WEST VIRGINIA CODE CHAPTER 38

WV Legislature

§38-1-1. Vendor's lien; its enforcement.

If any person convey real estate, or any interest, legal or equitable, therein, and the purchase money or any part thereof remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money unless such lien is expressly reserved on the face of the conveyance. A vendor's lien may be enforced by a suit in equity.

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§38-1-1a. Deeds of trust conveying real and/or personal property; limitations on application of article.

A deed of trust may convey both real property or some interest therein and personal property or only real property or some interest therein or only personal property in order to secure a debt. This article shall apply to deeds of trust that convey real property or some interest therein or both real property or some interest therein and personal property. Deeds of trust conveying only personal property are governed by article nine of chapter forty-six of this code. If the deed of trust conveys both real and personal property, a financing statement as to the personal property shall be required as specified in article nine, chapter forty-six of this code, and the trustee may proceed as to the sale or other disposition of the personal property involved under said article nine of chapter forty-six and of the real property involved under this article or he may proceed as to the sale or other disposition of both the real and personal property involved under this article. In all other respects this article is applicable to the conveyance of real property by deed of trust, and article nine of chapter forty-six is applicable to the conveyance of personal property by deed of trust.

For purposes of this section, personal property is any property right or interest in which a security interest under article nine of chapter forty-six of this code may be obtained or created.

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§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.

A deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect: "This deed made the ..... day of ....., in the year ....., between ..... (the grantor) of the one part, and ..... (the trustee) of the other part, witnesseth: That the said ..... (the grantor) doth (or do) grant unto the said ..... (the trustee) the following property (here describe it). In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon). Witness the following signature."

In lieu of the recording of a deed of trust, there may be recorded with like effect a memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed of trust entitled to be recorded shall contain at least the following information with respect to the deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to the indebtedness secured by the deed of trust including the amount of the indebtedness and the date the indebtedness was incurred or if the indebtedness is evidenced by a note or contract, the date the instrument was executed; (3) the date of execution of the deed of trust if different than the date the evidence of indebtedness was executed; (4) the date of maturity of the indebtedness; (5) the description of the real estate against which a lien is claimed to secure the indebtedness; (6) a title in compliance with subsection (b), section fourteen, article one, chapter thirty-eight of this code if the indebtedness is a line of credit; (7) a statement of whether advances are obligatory if the indebtedness is a line of credit; (8) provisions of the deed of trust regarding substitution of a trustee; (9) a summary of the applicable notice and publication requirements if there is a default; (10) whether the loan was originated or serviced pursuant to a program of the following agencies or organizations, and if so, any form number actually used: (a) Federal Housing Administration; (b) Veterans Administration; (c) Federal National Mortgage Association; (d) Federal Home Loan Administration; (e) United States Department of Agriculture; or (f) West Virginia Housing Development Fund; and (11) the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained. The memorandum shall constitute notice of only the information contained therein but, as against creditors and purchasers, it is as valid as if the complete deed of trust were recorded on the date the memorandum is admitted to record. Prior to the commencement of any foreclosure or other execution of the deed of trust, the original deed of trust shall be recorded.

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§38-1-3. Sales under trust deeds.

The trustee in any trust deed given as security shall, whenever required by any creditor secured or any surety indemnified by the deed, or the assignee or personal representative of any such creditor or surety, after debt due to such creditor or for which such surety may be liable shall have become payable and default shall have been made in the payment thereof, or any part thereof, by the grantor or other person owing such debt, and if all other conditions precedent to sale by the trustee, as expressed in the trust deed, shall have happened, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, having first given notice of such sale as prescribed in the following section.

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§38-1-4. Notice of sale.

Unless property is to be sold under a deed of trust executed and delivered prior to July 1, 1980, which contains a provision waiving the requirement of published notice, the trustee shall publish a notice of a trustee's sale 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 where the property is located: Provided, That any notice of sale published since July 1, 1980, and prior to the effective date of this section, shall be deemed to have met the requirements of the section if such were published as Class II legal advertisements, in compliance with the provisions of article three, chapter fifty-nine of this code, in that by the enactment of the acts of the Legislature, regular session, 1980, the Legislature intended that all notice of sales pursuant to trust deeds were to have been published as Class II legal advertisements.

Except as expressly provided in this section, no trust deed shall waive the requirements of publication of notice required by this section.

In all cases, a copy of such notice shall be served on the grantor in such trust deed, or his agent or personal representative, by certified mail, return receipt requested, directed to the address shown by the grantors on the deed of trust or such other address given to the beneficiary of said trust deed or said beneficiary's agent or assignee in writing by the said grantor subsequent to the execution and delivery of the trust deed and notice shall be deemed complete when such notice is mailed to the aforesaid address, notwithstanding the fact that such mail may be returned as refused or undeliverable and shall be served by certified mail, at least twenty days prior to the sale, upon any subordinate lienholder who has previously notified the primary lienholder by certified mail of the existence of a subordinate lien. Every trust deed shall state the address to which such notice shall be mailed.

Every notice of sale by a trustee under a trust deed shall show the following particulars: (a) The time and place of sale; (b) the names of the parties to the deed under which it will be made; (c) the date of the deed; (d) the office and book in which it is recorded; (e) the quantity and description of the land or other property or both conveyed thereby; and (f) the terms of sale.

Notice to a subordinate lienholder shall be complete when such notice is mailed in accordance with the provisions of this section, directed to the address of the subordinate lienholder as provided by such subordinate lienholder in the notice of existence of a subordinate lien.

The provisions of this section relating to the methods of serving notice are not exclusive. In addition to, but not in lieu of, any service of notice required by the provisions of this section, service of such notice may be also made by any other method authorized for the service of original process in the circuit courts of this state by statute or by the rules of civil procedure for trial courts of record.

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An individual who purchases property at a trustee's sale is under no duty to ascertain whether notice was given to subordinate lienholders in accordance with the provisions of this section, and such right, title and interest as the purchaser may acquire shall not be affected by defects in such notice or the service thereof, if the purchaser is otherwise a bona fide purchaser for value.

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§38-1-4a. Statute of limitations for sales by trustees.

Provided the grantor on the deed of trust or the agent or personal representative of the grantor is provided notice as required by section four of this article, no action or proceeding to set aside a trustee's sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a trust deed shall be filed or commenced more than one year from the date of the sale.

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§38-1-5. Terms of sale.

Such sale shall be made upon such terms as are mentioned in such deed; and if no terms are therein mentioned, then upon the following terms, to-wit: If the property to be sold is real estate, one third of the purchase money cash in hand, one third thereof, with interest, in one year, and the residue thereof, with interest, in two years from the day of sale, taking from the purchaser his notes, with good security, for the deferred payments, and either retaining the legal title as further security or conveying the legal title and reserving in the deed of conveyance a lien for the deferred purchase money, or otherwise securing the same; if the property to be sold be personal estate, then for cash.

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§38-1-6. Form of trustee's deed.

Every deed for real estate sold under a trust deed may be made in the following form, or to the same effect: This deed, made the ..... day of ....., between A ..... B ....., trustee, of the first part, and C ..... D ..... of the second part: Whereas the said trustee, by virtue of the authority vested in him by the trust deed hereinafter mentioned, or by an order of the circuit court of the county of ....., made on the ..... day of ....., (as the case may be) did sell the real estate hereinafter described and conveyed, at which sale the said C ..... D ..... became the purchaser for the sum of ..... dollars. Now therefore this deed witnesseth: That the said A ..... B ....., trustee as aforesaid, doth grant unto the said C ..... D ..... a certain parcel of real estate situate in the county (or city, town or village, as the case may be) of ....., said real estate being the real estate conveyed by E ..... F ..... to the said A ..... B ....., trustee (or to G ..... H ....., trustee, as the case may be) by deed bearing date the ..... day of ....., 19 ...., and recorded (if it be recorded) in trust deed book ..... on page ..... in the office of the clerk of the county court of the county of ....., and bounded and described therein as follows: (here insert the description and quantity as set forth in the trust deed, and any other or further description deemed necessary. A reservation of a vendor's lien, a covenant of special warranty, or any other provision which is in accord with the terms of sale and the trustee's duty may also be inserted.)

Witness the following signature.

A ..... B ....., Trustee.

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§38-1-7. Application of proceeds; action to recover a deficiency.

(a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five percent on the first $300, and two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata, or in the order of priority, if any, prescribed by the trust deed, to the payment of the debts secured and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

(b) A trust deed grantor, the obligor on the debt secured by the deed of trust, including any maker, comaker, guarantor, surety or other accommodation party, or other defendant in a civil action seeking a deficiency judgment on the debt secured by the deed of trust, may not assert as a defense that the fair market value of secured real property was not obtained at a trust deed foreclosure sale conducted in accordance with this article.

WV Legislature

§38-1-8. Return of account of sale; forfeiture of commissions on failure to account.

When a sale of property is made under any trust deed otherwise than under a decree, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county court of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. Any trustee failing to comply with this section shall forfeit his commissions on such sale, which commissions may be recovered in an action by the grantors in such deed, or of any beneficiary when the proceeds of sale were insufficient to pay the debt secured.

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§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.

(a) This section applies to deeds of trust if the property conveyed therein includes real property that is occupied, or is intended to be occupied as a residence by the grantor at time the deed of trust is executed and delivered.

(b) Beginning July 1, 2009, when a report of the sale of the property sold pursuant to a deed of trust is placed of record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include the following information on a disclosure form submitted with and made a part of the report of sale:

(1) Name or names of the grantor of the deed of trust;

(2) Street address, city, state and zip code of real property subject to the trust;

(3) Original trustee name;

(4) Substitute trustee name, if any, and date of appointment;

(5) The address, telephone number and electronic contact information for the trustee making the sale;

(6) Date, time and place advertised for sale;

(7) Name of original secured lender;

(8) Current holder of deed of trust, and the current holder's address;

(9) Original principal amount of the secured debt;

(10) Original interest rate;

(11) Whether the loan was adjustable and if so current rate;

(12) Total secured indebtedness at time of sale;

(13) The number of months the loan is delinquent at time of notice of sale; and

(14) The date, time and place of sale;

(15) The name of the purchaser;

(16) The appraised value at the time of loan, if available;

(17) The net amount applied to the secured loan;

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(18) The date the report of sale is recorded; and

(19) Any other information the West Virginia Housing Development Fund may require.

(c) The West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code shall publish a form setting out the information required by subsection (b) and instructions as to how this information is to be filed with the report of sale.

(d) Notwithstanding any other provision of this code, nothing in this section shall be deemed to create a responsibility by the West Virginia Housing Development Fund to provide any report other than a compilation into an electronic data base of the data that is required to be submitted pursuant to subsection (b) of this section and the compiled raw data submitted from each county clerk. The West Virginia Housing Development Fund is not required to verify and is not responsible for the veracity of the accuracy of the data submitted.

(e) Failure to comply with this the provisions of this section shall not affect the validity of the sale or the title to the property sold by the trustee.

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§38-1-9. Recordation of account of trustee.

When an account required by the next preceding section is returned, the clerk of the county court shall record the same in a well-bound book to be kept for that purpose, to be called "Reports of Sales Under Trust Deeds," and properly index the same, for which service such clerk shall receive the fee provided by law.

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§38-1-10. Who may require trustee to give bond; new trustee on failure to give; notice.

The grantor or his assignee, or any cestui que trust, may at any time after the execution of the trust deed, by notice in writing, require any trustee to give the bond mentioned in the following section of this article, and, upon his failure to do so for twenty days after such notice, the power of such trustee shall cease and another trustee may be appointed by the circuit court of any county wherein such deed of trust is recorded, or by the judge thereof in vacation, to execute such trust, upon the application of any cestui que trust, or the grantor or any assignee of the grantor, if, upon the hearing of such application, the failure of the trustee to give such bond be made to appear to the satisfaction of such court or judge, by affidavits or otherwise. At least ten days' notice in writing of such application shall be given to the trustee, grantor, or assignee of the grantor, and to all cestuis que trust in such deed if they be residents of the county, stating the court or judge before whom such application is to be made. If such trustee and grantor or assignee of the grantor, or either of them, are not residents of such county, the notice as to them, or the one not a resident, may be published 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 such county.

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§38-1-11. Amount and approval of bond of trustee; recordation; effect of failure to give.

If the grantor in the trust deed, or any person to whom such grantor shall have granted or assigned the property covered by such deed, or any cestui que trust of such trust deed, shall as provided in the preceding section, require the trustee to give bond, such trustee shall, before making any sale, or receiving any of the proceeds of such sale, give bond in a penalty at least equal to the full value of the property to be sold, with good security, before the clerk of the county court of the county where such property is, which bond and security shall be approved by such clerk, conditioned that he will faithfully perform his duty as such trustee, and account for and pay over, as required by law, all money that may come into his hands in the execution of such trust. Every such bond shall be filed by such clerk in his office, and recorded by him in the book in which the bonds of administrators are recorded. Every notice of sale by a trustee under a trust deed shall have appended to it the certificate of such clerk, that bond and security has been given by the trustee as required by law, if such bond be required as aforesaid, but the failure to give such bond shall not affect the title of any purchaser of such property at the trustee's sale, for value, and without notice of the fact that such bond had been required.

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§38-1-12. Bond of new trustee appointed by court; recordation.

Of a trustee appointed by the court under the provisions of section ten of this article, bond shall be required in the penalty of at least the full value of the property which may come into his hands, which bond may be given before and approved by such court or judge, or be given before and approved by the clerk of the county court of such county, upon the order of such circuit court or judge, and shall be filed by such clerk in his office, and recorded as provided in section eleven of this article, and shall be with like condition as the bond given by a trustee named in the trust deed.

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§38-1-13. Substitution of trustees under a trust deed securing a debt.

(a) When a trust deed to secure a debt or obligation does not by its terms prescribe a method for substitution, the party secured by the trust deed, or any surety indemnified by the deed, or the assignee or personal representative of any secured party or surety may, if there is a death, removal, declination, resignation, refusal or inability of the original trustee or trustees named in the instrument, substitute a trustee or trustees in his or her, or its place by a writing duly signed and acknowledged and recorded in the office of the clerk of the county commission where the real estate covered by the trust deed is situate.

(b) When a substitution is made under this section of a trustee or trustees of a trust deed securing a debt or obligation, the substitution is effected when the party secured, or a surety indemnified by the deed, or the assignee or personal representative of any such secured party or surety has deposited true copies of the notice of the substitution in the United States mail, first class postage prepaid, addressed to the last known addresses of the grantor or grantors or any other person owing the debt or obligation, and has presented the original of the notice to the clerk of the county commission in whose office the trust deed is recorded, causing the notice to be recorded and indexed in a general lien book or other appropriate book in which trust deeds or assignments of trust deeds are recorded. There shall be appended to the notice presented for recording a certificate by the party making the substitution, certifying that copies of the notice were mailed as required by this subsection and showing the date of the mailing.

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§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.

(a) Definitions: For purposes of this section, the following definitions shall apply:

(1) "Credit line deed of trust" is a deed of trust securing any obligation arising out of a loan agreement, a promissory note, a sales contract, a performance contract, or any other agreement or writing, under the terms of which the indebtedness or other obligation created may increase and/or decrease from time to time.

(2) "Future advance" means any form of increase in the indebtedness or obligation owed to the secured party under the terms of the credit line deed of trust, including, but not limited to, an increase arising from, but not limited to, an application for the same by the obligor; the advancement of loan proceeds pursuant to the terms of the credit line deed of trust or other agreement; the payment of any taxes, insurance premiums, interest, or other obligations pursuant to the terms of the credit line deed of trust or other agreement; or the occurrence of any condition, event or circumstance set forth in the credit line deed of trust.

(3) "Obligatory advance" means any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other such event. Obligatory advances include, but are not limited to, advances which the secured party has agreed to make as a term or condition of the credit line deed of trust or other related agreement; obligations arising out of the occurrence of a condition, event or circumstance contemplated by the agreement; obligations arising on a specified date or time; or advances made upon application therefor by the grantor under the credit line deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

(b) A credit line deed of trust shall comply with all the provisions of this article and shall either (i) have clearly entitled at the beginning thereof either in capital letters or in language underscored, the words, "A CREDIT LINE DEED OF TRUST", or (ii) state conspicuously either immediately above or beneath the caption at the top of the first page of the credit line deed of trust the words, "This instrument secures an obligation that may increase and decrease from time to time."

A credit line deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness or other obligations secured thereby at the time of recording and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the credit line deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the credit line deed of trust or whether the secured party under the credit line deed of trust readvances principal sums repaid. The credit line deed of trust shall also be security for interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the credit line deed of trust or in the related loan agreement, note, contract, or other agreement or evidences of

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indebtedness or obligations secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the obligations outstanding at any time may increase the amount secured by the credit line deed of trust above the stated maximum amount.

(c) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The credit line deed of trust shall contain specific provisions permitting or requiring future advances and stating whether the future advances are intended to be obligatory or nonobligatory;

(2) At no time may the unpaid principal balance of the obligation or indebtedness secured by the credit line deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (b) of this section; and

(3) The original credit line deed of trust must be executed and recorded after June 6, 1984.

(d) Except as otherwise provided herein, a credit line deed of trust, to the extent of the principal amount of the loan indebtedness or obligation secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced on the date and at the time the credit line deed of trust is recorded.

