WEST VIRGINIA CODE CHAPTER 38 ARTICLE 7

WV Legislature

§38-7-1. Filing of affidavit; prejudgment hearing; seizure of property.

In any civil action for the recovery of any claim or debt arising out of contract, or to recover damages for any wrong, the plaintiff, after service of the summons upon the defendant, or at any time thereafter and before judgment may have an order of attachment against the property of the defendant, on filing with the clerk of the court in which such action, proceeding or suit is about to be or is brought, his own affidavit or that of some credible person, stating the nature of the plaintiff's claim and the amount, at the least, which the affiant believes the plaintiff is justly entitled to recover in the action, proceeding or suit, and also that the affiant believes that some one or more of the grounds mentioned in the next following section of this article exist for such attachment: Provided, That in any action where the plaintiff shall give bond for the purpose of having the officer take possession of the personal property levied upon, as provided in section eight of this article, such officer may not take possession of the personal property attached under section eight of this article unless and until a prejudgment hearing shall have been held, for which proper notice shall be given the defendant and which shall be held in not less than five days nor more than ten days after the filing of the affidavit; which hearing shall be held to ascertain specific facts as to the nature of the obligation under which the plaintiff claims a right to possession, and to establish facts justifying the seizure, under one or more of the grounds set forth in section two of this article.

WV Legislature

§38-7-2. Grounds of attachment.

The grounds upon which an order of attachment may issue, under the preceding section, are the following: (a) That the defendant, or one of the defendants, is a foreign corporation or is a nonresident of this state; or (b) has left, or is about to leave the state, with intent to defraud his creditors; or (c) so conceals himself that a summons cannot be served upon him or (d) is removing or is about to remove, his property, or the proceeds of the sale of his property, or a material part of such property or proceeds, out of this state, so that process of execution on a judgment or decree in such action or suit, when it is obtained, will be unavailing; or (e) is converting, or is about to convert, his property, or a material part thereof, into money or securities, with intent to defraud his creditors; or (f) has assigned or disposed of his property or a material part thereof, or is about to do so, with intent to defraud his creditors; or (g) has property or rights in action, which he conceals; or (h) fraudulently contracted the debt or incurred the liability for which the action or suit is about to be or is brought.

WV Legislature

§38-7-3. Statement of facts showing grounds of attachment in affidavit.

Unless the attachment is sued out upon the first of the grounds mentioned in the preceding section, the affiant shall also state in his affidavit the material facts relied upon by him to show the existence of the grounds upon which his application for the attachment is based.

WV Legislature

§38-7-4. Form of order of attachment.

The order of attachment shall be issued by the clerk, and may be in form or effect as follows:

A..... B....., Plaintiff,

vs.Order of Attachment. C..... D....., Defendant.

The plaintiff in this case having filed his affidavit as required by law, the sheriff of the county of ....., or a constable of any district therein, to whom this order may come, is required, in the name of the State of West Virginia, to attach the estate of the defendant, C..... D....., sufficient to pay the sum of ..... (the amount the affiant states the plaintiff is justly entitled to recover) and the costs of this suit, and make return of his proceedings under this order to the next term of the ..... court (or at rules to be held for the ..... court on the ..... day of ....., naming in either case the court in which the action is brought).

Witness E..... F....., clerk of said court, this ..... day of .....

E..... F....., Clerk.

WV Legislature

§38-7-5. Attachment for claim not due.

An attachment may be sued out in a court of equity for a debt or claim, legal or equitable, whether the same be due or not, upon any of the grounds mentioned in section two of this article, but the affidavit, in case the claim or debt be not due, must show when it will become due: Provided, however, That an attachment shall not be sued out against a foreign corporation for a debt not due, upon the ground alone that it is a foreign corporation, nor against a nonresident defendant for a debt not due, upon the ground alone that he is a nonresident, unless the affiant shows by his affidavit that such defendant was a resident of this state when the debt was contracted, and that the plaintiff believed he would remain a resident of this state at the time he gave the defendant credit.

