WEST VIRGINIA CODE CHAPTER 38 ARTICLE 8

WV Legislature

§38-8-1. Exemptions of personal property.

(a) Any individual residing in this state, or the dependent of such individual, may set apart and hold as exempt from execution or other process the following personal property:

(1) Such individual's interest, not to exceed $5,000 in value, in one motor vehicle;

(2) Such individual's interest, not to exceed $8,000 in aggregate value, in household goods, furniture, toys, animals, appliances, books and wearing apparel that are held primarily for the personal, family or household use of such individual;

(3) Such individual's aggregate interest, not to exceed $3,000, in any implements, professional books or tools of such individual's trade;

(4) Such individual's funds on deposit in a federally insured financial institution, not to exceed $1,100; and

(5) Funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP), in the name of such individual: Provided, That the amount is 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 or Section 4979 of the Internal Revenue Code of 1986, or both sections, or any successor provisions, regardless of whether the tax is or has been paid.

(b) Notwithstanding the foregoing, in no case may an individual residing in this state, or the dependent of such individual, exempt from execution or other process more than $15,000 in the aggregate in personal property listed in subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(c) Wages or salary are automatically exempt from execution or other process but only to the extent set forth in section three, article five-a of this chapter. No person may file for an exemption of wages or salary pursuant to this section in an amount above that set forth in section three, article five-a of this chapter.

WV Legislature

§38-8-2. Definition of value.

For the purpose of this article, the term "value," when used without any modifying words, means fair market value as of the date the exemption is claimed, less all liens other than judicial liens obtained by legal or equitable proceedings.

WV Legislature

§38-8-3. Method of claiming exemption on personal property.

When a debtor claims personal property as exempt under the provisions of this article, he or she shall deliver to the officer holding the execution or other process, a list by separate items with the fair market value of each item, according to the belief of the debtor, of all personal property and estate owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, along with the address of the person so indebted. The list shall also set forth with respect to each item of personal property and estate the name and address of the holder of and the current amount owing on each lien thereon other than judicial liens obtained by legal or equitable proceedings. The debtor shall verify such list, valuation and lien indebtedness by affidavit, which affidavit shall also show that the debtor is entitled to the exemption, and shall specify the character in which he claims to be so entitled, as for example, that he is a husband. If the value of the property named in the list exceeds, as stated therein, the maximum allowed amounts set forth in section one of this article, the debtor shall state at the foot thereof what part of the property he claims as exempt, but if such value does not exceed the allowed amount, as so stated, the claim of exemption shall be held to extend to the whole thereof without stating more; and if no appraisement thereof be demanded, as hereinafter provided, the property so claimed shall be set apart to the debtor as exempt. If the husband, wife, parent or other head of a household owning such property be absent, or incapable of acting, or neglect or decline to act, the claim may be made, the list delivered, and the affidavit made by another member of the family, with the same effect as if made by the owner, and the claim may be made, the list delivered, and the affidavit made on behalf of infant children by the guardian thereof or someone standing in loco parentis thereto. The officer shall immediately, upon receipt of the list, exhibit the same to the creditor, his or her agent or attorney.

WV Legislature

§38-8-4. Demand for appraisement; selection of appraisers.

If, within five days after the delivery of the list to the officer, the creditor, his agent or attorney, demand an appraisement of the property listed under the preceding section, two disinterested householders of the neighborhood shall be chosen, within twenty-four hours of such demand, one by the debtor, his agent or attorney, or, in their absence or failure to act, by his spouse, and the other by the creditor, his agent or attorney and these two, if they cannot agree, shall select a third; but if either party fail to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the officer shall fill the vacancy.

WV Legislature

§38-8-5. Appraisement.

The appraisers shall forthwith proceed to make a list, by separate items, of the personal estate selected by the debtor, affixing to each item the fair market value they may agree on, and annexing to the list their affidavit to the following effect: "We solemnly swear that, to the best of our judgment, the above is the fair market value of the property therein described"; which affidavit shall be signed by two appraisers at least, and be certified by some person authorized to administer oaths.

WV Legislature

§38-8-6. Officer's return to include appraisement and debtor's list.

The list shall be delivered to the officer holding the execution, order of sale or other process, and be by him annexed to and made part of his return; and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. The officer shall also annex as part of his return the list specified in the third section of this article.

WV Legislature

§38-8-7. Release of exempt claim or demand.

When an attachment or suggestion has been served on a person owing a claim or demand to the debtor which is by him exempted as aforesaid, the officer shall, upon request, release such claim or demand by giving the debtor, his spouse, agent or attorney, a written certificate of such exemption, which certificate shall be delivered to the person owing the claim or demand, who shall thereupon be entitled to pay the same to the debtor.

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§38-8-8. Forfeiture by officer selling or refusing to release exempt property.

