument.

If the debt or liability of the person suggested to the judgment debtor for the money or property owned or held by such person be evidenced by a negotiable instrument, and such instrument be negotiated after service on, or notice to, the person suggested, to a holder in due course, so that such person becomes obligated to pay the money or deliver the property to such holder, the lien of the fieri facias thereon shall, to the extent of such obligation to such holder, be discharged.

WV Legislature

§38-5-13. Contents of answer of person suggested; verification.

The answer of the person suggested shall state, in addition to the matters required to be disclosed by the summons mentioned in section ten of this article, the nature and amount of liability or indebtedness to the judgment debtor at the time of service of the summons, or a description of the property of the judgment debtor held by the person suggested at the time of service of the summons, and whether the liability of the person, or any part thereof, is represented by a negotiable instrument, and, in the case of a bailee, whether there is outstanding any negotiable warehouse receipt, bill of lading, or other negotiable instrument for any of the personal property in the person's possession or under the person's control. The answer shall be verified in the manner prescribed for the verification of other pleadings.

WV Legislature

§38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.

A person suggested may, at any time before the return day of the summons mentioned in section ten of this article, deliver the property or pay the money for which the person is liable at the time of service of the summons, or a sufficiency thereof to satisfy the execution, and shall thereby be discharged from any further liability under the execution, and, as to the property so delivered and/or money so paid, the person shall be discharged from all liability whatsoever to the judgment debtor: Provided, That if the obligation upon which the person is indebted to the judgment debtor is evidenced by a negotiable instrument, the obligation shall not, as to a holder in due course, be discharged by the payment: Provided, however, That the right of a holder in due course, of a negotiable warehouse receipt, bill of lading, or other negotiable instrument for any property so delivered, shall not be impaired by the delivery. If any payment or delivery is made to the officer under the provisions of this section, the officer shall give a receipt for, and make a return of, what is so paid and delivered.

WV Legislature

§38-5-15. Order of court for payment by person suggested.

If it appears from the answer of the person suggested that, at the time the writ of fieri facias was delivered to the officer to be executed, or thereafter, and before the time of the service of the summons, or the return day of the writ of fieri facias, whichever comes first, the person was indebted or liable to the judgment debtor, or had in the person's possession or under the person's control any personal property belonging to the judgment debtor, and that the person had not, before notice of the delivery of the writ of fieri facias to the officer, paid the money or delivered the property to the judgment debtor, or upon the judgment debtor's order, and that the debt or liability to pay the money or deliver the property was not evidenced by a negotiable instrument, the court may order the person to pay the amount so due from the person and to deliver the property, or any part of the money or property, to such person as the court may designate as receiver: Provided, That if it shall appear from the answer of the person suggested, that the person's debt or liability to pay money or deliver property is evidenced by a negotiable instrument, the court may order the payment or delivery, but only upon condition that the holder of the negotiable instrument shall deliver the same to the person suggested simultaneously with the payment of the money or delivery of the property: Provided, however, That any person suggested holding property under a pledge or lien shall not be required to deliver up the property except upon payment to such person of the debt secured by the pledge or lien.

WV Legislature

§38-5-16. Effect of order of court as judgment.

An order made against a person suggested shall have the effect of a judgment, and may be enforced in the same manner as any other judgment.

WV Legislature

§38-5-17. Failure of person suggested to answer.

If any person suggested, summoned as provided in this article, fails to answer, the court may either compel the person to answer, or hear proof of the matters required by section fifteen of this article to be disclosed by the person's answer, concerning any debt or liability due by the person to, or personal property in the person's possession or under the person's control of, the judgment debtor at the time of service of the summons, and make the orders in relation thereto as if what is so proved had appeared in the person's answer.

