
WEST VIRGINIA CODE CHAPTER 38
ARTICLE 6

WV Legislature

§38-6-1. Bond to indemnify officer making levy.

If any officer levy or is required to levy an execution or a warrant of distress on property, and a doubt shall arise whether such property is liable to such levy, he may give to the plaintiff, his agent, or attorney at law, notice that an indemnifying bond is required in the case. Bond may thereupon be given by any person, with good security, payable to the officer, in a penalty equal to double the value of the property, conditioned to indemnify him against all damages which he may sustain in consequence of the seizure or sale of such property, and to pay to any claimant of such property all damages which he may sustain in consequence of such seizure or sale.

§38-6-2. Effect of giving, or of refusal to give, bond; return of bond to clerk's office.

If such bond be not given within a reasonable time after such notice, the officer may refuse to levy on such property, or may, if he has already levied, restore it to the person from whose possession it was taken, as the case may be. If, where there has been no levy, the bond be given within a reasonable time, or, after a levy, the bond be given before the property is restored, it shall be returned within twenty days to the clerk's office of the circuit court of the county in which such property may be, and the claimant or purchaser of such property shall, after such bond is so returned, be barred of any action against the officer levying thereon, provided the security therein be good at the time of taking it. After such bond has been given as herein provided, the officer shall proceed to levy, if he has not already done so, or, if the levy has been released, he shall proceed to levy again.

§38-6-3. Suspending bond; settling claimant's title; how suits on bonds prosecuted.

But the sale of any such property shall be suspended at the instance of any claimant thereof, who shall deliver to the officer bond with good security in a penalty equal to double the value thereof, payable to such officer, conditioned to pay to all persons who may be injured by suspending the sale thereof, until the claim thereto can be adjusted, such damages as they may sustain by such suspension. If the property claimed to be liable by virtue of the process aforesaid is in the possession of any of the parties against whom such process was issued, but is claimed by any other person or persons, the officer having such process in his hands to be executed shall, whether an indemnifying bond has been given or not, after notice to the claimant, or his agent, proceed to execute the same notwithstanding such claim, unless the claimant of such property, or someone for him shall give the suspending bond aforesaid, and shall, within thirty days after such bond is given, proceed to have the title to such property settled in accordance with the provisions of this article. And in case such claimant or someone for him fails to give such bond, or having given such bond fails to have such proceedings instituted as aforesaid, to settle the title thereto, such property shall be conclusively presumed to be the property of the party in possession. For the purposes of this section, a person making a claim of ownership of property on behalf of another shall be deemed to be the latter's agent, and the notice required by this section may be verbal or in writing. Upon any such bond as is mentioned in this or the two preceding sections, suit may be prosecuted in the name of the officer, for the benefit of the claimant, creditor, purchaser or other person injured, and such damages recovered in such suit as a jury may assess. The same may be prosecuted, and execution had, in the name of such officer, when he is dead, in like manner as if he were alive.

§38-6-4. Procedure for determination of conflicting claims to property levied on.

When property of the value of more than \$50 is taken under a warrant of distress, or when property of any value is taken under an execution issued by the clerk of a court, and any person, other than the party against whom the process issued, claims such property, or the proceeds or value thereof, the circuit court of the county in which the property is taken, or the judge thereof in vacation, upon the application of the officer, where no indemnifying bond has been given, or if one has been given, on the application of the person who claims such property and has given such suspending bond as is mentioned in the next preceding section, may cause to appear before such court, as well the party issuing such process, as the party making such claim; and such court may exercise, for the decision of their rights, all or any of the powers and authority prescribed in section one, article ten, chapter fifty-six of this code. Such court on the application of the party issuing such process may cause to appear before it the party making such claim, and may exercise the like power and authority.

§38-6-5. Order of sale pending determination of rights.

In such case as is mentioned in the preceding section, the court, or the judge thereof in vacation, where no bond is given for the forthcoming of the property, may, before a decision of the rights of the parties, make an order for the sale of the property or any part thereof, on such terms as the court or judge may deem advisable, and for the proper application of the proceeds according to such rights.

WV Legislature

§38-6-6. Disposition of surplus proceeds.

When property, the sale of which is indemnified, sells for more than enough to satisfy the execution or distress warrant under which it is taken, the surplus shall be paid by the officer into the court to the office whereof the indemnifying bond is required to be returned, or as such court may direct. Such court may make such order for the disposition thereof, either temporarily until the question as to the title of the property sold is determined, or absolutely, as in respect to the rights of those interested may seem to it proper.

§38-6-7. Forthcoming bonds.