(e) Any mechanic's lien, abstract of judgment, notice of lis pendens, other deed of trust or other lien of encumbrance, which affects the property encumbered by the credit line deed of trust and which is duly recorded and perfected as required by law after the recording of the credit line deed of trust, shall have priority over any advances secured by the credit line deed of trust that are not obligatory and that are made by the secured party under the credit line deed of trust after receipt by the secured party, at the address provided for the purpose of notification in the credit line deed of trust, of written notice of such mechanic's lien, judgment lien, notice of lis pendens, other deed of trust or other lien or encumbrance. However, any obligatory advances made by the secured party that are secured by the credit line deed of trust or any other related agreement, and any taxes, insurance premiums and obligations which the secured party has agreed to pay, or which under the credit line deed of trust or otherwise the secured party has the right to pay in connection with such credit line deed of trust, shall continue to have the priority created under subsection (b) of this section over a mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance.

(f) Notwithstanding any other provision of this code, the secured party under a credit line deed of trust subject to this section shall be obligated to release the credit line deed of trust at such time as all indebtedness or other obligations secured thereby have been paid in full or otherwise satisfied and the secured party has been duly released from any further

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obligation to make future advances under any note or agreement secured by the credit line deed of trust. This release shall become effective upon the recording of the release and the secured party shall be released and discharged from any further obligation.

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§38-1-15. Validity of deed of trust upon renewal of loan.

Upon the renewal of a loan agreement in the instance when no additional principal is advanced, the original deed of trust is sufficient for the purpose of securing the loan, regardless of any change in the rate of interest.

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§38-1-16. Sale of real property pursuant to a deed of trust; preexisting tenancy.

(a) Notwithstanding the notice requirements of section five, article six, chapter thirty-seven of this code, following the conveyance of residential rental property to a purchaser by a trustee pursuant to a deed of trust, the tenancy of a tenant occupying the property under an unexpired written lease that is either not of record or was placed of record after the deed of trust under which the trustee sold the residential rental property was placed of record, may be terminated by giving ninety days written notice or by giving written notice not less than thirty days prior to the expiration of the lease, whichever is shorter. However, the tenancy of a tenant occupying the property under a month to month or other tenancy may be terminated by giving thirty days written notice. The terms and conditions of the lease of the property remain fully enforceable during the notice period. If the tenant fails to timely comply with the terms of the lease, the new owner, or the agent of the new owner, may proceed under article three-a of chapter fifty-five of this code, notwithstanding the provisions of this section. The tenancy of a factory built home may only be terminated as provided in section six, article fifteen, chapter thirty-seven of this code.

(b) The notice required by subsection (a) of this section shall, at a minimum, identify the residential real property occupied by the tenant, state the date of the trustee's sale at which the residential real property was purchased, state the book and page number at which the trustee's deed to the purchaser appears of record, state the date on which the tenancy will expire, and identify the purchaser, including information sufficient to contact the purchaser.

(c) Service of written notice upon the tenant, or anyone else holding the leased premises, or any part thereof, under the tenant is sufficient if made by regular mail addressed to the tenant or person holding under the tenant at the address of the property and by either personal delivery to the tenant or person holding under the tenant, by posting a copy of the notice on the front door of the rental real property or by certified mail addressed to the tenant or person holding under the tenant at the address of the property. When notice is given by the tenant, it may be served upon any person owning the premises, in whole or in part, or the agent of an owner.

(d) The provisions of this section take effect on the first day of January, two thousand thirteen.

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§38-1-17. Personal property after foreclosure; notice and access to recover personal property; abandonment.

Following a foreclosure on residential real property pursuant to this article, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides notice, pursuant to this section, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at all the address(es) to which notice of foreclosure sale was sent as set forth in the trustee's report of sale, as well as the last known address, if different. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person's or entity's mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of the real property may dispose of the remaining personal property in the purchaser's discretion. The notice required by this section may not be waived before the property is vacated.

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§38-1A-1. "Security trust" defined.

For the purposes of this article, the term "security trust" shall include a deed of trust, mortgage, bond or other instrument, entered into after the effective date of this article under which the title to real and personal property, or either of them, wholly situate in and including no property situate outside of the State of West Virginia, is conveyed, transferred, encumbered or pledged to secure the payment of money or the performance of an obligation: Provided, however, That the provisions of this article shall not apply to supplements to existing security trust instruments now of record executed pursuant to the provisions of said existing security trust instruments.

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§38-1A-2. Nonresident of state not to be named trustee; corporations eligible to be trustees.

No person not a resident of this state may be named or act, in person or by agent or attorney, as the trustee of a security trust, either individually or as one of several trustees, the other or others of which are residents of this state. No corporation may be named or act as the trustee or as one of the trustees of a security trust unless it is chartered under the laws of this state or of the United States of America, and unless its principal office is within this state.

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§38-1A-3. Validity of sales and titles conveyed by nonresident trustees.

The nonresidency of a trustee shall not invalidate or cloud the title passing under a security trust. Any conveyance made by a nonresident trustee pursuant to foreclosure of a security trust shall be as valid as though such trustee were a resident of this state.

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§38-1A-4. Enjoining sales or conveyances by nonresident trustees.

The circuit court of the county in which the property is situate, or the judge thereof in vacation, shall have jurisdiction in equity, on the application of any party interested, to enjoin a sale, a conveyance pursuant to a sale, or proceedings preliminary to a sale under any security trust by a trustee not a resident of the State of West Virginia.

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§38-1A-5. Recovery of commissions, costs and expenses following sale by nonresident trustee.

In the event a nonresident trustee shall sell under a security trust, the grantor in the security trust may, within one year from the day of such sale, in the circuit court of the county where the sale was held or where the property was situate at the time of sale, recover from such trustee all commissions, costs and expenses of sale deducted by such trustee from the proceeds of such sale or received by the trustee on account of such sale, with interest at six percent from the date of such sale.

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§38-1A-6. Security trust not to be recorded unless trustee's address stated; sufficiency thereof.

No county clerk shall hereafter admit any security trust for recordation or filing which does not state the residence address of the trustee or trustees named therein: Provided, however, That the county in this state in which the said trustee resides shall be sufficient statement of the residence address thereof.

WV Legislature

§38-1A-7. Secretary of state attorney-in-fact for service on nonresident trustees.

The naming in a security trust of a person not a resident of this state as a trustee, or as one of several trustees thereof, shall be deemed equivalent to an appointment by such nonresident of the Secretary of State as attorney-in-fact of such nonresident trustee upon whom may be served all process and notices in any suit, action, motion or proceeding in any court of record in this state, and such service shall have the same effect as process or notice duly served in person upon such person in this state.

WV Legislature

§38-1A-8. How service of process or notice made.

Service of process or notice shall be made by mailing or delivering to the office of the Secretary of State three copies of the process or notice, with a notation on the process or notice of the residence address of the trustee upon whom service is being had, as stated in the security trust; if the address of the trustee is not stated in the security trust, the notation shall state the address of the beneficiary of the trust as given in the security trust; and service of the process or notice is complete upon the receipt in the office of the Secretary of State of the notice or process bearing the notation and accompanied by the fee required by section two, article one, chapter fifty-nine of this code, which shall be taxed as costs in the suit, action or proceeding. The Secretary of State shall keep one copy of all process and notices, with a record of the day and hour of service of the process or notice.

WV Legislature

§38-1A-9. Action by Secretary of State following service.

Forthwith upon such service, said Secretary of State shall send to such trustee the second copy of such process or notice, by registered or certified mail, return receipt requested, to the address stated in such notation. The third copy of such process or notice, bearing the acknowledgment of the Secretary of State of the fact of service on him with his notation of the mailing of the second copy as above provided, shall be transmitted by the Secretary of State to the clerk of the court issuing the process or to the person giving the notice, as the case may be.

WV Legislature

§38-1A-10. Other manner of serving process or notice.

The foregoing provisions for service of process and notices are cumulative. Process and notices may also be served upon any such nonresident trustee in any manner provided by law.

WV Legislature

§38-1A-11. Appointment of resident trustee by court; powers and duties of substituted trustee.

The circuit court, or the judge thereof in vacation, of the county in which the property is situate, may, on motion of any party interested, appoint a trustee or trustees in the place of any nonresident trustee named in any security trust. Any trustee or trustees so appointed, if he or they accept, shall be vested with all the estates, rights and powers, and charged with all the duties and responsibilities, of the trustee or trustees named in the security trust.

WV Legislature

§38-1A-12. Notice of motion for appointment of resident trustee; guardians ad litem.

Ten days' prior notice of the motion under the preceding section shall be given to the grantor of the security trust, his heirs, devisees or personal representatives, to the trustee or trustees named in the security trust, and to the person appearing by such security trust or by a recorded assignment thereof to be the party secured or his personal representatives. If any of the parties upon whom such notice is required to be served be under disability, the notice shall be served on his guardian or committee or, if he have none, the court shall appoint a discreet and competent attorney at law as guardian ad litem, upon whom notice may be served.

WV Legislature

§38-1A-13. Provisions of article severable and remedial.

The provisions of this article are severable, and the unconstitutionality of one portion shall not affect other portions. The provisions of this article are remedial, and shall be liberally construed to the relief of the owners of property in this state.

WV Legislature

§38-2-1. Lien of contractor.

Every person, firm or corporation who erects, builds, constructs, alters, removes or repairs any building or other structure, or other improvement appurtenant to any such building or other structure, or who alters or improves the real property whereon the same stands, or to which it may have been removed, or who provides services for any of the foregoing, under and by virtue of a contract with the owner for such erection, building, construction, alteration, removal or repair, either for an agreed lump sum or upon any other basis of settlement and payment, shall have a lien upon such building or other structure or improvement appurtenant thereto, and upon the interest of the owner thereof in the real property whereon the same stands, or to which it may have been removed, to secure the payment of such contract price or other compensation therefor.

WV Legislature

§38-2-2. Lien of subcontractor.

Every person, firm or corporation who, under and by virtue of a contract with such general contractor as is mentioned in section one of this article, or with a subcontractor for a part of such work, either for an agreed contract price or by day or by piece, or other basis of payment, shall furnish any part of the materials, machinery or other necessary supplies or equipment, or shall perform any labor, do any work or provide any services necessary to the completion of any general contract, such as is mentioned in section one of this article, shall have such a lien for his or her compensation, as is provided for in section one of this article.

WV Legislature

§38-2-3. Lien of materialman furnishing supplies to owner.

Every person, firm or corporation which shall furnish to any owner, for use in the erection, construction, alteration, repair or removal of any building or other structure or improvement appurtenant thereto, any materials, machinery or other equipment or supplies necessary to the completion of such building or other structure or improvement, shall have such a lien for his compensation as is mentioned in section one of this article.

WV Legislature

§38-2-4. Lien of materialman furnishing supplies to contractor or subcontractor.

Every person, firm or corporation, which shall furnish to any general contractor or to any subcontractor mentioned in sections one and two of this article, any materials, machinery or other equipment or supplies necessary to the completion of any building or other structure mentioned in this article, or improvement appurtenant thereto, for use in the erection, construction, repair or removal thereof, by virtue of a contract between such general contractor or subcontractor and the materialman or furnisher of machinery, or other supplies or equipment necessary to the completion of such general contract, shall have such a lien for his compensation as is mentioned in section one of this article.

WV Legislature

§38-2-5. Lien of mechanic or laborer working for owner.

Every workman, artisan, mechanic, laborer or other person who performs any work or labor or provides any service in the erection, construction, repair or removal of any building or other structure or improvement appurtenant thereto, or who alters or improves the real property whereon the same stands, or to which it may have been removed, by virtue of a contract for such work and labor directly with the owner thereof, shall have such a lien for his or her compensation as is mentioned in section one of this article.

WV Legislature

§38-2-6. Lien of mechanic or laborer working for contractor or subcontractor.

Every workman, artisan, mechanic, laborer or other person who performs any work or labor or provides any service under the employment of any general contractor or of any subcontractor in the erection, construction, repair or removal of any building or other structure, or improvement appurtenant thereto, or who alters or improves the real property whereon the same stands, or to which it may have been removed, necessary to the completion of such general contract, shall have such a lien for his or her compensation as is mentioned in section one of this article.

WV Legislature

§38-2-6a. Lien of architect, surveyor, engineer or landscape architect.

An architect, surveyor, engineer or landscape architect shall have a lien for his or her compensation as provided for in sections one through six, inclusive, of this article for all materials furnished and[B all work done, or all services provided by such architect, surveyor, engineer and landscape architect as a contractor, subcontractor, materialman, mechanic or laborer, as the case may be. The lien shall be perfected and preserved in accordance with, and shall otherwise be subject to, the provisions of this article governing liens for contractors, subcontractors, materialmen, mechanics or laborers, as the case may be.

WV Legislature

§38-2-7. Necessity and period for perfecting lien.

But the lien created and authorized by section one of this article shall be discharged from and after one hundred days from the completion of the contract and the lien created and authorized by section two of this article shall be discharged from and after one hundred days from the completion of the subcontract and the lien created and authorized by section three of this article shall be discharged from and after one hundred days from the furnishing of the last of the materials, machinery or other supplies and equipment and the lien created and authorized by section four of this article shall be discharged from and after one hundred days from the date of the furnishing of the last of the materials, machinery or other equipment or supplies and the lien created and authorized by section five of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor and the lien created and authorized by section six of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor, unless, within the respective periods, the claimant of any such lien shall have perfected and preserved the same, as hereinafter provided in this article.

WV Legislature

§38-2-8. Notice and recordation of contractor's lien.

For the purpose of perfecting and preserving his lien, any such general contractor as is mentioned in section one of this article shall, within one hundred days after the completion of his work provided for in such contract, cause to be recorded, in the office of the clerk of the county court of the county wherein such property is situate, a notice of such lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To.....

Notice is hereby given, in accordance with the laws of the State of West Virginia, that the undersigned claims a lien to secure the payment of the sum of $..... upon your interest in and to lot number ..... of block number ..... as shown on the official map of the city of ..... (or other adequate and ascertainable description of the real estate to be charged) and upon the following buildings, structures and improvements thereon: (List the buildings, structures or improvements sought to be charged.)

Given under my hand this ..... day of ....., 20.....

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements contained in the foregoing notice of lien are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20....

My commission expires .....

.....

(Official Capacity)

WV Legislature

§38-2-9. Notice and recordation of subcontractor's lien.

For the purpose of perfecting and preserving his or her lien, every subcontractor mentioned in section two of this article shall, within one hundred days after the completion of his or her subcontract, give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned ..... was and is subcontractor with ..... who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of (here describe the nature of the subcontract) on that certain building (or other structure or improvement as the case may be), owned by you and situate on lot number ..... of block number ..... as shown on the official map of ..... (or other definite and ascertainable description of the real estate) and that the contract price and value of said work and materials is $..... You are further notified that the undersigned has not been paid therefor (or has been paid only $..... thereof) and that he or she claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the said sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his or her oath says that the statements in the foregoing notice of mechanic's lien are true, as he or she verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

But the lien shall be discharged and avoided, unless, within one hundred days after the completion of his or her subcontract as aforesaid, the subcontractor shall cause to be recorded in the office of the clerk of the county commission of the county wherein the property is situate, a notice of the lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-10. Notice and recordation of lien for supplies furnished to owner.

For the purpose of perfecting and preserving his lien, every materialman or furnisher of machinery or other necessary equipment, under a contract with the owner, as mentioned in section three of this article, shall cause to be recorded in the office of the clerk of the county court of the county wherein such property is situate, within one hundred days from the date when he shall have ceased to furnish material or machinery or other necessary equipment, a notice of such lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

For the purpose of perfecting and preserving his or her lien, every materialman or furnisher of machinery or other necessary equipment who has furnished material, machinery or equipment under a contract with any contractor or with any subcontractor, as set forth in section four of this article, within one hundred days after he or she has ceased to furnish the material or machinery or other equipment shall give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of the lien. The notice will be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned ..... has furnished and delivered to ..... who was contractor with you (or subcontractor with ....., who was contractor with you, as the case may be) for use in the erection and construction (or repair, removal, improvement or otherwise, as the case may be) of (here list the buildings or other structure or improvement to be charged) on the real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and the said materials were of the nature and were furnished on the dates and in the quantities and at the price as shown in the following account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $..... (or that there is still due and owing to the undersigned thereon the sum of $.....) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon, to secure the payment of the said sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements in the foregoing notice of lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

WV Legislature

The lien shall be discharged and avoided unless, within one hundred days after the materialman or other furnisher of machinery or other necessary equipment ceased to furnish the materials or machinery or other equipment, he or she recorded in the office of the clerk of the county commission of the county wherein the property is situate a notice of the lien. The notice shall be sufficient if in form and effect as that provided in section eight of this article. The recorded notice need not include the itemized account.

WV Legislature

§38-2-12. Notice and recordation of lien of mechanic or laborer working for owner.

For the purpose of perfecting and preserving his lien every such workman, artisan, mechanic, laborer or other person as is mentioned in section five of this article who shall have done any work or performed any labor upon any such building or improvement, under a contract with the owner thereof, shall cause to be recorded in the office of the clerk of the county court of the county wherein such property is situate, within one hundred days after he shall have ceased to perform any such work or labor, a notice of his lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

WV Legislature

§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

For the purpose of perfecting and preserving his or her lien, every workman, artisan, mechanic, laborer or other person who has performed any work or labor upon the building or improvement thereto, under a contract with any general contractor or with any subcontractor, as set forth in section six of this article, shall give to the owner, or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons within one hundred days after he or she ceased to perform any work or labor a notice of the lien. The notice shall be sufficient, if in form and effect as follows:

Notice of Mechanic's Lien.

To .....

You will please take notice that the undersigned has performed work and labor under a contract with ..... who was general contractor with you (or who was subcontractor with ....., who was general contractor with you) in the erection and construction (or removal, repair, improvement or otherwise, as the case may be) of a certain building (or other structure or improvement) on real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and that the work and labor was of the kind, was performed on the dates, for the purposes and at the prices, as shown in the following itemized account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $..... (or that there is still due and owing to the undersigned thereon the sum of $.....) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the sum.