WV Legislature

§38-7-6. Amendment of affidavit.

The affidavit required by the first section of this article may be amended at any time before or after the appearance of the defendant by the substitution of a new affidavit, complying with the requirements of the statute and containing allegations of facts existing at the time of making the former affidavit; and the new affidavit shall stand in lieu of the old one for all purposes.

WV Legislature

§38-7-7. What property may be attached.

Every attachment issued under the provisions of this article may be levied upon any estate, real or personal, of the defendant named therein, or so much thereof as is sufficient to pay the amount for which it issues: Provided, That funds on deposit in an individual retirement account (IRA) including a simplified employee pension (SEP) in the name of the defendant are exempt from attachment: Provided, however, That such amount shall be exempt only to the extent it is not, or has not been, subject to an excise or other tax on excess contributions under section 4973 and/or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is or has been paid.

WV Legislature

§38-7-8. Taking possession of personal property; plaintiff's bond.

If the plaintiff shall, at the time of suing out an attachment, or afterwards, give bond with good security, approved by the clerk issuing the attachment, in a penalty of at least double the estimated value of the property to be attached, as shown by the affidavit of the plaintiff or some reliable person, with condition to pay all costs and damages which may be awarded against him or sustained by any officer or other person by reason of the suing out of the attachment or levying the same, and to pay, to any claimant of any property seized or sold under or by virtue of such attachment, all damages which he may sustain in consequence of such seizure or sale, such officer shall take possession of the personal property levied upon by virtue of such attachment. But the clerk shall in no case accept such bond, the penalty of which shall be less than $500.

WV Legislature

§38-7-9. Liability of officer where plaintiff's bond given.

If the bond mentioned in the preceding section of this article be given, no action shall be maintained against the officer levying an attachment upon property or effects not belonging to the debtor, unless it shall appear that such wrongful levy was wilfully and knowingly made.

WV Legislature

§38-7-10. Execution of plaintiff's bond after order of attachment sued out.

If the plaintiff has sued out an order of attachment without giving the bond mentioned in section eight of this article, and afterwards gives the same as aforesaid, it shall be the duty of the clerk, whether the attachment has been levied or not, to certify the fact that such bond has been given to the officer who levied the same, or in whose hands it was to be levied, or if he be absent or out of office, to issue a new order of attachment and to place the same in the hands of some other proper officer; and it shall be the duty of any such officer to take the attached personal property into his possession and make return of such order in like manner as if such bond had been given before the issuing of the original attachment.

WV Legislature

§38-7-11. Exceptions to plaintiff's bond.

Any defendant in the case, or any person interested in the property so attached, who shall consider the bond so given not proper in form, or the penalty or security insufficient, may apply at once, by petition to the court from which the attachment issued, if in session, and if not, to the judge thereof, in vacation, and shall be permitted to except to such bond, on any or all grounds aforesaid, and if any of such exceptions be sustained, the attached property shall be returned to the person from whom it was taken by the officer and the attachment shall be quashed unless the plaintiff shall within such time as the court shall prescribe, give a proper bond, in a sufficient penalty and with surety sufficient, all to be approved by the court or judge hearing the exceptions. If such new bond be not given, the principal and surety in such original bond, who signed the same, shall be liable to any person who shall suffer any damage by reason of the suing out and levy of such attachment, to the extent of the penalty thereof.

WV Legislature

§38-7-12. Form of order of attachment when bond given.

If the plaintiff at the time of suing out his attachment, or afterwards before judgment, give the bond and security required by section eight of this article, such order may be in form or effect as follows:

A..... B....., Plaintiff,

vs.Order of Attachment. C..... D....., Defendant.

