WEST VIRGINIA CODE CHAPTER 38 ARTICLE 9

WV Legislature

§38-9-1. Persons entitled to homestead; value.

Any husband, wife, parent or other head of a household residing in this state, or the infant children of deceased or insane parents, owning a homestead shall by operation of law have a homestead exemption therein to the value of $5,000, subject to the provisions of section forty-eight, article six of the Constitution of this state.

WV Legislature

§38-9-2. Definitions.

As used in this article:

(1) "Homestead" means property owned and used as the principal home for the debtor, his spouse or a dependent, or any or all of them, whether classified as real property, chattel real, a fixture or personal property; and

(2) "Value," without any modifying words, means fair market value as of the date the exemption is asserted, less all liens other than judicial liens obtained by legal or equitable proceedings.

WV Legislature

§38-9-3. Debts enforceable against homestead.

(a) As of the effective date of this article, a homestead shall be exempt up to the value of $5,000 from all debts and liabilities, except debts incurred for the purchase money thereof, or for the erection of permanent improvements thereon, and claims for taxes or county or district or municipal levies due thereon. The exemption herein granted by operation of law shall not render the homestead exempt from liens and all other debts and liabilities contracted and incurred prior to the effective date of this article: Provided, That with respect to a homestead exemption up to $1,000 perfected by execution and recordation of a written instrument as required under the former provisions of this article, such exemption shall for all purposes continue to be governed by such former provisions of this article.

(b) In addition to the exemption provided in subsection (a) of this section and subject to the provisions of section eleven-c, article five, chapter nine of this code, effective July 1, 1996, a homestead shall be exempt up to the value of $7,500 from all debts and liabilities for hospital or medical expenses incurred from a catastrophic illness or injury. For purposes of this section, "catastrophic illness or injury" means a medically verified illness or injury for which any insurance or other applicable benefits have been exhausted, and which incapacitates and creates a financial hardship upon the debtor, his or her spouse or sibling or dependent of the debtor, who uses the homestead as a principal home at the time the debt was incurred. The exemption provided by this section shall expire upon the date of the death of the debtor, the death of the debtor's spouse or the death of a disabled dependent of the debtor who uses the homestead as a principal home, whichever is the later.

The exemption provided pursuant to this subsection by operation of law shall not render the homestead exempt from liens and all other debts and liabilities contracted and incurred prior to July 1, 1996.

The Tax Commissioner shall propose for promulgation legislative rules, not inconsistent with this section, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish the procedures for exempting homesteads from debts and liabilities incurred from a catastrophic illness or injury.

WV Legislature

§38-9-4. Proceedings to reach excess value of homestead.

Any creditor of the person owning such homestead may assert a claim in a civil action, alleging that the value of the homestead is of greater value than $5,000, and if the court shall be satisfied, from the proofs in the cause, that the allegations are true, it shall make such order or decree as may be necessary to subject such excess of value, above the sum of $5,000, to the payment of the debt, or demand of such creditor. If more than one creditor shall join in such judicial proceeding, and their debts or claims be of equal priority, such excess shall be paid pro rata upon the debt or claim of each.

WV Legislature

§38-9-5. Descent of homestead to infant children.

In case of the death of a husband, wife or parent owning such homestead, the benefit thereof shall descend to his or her minor children, and shall be held and enjoyed by them as such homestead, until all of such infants attain the age of twenty-one years unless they sooner die.

WV Legislature

§38-9-6. Waiver of exemption void.

Any waiver of the rights conferred by this article shall be void and unenforceable except to the extent that (1) such waiver is accompanied by a consensual security interest in the property in which the homestead exemption is asserted and (2) such security interest cannot be satisfied without encroaching upon the homestead exemption so asserted.

WV Legislature