.....

State of West Virginia,

County of ....., being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ..... day of ....., 20.....

My commission expires .....

.....

(Official Capacity)

WV Legislature

The lien shall be discharged unless the workman, artisan, mechanic, laborer or other person shall record in the office of the clerk of the county commission wherein the property is situate, within one hundred days after he or she ceased to do work or perform labor upon the building or improvement thereto, a notice of the lien. The notice shall be sufficient if in form and effect as that provided in section eight of this article. The recorded notice need not include the itemized account.

WV Legislature

§38-2-14. Discharge of lien for failure to comply with article.

The failure of any person claiming a lien under this article to give such notice as is required by sections nine, eleven and thirteen of this article, or to record such notice as is required by sections eight, nine, ten, eleven, twelve and thirteen of this article, in the manner and within the time specified in such sections, or the failure of any such claimant of any such lien to comply substantially with all of the requirements of this article for the perfecting and preservation of such lien, within the time provided therefor in this article, shall, except as provided in section twenty of this article, operate as a complete discharge of such owner and of such property from all liens for claims and charges of any such contractor, subcontractor, materialman or laborer, for any work claimed to have been performed and for any materials, machinery or other necessary equipment claimed to have been furnished in connection with such work.

WV Legislature

§38-2-15. Publication and posting of notice to nonresident owner or owner not found.

In the event that any owner, upon whose real estate or improvement thereof it is desired to take a lien under this article, should be a nonresident of this state, or in the event that any officer of this state authorized by law to execute legal process should make return "not found" upon any notice of a mechanic's lien which may be presented to him for service, then it shall be sufficient service of any such notice of mechanic's lien upon such nonresident owner, or upon such owner as to whom any such return, of "not found" shall be made by any such officer, to publish a copy of such notice 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 wherein the real estate lies. A copy of such notice shall also be posted in a conspicuous place upon the property sought to be charged thereby, which publishing and posting shall be sufficient, if commenced within the period provided by this article for the filing of such notice. The costs of such publication may be added to the account for which the lien is claimed, and, if included in the amount mentioned in the recorded notice, the lien shall cover such costs.

WV Legislature

§38-2-16. What deemed included in one contract.

For the purposes of this article, all materials furnished, all work done, and all services provided by any one person, firm or corporation, upon any one building or the improvements appurtenant thereto, or upon the real property whereon the same stands, or to which it may have been removed, shall be deemed and considered one contract, whether or not all of such material was bought at one time, or under one general agreement or otherwise, and whether or not all of such work, labor or services provided, was contracted for at one time or otherwise.

WV Legislature

§38-2-17. Priority of mechanics' liens over other liens.

A lien authorized and created by this article shall, when perfected, attach as of the date such labor, material, machinery or other necessary equipment shall have begun to be furnished, and shall have priority over any other lien secured by a deed of trust or otherwise which is created subsequent to such date. Each lien authorized and created by this article shall be subordinate to any other lien created by a deed of trust or otherwise which is duly recorded or otherwise perfected to constitute constructive notice prior to the date labor, material, machinery or other necessary equipment giving rise to such lien shall have begun to be furnished, notwithstanding the fact that some other lien authorized and created by this article may have priority over such other lien created by deed of trust or otherwise which is so recorded or otherwise perfected.

WV Legislature

§38-2-18. Priority as among mechanics' lienors.

Of the persons acquiring liens by virtue of this article and solely for determining priorities as among such persons, laborers, artisans, mechanics, workmen and furnishers of material, machinery and other necessary equipment, shall have first liens, and the lien of such persons, when perfected and preserved as required by this article, shall take precedence over any lien taken or to be taken by the contractor or subcontractor indebted to them for labor, material, machinery or other equipment, to the extent of the amount of the lien of such contractor or subcontractor, and the lien of a subcontractor shall take precedence over any lien taken or to be taken by a contractor indebted to him upon his subcontract, to the extent of the amount of the lien of such contractor, and every assignment or transfer by any such head contractor of his contract with the owner or by any such subcontractor of his contract with the contractor, or any proceeding in attachment or otherwise against such head contractor or subcontractor, with the purpose of encumbering or subjecting his interest in such contract, shall be subject and subordinate to the liens of all such subcontractors, laborers, workmen, artisans, materialmen and furnishers of machinery and other necessary equipment who shall perfect their liens according to the provisions of this article. But all of such perfected liens of such laborers and workmen and of such materialmen and furnishers of machinery and of such contractors and subcontractors, respectively, shall be of equal dignity without priority among themselves, except as otherwise provided in this article.

WV Legislature

§38-2-19. Demand of account by owner; discharge of lien for failure to file account.

The owner may, at any time, by notice in writing, require such subcontractor, laborer, mechanic, workman or other person doing, or causing to be done, work or labor upon such building or other structure or improvement appurtenant thereto, or any such materialman or other person furnishing materials, machinery or other necessary equipment for such work, to file with such owner an itemized account of the work done or caused to be done by such laborer or other person, or of the materials or machinery or other equipment furnished by such materialman or other person for such work, which account shall show the dates upon which such work was done, or such materials were furnished, the price charged therefor, and the nature of such work or materials, and the neglect or failure of any such laborer, mechanic or other person furnishing materials, machinery or other necessary equipment for the doing of the same, so to file such itemized statement with such owner, within ten days after the receipt by him of such written notice so to do, shall release such owner from all responsibility and his property from all lien or charge for all labor done and for all materials furnished by the person so failing to file such required itemized statement, prior to the giving of such notice.

WV Legislature

§38-2-20. Preliminary notice to owner; effect.

Any laborer or other person employed to do any work or furnish any materials or machinery for the erection, construction, alteration, repair or removal of any building or other structure, or any improvement appurtenant thereto, by another who may have contracted with the owner therefor may, before doing any work or furnishing any material or machinery, give the owner of such building or other structure or improvement thereto notice in writing that if he is not paid therefor by the person employing him he will look to the owner for payment; and it shall not be necessary for the person who has given such notice in writing to file the account and notice with the owner within sixty days of the date of the doing of the last work or of the furnishing of the last of such materials or machinery, unless he is required by the owner in writing within such sixty days to do so, and his neglect or failure to file such notice and account within sixty days, unless so required to do so, shall in no way affect or impair his lien if it be otherwise perfected and preserved, as provided in this article.

WV Legislature

§38-2-21. Effect of payment by owner to contractor or subcontractor.

(a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any building, structure or improvement appurtenant to a building, structure or improvement or for any part or section of a work may affect, impair or limit the lien of the subcontractor, laborer, or materialman or furnisher of machinery or other necessary material or equipment, as provided in this article, except as otherwise provided in this article.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner's primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

WV Legislature

§38-2-22. Limitation of owner's liability by recordation of contract and bond of general contractor.

Any owner may limit his liability upon a contract such as is mentioned in section one of this article, to the sum agreed therein to be paid therefor, by recording his contract with such general contractor, in the office of the clerk of the county court of the county wherein such building or other structure is situate, prior to the beginning of the building, erection and construction thereof, and by requiring to be given by his general contractor, and by recording with such general contract, a valid and solvent bond, in a penalty equal to the contract price, with solvent surety, conditioned that in the event any laborer, materialman or other person, having perfected his lien as allowed by this article, be deprived by the recordation of the owner's contract from receiving from such owner the amount of his lien, then such bond and the surety thereon shall be responsible to such lienor for the amount of such lien account, or for any balance thereof not collected by such lienor from such owner and from such property. Any such owner who shall cause his general contract to be recorded in such clerk's office and who shall cause to be executed and recorded the bond therewith as hereinbefore provided shall be exempt from the payment of more than such contract price, and his property shall likewise be exempt therefrom, and all such liens created by this article as are not fully satisfied and discharged by such owner, by reason of such recordation, shall be paid by such contractor and his surety on such bond. If liens in excess of the contract price are perfected as provided in this article, the owner shall be liable to each lien claimant pro rata, in the proportion which the contract price bears to the total amount of the liens so perfected.

WV Legislature

§38-2-23. Effect of failure of owner to record contract and bond.

In the event any such owner should fail to record such contract and bond, or in the event the penalty of such bond should not be equal to the contract price, or in the event such bond should not be solvent at the time when given, then such contractor shall be deemed to be the agent of such owner and the building or other structure and the improvements appurtenant thereto, together with the interest of the owner thereof in and to the lot of land whereon the same stands or to which it is removed, shall be held liable and subject to such perfected liens, for the full and true value of all work and labor done and of all materials, machinery and equipment furnished therefor, although the same may exceed in the aggregate the price stipulated in the contract between the owner and the contractor.

WV Legislature

§38-2-24. Form of bond.

The bond referred to in section twenty-two of this article shall be sufficient if in form and effect as follows:

Know all men by these presents:

That ..... as principal, and ..... as sureties (or surety) are held and firmly bound unto ..... in the just and full sum of $....., to the payment whereof well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this ..... day of ....., 19....

The condition of the above obligation is such:

That whereas, the said ..... has entered into a certain contract with ..... for the building and erection by the said ..... for the said ..... of a certain ....., to be situated .....; and whereas, it is agreed between the above-named principal and surety that no change or modification of such contract

shall operate to discharge the surety upon this bond; now, therefore, if the said ..... shall well and truly perform his said contract, shall pay off, satisfy and discharge all claims of subcontractors, laborers, materialmen and all persons furnishing material or doing work upon said building and shall save the said ..... and his property harmless from any and all liability, over and above the contract price thereof, between the said owner and the said contractor, for all of such labor and materials, and shall fully pay off and discharge and secure the release of any and all mechanics' liens which may be placed upon said property by any such subcontractor, laborer or materialman, then this obligation shall be null and void. Otherwise to remain in full effect.

(Seal)

(Seal)

(Seal)

Acknowledged before the subscriber, a notary public, in and for the State of West Virginia and County of ....., this ..... day of ....., 19....

My commission expires .....

Notary Public.

No change or modification of any such contract between such owner and such general contractor shall operate to discharge or release the obligation of the surety or sureties upon

WV Legislature

any such bond.

WV Legislature

§38-2-25. Amount of rural land subject to lien.

Whenever a lien, perfected and preserved under this article is sought to be enforced against any property outside of any city, town or village, it shall be the duty of the court before which any suit for the enforcement of such lien is pending, to determine in its discretion how much land surrounding any such building shall be subject to such lien. In any event, not more of such land shall be so subject to such lien than shall be reasonably necessary to the full enjoyment of such building or other improvement.

WV Legislature

§38-2-26. Enforcement of contractor's bond in suit to enforce lien.

Whenever it shall be necessary for suit to be brought as hereinafter provided, for the enforcement of any of the liens contemplated by this article, such contractor and the sureties upon such bond mentioned in sections twenty-two, twenty-three and twenty-four of this article, shall be made parties thereto and all matters arising upon such bond and the liabilities thereunder shall be litigated and determined in such suit to enforce the lien and it shall not be necessary for judgment upon such bond to be taken at law, but all such proceedings as are necessary to enforce liability upon such bond shall be had in such court of chancery, according to the usual and ordinary course of proceeding therein.

WV Legislature

§38-2-27. Clerk of county court to record notices of liens, contracts and bonds; record book; indexing.

It shall be the duty of the clerk of the county court of the county to enter every notice of lien mentioned in this article upon the filing in his office of such notice in a book by him to be kept for that purpose, to be called "Mechanic's Lien Record," which book shall be well and properly indexed, so as to show the names of the parties, the amount and character of the claim, when filed, and the description of the property to be charged by such lien. The contract and bond mentioned in section twenty-two of this article shall also, when filed in the office of such clerk, be entered in the mechanic's lien record and indexed.

WV Legislature

§38-2-28. Proof of sale and delivery prima facie proof of use of materials.

Proof of the sale to any owner, contractor or subcontractor of any materials, machinery or other equipment for use in the performance of any contract mentioned in this article, and of the delivery of such materials, machinery or other equipment to such contractor or subcontractor, shall be prima facie proof of the use of such materials, machinery or equipment in the erection and construction of such building or other structure and of the improvements appurtenant thereto, and upon the proving of such facts, the burden of showing that such materials, machinery and equipment were not used in such building or other structure or improvement appurtenant thereto shall be upon the owner or other person disputing such use thereof.

WV Legislature

§38-2-29. Lien on several structures.

Any materialman or furnisher of machinery or other equipment necessary to the performance of any one such general or subcontract, who shall furnish such materials, machinery or other equipment in quantities for use in more than one building or other structure or improvement appurtenant thereto, and any workman, laborer or other person who shall perform work or labor upon more than one such building or other structure or improvement appurtenant thereto, provided for in such contract, shall have a lien upon all of such buildings and other structures and improvements into which his materials were put or upon which his work and labor was expended and upon the interest of the owner in and to the lot of ground upon which all of such buildings and structures stand or to which they may be removed, and such lien may be perfected and preserved by one notice thereof to such owner and by one recordation thereof, and it shall not be necessary for such lienor to give and record a notice as to each separate building or structure or improvement thereto.

WV Legislature

§38-2-30. Compensation and lien of contractor on default of owner.

When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to reasonable compensation for so much as he shall have performed, in proportion to the price stipulated for the whole, and shall have such a lien as is provided in this article, to secure payment thereof, when such lien is properly perfected and preserved according to the provisions of this article.

WV Legislature

§38-2-31. Lien against corporation for work or labor; priority.

Every workman, laborer or other person who shall do or perform any work or labor, for an incorporated company doing business in this state, by virtue of a contract either directly with such incorporated company or with its general contractor, or with any subcontractor, shall have a lien for the value of such work or labor upon all real estate and personal property of such company; and, to the extent and value of one month's such work or labor, said lien shall have priority over any lien created by deed or otherwise on such real estate or personal property subsequent to the time when such work or labor was performed: Provided, however, That there shall be no priority of lien as against conditional sales of, or reservation of title to, machinery sold to such company; nor shall there be priority of lien as between the parties claiming under the provisions of this section.

WV Legislature

§38-2-32. Perfecting lien for work or labor against corporation.

Such lien shall be discharged unless the person desiring to avail himself thereof, within ninety days from the time he shall have ceased to work or labor for such incorporated company or for such contractor, shall file with the clerk of the county court of the county in which such work or labor was performed, or in which the principal office, works, real estate or personal property of such incorporated company is situated, a notice of lien containing the amount due him after allowing all credits, which notice shall be sworn to by the person claiming such lien, or by someone in his behalf.

WV Legislature

§38-2-33. Clerk to record notices of liens against corporations for work and labor.

The clerk of the county court, to whom the notice of lien mentioned in the preceding section is presented, shall record the same in the mechanic's lien record. If the amount of the claim is for more than one month's work or labor, the record shall show, separately, the full amount of the claim and in addition thereto the amount of the claim for such month for which such prior lien is claimed.

WV Legislature

§38-2-34. Time within which suit to enforce lien may be brought; right of other lienors to intervene.

(a) Unless an action to enforce any lien authorized by this article is commenced in a circuit court within six months after the person desiring to avail himself or herself of the court has filed his or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an action commenced by any person having a lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and persons may intervene in the action for the purpose of enforcing their liens.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his or her primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

(c) As used in subsection (b):

(1) >Dwelling' or >residence' means any building or structure intended for habitation, in whole or part, and includes, but is not limited to, any house, apartment, mobile home, house trailer, modular home, factory-built home and any adjacent outbuildings.

(2) >Outbuilding' means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

WV Legislature

§38-2-35. Decree of sale in suit to enforce lien; personal decree.

If the lien or liens be established in favor of any of the creditors whose claims are presented in the suit mentioned in the preceding section, the court shall order a sale of the property on which the liens are established, or so much thereof as may be sufficient to satisfy such claims, in like manner as in other suits in chancery, and the court may, in addition, give a personal decree in favor of such creditors for the amount of their claims against any party against whom they may be established, and such decree shall have the effect of, and be enforced as, other decrees for money.

WV Legislature

§38-2-36. Discharge or release of lien; recordation; escrow; disbursement of escrow.

(a) When a debt secured by any lien mentioned in this article is fully paid at any time after the lien creditor shall have filed his notice of such lien in the office of the clerk of the county commission, such creditor assignee shall cause the clerk to enter a discharge of such lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(b) (1) At any time after a lien creditor has given notice of lien as required by the provisions of this article and has subsequently duly filed such notice of lien with the clerk of the county commission as provided for in this article, the owner or any person against whom the lien is claimed may apply to the circuit court having jurisdiction to enforce such lien, by petition, for an order authorizing such owner or other person against whom the lien is claimed to deposit, in escrow, with the clerk of the circuit court, an amount equal to the sum set out as due in the notice of lien, and directing the circuit clerk to execute a release of the lien. Previous to the filing of such petition, the petitioner shall cause to be served upon the lien creditor a notice of the time and place that such application will be made, which notice shall be served by registered mail, return receipt requested, addressed to the lien creditor or his authorized agent at the address set forth in the notice of lien: Provided, That if no such address is set forth in the notice of lien, the petitioner shall serve the notice, setting forth the time and place that his application will be made, in the same manner as original process is served for the commencement of civil actions.