The plaintiff in this case having filed the necessary affidavit and bond, the sheriff of the county of ....., or a constable of any district therein, to whom this order shall come, is hereby required, in the name of the State of West Virginia, to attach the real estate, and to attach and take into his possession the personal property of the defendant, C..... D....., sufficient to pay the sum of ..... dollars (the amount affiant states the plaintiff is justly entitled to recover), and the costs of the suit, and make return of his proceedings under this order to the next term of the ..... court (or at the rules to be held for the ..... court on the ..... day of ....., naming in either case the court in which the action is brought).

Witness E..... F....., clerk of said court, this ..... day of .....

E..... F....., Clerk.

WV Legislature

§38-7-13. To what officers orders may be directed.

An order of attachment under sections four and twelve of this article may be issued and directed to the sheriff or a constable in any county of this state; and several such orders may be issued and delivered to different officers at the same or different times, at the suit of the same or different persons.

WV Legislature

§38-7-14. Execution and return of attachment; penalty for failure.

The officer to whom any attachment issued under this article shall be delivered for execution shall execute and return the same as therein required, and, if he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff in the case for all damages he may sustain by reason of such failure.

WV Legislature

§38-7-15. Garnishment.

The plaintiff in an attachment may, by an indorsement on the order of attachment, designate any person as being indebted or liable to, or having in his possession, the effects of the defendant, or one of the defendants; and in such case the clerk shall make as many copies of the order as there are persons so designated, with an indorsement thereon that the person so designated is required to answer at the next term of the court in which the action or suit is pending, and disclose on oath in what sum he is indebted to the defendant, and what effects of the defendant he has in his possession or under his control; and it shall be sufficiently levied on such person by delivering to him a copy of the order and indorsement, or by a service thereof upon him in the same manner as a notice may by law be served, or by publication as provided in article three, chapter fifty-six of this code.

WV Legislature

§38-7-16. Levy of attachment upon real estate.

An attachment may be sufficiently levied upon real estate by an indorsement on the order of attachment, or upon a paper annexed thereto, stating the quantity, or the supposed quantity, and the location of the real estate attached.

WV Legislature

§38-7-17. Contents of officer's return of attachment.

The officer serving the attachment shall make a return of the time and manner of service on each person designated as being indebted to, or having in his possession or under his control the property of, any such defendant; and shall also return a list and description of the property if any, levied upon or levied upon and seized under such attachment, and of the date of the service, or execution thereof, on each person and parcel of property. Such return shall show, as to any personal property levied upon, whether such personal property was merely levied upon, or was both levied upon and seized.

WV Legislature

§38-7-18. Attachment on Sunday or holiday.

An attachment may be issued or executed on Sunday or on any holiday, if oath be made that the defendant is actually removing his effects on that day.

WV Legislature

§38-7-19. Lien of attachment.

The plaintiff shall have a lien upon any personal property, choses in action and other securities of the defendant, from the time of the levy of such attachment, but such lien may be defeated by a sale, pledge, or other transfer of such property, choses in action, or other securities, before seizure, if such property, choses in action, or other securities are subject to levy and sale under an execution, to a purchaser for value without notice, who advances money or other value at the time of such transfer, in reliance upon the defendant's title to the property: Provided, however, That in the case of a pledge or other transfer of the property other than a complete sale, the lien of the attachment shall bind any equity or other interest in the property, remaining in the defendant. The plaintiff shall have a lien upon the claim or right which the defendant has against any garnishee for any debt or liability owed by such garnishee to the defendant, or any personal property in the possession or under the control of the garnishee, belonging to the defendant, from the time of the service of the attachment upon such garnishee, or the delivery to him of a copy of the order and indorsement, as provided in section fifteen of this article: Provided, however, That if such chose in action or obligation be evidenced by a negotiable instrument, and such instrument be negotiated after the service on, or notice to, the garnishee, to a holder in due course, so that the garnishee becomes obligated to pay the money or deliver the property to such holder, the lien of the attachment thereon shall, to the extent of such obligation to such holder, be discharged. The plaintiff shall have a lien upon any real estate of the defendant levied upon under an attachment, from the time of the suing out of the attachment, but such lien may be defeated by a sale of such real estate to a purchaser for value without notice before the filing, by the plaintiff, of a notice of lis pendens under the provisions of article eleven, chapter fifty-five of this code.