WV Legislature

§38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

When it is suggested by the judgment creditor in any case of suggestion that the person suggested has not fully disclosed the debts or liabilities due by the person to, or personal property in the person's possession or under the person's control of, the judgment debtor at the time of service of the summons, or has not delivered to the officer the property, or paid the money, for which the person was liable, the court shall cause a jury to be impaneled, without any formal pleadings, to inquire as to the debts or liabilities or property, or as to the payment or delivery, unless a trial by jury is waived by the parties, and if trial by jury be waived, the court shall proceed to hear and determine the questions at issue. Whether the issues of fact be found by the court or by a jury, the court shall proceed in respect to any fact so found, in the same manner as if they had been confessed by the person suggested, but either party shall be entitled to a writ of error or an appeal as in other cases. If the verdict or decision of the court be for the person suggested, the person shall have judgment for the person's costs against the judgment creditor, and if the judgment be against the person suggested, the person shall be adjudged liable for the costs of the suggestion proceeding.

WV Legislature

§38-5-19. Return by officer as to money received in suggestion proceedings; disposition of money.

An officer receiving money in a suggestion proceeding shall, within thirty days after receiving it, make return thereof to the court or to the clerk's office of the court in which the judgment is, or, if it was rendered by a justice, to the clerk of the circuit court of the justice's county, and, for failing to do so, he shall be liable as if he had acted under an order of such court. After deducting from such money commissions allowed by law and his necessary expenses and costs, he shall within thirty days pay the net proceeds to the parties entitled thereto, and he and his sureties and their representatives shall be liable therefor in like manner as if the same had been made under a writ of fieri facias or execution.

WV Legislature

§38-5-20. Suit for recovery of property or debt subject to lien.

For the recovery of any personal property or any claim on which a writ of fieri facias or an execution is a lien under this article, or the enforcement of any liability in respect to any such property, or for the enforcement of any debt or liability of any person to the judgment debtor, on which the writ of fieri facias or execution is a lien, a suit may be maintained by the judgment creditor either at law or in equity, as the case may require. If such suit be at law, it may be brought in the name of the judgment debtor, for the use and benefit of the judgment creditor to the extent of his lien. If such suit be in equity, it may be brought in the name of the judgment creditor. Such suit may be brought by the judgment creditor instead of a proceeding in suggestion, or, after a proceeding in suggestion has been begun, the judgment creditor may, at any time before an order for payment or delivery has been made against the person suggested, dismiss such proceeding in suggestion at his own costs, and commence a suit under this section. If a recovery is had in such suit at law, the costs shall be assessed against the defendant in such suit. If no recovery be had, the costs shall be assessed against the judgment creditor. If the suit be in equity, the costs may be assessed as in other suits in equity. Any fact which would constitute a defense to a person suggested under the provisions of this article shall be a defense to any person sued under this section.

WV Legislature

§38-5-21. Form of judgment for money in suit to enforce execution; receipt for money received by judgment creditor.

The judgment or decree for money recovered in any suit brought under the provisions of the preceding section shall be in favor of the judgment creditor to the amount of his lien and any costs and charges which he may be entitled to recover, and, as to the residue, shall be in favor of the judgment debtor or such other person as may be entitled thereto, and shall show the amount to which each person is entitled thereunder. The judgment creditor shall, within ten days after the receipt of any money under such judgment or decree, execute and file with the clerk from whose court the fieri facias or execution issued, a receipt for such money which shall be credited by such clerk upon such fieri facias or execution and noted in his execution book.

WV Legislature

§38-5-22. Disposition of leviable property recovered in suit.

If property which is capable of being levied on under an execution is recovered in any suit brought under the provisions of section twenty of this article or in any proceeding in garnishment, it shall be subject to the lien of the execution under which the suit to recover such property was brought, and may be sold under that or a subsequent execution in the same manner as other property belonging to the judgment debtor.

WV Legislature

§38-5-23. Additional executions.

Although a judgment creditor avail himself of the proceeding in suggestion, or of the proceeding provided by sections one and twenty of this article, he may nevertheless, without impairing his lien under such proceedings, from time to time, subject to the limitations prescribed by law, issue other executions upon his judgment until the same be satisfied.

WV Legislature