(2) At the hearing upon the petition, the court shall ascertain what interest, if any, might reasonably be expected to accrue on the sum claimed to be due, either by contract or by operation of law, and subsequently be payable to the lien creditor, should he prevail upon his claim. The court shall also determine the current rate of return upon investments made by the general receiver of the court at the time of the hearing, and ascertain what rate of interest might reasonably be earned upon the petitioner's escrow deposit when paid into the court. To the extent that the anticipated interest due to the lien creditor exceeds the anticipated return upon the investment of the escrow deposit, the court may require an additional deposit beyond the sum set forth in the notice of lien, as the interests of the parties may require. The order authorizing the deposit and directing the execution of the release shall, if the court anticipates that complex or extended litigation may arise in resolving the issue of the validity of liens or claims in the case, require that the petitioner or other parties give security before the court, or the clerk thereof, for payment of the costs which may be awarded in the court, and of the fees due, or to become due, in any action to determine such issue.

(3) If an escrow deposit is authorized by the court, such deposit shall be made by cash, and when paid into court, shall be received by the general receiver of the court, who shall take charge of and invest the money deposited in the manner provided for in section one, article six, chapter fifty-one of this code until otherwise ordered to pay out or dispose of the same by the circuit court. Upon presentation to the clerk of the county commission wherein the

notice of lien is filed of an order of the court and a receipt executed by the clerk of the circuit court for the amount required to be deposited by the terms of the order, the clerk of the county commission shall file the order and shall enter a discharge of the lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(4) Unless an action to determine the validity of the creditor's claim is commenced within six months after the creditor shall have filed his notice of lien in the office of the clerk of the county commission as provided for in this article, the court shall, upon motion of the depositor, order the general receiver to pay out to the depositor the sum deposited, together with any dividends and interest, if any, earned upon the investment of the deposit, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of section seven, article six, chapter fifty-one of this code. If the claim is satisfied or settled and compromised at any time while secured by the deposit made with the general receiver but before an action is commenced, the court shall, upon proof of satisfaction or settlement and compromise, order the general receiver to pay out the deposit to the depositor in the same manner as though suit was not commenced within the requisite period of six months as described above. If an action is commenced, the general receiver shall thereafter pay out the money deposited and the dividends and interest, if any, earned upon the investment of the deposit, as the court may order or decree, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of said section seven.

WV Legislature

§38-2-37. Ordering clerk to execute release when lienholder refuses.

In case of the refusal of the party holding such lien to cause such clerk to enter a discharge of such lien, or to execute a release of such lien, in the manner provided in the preceding section of this article, upon the request of the party entitled to such discharge or release, the circuit court of the county, or the judge thereof in vacation, in which such lien is recorded may, on motion, after reasonable notice of the party so refusing, and if no good cause be shown against it, direct the clerk of the county court to enter such discharge, which shall thereupon have the effect of a discharge entered under the provisions of the preceding section. Such proceeding shall be at the cost of the party so refusing.

WV Legislature

§38-2-38. Enforcement of lien by executor, administrator or assignee.

The executor or administrator of any person entitled to a lien under this article, or any assignee of the claim upon which such lien is based, shall be entitled to such lien, and to the right to perfect and enforce such lien, in the same manner and to the same extent as the testator, intestate, or assignor could have done, had he remained the owner of such claim.

WV Legislature

§38-2-39. Public building; bond of contractor; recordation of bond; no lien in such case.

It shall be the duty of the state commissioner of public institutions, and of all county courts, boards of education, boards of trustees, and other legal bodies having authority to contract for the erection, construction, improvement, alteration or repair of any public building or other structure, or any building or other structure used or to be used for public purposes, to require of every person to whom it shall award, and with whom it shall enter into, any contract for the erection, construction, improvement, alteration or repair of any such public building or other structure used or to be used for public purposes, that such contractor shall cause to be executed and delivered to the secretary of such commissioner or other legal body, or other proper and designated custodian of the papers and records thereof, a good, valid, solvent and sufficient bond, in a penal sum equal at least to the reasonable cost of the materials, machinery, equipment and labor required for the completion of such contract, and conditioned that in the event such contractor shall fail to pay in full for all such materials, machinery, equipment and labor delivered to him for use in the erection, construction, improvement, alteration or repair of such public building or other structure, or building or other structure used or to be used for public purposes, then such bond and the sureties thereon shall be responsible to such materialman, furnisher of machinery or equipment, and furnisher or performer of such labor, or their assigns, for the full payment of the full value thereof.

No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

All such bonds shall have as surety thereon either some incorporated bonding and/or surety company authorized to carry on business in this state, or in lieu of such corporate surety the contractor may deposit as security for such bond with the said state commissioner of public institutions, county court, Board of Education, board of trustees or other legal body having authority so to contract, a sum in cash or bonds and securities of the United States of America or of the State of West Virginia of sufficient amount and value equal at least to the reasonable cost of materials, machinery, equipment and labor required for the completion of such contract. Immediately upon the acceptance of either of said bonds by the state commissioner of public institutions, county court, Board of Education and board of trustees, or other legal body, the bond shall be recorded by the secretary of such commissioner or other legal body, or by the proper designated custodian of the papers or records thereof, in the office of the clerk of the county court of the county or counties wherein such work is to be done and where such materials, machinery or equipment are to be delivered, and no such contract shall be binding and effective upon either party or parties thereto until such bond has been executed, delivered and recorded as aforesaid.

Nothing in this article shall be construed to give a lien upon such a public building or

WV Legislature

improvement as is mentioned in this section, or upon the land upon which such public building or improvement is situated.

WV Legislature

§38-3-1. Effect of decrees and orders; enforcement.

A decree for land or specific personal property and a decree or order requiring the payment of money shall have the effect of a judgment for such land, property or money, and be embraced by the word "judgment" where used in this or in articles four, five, and six of this chapter. But a decree or order in chancery, other than for the payment of money, or a decree or order for alimony or maintenance, may be enforced as it might have been if this and the following section had not been enacted.

WV Legislature

§38-3-2. Decree or order for payment of money; enforcement by execution.

The persons entitled to the benefit of any decree or order requiring the payment of money shall be deemed judgment creditors, although the money may be required to be paid into a court or a bank or other place of deposit. In such case an execution on the decree or order shall make such recital thereof, and of the parties to it, as may be necessary to designate the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time.

WV Legislature

§38-3-3. Meaning of word "judgment."

In the following two sections the word "judgment" shall include any undertaking, bond or recognizance which has the force of a judgment.

WV Legislature

§38-3-4. Abstracts of judgments; damages or penalty for failure of clerk or justice to deliver.

The clerk of every court of this state shall, without delay, make out and deliver a duly certified abstract of every judgment rendered by such court, and every justice of the peace shall, without delay, make out and deliver a duly certified abstract of every judgment rendered by him or by any other justice, the docket of which judgment is in his possession and under his control, to any person interested therein who may demand the same, and pay or tender the fee therefor, in which abstract shall be stated: (a) The names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they appear in the papers and proceedings in the cause, and if the defendants are sued as partners, the individual names of such defendants, and also the partnership name shall be stated; (b) the amount of the judgment and the amount of the costs, stating each separately; (c) the value of the specific property (if any) recovered by it, and the damages, if any, for its detention; (d) the date of the judgment and the court in which, or the justice by whom, the judgment was rendered. Any clerk or justice who shall fail to deliver such abstract as herein required shall, together with the sureties in his official bond, be liable to the person injured by such failure for the amount of his injury, or such injured person may, at his option, recover $50 from such clerk or justice.

WV Legislature

§38-3-5. Docketing abstracts of judgments; indexing; damages or penalty for failure of clerk to perform duties.

The clerk of every county court shall keep in his office, in a well-bound book, a judgment docket, in which he shall docket without delay any judgment rendered by any justice of the peace or court of this state or by any court of the United States within this state, upon the delivery to him of an authenticated abstract thereof for that purpose, and the payment or tender of his fee therefor. In such docket there shall be stated, in separate columns: (a) The names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they are stated in such abstract, and if it appear by such abstract that the defendants were sued as partners, their partnership name as well as their individual names shall be stated; (b) the amount of the judgment and of the costs, stating each separately; (c) the value of any specific property recovered by the judgment, and the damages (if any) for its detention; (d) the date of the judgment; (e) the court in which or the justice by whom it was rendered; (f) the date of docketing the judgment; (g) there shall also be a column for the notation of executions, if any shall be issued, upon the judgment. Every judgment, docketed by the clerk of the county court as aforesaid, shall at the same time be indexed by him in an index to be kept in or annexed to such judgment docket, such index showing the full name of the defendant, and, if more than one defendant, the full name of each, as they appear in such abstract. If the defendants are sued as partners, it shall also be indexed in the partnership name appearing in such abstract. Any clerk of a county court failing to perform any duty required of him by this section, or by section eight of this article, shall, together with the sureties in his official bond, be liable to the person injured by such failure for the amount of his injury, or such injured person may, at his option, recover $50 from such clerk.

WV Legislature

§38-3-6. Lien of judgment on real estate.

Every judgment for money rendered in this state, other than by confession in vacation, shall be a lien on all the real estate of or to which the defendant in such judgment is or becomes possessed or entitled, at or after the date of such judgment, or if it was rendered in court, at or after the commencement of the term at which it was so rendered, if the cause was in such condition that a judgment might have been rendered on the first day of the term; but if from the nature of the case judgment could not have been rendered at the commencement of the term, such judgment shall be a lien only on or after the date on which such judgment or decree could have been rendered and not from the commencement of the term; but this section shall not prevent the lien of a judgment or decree from relating back to the first day of the term merely because the case shall be set for trial or hearing on a later day of the term, if such case was matured and ready for hearing at the commencement of the term, not merely because an office judgment in a case matured and docketed at the commencement of the term does not become final until a later day of the term. A judgment by confession in vacation shall also be a lien upon such real estate, but only from the time of day at which such judgment is confessed. Such lien shall continue so long as such judgment remains valid and enforceable, and has not been released or otherwise discharged.

WV Legislature

§38-3-7. Judgment lien not good as against bona fide purchasers unless docketed, etc.; effect of issuing and filing execution.

No judgment shall be a lien as against a purchaser of real estate for valuable consideration without notice, unless it be docketed according to the fifth section of this article, in the county wherein such real estate is, before a deed therefor to such purchaser is delivered for record to the clerk of the county court of such county; nor shall such judgment, though it be docketed as aforesaid, be a lien, after ten years from its date as against such a purchaser who purchases after such ten years, unless within such ten years an execution shall have issued on such judgment and such execution or a copy thereof be filed in the office of such clerk, or, unless such purchaser have actual notice of the fact that such execution was issued, though it was not so filed; nor shall such judgment, though it be docketed as aforesaid, and though one or more executions shall have issued thereon and shall have been filed as aforesaid, be a lien, after ten years from the date of the last execution so filed, as against such a purchaser who purchases after such ten years, unless such purchaser have notice of the issuing of an execution within ten years preceding the date of such purchase.

WV Legislature

§38-3-8. Notation of executions on judgment lien docket.

It shall be the duty of the clerk of the county court, upon the filing of the execution, or a copy thereof, as provided in the preceding section or upon the filing of any execution issued by any court of the United States within this state, to note on the judgment lien docket, in the column provided for such notation, or on the margin of the record of such judgment, the date on which such execution issued and the date of the filing thereof.

WV Legislature

§38-3-9. Enforcement of judgment lien by suit.

The lien of a judgment may be enforced in a court of equity after an execution or fieri facias thereon has been duly returned to the office of the court or to the justice from which it issued showing by the return thereon that no property could be found from which such execution could be made: Provided, That such lien may be enforced in equity without such return when an execution or fieri facias has not issued within two years from the date of the judgment. If it appear to such court that the rents and profits of the real estate subject to the lien will not satisfy the judgment in five years, the court may decree such real estate, or any part thereof, to be sold and the proceeds applied to the discharge of the judgment.

WV Legislature

§38-3-10. Same -- Parties.

In every suit in equity to enforce a judgment, all persons having liens on the real estate sought to be subjected, by judgment or otherwise, shall be made parties plaintiff or defendant, or if the number of such persons exceed ten, the suit may be brought by any one or more of them, for the benefit of himself and such other lienholders as will come in and contribute to the expenses of the suit. And whether the suit be so brought or not, every such lienholder, whether he be named as a party to the suit or not, or whether he be served with process therein or not, may present, prove and have allowed any claim he may have against the judgment debtor, which is a lien on such real estate, or any part thereof, and from and after the time he presents any such claim he shall be deemed a party plaintiff in such suit.

WV Legislature

§38-3-11. Same -- Publication of notice to lienholders.

No decree for the distribution of the proceeds of real estate in a suit in equity to enforce a judgment shall be made until a notice to all persons holding liens on the real estate of the judgment debtor be published, under a decree of the court, as hereinafter provided. Such notice shall be sufficient if it be in form or effect as follows:

To all persons holding liens by judgment or otherwise, on the real estate, or any part thereof, of A ..... B .....:

In pursuance of a decree of the circuit court of ..... county, made in a cause therein pending, to subject the real estate of the said A ..... B ..... to the satisfaction of the liens thereon, you are hereby required to present all claims held by you and each of you against the said A ..... B ....., which are liens on his real estate, or any part of it, for adjudication to me, at my office in the county (or city, town or village, as the case may be) of ..... on or before the ..... day of .....

Given under my hand, this ..... day of .....

C..... D ....., Commissioner.

Such notice shall be published 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. Publishing of such notice shall be equivalent to the personal service thereof on all persons holding liens, on any such real estate, unless the court shall, in the decree directing such notice to be so published, otherwise order.

WV Legislature

§38-3-12. Same -- Duties of commissioner.

The commissioner to whom the case is referred by such decree shall, as soon as possible after such notice is published as aforesaid, or served in such manner as the court may order, proceed to ascertain and report all the liens, on the real estate or any part thereof of the judgment debtor, the holders of such liens, the amount due to each, and the priorities thereof, and such other matters and things as the court by its decree may direct, and the same proceeding shall be had on such report as in other suits in chancery.

WV Legislature

§38-3-13. Same -- Confirmation of report; decree of rental or sale and distribution.

When the report of any such commissioner is confirmed, if the claims therein reported (if any) be not paid, the court shall decree that so much of the real estate of the judgment debtor as may be necessary, and which is subject to such lien or liens, shall be rented or sold, and the proceeds thereof distributed among the several lienholders who have appeared and proved their liens and claims, according to their several priorities, if any; which decree shall be a bar to the claim of any lienholder who has not appeared and presented his claim to such commissioner, as required by such notice, except that if a surplus remain after the payment of the claims so presented and proved and confirmed by the court, the lienholder so failing to appear may share in such surplus, upon proving his claim at any time before a final decree in the case, in such manner as the court shall direct. But if he fail to present his claim before such final decree, he shall be forever barred of all right to participate in the proceeds of such real estate so far as the other creditors of such judgment debtor, holding liens on such real estate, who have not so failed, are concerned.

WV Legislature

§38-3-14. Same -- Judgment against debtor pending suit.

If, pending any such suit, a judgment at law be recovered by any person against such judgment debtor, such person may present his claim to the commissioner and have it adjudicated and allowed in the same manner and to the same extent as if the judgment had been obtained before the institution of such suit. And he may present such claim to the court after the report is made, and before the entering of a decree distributing the proceeds of the sale of such real estate, and have the same adjudicated and passed upon by the court, and if found to be correct and a lien upon such real estate, the court shall allow and confirm the same, and provide for the payment thereof in the decree of sale and distribution.

WV Legislature

§38-3-15. Same -- Other proceedings commenced pending suit.

If, after the commencement of suit to enforce a judgment lien, any lienholder commence any other suit or proceeding in or out of court to enforce a lien claimed by him on the real estate, or any part thereof, of the judgment debtor, upon which a lien is sought to be enforced by such suit, the court, or the judge thereof in vacation, may enjoin him from so doing and require him to come in and assert his lien in such suit, or make such order or decree in relation thereto as to such court or judge may seem right and proper to protect the interest of all parties having such liens.

WV Legislature

§38-3-16. Order of liability of real estate.

Where the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it, or any part of it, has been aliened, as between the alienees, that which was aliened last shall, in equity, be first liable, and so on with other successive alienations until the whole judgment is satisfied, except that where any prior alienee has not recorded his deed or conveyance another parcel of the judgment debtor's land, subsequently aliened to a purchaser for value and without notice of the prior alienation, shall be considered as having been aliened prior to the aforesaid unrecorded alienation. But any part of such real estate retained by the debtor himself shall be first liable to the satisfaction of the judgment.

WV Legislature

§38-3-17. Judgment liens commencing on same day.

Where two or more judgments are rendered against the same person, and the liens thereof on his real estate commerce on the same day, the creditors having such judgments shall be entitled to satisfaction out of such real estate ratably.

WV Legislature

§38-3-18. Limitations on enforcement of judgments.

(a) On a judgment, execution may be issued within ten years after the date thereof. Where execution issues within ten years as aforesaid, other executions may be issued on such judgment within ten years from the return day of the last execution issued thereon, on which there is no return by an officer, or which has been returned unsatisfied.

(b) For any order for child support in an action filed on and after the amendment and reenactment of this section during the 2008 legislative session, an execution may be issued upon a judgment for child support, as those terms are defined in chapter forty-eight of this code, within ten years after the emancipation of the child: Provided, That in cases where the support order is for more than one child, the limitations set forth in subsection (a) of this section commence when the youngest child who is the subject of the order on which the execution is based reaches the age of eighteen or is otherwise legally emancipated.

(c) An action, suit or scire facias may be brought upon a judgment where there has been a change of parties by death or otherwise at any time within ten years next after the date of the judgment; or within ten years from the return day of the last execution issued thereon on which there is no return by an officer or which has been returned unsatisfied. But if such action, suit or scire facias be against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative.

WV Legislature

§38-3-19. Exceptions to limitations.