WV Legislature

§38-7-20. Retention of property or release of attachment on forthcoming bond or bond to perform judgment taken by officer.

Any property seized under any attachment, where the plaintiff has given bond, may be retained by, or returned to, the person in whose possession it was, on his giving bond, with condition to have the same forthcoming at such time and place as the court may require; or the defendant in any attachment may release from the attachment the whole of the estate attached, by giving bond, with condition to perform the judgment or decree of the court. The bond, in either case, shall be taken by the officer serving the attachment, with security, payable to the plaintiff, and in a penalty, in the latter case, of at least the amount of the claim for which the attachment issued, with the costs, and in the former, either of the amount of the claim for which the attachment issued, with the costs, or of the value of the property retained or returned, at the option of the person giving it.

WV Legislature

§38-7-21. Return and filing of forthcoming bond or bond to perform judgment; exceptions to bond.

Every bond given under the provisions of the preceding section of this article shall be returned by the officer to, and filed by, the clerk of the court in which the suit is pending, or to which the attachment is returnable; and the plaintiff may, within thirty days after the return thereof, file exceptions to the same, or to the sufficiency of the security therein. If such exceptions be sustained, the court shall rule such officer to file a good bond, with sufficient security, to be approved by it, on or before a certain day to be fixed by the court. If he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff as for a breach of such official bond. But the officer shall have the same rights and remedies against the parties to any bond so adjudged bad, as if he were a surety for them.

WV Legislature

§38-7-22. Interest and profits pending suit; discharge of attachment on bond.

When any attachment is sued out, either at law or in equity, except against a nonresident, on such an affidavit as is mentioned in the first section of this article, and the property is seized and retained by the officer, the interest and profits thereof, pending the suit and before judgment or decree, may be paid to the defendant, if the court deem it proper; and at any time during such period the court, or in vacation the judge thereof, may discharge the attachment, as to the whole of the estate of the defendant, on his giving bond, with security, payable to the plaintiff in a penalty of the value of such estate with costs, with condition, if judgment or decree be rendered for the plaintiff in such suit, to pay such value, or so much thereof as may be necessary to satisfy the same.

WV Legislature

§38-7-23. Custody of attached property; sale of perishable property or property expensive to keep; terms.

Property seized under an attachment, and retained by the officer, shall be kept in the same manner as similar property taken under execution. But perishable property, or property which is expensive to keep, may be sold by order of the court, or in vacation, by order of the judge, such sale to be made in the same manner and upon the same terms as if it were a sale under an execution, issuing from a court other than a justice court.

WV Legislature

§38-7-24. Answer of garnishee.

Any person served with the writ and indorsement thereon, provided for in section fifteen of this article, in any action or proceeding at law, or suit in equity, shall, on or before the return day thereof, or within such additional time as may be granted by the court, answer in writing disclosing the matters required by the indorsement on such writ. The answer shall state whether the liability of the garnishee, 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 his possession or under his control. Such answer shall be verified in the manner prescribed for the verification of other pleadings.

WV Legislature

§38-7-25. Discharge of garnishee by payment of money or delivery of property.

A garnishee may at any time before the return day of the order mentioned in section fifteen of this article, deliver the property or pay the money for which he is liable, or a sufficiency thereof to satisfy the attachment, to the officer having the order of attachment, and shall thereby be discharged from any further liability under the attachment, and as to the property so delivered and/or money so paid, he shall be discharged from all liability whatsoever to the defendant: Provided, however, That if the obligation upon which the garnishee is indebted to the defendant is evidenced by a negotiable instrument, such obligation shall not, as to a holder in due course, be discharged by such payment: Provided further, 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 such delivery.