The sheriff or other officer levying a writ of fieri facias or distress warrant on property of the debtor, or on property the sale of which is suspended at the instance of a claimant thereof, may take from such debtor, or from such claimant, as the case may be, if such claimant desires the property to remain in such possession as it was in immediately before the levy, and the case be one in which a bond for the forthcoming of the property is not prohibited by section fourteen of this article, a bond with sufficient security, payable to the creditor, in a penalty not more than double the value of the property levied upon as ascertained and fixed by such officer, reciting the service of such writ or warrant, describing the property, specifying its true value, with the condition that the property be forthcoming at the day and place of sale then or thereafter to be appointed. Whereupon such property shall, except as provided in the following section, be permitted to remain in the possession of the debtor or in such possession as it was in immediately before the levy, as the case may be, and in either case at the risk of such debtor or claimant.

§38-6-8. Sale of perishable property or property expensive to keep.

Notwithstanding such forthcoming bond as is mentioned in the preceding section be given, if such property be expensive to keep or perishable, the court in which proceedings in the case under section four of this article are pending or may be had, or the judge thereof in vacation, may, before a decision of the rights of the parties under such proceedings, on the application of such claimant or of the surety in such suspending or forthcoming bond, after reasonable notice of the intended application has been given by such claimant or the surety to the other parties in the case, order a sale of the property, or any part thereof, on such terms as the court or judge may deem advisable; and the court shall apply the proceeds according to such rights when determined.

§38-6-9. Levy on additional property.

If the property levied upon as aforesaid be not sufficient to pay the plaintiff's debt, interest and costs, and the fees and commissions of the officer, the execution or warrant, while in force, may be levied upon other property, if any be found, or a new execution may be sued out, upon the return of the former, for the residue of the debt, interest and costs. But such execution shall not be levied upon the property mentioned in the forthcoming bond without the consent of the persons liable therein.

WV Legislature

§38-6-10. Enforcement of forthcoming bond.

If the property, or any of it, mentioned in the forthcoming bond be not delivered as therein provided, the officer, unless payment be made of the amount due on the execution or warrant, including his fees and commissions, shall forthwith return such bond to the clerk's office from which the execution issued, or if it be a distress warrant, to the clerk's office of the circuit court of the county in which such warrant was issued. The clerk shall indorse on the bond the date of its return; and, against such of the persons who signed the same as may be alive when it is so returned, it shall have the force of a judgment. But no execution shall issue thereon under this section.

§38-6-11. Action or motion on forthcoming bond; enforcement of original judgment.

The person signing such forfeited forthcoming bond shall be liable for the true value of the property therein mentioned, and not delivered as aforesaid, with interest on such value from the date of the bond, and costs incurred in proceedings upon the bond. And the obligee in such bond, or his assignee or personal representative, may recover such sum and interest, or so much thereof as may be necessary to satisfy his demand against the defendant in the execution or warrant with costs, by action or motion against the persons signing such bond. And in case such obligee fail for any cause to recover a judgment on such bond, or to collect the amount specified in any such judgment, or any part thereof, he may proceed against the defendant in the original judgment for the amount remaining unpaid, in the same manner as if such bond had not been given.

§38-6-12. Defenses to bond taken under distress warrant.

In an action or motion on such bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal.

WV Legislature

§38-6-13. Remedies on quashing of forthcoming bond.

If any such forthcoming bond be at any time quashed, the obligee, besides his remedy against the officer, may have such execution on his judgment or issue such distress warrant as would have been lawful if such bond had not been taken.

WV Legislature

§38-6-14. Forthcoming bonds forbidden in certain cases.

No bond for the delivery of property shall be taken on an execution on a forthcoming bond, nor on an execution on a judgment against a sheriff or other officer, or a deputy of such sheriff, for money received by any such officer or deputy, by virtue of his office, or against any such officer or his personal representative, in favor of a surety of such officer, or against such deputy of any such officer or his surety or personal representative, in favor of his principal or the personal representative of such principal, for money paid or a judgment rendered for a default in office; nor on an execution against an overseer of the poor, or his personal representative, or a justice or constable for money received by him as such, nor on any other execution on which the clerk is required by law to indorse that no forthcoming bond is to be taken.

§38-6-15. Indorsement on execution forbidding forthcoming bond.

On every execution on which such bond is prohibited from being given, the indorsement "no forthcoming bond is to be taken" shall be made by the clerk.

WV Legislature

§38-6-16. Costs.

In any case mentioned in this article, the court may make all such rules and orders and enter such judgment as to costs and all other matters, as may be just and proper.

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