No execution shall issue, nor any action, suit or scire facias be brought on any judgment in this state after the time prescribed in the preceding section, except that in computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted from the computation; and sections fifteen, sixteen, seventeen and eighteen, article two, chapter fifty-five of this code shall apply to the right to bring such action, suit or scire facias, in like manner as to any right, action, suit or scire facias mentioned in those sections; and except that when the judgment is for a sum ascertained, and such further sums as may be afterwards assessed, or be found due upon a scire facias assigning a further breach, as provided in section thirty, article six, chapter fifty-six of this code, such scire facias may be brought within ten years after such breach.

WV Legislature

§38-4-1. Executions against corporations.

Against a corporation such execution may issue as against a natural person.

WV Legislature

§38-4-2. Executions on joint judgments.

Where a judgment is against several persons jointly, executions thereon shall be joint against them all.

WV Legislature

§38-4-3. Execution for benefit of person other than plaintiff.

Where an execution issues on a judgment for the benefit, in whole or in part, of any person other than the plaintiff, if that fact appear by the record, the clerk shall, in the execution or an indorsement thereon, state the extent of the interest therein of such persons, and such person may, as a party injured, either in his own name or that of the plaintiff, prosecute a suit or motion against the officer.

WV Legislature

§38-4-4. Writs of possession and fieri facias on judgments for specific property.

On a judgment for the recovery of specific property, real or personal, a writ of possession may issue for the specific property, which writ shall conform to the judgment as to the description of the property, and the estate, title, or interest recovered. On such a judgment a writ of fieri facias or execution may also be issued for the damages or profits and costs.

WV Legislature

§38-4-5. Execution or fieri facias on money judgment.

On a judgment for money, there may be issued an execution known as a writ of fieri facias.

WV Legislature

§38-4-6. On what fieri facias may be levied.

By a writ of fieri facias, the officer shall be commanded to make the money therein mentioned out of the personal property of the person against whom the judgment is. The writ may be levied upon goods and chattels, current money and bank notes, stamps, certificates of stock in a corporation, negotiable warehouse receipts, negotiable instruments, or any other negotiable evidences of indebtedness calling for a liquidated sum of money, belonging to the person against whom the judgment is.

WV Legislature

§38-4-7. How currency or bank notes shall be accounted for.

If the levy be upon gold or silver coin or other currency which is legal tender in the United States, the same shall be accounted for at its par value as so much money made under the execution. If it be upon bank notes or currency which are not legal tender in the United States, and the creditor will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution.

WV Legislature

§38-4-8. Commencement and duration of lien of fieri facias.

A writ of fieri facias or execution shall create a lien, from the time it is delivered to the sheriff or other officer to be executed, upon all of the personal property, or the estate or interest therein, owned by the judgment debtor at the time of such delivery of the writ, or which he may acquire on or before the return day thereof, although such property was not levied on or capable of being levied on under the provisions of section six of this article. Such lien shall continue beyond the return day of the execution, whether the writ was levied or not, but shall cease whenever the right of the judgment creditor to levy the writ under which such lien arose, or to levy a new writ, ceases, under the provisions of section eighteen, article three of this chapter, or when such right is suspended by a forthcoming bond being given or forfeited, or by an appeal or otherwise. The lien created by this section shall be subject to the provisions of sections nine and ten of this article.

WV Legislature

§38-4-9. Purchaser for value and without notice before levy takes free of lien; payment or delivery to debtor without notice is without liability.

The lien of a writ of fieri facias shall not be good as against a purchaser or assignee of the property subject to the lien, for a valuable consideration and without notice of such lien, unless, at the time of such purchase or assignment, the writ shall have been actually levied upon the property, and the property shall have been in the actual possession of the officer or of some person, other than the judgment debtor, holding such property for the officer. If the property, upon which such writ is a lien, is a debt or liability of some third person to pay money or deliver property to the judgment debtor, any payment or delivery made by such third person to the judgment debtor or his assignee, before such third person has notice of the writ, shall be good, and such person shall be discharged, to the extent of such payment or delivery, from any liability to the judgment creditor: Provided, however, That if the evidence of such debt or liability of such third person is a writing of such a nature that it could be levied on under the provisions of section six of this article, and if such writing has been levied on and taken into the possession of the officer under the writ, such levy shall constitute notice to such third person of the lien of such fieri facias.

WV Legislature

§38-4-10. Docketing as constructive notice.

The docketing of an execution as provided in the following section of this article shall constitute constructive notice to all persons, of such execution: Provided, however, That if the property upon which such execution is a lien be a negotiable instrument, a holder in due course of such instrument shall hold it free from the lien of such execution, whether such execution be docketed or not, and if the property be a debt or liability of a third person to the judgment debtor, whether such debt or liability be negotiable or not, any payment made by such third person to such judgment debtor shall discharge such third person from all further liability, to the extent of such payment, whether such execution be docketed or not, unless such third person had actual notice of such execution: Provided further, That any sale of property made by a merchant, dealer, or manufacturer in the regular course of the business of such person, shall pass such goods free from the lien of an execution, whether it be docketed or not.

WV Legislature

§38-4-11. Docketing of execution.

The clerk of the county court of every county shall keep in his office, in a well-bound book, an execution docket, in which he shall docket without delay, any execution in this state, when he shall be required so to do by any person interested, on such person delivering to him an authenticated abstract of it, for which he shall be entitled to the same fee as for docketing a judgment. In such abstract and docket there shall be stated in separate columns: (a) The full name of the plaintiff or plaintiffs, and of the defendant or defendants, and if the defendants are sued as partners, the name of the partnership; (b) the amount of the execution; (c) the date of the execution; (d) the day and hour when received by the sheriff or other officer; (e) when returnable; (f) the date of docketing.

WV Legislature

§38-4-12. Exemption from execution.

Such property as a husband or parent may have listed and set apart as exempt from distress and levy, under the provisions of law, shall not be subject to the lien of a fieri facias.

WV Legislature

§38-4-13. Indorsement of time of receipt by officer; penalty for failure to indorse.

Every officer shall indorse on each writ of fieri facias the year, month, day, and time of day, he receives the same. If he fail to do so, the judgment creditor may, by motion, recover against him and his sureties, jointly and severally, in the court in which the judgment was rendered, a sum not exceeding fifteen percent upon the amount of the execution.

WV Legislature

§38-4-14. Order of levy and satisfaction of several writs.

Of writs of fieri facias, that which was first delivered to the officer, though two or more be delivered on the same day, shall be first levied and satisfied; and where several such executions are delivered to the officer at the same time, they shall be satisfied ratably.

WV Legislature

§38-4-15. Rules concerning distress or levy.

The officer shall in no case make an unreasonable distress or levy. For horses or any livestock distrained or levied upon, he shall provide sufficient sustenance while they remain in his possession. Nothing distrained or levied upon shall be removed by him out of his county, unless it is otherwise specially provided.

WV Legislature

§38-4-16. Officer's return upon fieri facias.

Upon a writ of fieri facias the officer shall make a return showing whether or not the money therein mentioned has been or can be made, or whether any part thereof, and if so, what part, has been or can be made. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges; and such amount, except such fees and charges, he shall pay to the person entitled, or to his agent or attorney.

WV Legislature

§38-4-17. Resale upon default of purchaser.

If at any sale by an officer, the purchaser shall not comply with the terms of sale, the officer may resell the property, either forthwith or under a new advertisement, or return that the property was not sold for want of bidders. If, on a resale, the property be sold for less than it sold for before, the first purchaser shall be liable for the difference to the creditor, so far as is required to satisfy him and to the debtor for the balance. This section shall not prevent the creditor from proceeding as he might have done if it had not been enacted.

WV Legislature

§38-4-18. Writ of venditioni exponas; notice of sale.

When it appears by the return on an execution, that property taken to satisfy it remains unsold, a writ of venditioni exponas may issue; whereupon the like proceedings shall be had as might have been had on the first execution, except that if it issue upon a return of no sale for want of bidders, or of a sufficient bid, the notice shall state the fact, and that the sale will be made peremptorily.

WV Legislature

§38-4-19. Proceeding in case of death of officer before sale.

If an officer, taking property under execution, dies before the sale thereof, and there be no deputies of such officer acting in the case, a writ of venditioni exponas may, upon a suggestion of the fact, be directed to such sheriff or other officer of the county wherein the property was taken as may be in office at the time the writ issues. Whereupon the officer to whom the writ is directed shall take possession of the property previously levied upon, whether the same be in the possession of the representative of the deceased officer or the execution debtor, and proceed to advertise and sell it and account for the proceeds thereof in like manner as if the levy had been made by himself

WV Legislature

§38-4-20. Time and place for sale of personal property under distraint, levy or order of court; posting or publishing notice; conduct and terms of sale.

In any case where an officer shall distrain or levy upon personal property, otherwise than under an execution or order issued by a justice, or under an attachment, and in any case in which he may be directed to sell personal property by an order of a court or judge, unless such order prescribes a different course, he shall fix upon a time and place for the sale thereof, and publish notice of such sale at least ten days by posting the same at the door of the courthouse of his county and some other conspicuous place near the residence of the owner, if he resides in the county: Provided, That any sheriff or other officer proceeding to sell under a writ of fieri facias or venditioni exponas, if the property be of the value of $500 or more, shall advertise the sale as a Class II-0 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. If the property be perishable or expensive to keep, it may be sold by order of the court, or the judge thereof in vacation, upon such notice as the court or judge may direct.

At the time and place so appointed the officer shall sell to the highest bidder for cash, except as hereinafter provided in section twenty-three of this article, such personal property, or so much thereof as may be necessary.

WV Legislature

§38-4-21. Adjournment of sale.

When for any cause the sale is not completed on the day appointed therefor it may be adjourned from day to day until it shall be completed.

WV Legislature

§38-4-22. Appraisal before sale.

If, before any such sale is made, the judgment debtor, his agent or attorney, or in their absence, his or her spouse, so desires, the property to be sold shall be appraised by separate items by two disinterested householders of the district in which the levy is made, or where the debtor resides, if he resides in the county, one to be selected by the judgment debtor, his agent or attorney, or, in their absence, his or her spouse, and the other by the judgment creditor, his agent or attorney, or in their absence, by the officer in whose hands the execution, order of sale or other process is, who, after being duly sworn for the purpose, shall appraise, at its fair cash value, each item of property to be sold, reduce their appraisement to writing, sign the same and deliver it to the officer whose duty it is to make the sale. If they do not agree as to the value of any item of property to be sold, such officer shall, on his official oath, act as umpire in the case and his decision and that of one of such appraisers shall determine the value of such items. Such appraisement shall be returned by the officer with his execution, order of sale or other process.

WV Legislature

§38-4-23. Method and terms of sale of appraised property.

The property appraised under the provisions of the preceding section shall be sold by the officer in separate items, or in parcels, or as a whole, whichever method will secure the highest price therefor. The property so appraised shall be first offered for sale for cash, and, if the highest aggregate bids therefor amount to two thirds or more of its appraised value, the sale thereof shall be for cash; but if no bid be made therefor aggregating two thirds of its appraised value, the same shall then be offered for sale, one half on a credit of four months and the residue on a credit of eight months, the purchaser giving his note with good security bearing interest from date. If when so offered on a credit a greater aggregate sum be bid therefor than was offered in cash, the sale shall be made upon credit as aforesaid, otherwise the cash bid shall be accepted.

WV Legislature

§38-4-24. Payments on purchase money notes.

All moneys paid to the officer, on any note taken under the preceding section shall be regarded as so much money received by him on the execution, order of sale, or other process under which the sale was made, and the officer shall indorse the same on the execution, order of sale or other process, whether the same has been returned or not, at the time such payment is made.

WV Legislature

§38-4-25. Judgment on defaulted purchase money notes.

If any note so taken be not paid to the officer when due, he shall indorse thereon any payments made to him and return it to the office of the clerk of the court from which such execution, order of sale or other process issued, who shall indorse thereon the date of such return, whereupon the clerk shall, without process or further proceedings, enter, in the law order book, judgment in favor of the officer upon such note for the amount remaining unpaid with interest. Such judgment shall be as final and valid as if entered by the court, except only that the court shall have such control of it as is given by article two, chapter fifty-eight of this code.

WV Legislature

§38-4-26. Form of judgment on notes.

The judgment entered by the clerk under the provisions of the preceding section shall be in the following form or to the following effect:

Whereas on the ..... day of ....., 19....., a judgment (or decree or order) was rendered by the ..... court of ..... County, West Virginia, in favor of ....., and against ....., for the principal sum of ..... dollars, upon which an execution was, on the ..... day of ....., 19 ....., issued and placed in the hands of ....., sheriff of said county, to be executed, and

Whereas said execution has been returned showing that, by virtue thereof, personal property of the said ....., was sold to ....., at the price of ..... dollars, on a credit for four and eight months, and that said ..... executed to the said sheriff his two interest bearing notes dated on the ..... day of ....., 19 ....., payable as aforesaid, with ....., as surety, and

Whereas the note falling due on the ..... day of ....., 19 ....., has, by said sheriff, been returned to this office unsatisfied, and it appearing therefrom that the principal and interest remaining due and unpaid amounts to ..... dollars.

Now, therefore, in pursuance of the statute in such cases made and provided, it is ordered that ....., sheriff, do recover of ..... and ....., the sum of ..... dollars.

Given under my hand this ..... day of ....., 19 .....

Clerk.

WV Legislature

§38-4-27. Disposition of surplus received by officer; disposition of money not paid over when execution stayed.

Where an officer has received money under execution, if any surplus remain in his hands after satisfying the execution, such surplus shall be repaid to the debtor; and if the debtor or his personal representative obtain an injunction or appeal staying an execution, in whole or in part, before money received under it, or any part of it, is paid over to the creditor, the officer shall repay such debtor the money so received and not so paid over, or so much thereof as the injunction or appeal may extend to, unless otherwise directed by law, or the order of the court.

WV Legislature

§38-4-28. Liability of officer for money received under execution payable to nonresident of county.

No officer, receiving money under execution, when the person to whom it is payable resides in a different county from that in which the officer resides, shall be liable to have any judgment rendered against him or his sureties for the nonpayment thereof, until a demand of payment be made of such officer in his county by such creditor or his attorney at law, or some person having a written order from the creditor.

WV Legislature

§38-4-29. Successive executions.

Subject to the limitations prescribed by law, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived; and may sue out other executions at the defendant's costs, where, on a former execution, there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process, which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing.

WV Legislature

§38-4-30. New execution when property sold is recovered from obligor on indemnifying bond or purchaser.

When property sold under execution, or its value, is recovered from an obligor in an indemnifying bond given before such sale, or from a purchaser having a right of action on such bond, the person having such judgment or execution, or his personal representative may, by scire facias, or motion after reasonable notice to the person or the personal representative of the person against whom the judgment or execution was, obtain a new execution against him in the latter case, for the amount for which the property sold, with interest from the day of sale, and in the other cases, for so much of the judgment as remains unpaid. Such scire facias shall be sued out, or such motion made, within five years after the right to sue out or make the same.

WV Legislature

§38-4-31. Motion to quash execution.

A motion to quash an execution may, after reasonable notice to the adverse party, be heard and decided by the court whose clerk issued the execution, or by the judge thereof in vacation; and such court or judge may, without such notice, make an order staying proceedings on the execution until such motion can be heard and determined. A copy of the order so made must be served upon the officer in whose hands the execution is.

WV Legislature

§38-4-32. Limitation on motion for failure to return execution.

A motion against an officer or his sureties, or his or their representatives, for a failure to return an execution, shall be made within ten years from the return day thereof and not after.

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

§38-5A-1. Definitions.

For purposes of this article:

(1) "Salary" and "wages" shall be given their ordinary meaning but in any event shall include compensation measured partly or wholly by commissions, percentages or share of profits or by other sums based upon work done or results produced whether or not the judgment debtor is given a drawing account.

(2) The term "suggestee execution" shall mean an execution differing from an ordinary execution upon a judgment only in that it is directed against money due or to become due to the judgment debtor from the suggestee as therein set out.

(3) The term "judgment creditor" shall include the owner of a money decree.

WV Legislature

§38-5A-2. Salary or wages subject to suggestion only as provided in this article.

Salary or wages payable to any person engaged in private employment, whether due and owing or to become due and owing, shall be subject to suggestion by judgment creditors only as provided by this article.

WV Legislature

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than fifty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the present address and date of birth of the judgment debtor, which information shall be made available for the purpose of properly identifying the judgment debtor whose salary or wages are being levied upon.

WVLegislature

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

A certified copy of an execution issued under this article against salary or wages shall be served upon the judgment debtor. Such service shall be made by the court or the clerk of the court who issued the execution by mailing the copy to the judgment debtor or his or her agent authorized to accept service of process by certified mail, return receipt requested. The day and hour of such mailing shall be clearly noted on the face of the original execution and the clerk of the court or the officer to whom it is delivered for collection shall not make service upon the suggestee until the expiration of five days from that time.

WV Legislature

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

(a) Service of a suggestee execution against salary or wages may be made by the clerk of the circuit court or the magistrate court clerk, as the case may be, by sending a copy of the suggestee execution to the suggestee by certified mail, return receipt requested, with delivery restricted to the addressee as provided by subdivision (1), section (d) of rule four of the Rules of Civil Procedure for trial courts of record. If the registered mail is unclaimed or otherwise is not accepted or is refused by the suggestee, then service of the suggestee execution shall be made in the same manner as a summons commencing an action is served in accordance with the Rules of Civil Procedure for trial courts of record: Provided, That if the suggestee is located in a county other than the county where the suggestee execution issues, the clerk may mail the suggestee execution by first class mail to the sheriff of the other county for such service. If the service is made on a corporation, limited liability company or other person or entity through the Secretary of State, it shall be submitted along with the fee required by section two, article one, chapter fifty-nine of this code.