WV Legislature

§38-7-26. Order against garnishee for payment or delivery; forthcoming bond.

If it appear from the answer of the garnishee that at or after the service of the attachment the garnishee was indebted or liable to the defendant against whom the claim is, or had in his possession or control any personal property belonging to such defendant and that such debt or obligation to pay such money or deliver such property was not evidenced by a negotiable instrument, the court may order him to pay the amount so due from him and to deliver such property or any part thereof, to such person as it may appoint as receiver; or such garnishee, with leave of the court, may give bond, with sufficient security, payable to such person and in such penalty as the court may prescribe, with condition to pay the amount due by him and/or have such effects forthcoming at such time and place as the court may thereafter require: Provided, however, That if it shall appear from the answer of the garnishee, that his debt or liability to pay money or deliver property is evidenced by a negotiable instrument, the court may order such payment or delivery, but only upon condition that the holder of such negotiable instrument shall deliver the same to the garnishee simultaneously with the payment of the money or delivery of the property: Provided further, That any garnishee holding property under a pledge or lien shall not be required to deliver up such property except upon payment to him of the debt secured by the pledge or lien.

WV Legislature

§38-7-27. Failure of garnishee to answer.

If any garnishee, summoned as provided in this article, fail to answer, the court may either compel him to answer, or hear proof of the matters required by section twenty-four of this article to be disclosed by the garnishee's answer, concerning any debt or liability due by him to, or personal property in his possession or under this control of, the defendant in such attachment, and make such orders in relation thereto as if what is so proved had appeared in his answer.

WV Legislature

§38-7-28. Jury trials in garnishment cases; waiver of right; appeal; costs.

When it is suggested by the plaintiff in any attachment at law or in equity that the garnishee has not fully disclosed the debts or liabilities due by him to, or personal property in his possession or under his control of, the defendant in such attachment, or has not delivered to the officer the property, or paid the money, for which he was liable, the court shall cause a jury to be impaneled, without any formal pleadings, to inquire as to such debts or liabilities or property, or as to such payment or delivery, unless a trial by jury be waived by the parties, and if trial by a 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 facts so found, in the same manner as if they had been confessed by the garnishee, 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 garnishee, he shall have judgment for his costs against the plaintiff, and if the judgment be against the garnishee, he shall be adjudged liable for the costs of the garnishment proceeding.

WV Legislature

§38-7-29. Effect of order against garnishee as judgment.

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

WV Legislature

§38-7-30. Service of process.

In any proceeding under this article process commencing the action shall be served upon the attachment debtor, and may be served in any manner provided in article three, chapter fifty-six of this code for serving process commencing a suit.

WV Legislature

§38-7-31. Who may defend against attachment.

A defendant, any person entitled to file a petition under the provisions of section forty-one of this article, any party to any bond given under section twenty of this article, any officer who may be liable to the plaintiff by reason of any such bond being adjudged bad, or any other person whose rights are affected by the attachment, shall have the right, either jointly or separately, to defend against any attachment, and to the benefit of all available defenses thereto: Provided, That a judgment in favor of any party to a bond, or in favor of an officer who may be liable by reason of such bond being adjudged bad, shall not discharge the lien of the attachment on any property.

WV Legislature

§38-7-32. Quashing of attachment for insufficiency of affidavit.

The right to sue out an attachment may be contested, and when the court is of opinion that the facts stated in the affidavit or amended affidavit were not sufficient to authorize the issuing thereof, or that the affidavit is otherwise insufficient, judgment shall be entered that the attachment be quashed.

WV Legislature

§38-7-33. Denial of grounds of attachment; trial; new trial; appeal.