Any officer who shall sell any property so claimed as exempt, after the provisions of the third section of this article have been complied with by the debtor, his agent, attorney, or spouse, shall forfeit to such debtor double the value of the property so sold, which forfeiture may be recovered from the officer and his sureties in his official bond in any court having jurisdiction in the case. And any officer failing to release any money or property in his control which shall have been exempted, or failing to deliver the same if in his possession, to the debtor, his agent, attorney or spouse, upon request, shall forfeit to the debtor $5 for each day such failure may continue, which forfeiture may be recovered from the officer and his sureties in an action upon his official bond in any court having jurisdiction. In an action on such bond or on an indemnifying bond taken by such officer, defense may be made on the ground that the debtor was not entitled to exemption as stated in the affidavit accompanying his list.

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§38-8-9. Compensation of appraisers.

Each appraiser shall be entitled to $1, to be paid by the creditor if the appraised fair market value of the property claimed by the debtor as exempt is equal to or greater than the fair market value ascribed to such property by the debtor; otherwise to be paid by the debtor.

WV Legislature

§38-8-10. Right of exemption of surviving spouse or minor children.

After the death of a husband, wife or parent residing in this state, his surviving spouse or minor children, or such of them as there may be, may select personal estate of the deceased, not exceeding $1,000 in value, and hold the same exempt from any debts or liabilities of the deceased spouse or parent, contracted or incurred by the deceased in his lifetime, but the personal representative or any creditor of the deceased may have the personal estate so selected appraised as prescribed in the preceding sections of this article, and with like effect; and no greater amount than $1,000 of the personal estate of the deceased shall be exempt by virtue of this provision; and if during his lifetime, he had himself set apart personal estate to be exempt from execution and other process, the same shall be subject thereto after his death, so far as it is not selected as aforesaid by his surviving spouse and minor children, or such of them as there may be.

WV Legislature

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

No exemption claimed under the preceding sections of this article, or any of them, shall affect or impair any claim for child or spousal support established or enforced under the provisions of chapter forty-eight of this code, the purchase money of the personal estate in respect to which such exemption is claimed, or any proceeding for the collection of taxes, or county or district or municipal levies. Any increase in the exemption provided by a prior enactment of other sections of this article are not applicable to liens and all other debts and liabilities contracted and incurred prior to the effective date of the prior enactment of those sections.

WV Legislature

§38-8-12. How appraisement may be set aside; determination of liens.

Whenever an appraisement has been timely demanded by the creditor, his agent or attorney, the circuit court of the county, or judge thereof in vacation, on motion of any person aggrieved made within ten days after delivery of the appraisement list to the officer as specified in section six of this article, may set aside any appraisement made as provided in this article, order a new appraisement to be made and returned, and appoint appraisers for that purpose, and may determine the amount and validity of the liens on the items of personal property and estate set forth on the debtor's list delivered to the officer as specified in section three of this article, and make such order respecting the costs as may be deemed just. Any determination under this section of the amount and validity of liens shall be binding only as between the debtor and the creditor at whose instance the execution or other process has issued.

WV Legislature

§38-8-13. Proceedings or transfers to avoid exemption prohibited.

It shall be unlawful for any person to institute, or permit to be instituted, proceedings in his own name, or in the name of any other person, or to assign or transfer, either for or without value, any claim for debt, or liability of any kind, held by him against a resident of this state, for the purpose of having payment of the same, or any part thereof, enforced out of the wages that may be exempted by virtue of the provisions of this article by proceedings in attachment or garnishment, in courts, or before justices of the peace, in any other state than in the State of West Virginia; or to send out of this state by assignment, transfer, or in any other manner whatsoever, either for or without value, any claim or debt against any resident thereof, for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy or garnishment, according to the provisions of this article. And the person instituting such suit, or permitting such suit to be instituted, or sending, or assigning, or transferring any such claim or debt for the purpose, or with the intent aforesaid, shall be liable in an action of debt to the person from whom payment of the same or any part thereof shall have been enforced by attachment or garnishment, or otherwise, elsewhere than in the State of West Virginia, for the full amount, payment whereof shall have been so enforced, together with interest thereon, and the cost of the attachment or garnishment proceedings, as well as the costs of such action to recover the same.

The fact that the payment of a claim or debt against any person entitled to the exemption provided for by this article has been enforced by legal proceedings in some state other than the State of West Virginia, in such manner as to deprive such persons to any extent of the benefit of such exemption, shall be prima facie evidence that any resident of this state who may at any time have been owner or holder of such claim or debt has violated this section.

WV Legislature

§38-8-14. Unripe crops exempt; exception as to corn.

No crop shall be liable to distress or levy until it is mature, or has been severed from the soil, except that Indian corn may be taken at any time after October 15, of the year when it was planted.

WV Legislature

§38-8-15. Waiver of exemption void.

Any waiver of the rights conferred by this article shall be void and unenforceable.

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