(b) If the suggestee served with the execution is indebted or will in the future become indebted to the judgment debtor for salary or wages, then during the time the execution remains a lien on any indebtedness for salary and wages the suggestee is required to pay over to the officer serving the same or to the judgment creditor the percentage of the indebtedness required by section three of this article until the execution is wholly satisfied. The suggestee shall deduct the amounts paid from the amounts payable to the judgment debtor as salary or wages and the deduction of these amounts is a bar to any further action by the judgment creditor against the wages or salary of the judgment debtor.

(c) Once every ninety days during the life of such execution and any renewal execution the suggestee upon whom the execution or any renewal execution is served shall pay over to the officer who served the same or to the judgment creditor the full amount of money held or retained pursuant to such execution or renewal execution during the preceding ninety days.

If the suggestee upon whom the execution is served fails or refuses to pay over to the officer serving the execution or to the judgment creditor the required percentage of the indebtedness, as aforesaid, he or she shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied in satisfaction of the execution.

WV Legislature

§38-5A-6. Vacation and modification of suggestee executions.

Either party may apply at any time to the court if a court not of record, or the court or a judge thereof, if a court of record, from which such an execution shall have issued, upon such notice to the other party as such court or judge shall direct for the vacation or modification of the execution. After conducting a hearing thereon, the court or judge shall vacate the execution if satisfaction of the same or the judgment be made out by affidavit or otherwise, and in any case may make such modification of the execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until paid and satisfied, or until vacated or further so modified. Such an execution may be vacated at any time upon the application of the judgment creditor without notice or a hearing and in such a case the clerk of a court of record shall have power to vacate the execution if issued out of his court. For the protection of the suggestee the lien of a suggestee execution shall, as regards the suggestee, be deemed unaffected by a vacating or modifying order prior to service of such order upon the suggestee.

WV Legislature

§38-5A-7. Renewal of suggestee executions.

A suggestee execution which shall expire wholly or partly unsatisfied may be renewed from time to time in the manner in which it was originally issued and for a like period. The renewal execution shall conform to the original save that it shall state in addition the fact that it is a renewal and shall be issued only for the balance due on the judgment. A renewal execution shall retain the same priority of lien as the original if, and only if, served within a thirty-day period ending on the date of the expiration of the life of the original or the last previous renewal, as the case may be.

WV Legislature

§38-5A-8. Priority of suggestee executions over assignments.

An execution issued and served under this article shall have priority over an assignment filed with the suggestee subsequent to service of the notice required by section four hereof.

WV Legislature

§38-5A-9. Exemptions.

A judgment debtor to whom money is due or to become due which would otherwise be subject to suggestion under this article may have the same exempted from levy in the manner and to the extent provided for by article eight of this chapter. The exemption may be claimed for sums currently accruing but must be asserted anew as to any salary or wages which shall begin to accrue after the next payment date. Such exemption shall not be binding upon a suggestee unless and until a certificate of exemption or true copy thereof shall have been delivered to him

WV Legislature

§38-5A-10. Accounting for moneys collected under suggestee executions.

It shall be the duty of the officer to whom a suggestee execution shall be delivered to account for and pay over to the person entitled thereto all moneys collected on such execution, less his lawful fees and expenses for collecting the same. Such accounting shall be made from time to time and at least once every month from the time a levy shall have been made.

WV Legislature

§38-5A-11. Supreme court of appeals authorized to prescribe forms of suggestee executions.

In aid of the better administration of this article the Supreme Court of Appeals is hereby authorized to prescribe forms of suggestee executions conformable to the provisions hereof. Forms so prescribed shall be followed in the preparation of all suggestee executions issued under this article from and after a date to be fixed by the Supreme Court of Appeals in promulgating the same, which shall not be less than thirty, nor more than ninety days after their certification as hereinafter provided. Copies of forms so prescribed shall be certified by the clerk of the Supreme Court of Appeals to the clerk of each court of record in the state. It shall thereupon be the duty in turn of each such clerk to furnish each court not of record within the circuit, district, or other territorial area constituting the territorial jurisdiction of his court, by registered mail, with true copies of the forms and at the same time to inform such court of the time when the action of the Supreme Court of Appeals in prescribing the forms shall take effect.

WV Legislature

§38-5A-12. Fees.

The general laws governing the fees of courts and court officers shall apply to the duties and functions performed under this article. In no event, however, shall the fee for modifying or vacating a suggestee execution exceed $1.

WV Legislature

§38-5A-13. Construction of article.

This article is remedial in purpose and shall be liberally construed to that end.

WV Legislature

§38-5B-1. Definitions.

For purposes of this article:

1. The term "suggestee execution" shall mean an execution differing from an ordinary execution upon a judgment only in that it is directed against money due or to become due to the judgment debtor from the suggestee as therein set out.

2. The term "state agency" shall mean any department, institution, board, commission, bureau, or other agency of the state government, including a public corporation created to effect a state public improvement.

3. The term "political subdivision" shall mean any county, county board of education, municipal corporation, or any other public corporation or governmental unit organized to perform one or more of the functions of local government or to effect a local public improvement.

4. The term "proper officer" shall mean the officer of the state, a state agency, or a political subdivision, as the case may be, upon whom to make service of suggestee executions under this article.

5. The term "judgment creditor" shall include the owner of a money decree.

WV Legislature

§38-5B-2. Application for suggestee execution against money from state, state agency or political subdivision; extent of lien and continuing levy; priority among suggestee executions.

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of the same to the judgment debtor from the state, a state agency or any political subdivision of the state. If satisfactory proof is made, by affidavit or otherwise, of such facts and, where the execution is sought against salary or wages, of the fact that the amount due or to become due as salary or wages after the deduction of state and federal taxes exceeds in any week fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record, the clerk thereof, shall issue a suggestee execution against such money due or to become due to the judgment debtor, and there shall be entered on the face thereof the day and hour of issuance.

The execution and the expenses thereof shall, when served by the officer to whom delivered for collection in the manner hereinafter provided, upon the state, a state agency or political subdivision from which such money is due or may thereafter become due to the judgment debtor, become a lien and continuing levy upon the sums due or to become due to the judgment debtor within one year after the issuance of the execution (but not to exceed twenty percent of the salary or wages due to the judgment debtor or reduce the amount received by him or her per week to an amount less than fifty times the federal minimum hourly wage then in effect) unless sooner satisfied and paid, vacated or modified as hereinafter provided.

Where more than one suggestee execution has been issued pursuant to this section against the same judgment debtor, they shall be satisfied in the order of priority in which they are served upon the state, state agency or political subdivision from which the money is due or becomes due. For purposes of determining the priority, the time that an execution served by mail, as hereinafter provided, is received, and not the time of admission of service, shall control. In the case of two or more executions received in the same mail, delivery priority shall be accorded the one first issued.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the present address and date of birth of the judgment debtor, which information shall be made available for the purpose of properly identifying the judgment debtor whose salary or wages are being levied upon.

WV Legislature

§38-5B-3. Suggestee execution against salary or wages; commencement of lien; priorities.

A suggestee execution issued under this article against salary or wages shall become a lien and continuing levy upon sums due or to become due to the judgment debtor as salary or wages to an amount equal to twenty per centum thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to less than $20 per week. A suggestee execution against salary or wages shall contain the name of the judgment debtor and the bureau, office, department, institution or subdivision thereof of the state or political subdivision of the state, as the case may be, of which he is an officer or employee. If a person so employed shall resign or be dismissed while an execution issued hereunder against his salary or wages is wholly or partly unsatisfied, and he shall thereafter be reinstated or reemployed, the execution shall lapse and no further deduction shall be made with respect thereto from his salary or wages unless such reinstatement or reemployment shall occur within ninety days after such resignation or dismissal. A suggestee execution shall not be affected by the transfer of the officer or employee who is the judgment debtor from one bureau, office, department, institution or subdivision thereof of the state or a political subdivision to another if the officer upon whom service of the execution was made would be the proper officer for service of a suggestee execution against salary or wages due or to become due to the judgment debtor in the new employment.

Such an execution shall not become a lien against salary or wages payable by the state or a state agency within ten days after the service thereof or payable by a political subdivision within five days after the service thereof but shall become a lien and continuing levy upon the salary or wages which shall become due or owing to the judgment debtor thereafter during the life of the execution.

Only one suggestee execution against the salary or wages of a judgment debtor shall be satisfied at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

WV Legislature

§38-5B-4. Notice to judgment debtor of execution against salary or wages; time for service on officer of suggestee.

A certified copy of an execution issued under this article against salary or wages shall be served by the clerk of the court who issued the execution upon the judgment debtor or his or her agent authorized to accept service of process, by certified mail, return receipt requested. The day and hour of mailing shall be clearly noted on the face of the original execution and the officer to whom it is delivered for collection shall not make service upon the proper officer until the expiration of five days from that time.

WV Legislature

§38-5B-5. Service of suggestee execution and vacating or modifying order.

An execution issued under this article against money due and owing or to become due and owing from the state, or a state agency which shall be payable on the warrant of the State Auditor for the payment thereof directed to the judgment debtor must be served upon the State Auditor at his or her office in Charleston. In the case of money payable directly by any state agency the execution shall be served upon the auditor of such agency or, lacking such, upon the officer thereof whose duty it is to audit and/or to issue warrants, checks or orders for the payment of such claims. Such service shall be made by exhibiting and at the same time delivering a true copy of the original execution, to the proper officer, or to a person in his or her office designated and authorized by the State Auditor or head of such department, institution or agency, as the case may be, by writing filed in such office to receive it. Service of such an execution may be made by mail by the court or the clerk of the court who issued the execution or by the officer to whom the same is delivered or by any credible person, by enclosing the original suggestee execution in a postpaid wrapper addressed to the proper officer and agency together with a true copy of the suggestee execution. Service by mail shall not be deemed to be complete until duly admitted and until the original execution shall have been returned to the court or the clerk of the court who issued said execution. Such admission shall be made as soon as may be in the regular course of administration after receipt of the execution. The admission may be subscribed by the officer upon whom the service is required by this section to be made or by a person in his or her office designated and authorized by the State Auditor or the head of a state agency, as the case may be, by writing filed in such office to admit service of suggestee executions.

A suggestee execution against a political subdivision of the state shall be served upon the auditor thereof or the officer who, or the clerk of the board or any body which is charged with the duty of auditing and/or issuing warrants, checks or orders for the payment of such claims, in like manner as service hereunder upon state officers, except that service by mail shall not be sufficient or binding.

Service of a vacating or modifying order issued pursuant to section six of this article shall be made in the manner herein prescribed for the service of a suggestee execution.

WV Legislature

§38-5B-6. Vacation and modification of suggestee executions.

Either party may apply at any time to the court, if a court not of record, or the court or a judge thereof, if a court of record, from which such an execution shall have issued, upon such notice to the other party as such court or judge shall direct for the vacation or modification of the execution. After conducting a hearing thereon, the court or judge shall vacate the execution if satisfaction of the same or the judgment be made out by affidavit or otherwise, and in any case may make such modification of the execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until paid and satisfied, or until vacated or further so modified. Such an execution may be vacated at any time upon the application of the judgment creditor without notice or a hearing and in such a case the clerk of a court of record shall have power to vacate the execution if issued out of his court. For the protection of the suggestee, the lien of a suggestee execution shall, as regards the suggestee, be deemed unaffected by a vacating or modifying order prior to service of such order upon the suggestee.

WV Legislature

§38-5B-7. Renewal of suggestee executions.

A suggestee execution which shall expire wholly or partly unsatisfied may be renewed from time to time in the manner in which it was originally issued and for a like period. The renewal execution shall conform to the original save that it shall state in addition the fact that it is a renewal and shall be issued only for the balance due on the judgment. A renewal execution shall retain the same priority of lien as the original if, and only if, served within a thirty-day period ending on the date of the expiration of the life of the original or the last previous renewal, as the case may be.

WV Legislature

§38-5B-8

Repealed

Acts, 2017 Reg. Sess., Ch. 98.

WV Legislature

§38-5B-9. Payments in satisfaction of execution; liability of officer for payment or failure to pay; action against political subdivision failing to pay; declaratory judgment as to right against state.

It shall be the duty of the proper officer, after service of an execution under this article, bearing the notation required by section four of this article if directed against salary or wages, to pay to the judgment creditor such sums as may be or shall thereafter become due to the judgment debtor from the suggestee, or the amount thereof prescribed in section three of this article in the case of salary or wages, during the life of the execution until it shall be wholly satisfied. The proper officer or suggestee upon whom the execution or any renewal execution is served shall once every ninety days during the life of such execution and any renewal execution pay over as aforesaid the full amount of money payable, held or retained pursuant to such execution or renewal execution during the preceding ninety days.

A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of such execution, money due the judgment debtor shall be personally liable therefor only if he or she shall have acted in bad faith, even though such payment or failure or refusal to pay shall have been in violation of the rights of one or more parties in interest.

If a political subdivision be the suggestee and shall fail or refuse to pay over to the judgment creditor the amount due the judgment debtor or the required percentage thereof in the case of salary or wages, it shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied toward the payment of the execution.

No judgment may be recovered against the state as suggestee but a judgment creditor may bring an action against the proper officer for a declaratory judgment establishing his or her right to have sums due or to become due to his or her judgment debtor or from the state or a state agency applied in satisfaction of a suggestee execution issued on his or her judgment pursuant to this article. Such an action may be brought against the State Auditor only in the circuit court of Kanawha County. Costs shall be in the discretion of the court.

WV Legislature

§38-5B-10. Priority of suggestee executions over assignments.

An execution issued and served under this article shall have priority over an assignment filed with the proper officer subsequent to service of the notice required by section four hereof in the case of salary or wages and subsequent to service of the execution in any other case. This section is not intended and shall not be deemed to modify the now existing law governing the validity of the assignment of the salary or wages of a public officer or employee.

WV Legislature

§38-5B-11. Executions against claims due contractors on public works.

An execution issued and served under this article shall, in the case of money due or to become due to a contractor on public work, apply only to such sums as shall be payable to the contractor after completion and acceptance of the work. Certification of completion and acceptance by the officer or body whose duty it is to make such determination shall be sufficient evidence to the proper officer of the facts of completion and acceptance for purposes of making payment in satisfaction of suggestee executions issued under this article.

WV Legislature

§38-5B-12. Exemptions.

A judgment debtor to whom money is due or to become due which would otherwise be subject to suggestion under this article may have the same exempted from levy in the manner and to the extent provided by article eight of this chapter. In the case of salary or wages the exemption may be claimed for sums currently accruing but must be asserted anew as to any salary or wages which shall begin to accrue after the next payment date. Such exemption shall not be binding upon the state, state agency or political subdivision of which the judgment debtor is an officer or employee unless and until a certificate of exemption or true copy thereof shall have been delivered to the proper officer upon whom to make service of a suggestee execution under this article.

Money due to any lawful beneficiary thereof from any workers' compensation, unemployment compensation, pension or retirement, public assistance or relief fund or system, or under the state's emergency employment program as provided by section six, Title II of Enrolled Senate Bill No. 1 (Budget Bill), enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, or any laws amendatory of, supplementary or successor to, such program that may hereafter be enacted, shall not be subject to suggestion under this article.

Public obligations, whether in the form of bonds, notes, certificates of indebtedness, or otherwise, and whether negotiable or nonnegotiable, shall not be subject to suggestion under this article.

WV Legislature

§38-5B-13. Accounting for moneys collected under suggestee executions.

It shall be the duty of the officer to whom a suggestee execution shall be delivered to account for and pay over to the person entitled thereto all moneys collected on such execution, less his lawful fees and expenses for collecting the same. In case of salaries, wages or other claims payable periodically, such accounting and payment shall be made from time to time and at least once every three months from the time a levy shall have been made.

WV Legislature

§38-5B-14. Supreme court of appeals authorized to prescribe forms of suggestee executions.

In aid of the better administration of this article the Supreme Court of Appeals is hereby authorized to prescribe forms of suggestee executions conformable to the provisions hereof. Forms so prescribed shall be followed in the preparation of all suggestee executions issued under this article from and after a date to be fixed by the Supreme Court of Appeals in promulgating the same, which shall be not less than thirty nor more than ninety days after their certification as hereinafter provided. Copies of forms so prescribed shall be certified by the clerk of the Supreme Court of Appeals to the clerk of each court of record in the state. It shall thereupon be the duty in turn of each such clerk to furnish each court not of record within the circuit, district, or other territorial area constituting the territorial jurisdiction of his court, by registered mail, with true copies of the forms and at the same time to inform such court of the time when the action of the Supreme Court of Appeals in prescribing the forms shall take effect.

WV Legislature

§38-5B-15. Garnishment and suggestion of money and other personality in hands of public officers.

Money and other personal property in the hands of a sheriff, constable, clerk of court, justice of the peace or other public officer who shall hold the same by virtue of his office and which belongs or is owed to any person shall be subject to garnishment and suggestion in the same manner and to the same extent as if held by him as a private individual, except that money or other property which is in custodia legis shall be paid or delivered into the court to abide the result of the suit, unless the court shall otherwise direct. This section does not apply to public property or funds.

WV Legislature

§38-5B-16. Construction of article; effect on existing law.

Existing law governing the presentment, audit and allowance of claims against the state, a state agency, or a political subdivision is not affected hereby and the provisions hereof shall not be deemed to permit payments in excess of appropriations not otherwise permitted by law. This article is remedial in purpose, however, and shall be liberally construed to that end.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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 applicable 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.

WV Legislature

§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 than 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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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

§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.