Any person entitled to defend in any attachment proceeding may controvert the existence of the grounds of the attachment and of the facts relied upon to show the existence of such grounds, as such grounds and facts are stated in the affidavit, or in any amendment thereto, and may file an answer in writing denying the existence of such grounds and facts in any proceeding at law or in equity, such answer to be verified as any other pleading. The issue on such answer shall be tried by a jury, unless trial by jury be waived by the parties. The affirmative of such issue shall be with the plaintiff to prove the existence of such grounds and facts, sufficient to sustain the attachment, and, if the verdict be for the defendant, judgment shall be entered abating and discharging the attachment, and awarding to the defendant his costs, and ordering the restoration to him of the attached property. The court may grant new trials as in other cases, and either party may have the judgment reviewed upon a writ of error or appeal as the case may be, as in other actions.

WV Legislature

§38-7-34. Final judgment for defendant on merits.

When the attachment is properly sued out, and the case heard upon its merits, if it be determined that the claim of the plaintiff is not established, final judgment shall be given for the defendant and his costs shall be awarded to him and an order shall be made for the restoration to him of the attached property.

WV Legislature

§38-7-35. Damages for unlawful attachment.

If, upon any trial had under the provisions of sections thirty-three or thirty-four of this article, it be found either by the court, or by the jury, if one be impaneled, that the defense is well founded, judgment may be entered for the defendant against the plaintiff for the damages sustained by the defendant by reason of the attachment.

WV Legislature

§38-7-36. Order of sale to satisfy judgment for plaintiff.

If the claim of the plaintiff in any suit or proceeding under this article be established, judgment or decree shall be rendered for him and the court shall order the sale of all real or personal property levied upon, under and by virtue of any such attachment, which shall not have been previously sold, including any property embraced in any forthcoming bond, but not including any property restored to the defendant upon his giving bond to perform the judgment or decree of the court, and direct the proceeds of the sale of such property, and any funds derived from property previously sold, to be applied in satisfaction of such judgment or decree. But no real estate shall be sold under such order until all other property and money, so levied on as aforesaid, has been exhausted, and then only so much thereof as is necessary to pay the judgment or decree.

WV Legislature

§38-7-37. Sale of attached land; conveyance.

When a sale of real estate is ordered under the provisions of the preceding section, the court shall prescribe in the order the terms of such sale and the officer or person by whom it shall be made. The officer or person making such sale of real estate shall report, to the court which ordered the sale, the real estate so sold by him with the name of the purchaser, the sum for which it sold, and the time and place of such sale. The court, for good cause, may refuse to confirm the sale, and order the property to be resold, but if good cause for setting the sale aside be not shown, the court shall confirm the same, and shall direct a deed of conveyance of the real estate so sold to be made to the purchaser thereof, by the officer or person who sold the same, or by a special commissioner, appointed for that purpose, whenever the purchase money thereof, with its interest, shall have been fully paid.

WV Legislature

§38-7-38. Conveyance by former officer; sale or conveyance by special commissioner.

An officer directed by the court to make a conveyance, under the preceding section, may make the same in his official character, notwithstanding his term of office shall have expired. And in case of the death, removal, inability, or refusal to act of the officer or person appointed to make any such sale or conveyance, before the same is made, the circuit court of the county, in which such judgment, decree or order was rendered or made, may appoint a special commissioner to make such sale or conveyance, or both, as required by such judgment, decree or order.

WV Legislature

§38-7-39. Bond for sale of attached land when defendant has not appeared or been served.

If the defendant whose real estate is attached has not appeared in the action, proceeding or suit, or been served with a copy of the attachment sixty days before such judgment, decree or order, no sale of the real estate so attached shall be made until the plaintiff, or someone for him shall give bond, with sufficient security, in such penalty as the court shall approve, with condition that the plaintiff will perform such future order as may be made by the court in the action or suit, in case the defendant appear and make defense therein within the time prescribed by law: Provided, That after the right of a defendant to appear and make defense in any such action or suit shall have expired by limitation or otherwise, as prescribed in this chapter, a sale of such real estate may be made under the judgment, order or decree, whether such bond has been given or not.