WV Legislature

§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.

WV Legislature

§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.

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

§38-10-1. Recordation of federal tax lien; release; fee.

Notices of federal tax liens and certificates discharging such liens may be filed in the office of the clerk of the county commission of one or more of the counties of this state. The clerk of the county commission of every county of this state shall keep in his or her office in a bound book a federal tax lien docket, in which he or she shall, upon the filing in the office of any notice of a lien upon the property of any person in favor of the United States for the amount of any tax, including any interest, penalty, additional amount, or additions to such tax, together with any costs that may accrue in addition thereto, record such notice without delay. The clerk shall index such notice in the name of the person against whom the lien is claimed. No such tax shall be a valid lien as against any mortgagee, purchaser or judgment creditor, until such notice shall be filed in the office of the clerk of the county commission of the county or counties in which the property subject to such lien is situated.

The clerk of such county commission shall, upon the filing in his or her office of any release or partial release of such lien issued by the Internal Revenue Service, record the same and make proper marginal notation thereof in the federal tax lien docket.

The fee for filing and indexing each notice of federal tax lien, refiled notice of federal tax lien, certificate of discharge or subordination, or other notice, including a certificate of release, partial release or nonattachment of a federal tax lien, shall be $2. If a release contains more than one reference to a lien released, the fee shall be $2 for each lien released thereby. Such fees may, at the discretion of the Internal Revenue Service, be remitted quarterly on the thirty-first day of March, June 30, September 30, and December 31, and shall include all fees due for the preceding three months of the quarter for which the remittance is made.

WV Legislature

§38-10-1a. Recordation of certificates of redemption.

A certificate of redemption issued and executed under the provisions of section seven thousand four hundred twenty-five of the Internal Revenue Code of one thousand nine hundred fifty-four, enacted by the Congress of the United States (section one hundred nine of The Federal Tax Lien Act of 1966) may be recorded in the office of the clerk of the county court of the county in which the real estate being redeemed is situate. Such certificate shall be recorded in the deed books and indexed in the name of the person from whom the real estate is redeemed, as the grantor, and in the name of the United States of America, as the grantee.

WV Legislature

§38-10-2. Recordation of adjudications of bankruptcy; fee.

Certified copies of orders of decrees of adjudication of bankruptcy, made pursuant to the acts of Congress relating to bankruptcy, shall be filed in the office of the clerk of the county court of any county wherein any real estate owned by the bankrupt is situated. Such degrees shall be recorded in the deed books and indexed in the name of the bankrupt. For each such recordation the clerk shall be paid a fee of 50¢.

WV Legislature

§38-10-3. Recordation of orders approving bonds of trustees in bankruptcy; fee.

Certified copies of orders approving the bonds of trustees in bankruptcy, made by referees in bankruptcy or United States courts pursuant to the acts of Congress relating to bankruptcy, shall be filed in the office of the clerk of the county court of any county wherein any property of the bankrupt (the bond of the trustee of whose estate in bankruptcy is approved by such order) is situated or located. Such orders shall be recorded in the deed books and indexed in the names of the trustees in bankruptcy and the bankrupt. For each such recordation the clerk shall be paid a fee of 50¢.

WV Legislature

§38-10-4. Exemptions of property in bankruptcy proceedings.

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed $35,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor: *Provided*, That when the debtor is a physician licensed to practice medicine in this state under §30-3-1 *et seq*. or §30-14-1 *et seq*. of this code, and has commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical professional liability action, if the physician has current medical malpractice insurance in the amount of at least $1 million for each occurrence, the debtor physician's interest that is exempt under this subdivision may exceed $35,000 in value but may not exceed $250,000 per household.

(b) The debtor's interest, not to exceed $7,500 in value, in one motor vehicle.

(c) The debtor's interest, not to exceed $800 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor: *Provided*, That the total amount of personal property exempted under this subdivision may not exceed $16,000.

(d) The debtor's interest, not to exceed $2,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(e) The debtor's interest, not to exceed in value $800 plus any unused amount of the exemption provided under subdivision (a) of this subsection in any property.

(f) The debtor's interest, not to exceed $3,000 in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(i) The debtor's right to receive:

(1) A Social Security benefit, unemployment compensation, or a local public assistance benefit;

(2) A veterans' benefit;

(3) A disability, illness, or unemployment benefit;

WV Legislature

(4) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account, including a simplified employee pension regardless of the amount of funds, unless:

(A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise 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 the tax is paid.

(j) The debtor's right to receive or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) All life insurance proceeds paid to the debtor as a beneficiary, any annuities, other than those annuities included in §38-10-4(i)(5), which are paid to the debtor as a beneficiary, or any annuities or life insurance policies owned by the debtor which are payable to someone other than the debtor, including any applicable cash surrender value.

(4) A payment, not to exceed $50,000 on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund, including earnings, in accordance with §18-30-1 *et seq*. of this code on behalf of any beneficiary.

WV Legislature

(k) Solely for the purpose of applying the provisions of 11 U.S.C. § 522(b)(2) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law, an individual debtor domiciled in this state may exempt from property of the debtor's bankruptcy estate the property specified under 11 U.S.C. § 522(d).

(l) The amendments made to this section during the 2023 regular session of the Legislature shall apply to bankruptcies filed on or after the effective date of those amendments.

WV Legislature

§38-10A-1. Scope.

This article applies only to federal lien notices which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

WV Legislature

§38-10A-2. Place of filing.

(a) Notices of liens, certificates, and other notices affecting federal liens, for which filing thereof is not otherwise provided for under the provisions of this code, must be filed in accordance with this article.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk of the county commission of the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk of the county commission of the county wherein the person against whose interest the lien applies resides at the time of filing of the notice of lien. For purposes of this subsection, the residence of a corporation or a partnership shall be deemed to be the place at which the principal executive office is located.

WV Legislature

§38-10A-3. Execution of notices and certificates.

Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his or her delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

WV Legislature

§38-10A-4. Duties of the clerk of the county commission.

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to the clerk of the county commission, the clerk shall endorse thereon his or her identification and the date and time of receipt, file the same, and forthwith enter and record the fact of such filing in the index maintained for the public indexing of federal liens in such a manner that a reasonable inspection of the index will reveal the existence of the instrument.

(b) If a refiled notice of federal lien referred to in in subsection (a) or a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the clerk of the county commission for filing, the clerk shall endorse thereon his or her identification and the date and time of receipt, file the same, enter and record the fact of such filing in the index maintained for the public indexing of federal liens, and enter and record the fact of such filing in the public index on the line where the original notice of lien is entered.

(c) Upon request of any person, the clerk of the county commission shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article or previous federal tax lien registration act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is $2. Upon request, the clerk shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of $1 per page.

WV Legislature

§38-10A-5. Fees.

The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:

(1) For a lien on real estate, $2;

(2) For a lien on tangible and intangible personal property, $2;

(3) For a certificate of discharge or subordination, $2; and

(4) For all other notices, including a certificate of release or nonattachment, $2.

The clerk of the county commission shall bill the appropriate federal officials on a quarterly basis for fees for documents filed by them.

WV Legislature

§38-10B-1.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-10C-1. Recordation necessary for priority of liens in favor of state, political subdivision or municipality.

No lien in favor of the State of West Virginia, or any political subdivision thereof or of any municipality therein, whether heretofore or hereafter accruing, except the lien for taxes accruing under the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, shall be enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed, as hereinafter provided, in the office of the clerk of the county court of the county wherein such real estate or personal property is, before a deed therefor to such purchaser is delivered for record to the clerk of the county court of such county. The term "purchaser" as used herein shall be construed to include lien creditors whose liens were acquired and perfected prior to such docketing.

WV Legislature

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; withdrawal release.

It is the duty of the Tax Commissioner, or the proper officers of the political subdivisions of the state for its subdivisions and of the proper officers of the municipalities for the municipalities, having liens, to file a notice of the liens in the office of the clerk of the county commission of the county in which the property of the taxpayer against whom the lien is claimed, is situate, stating in the notice what amount of money is owing to the State of West Virginia, the political subdivision or the municipality, on account of the lien from the taxpayer owing the money; and the clerk of the county commission of the county shall, upon the filing of notice, index the lien in the judgment or tax lien docket in his or her office as a tax lien against the taxpayer in favor of the State of West Virginia, the political subdivision or the municipality. Upon the determination of the Tax Commissioner or the Tax Commissioner's designee that the lien should be withdrawn, a withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee. Upon the satisfaction of the lien, a release of the lien for recordation shall be signed and delivered to the taxpayer by the proper officer. The signature of the Tax Commissioner or the Tax Commissioner's designee on the notice and on the release or withdrawal may be either a properly acknowledged manual signature or a facsimile signature authenticated pursuant to the filing of an affidavit and a manual signature with the Secretary of State in the manner specified in section two, article fourteen, chapter six of this code. The facsimile signature has the same legal effect as the manual signature.

WV Legislature

§38-10D-1. Recordation of federal superfund liens; release; fee.

(a) Pursuant to the authority of section 107(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9607(1), notices of liens for costs and damages under said act (superfund liens) may be filed in an office designated by state law. Pursuant to said act, the office of the clerk of the county commission for the county in which the real property is located is hereby designated as the appropriate office for the filing of such notices of superfund liens.

(b) The clerk of the county commission of every county of this state shall, upon the filing in his/her office of any such notice of superfund lien upon the property of any person in favor of the United States, record such notice of lien without delay in the federal tax lien docket. He shall index such lien in the name of the person against whom the lien is claimed.

(c) Every such superfund lien shall be void as to any creditor, secured parties under a deed of trust, mortgagee, purchaser, holder of a security interest or judgment lien creditor, until and except from the time such lien is filed in the office of the clerk of the county commission of the county in which the real property subject to such lien is situated. In case the real property lies in more than one county, then such notice shall be filed in all counties in which the real property subject to such lien is situated.

(d) The clerk of such county commission shall, upon the filing in his/her office of any release of such lien issued by the regional counsel for the United States Environmental Protection Agency, record the same and make proper marginal notation thereof in the federal tax lien docket. No fee shall be charged by such clerk for recording of the notice of superfund lien, but he/she shall charge a fee of $2 for recording such release or partial release.

WV Legislature

§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.

(a)(1) Notwithstanding any provision of this code to the contrary, the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real property creates a statutory lien on the insurance proceeds payable for such claim in favor of the municipality in which the property is situate or, if the property is located outside a municipality, the county in which the property is situate, in an amount equal to the greater of: (A) $5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: Provided, That the amount of the lien may not exceed the policy limits of coverage for the real property plus debris removal, if any: Provided, however, That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses: Provided, further, That the lien amount imposed against proceeds payable under policies issued by farmers' mutual fire insurance companies pursuant to article twenty-two, chapter thirty-three of this code shall in no event exceed ten percent of the policy limits for loss to the real property, including any coverage for debris removal.

(2) The terms "municipality" and "treasurer" have the same meanings ascribed to them in section two, article one, chapter eight of this code.

(b) Within ten days of a determination by the insurer that a covered claim constitutes a total loss, the insurance company shall send certified letters to the insured and, as applicable, to the treasurer of the municipality in which the property is situate or, if the property is situate outside a municipality, to the sheriff of the county in which the property is situate, stating any amount claimed; the limits and conditions of coverage; the location of the property; the terms and limits of coverage designated by the insurance policy for securing, cleanup and removal, if any; any time limitations imposed on the insured for securing, cleanup and removal; and the policyholder's name and mailing address.

(c)(1) The lien created pursuant to subsection (a) of this section shall be discharged unless the municipality or county, whichever is applicable, within thirty days of the receipt of the letter sent in accordance with subsection (b) of this section, perfects and preserves such lien by filing a notice thereof with the clerk of the county commission of the county in which such property is situate: Provided, That upon filing of a notice of lien in accordance with this subdivision, the amount of the lien created in subsection (a) of this section shall thereafter be for the estimated cost of cleanup contained in such notice of lien, subject to the limitation stated in subsection (a) of this section with respect to policies issued by farmers' mutual insurance companies: Provided, however, That the discharge of a lien based on the municipality's or county's failure to file a notice pursuant to this subdivision does not affect any other remedies the municipality or county may have with respect to such property or the liability of the property owner.

(2) A notice of lien filed in accordance with this subsection shall include a statement of the

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estimated cost to the municipality or county for the cleanup of the damaged property, removal of any refuse, debris, remnants or remains of the building and appurtenances, and securing the structure: Provided, That such estimated cost may not exceed the amount of the lien created pursuant to subsection (a) of this section.

(3) A notice of lien filed in accordance with this section shall be notarized and shall be sufficient if in form and effect as follows:

Notice of Lien for Debris Removal

To (name of insurance company):

You will please take notice that the undersigned, on behalf of the (municipality or county) (of County, if a municipality), West Virginia, has estimated that the cost of removing debris and otherwise cleaning up (a certain building, other structure or improvement) on real estate known as (an adequate and ascertainable description of the real estate) would be (estimated cleanup cost).

You are further notified that, in order to secure the payment of the amount allowed by the provisions of subsection (a), section one, article ten-e, chapter thirty-eight of the West Virginia Code, the undersigned, on behalf of the (municipality or county) and pursuant to the provisions of section one, article ten-e, chapter thirty-eight of the West Virginia Code, claims a lien in such amount upon the interest of (policyholder's name) in a fire insurance policy (the policy number or other identifying information) issued by (the insurance company's name and address). (Signature of treasurer or municipal officer exercising the power and authority commonly exercised by a treasurer, or sheriff).

(Title)

(d) The clerk of the county commission shall, upon the filing of such notice, index the same in a book in his or her office called "Debris Removal Liens" as a lien against the insurance proceeds in favor of the municipality or county and shall send a copy of the notice to the insurer.

WV Legislature

§38-10E-2. Release of lien.

(a) A lien recorded in accordance with section one of this article shall be released if the municipality or county determines that the property has been satisfactorily cleaned up or repaired, the city or county determines that satisfactory measures have been taken to assure that the property will be repaired or cleaned up within a reasonable time, with the property owner first being given the opportunity to make said clean-up or removal within sixty days, or that the insurance company has paid the amount of the lien to the municipality or county or such person designated to receive such moneys: Provided, That if the insurer has paid the amount of the lien to the treasurer or sheriff and the subsequent cost of cleanup is less than that amount, the difference shall be returned to the insurer.

(b) Upon the satisfaction of a lien in accordance with subsection (a) of this section, the treasurer or sheriff, whichever is applicable, shall sign a release and cause it to be recorded by the clerk of the county commission in the "Debris Removal Liens" book and, immediately upon recordation, he or she shall send a certified copy thereof to the insurance company: Provided, That if a lien has been paid or otherwise satisfied and the treasurer or sheriff refuses to cause such lien to be released, the insurance company or policyholder may apply to the circuit court for an order compelling the clerk to record a release.

WV Legislature

§38-11-1. Definition of lienor.

The word "lienor" as used in this article shall mean the person claiming or asserting a lien upon personal property.

WV Legislature

§38-11-2. Rights of lienor in property subject to other claims; priority.

Any lienor shall take such rights as a purchaser of the property deposited with him would take, and shall take subject to other titles, interests, liens, or charges in the same manner that a purchaser would take. The lienor's rights shall be determined as of the time when the property was deposited with him except that if such lienor shall receive actual notice of such other liens or charges after he has received possession of the property, any further charges incurred by him after such notice, except such as shall be necessary for the storage or preservation of the property while holding such property for charges incurred before such notice, shall be subordinate to such other liens or charges of which he had actual notice.

WV Legislature

§38-11-3. Improver's, storer's or transporter's lien on personal property and animals.

A person who, while in possession thereof, makes, alters, repairs, stores, transports or in any way enhances the value of an article of personal property, or boards, pastures, feeds, trains, improves or transports any animal shall have a lien upon such article or animal while lawfully in the possession thereof, for the charges agreed upon, or, if no charges be agreed upon, then for his just and reasonable charges for the work done or the board or storage or transportation furnished, to the extent and in the manner provided for in section fourteen of this article, and may retain possession thereof until such charges are paid. Such lien shall be good against the person who deposited the property with the lienor and against any other person by whose authority or with whose consent the property was deposited: Provided, That, notwithstanding the provisions of this section and section two of this article, if a person possessing an improver's lien on a motor vehicle releases that vehicle to a secured party taking possession after default, the secured party shall, upon redemption of the vehicle by the debtor or resale or other disposition by the secured party, pay to the improver the lesser of: (i) The actual cost of improvements as measured by the cost of inventory and labor; or (ii) $1,500: Provided, however, That improvements shall not include nonstock changes in the appearance or performance of the vehicle: Provided further, That if after satisfaction of any prior perfected lien, proceeds remain from the sale, redemption or other disposition of the vehicle by the secured party, such proceeds shall be used to satisfy any balance remaining on the improver's lien: And provided further, That nothing herein shall be construed as impairing or affecting the secured party's right to recover under any insurance policy covering the vehicle. If two or more articles of personal property are made, altered, repaired, stored, transported or enhanced in value as aforesaid, or two or more animals are boarded, pastured, fed, trained, improved or transported as aforesaid, under one contract or agreement, any one or more of such articles or animals may be held under the lien, hereinbefore mentioned, for all of the charges upon all such articles included in such contract or agreement.

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§38-11-4. Lien of bailee of animals or vehicles.