WV Legislature

§38-7-40. Bond for sale of attached personal property when defendant has not appeared or been served.

If personal property be levied upon, and ordered to be sold, where there has been no such appearance or service of the attachment as is mentioned in the preceding section, and no bond has been given by the plaintiff as provided in section eight of this article, the court shall require such bond to be given by the plaintiff, and if the plaintiff, or someone for him fail to give such bond within a reasonable time, the court shall order such property to be discharged from the lien of the attachment.

WV Legislature

§38-7-41. Intervention of third persons; trial; costs.

Any person interested may file his petition at any time before the property attached as the estate of a defendant is sold under the decree or judgment, or if the proceeds of the sale have not been paid to the plaintiff, or his assigns, within one year after such sale, disputing the validity of the plaintiff's attachment thereon, or stating a claim thereto, or an interest in or lien on the same, under any other attachment or otherwise, and stating the nature of such claim, and, upon such petitioner's giving security for costs, the court, without any other pleading, shall impanel a jury to inquire into such claim, unless trial by jury be waived by the parties, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property or its proceeds, the court shall make such order as is necessary to protect his rights. The costs of such inquiry shall be awarded to the prevailing party.

WV Legislature

§38-7-42. Priority of attachments.

(a) Except as otherwise provided in subsection (b) of this section, the attachment first served on the same personal property, or on the person having such property in his possession, or on the person indebted to the defendant in the attachment suit, shall have priority of lien; and the officer making the levy shall note on the order of attachment the day and hour at which the levy is made: Provided, That where two or more attachments are delivered to the same officer at different times to be served, he shall serve them in the order in which he received them, and when they are delivered at the same time they shall be served at the same time, and, if more than one of such attachment be sustained, such of them as are sustained shall be satisfied pro rata out of the proceeds of the attached property.

(b) No garnishment of wages governed by the provisions of this article will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment of wages to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

WV Legislature

§38-7-43. Rehearing after judgment or decree on service by publication.

If a defendant against whom, on publication, a judgment or decree has been or shall hereafter be rendered, in an action, suit, or proceeding in which an attachment is sued out and levied as provided in this article, or the personal representatives of such defendant shall return to, or appear openly in this state, he may, within one year after a copy of such judgment or decree has been or shall be served upon him at the instance of the plaintiff, or within two years from the date of such judgment or decree, if he be not so served, petition to have the proceedings reheard. On giving security for the costs which have accrued and shall thereafter accrue, such defendant shall be admitted to make defense against such judgment or decree, as if he had appeared in the case before the same was rendered, except that the title of any bona fide purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner, or his decedent, was served with a copy of the original process in the action, suit or proceeding wherein the attachment issued, more than sixty days before the date of the judgment or decree, or to a case in which he appeared and made defense.

WV Legislature

§38-7-44. Judgment on rehearing; costs.

On any rehearing or new trial had under the preceding section of this article, if the judgment or decree be for the defendant, the court may order the plaintiff in the original suit, or his personal representative, to restore any money paid him under his judgment or decree therein, with interest from the date of such order, to the defendant, or his personal representative, entitled thereto, and may enter a judgment or decree against such plaintiff therefor, and, if the defendant, or his personal representative, fail to recover on such rehearing or new trial, the original judgment or decree shall be confirmed; and in either case the costs shall be adjudged to the prevailing party.

WV Legislature

§38-7-45. Appeal bond; return of property to owner.

Where a judgment or decree in favor of the plaintiff is rendered in any case in which an attachment is sued out, and, on appeal therefrom, an appeal bond is given with condition to prosecute the appeal with effect, or pay the debt, interest, costs and damages, as well as the costs of the appeal, the officer, in whose custody any attached property may be, shall deliver the same to the owner thereof.

WV Legislature

§38-7-46. Who may give bonds.

Any bond, authorized or required by any section of this article, may be given either by the party himself or by any other person.

WV Legislature