A person keeping a livery stable, or boarding stable for animals, or a garage or storage place for automobiles or other vehicles, or who boards, pastures, feeds or trains animals for hire, has a lien upon such animals or vehicles for the sum due him for the care, boarding, pasturage, feeding, or training of such animals, or the care, keeping or storage of such vehicles, even though such animals or vehicles are permitted to be taken out of the possession of the one claiming such lien, if the contract between the owner and the person claiming such lien for keeping, boarding, pasturage, feeding, training or storage, has not been terminated at the time such animal or vehicle is taken out of such possession: Provided, however, That any purchaser of such animal or vehicle, while out of the possession of the person claiming such lien, shall take such property free of such lien, unless he had actual notice at the time of such purchase that such animal or vehicle was being kept, stored, boarded, pastured, fed or trained by some person other than the owner thereof: Provided further, That the lien hereinbefore provided for in this section shall not be valid as against any person other than the owner of such animal or vehicle, whether such other person have notice of the claim of lien or not, for any charges incurred more than three months prior to the time when such person other than the owner acquired his interest in the animal or chattel, unless the animal or chattel was, at the time of the acquisition of such interest, actually in the possession of the person claiming such lien.

WV Legislature

§38-11-5. Lien for lodging and board.

The owner or keeper of any hotel, inn, lodginghouse, restaurant, eating house or boardinghouse shall have a lien upon and, to the extent and in the manner provided for in section fourteen of this article, may retain possession of the baggage, luggage or other personal property of any kind, brought to such hotel, inn, lodginghouse, restaurant, eating house or boardinghouse by, or with the consent of, the owner thereof, for the amount of his lawful claim for lodging, board or other accommodations or facilities furnished by him at that time to such person bringing the same, or to any other person for whose charges the person so bringing such property is liable.

WV Legislature

§38-11-6. Lien of humane officer.

When any humane officer shall provide any neglected or abandoned animal with proper food, shelter and care, he shall have a lien upon such animal for the expense thereof, and such expense shall be charged against the owner of such animal. Until the humane officer shall take possession of the animal or place the animal in the possession of some person other than the owner, to the extent and in the manner provided for in section fourteen of this article, such lien shall not be good against a purchaser of the animal from the owner, for value, and without notice of the facts creating the lien.

WV Legislature

§38-11-7. Recovery of possession from owner by lienor.

When any personal property lawfully held by a creditor in his possession under a lien shall be wrongfully taken from his possession by the owner thereof, the creditor shall have the right to recover the possession thereof, from the owner or any creditor of the owner, or any other person except a purchaser of the property for value without notice of the creditor's right under his lien, in the same manner as an owner of personal property may recover the possession thereof.

WV Legislature

§38-11-8. Lien for service of male animals.

The owner of any stallion, jack or bull, that is duly registered under the laws of the State of West Virginia, shall have a lien upon the foal or calf thereof, whenever the service of such stallion, jack or bull was had by contract with the owner, or agent of the owner, of the dam or cow of such foal or calf, at the time of such service. Such lien shall cease unless the person desiring to avail himself thereof shall, within six months from the birth of such foal or calf, file before some magistrate in the county in which such foal or calf may be, his own affidavit, or that of some credible person, stating the amount of his lien against such foal or calf and that such amount is due by contract, also a description of the foal or calf upon which such lien is claimed. Such affidavit shall be filed and preserved by such magistrate, for which service he shall receive any fee provided by law. Upon the filing of such affidavit, such proceedings shall be had for the enforcement of such lien as are provided in section fourteen of this article.

WV Legislature

§38-11-9. Workman's or materialman's lien on vessel.

Any citizen of this state shall have a lien upon any domestic steamboat, steamer or vessel, propelled wholly or in part by steam, gas, fluid, naphtha, or electricity, which plies upon the navigable waters of this state, and which is registered in this state, for all work and labor done upon such vessel, and for all materials, goods, wares and merchandise furnished such vessel by any such citizen.

WV Legislature

§38-11-10. Lienor's right to compensation and lien for storage.

Any lienor lawfully holding personal property in his possession under a lien shall be entitled to reasonable compensation for the storage or keeping of such property, or for the expense of having it stored or kept at some other place, and for any other trouble or expense necessarily incurred in the care and preservation of such property, and the property so held shall be subject to a lien for such charges.

WV Legislature

§38-11-11. Assignability of liens.

Whenever any lienor shall assign to any other person the debt or claim secured by a lien, such assignee shall be entitled, unless it is otherwise expressly agreed, to take possession of the property and hold it by virtue of the lien, in the same manner as his assignor was entitled to hold it before the assignment.

WV Legislature

§38-11-12. Liability of lienor or pledgee for safe return of property delivered to another.

Whenever any lienor or pledgee or his assignee shall lawfully deliver the possession of the property which he holds under a lien or pledge to any third person, by reason of any assignment, lawful repledge, or otherwise, such lienor or pledgee shall be liable to the owner of the property for the safekeeping and safe return of such property, and shall in such case be answerable for its loss or for any damage to it while it was out of his possession.

WV Legislature

§38-11-13. How possessory lien may be waived, lost or released.

Any lien or pledge mentioned in this article which is dependent upon the lienor's possession shall be released by the lienor:

(a) By the voluntary surrender of the possession of the property upon which the lien is claimed;

(b) By the payment or tender by the owner of such property, or any person having an interest in such property, to the lienor, of the amount of the debt due such lienor, for which debt such lien is properly held;

(c) By the assertion of the person holding such property of some other claim or interest in the property, inconsistent with the right of the owner to have possession of his property upon the payment of the debt for which a lien might lawfully have been claimed;

(d) By the fraudulent assertion of a claim of an amount greater than is due to such claimant for the services or charges for which the lien is claimed;

(e) By the removal of the property, by the lienor, outside the State of West Virginia, without the written consent of the owner of the property: Provided, however, That this subdivision shall not apply to notes, bonds, certificates of stock, warehouse receipts, bills of lading, or other evidences of indebtedness or deposit;

(f) By the failure or refusal, upon the written demand of the owner of the property, or upon the written demand of any other person lawfully entitled to discharge the lien and receive the property into his possession, to return the property without expense to the owner thereof, other than the expense mentioned in section ten of this article, to the place where the property was first deposited with the lienor by the owner, so that the owner or such other person may redeem the property: Provided, however, That if such place is no longer within the possession or control of the lienor, the lienor may designate some other convenient place, not more than one fourth mile distant from such place of deposit, where, at some convenient time within ten days after the demand made upon the lienor, the owner or other person entitled to do so may receive the property upon the payment of the debt and other lawful charges for which the lien is held, and, in such case, unless the owner shall appear at such time and place and pay or tender the amount of the debt and other lawful charges, the lienor's lien shall not be lost, but the lienor shall have a lien for the expense of bringing such property to such place.

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§38-11-14. Enforcement of lien or pledge.

Any person holding personal property in his possession under a lien or pledge may satisfy such lien in any manner agreed upon between the owner and the lienor or, if there be no such agreement, in the following manner:

The lienor or pledgee shall give a written notice to the person on whose account the goods are held and to any other person known by the lienor to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the lienor's or pledgee's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien or pledge exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than seven days from the delivery of the notice. If delivery of notice is made by mail instead of personal delivery, such delivery shall be by registered or certified mail, return receipt requested, and such delivery shall be complete when such notice is deposited in the United States mail, postage prepaid, addressed to the debtor at his last known address; and

(d) A statement that unless the claim is paid within the time specified the goods will remain in the possession and control of the lienor or pledgee and he will assert in a court of competent jurisdiction his legal right to hold and sell the property for the amount of the debt and to otherwise proceed for payment of the debt.

If the debt has not been fully satisfied by the day following the date specified for payment in the notice hereinabove provided for, the lienor or pledgee shall either release the property to its owner or other appropriate custodian or continue to retain the property and sue upon the debt and the right of possession in a court of competent jurisdiction. Any such suit shall proceed expeditiously toward judgment in manner and form prescribed by law for other civil actions.

Unless a suit to enforce any lien authorized by this article be brought in a court of competent jurisdiction within thirty days after the delivery of the notice hereinabove provided for, such lien shall be discharged.

At any time before judgment in any such suit, any person claiming a right of property or possession in the property at issue may pay the lienor or pledgee the amount necessary to satisfy his lien or pledge and the reasonable expenses and liabilities, including all court costs, incurred in protecting and proceeding upon the lien or pledge up to the time of such payment or such person may execute a bond with good security, conditioned to pay the lienor who may be damaged by the release of property under the lien, to be approved by the

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court, in a penalty not to exceed the lesser of the amount of the lien with reasonable court costs thereupon or the value of the property in the possession of the lienor. The lienor or pledgee shall deliver the goods to the person making such payment or posting such bond, if he is a person entitled to the possession of the goods or payment of charges thereon. Otherwise the lienor or pledgee shall retain possession of the goods according to the terms of the original contract of deposit and shall proceed upon the suit.

WV Legislature

§38-11-15. Sale or disposition of perishable or hazardous goods by lienor or pledgee.

If goods which are subject to a lien or pledge under this article are such that they are perishable or threaten to decline in value speedily, or are of a hazardous nature, the lienor or pledgee may give such notice to the owner, or to the person in whose name the goods are stored, as is commercially reasonable under the circumstances, to satisfy the lien or pledge upon such goods and to remove them, and in the event of the failure of such person to satisfy the lien or pledge and to remove the goods within the time specified within the notice, the lienor may sell the goods at public or private sale. If the lienor after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

WV Legislature

§38-11-16. Other remedies of lienor or pledgee.

The remedy for enforcing a lien or pledge provided for in this article does not preclude any other remedies allowed by law for the enforcement of a lien or pledge against personal property nor bar the right to recover so much of the lienor's or pledgee's claim as shall not be recovered under the provisions of this article.

WV Legislature

§38-11-17.

Repealed.

Acts, 1981 Reg. Sess., Ch. 141.

WV Legislature

§38-12-1. When release of lien required; requisites thereof.

(a) Every person entitled to the benefit of any lien on any estate, real or personal, or to the money secured thereby, whether the lien was created by conveyance, judgment, decree, lis pendens, notice of attachment, deed of trust, contract or otherwise, shall be required to furnish and execute an apt and proper written release thereof free of charge to the debtor whose obligation secured by such lien has been fully paid and satisfied, if the lien is of record in the proper county. Such release shall be executed and furnished to the debtor within thirty days after the debt has been satisfied.

(b) Such release of lien shall be executed by the lienholder and acknowledged before the clerk of the county commission in whose office the lien is recorded or before such other person authorized to take acknowledgments of deeds. Such written release shall be deemed sufficient if it describe the lien to be released by any words that will identify and show an intent to discharge the same. Releases may also be made according to the provisions of section two of this article.

WV Legislature

§38-12-2. When trustee may release lien of deed of trust; effect.

A trustee in a trust deed may release the lien of such trust deed:

(a) When the trust deed authorizes the trustee to release the same;

(b) When the trust deed creates a lien to secure debts to persons not named in the trust deed;

(c) When a trust deed creates a lien to secure more than five creditors, even though such creditors be named in the trust deed;

(d) When a trust deed creates a lien to secure notes or bonds or other instruments payable to bearer.

A release executed by the trustee in any of the cases mentioned herein, and properly recorded, shall, as to purchasers for value without notice, be valid and binding, whether the debt secured by such lien had in fact been paid or discharged or not.

WV Legislature

§38-12-3. Release by trustee when unnamed persons are secured; publication; effect.

If a trustee in a trust deed which secures persons not named in the trust deed shall publish, as hereinafter provided, a notice that he will, on a day named in such notice, such day to be not more than thirty nor less than ten days after the last publication of such notice, release such trust deed, such trustee may execute such release and make distribution of any funds in his hands as such trustee without any liability to any person not named in the trust deed nor known to the trustee to be a beneficiary of the trust. Such notice shall be published 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 in which such trust deed is recorded.

WV Legislature

§38-12-4. Form of release; recordation of assignment with release by assignee.

Releases and their acknowledgments may be substantially in form or effect as follows:

(a) In case of a mortgage or trust deed: I, A..... B....., hereby release a mortgage (or trust deed) made by C..... D..... to me (or to E..... F....., my trustee, or to ....., and assigned to me) dated the ..... day of ....., recorded in the office of the clerk of the county court of ..... county, West Virginia, in trust deed book ....., page ..... (Or, in case the release is by the trustee, I, A..... B....., hereby release a trust deed made by C..... D..... to me as trustee, for the benefit of E..... F....., dated the ..... day of ....., recorded, etc., as in preceding form.) To be signed A..... B.....

Acknowledged before the subscriber, by A..... B....., this ..... day of ..... (or, in case the release be by a corporation, acknowledged before the subscriber, by ....., who signed the name of ....., a corporation, thereto, this ..... day of ....., ...)

(To be signed) G..... H....., a justice (or clerk of the county court, notary public, etc., as the case may be) of ..... county, West Virginia.

(b) In case of a lien for purchase money, reserved by conveyance:

I, A..... B....., hereby release the right reserved to me in a conveyance executed by me (or myself and wife) to C..... D....., dated the ..... day of ..... (Or, in case of an assignment, I, A..... B..... hereby release the right reserved by C..... D..... in a conveyance to E..... F....., dated the ..... day of ....., ..., which right was assigned by the said C..... D..... to me, the ..... day of ....., ...) To be signed and acknowledged as above.

(c) In case of a judgment or decree: I, A..... B....., hereby release a judgment (or decree) in my favor (or in favor of I..... K....., which has been assigned to me; or in favor of I..... K..... for my use) against C..... D....., for (stating the amount) with interest and costs, rendered by (stating the court by which, or the justice by whom, it was rendered, and the term or date at which it was rendered, to be signed and acknowledged as above.)

When such lien is released by the assignee thereof, the assignment thereof, whether of the lien or of the debt secured thereby, must be acknowledged in the same manner as the release, and recorded with such release: Provided, That if any such lien, or the debt secured thereby, shall have been assigned, the same may always be released by the assignee who receives satisfaction thereof, upon the assignor joining therein, without the recordation of the assignment as aforesaid.

WV Legislature

§38-12-5. Partial or limited release.

In case of a discharge of only a part of the lien debt, or a release of only a part of the property subject to the lien, or any other partial or limited release, the form of release prescribed in section four of this article may be modified to express the facts and the intention of the parties.

WV Legislature

§38-12-6. Liability of lienor for release after assignment.

Any person who shall have been entitled to the benefit of any lien and who shall have assigned such lien, or the benefit thereof, or any instrument secured by such lien, to any other person, shall be liable to any person injured by any release executed by such person first mentioned, after such assignment.

WV Legislature

§38-12-7. Release when lienor under disability.

In case of the death, insanity, or infancy of the person entitled to the lien, the release may be made by the personal representative, committee, or guardian of such person, as the case may be.

WV Legislature

§38-12-8. Recordation of release; effect.

When the release has been so signed and acknowledged, it may be presented for record to the clerk in whose office the lien thereby intended to be released is recorded or docketed, and from and after the time the same is so left for record (which time the clerk shall indorse thereon) such lien shall be discharged and extinguished, and the estate, of whatever kind, bound or affected thereby, shall be deemed to be vested in the former owner or those claiming under him as if such lien had never existed.

WV Legislature

§38-12-9. Duties of clerk.

The clerk of the county court shall record and properly index all releases and assignments admitted to record in his office under the provisions of this article, in a well-bound book to be kept exclusively for the purpose, and, when any such instrument is recorded, he shall note the fact on the margin of the record or docket of the lien affected or discharged thereby, with a reference to the book and page where such release or assignment is recorded.

WV Legislature

§38-12-10. Action on refusal of lienholder to execute release.

In case of the failure of the party holding such lien to furnish and execute an apt and proper release upon request of the party entitled thereto as required by section one of this article, the circuit court having jurisdiction may, on motion, after reasonable notice to the party so failing, and if no good cause be shown against it, direct the clerk of the county commission to execute such release, and it shall thereupon have the effect of releases executed under section one of this article. The proceedings shall be at the cost of the lienholder who so refuses without good cause and the court shall also award reasonable attorney fees and court costs to the person entitled to such release if such person be the prevailing party.

WV Legislature

§38-12-11. Construction of article.

Nothing in this article contained shall be construed to authorize the discharge of any lien contrary to the provisions of the instrument under which the lienor claims, or to impair or affect the validity of any deed of release, or other writing discharging any lien in this article mentioned, either heretofore or hereafter created or made.

WV Legislature

§38-12-12. Noting satisfaction of execution on judgment lien docket.

When an execution issued upon a judgment or decree, which has been entered in the judgment lien docket in the office of the clerk of the county court, is returned satisfied, the clerk, to whose office such return is made, shall certify the same to the clerk of the county court, and such return shall be entered by such clerk in the margin of the docket of such judgment or decree.

WV Legislature

§38-12-13. Penalty for failure of clerk or other officer.

If any clerk or other officer shall fail in any duty imposed upon him by this article, he shall be liable to any party injured for all damages caused by such failure, or the person injured may, at his option, recover the sum of $50 from such clerk.

WV Legislature

§38-13-1. Assignment by insolvent; form; acknowledgment; recordation; assent of trustee; transfer of stockholders' liability.

Every assignment, conveyance or transfer made by an insolvent debtor to a trustee which is intended to operate as an assignment of all of such debtor's property for the benefit of all of his creditors, or of all such property except what is exempt from execution or other process, shall be in writing, and shall specifically state therein the residence and kind of business carried on by such debtor at the time of making the assignment, the place at which such business was conducted, and the name, residence, address and place of business of the trustee and there shall be annexed thereto a statement of the assets of the debtor and the location thereof, and a list of the names and addresses of his creditors.

Every such assignment, conveyance or transfer shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds and shall be recorded in the office of the clerk of the county court of the county in which the principal place of business of the debtor is situated when real property is a part of the property assigned and is situated in a county other than the one in which the original assignment is required to be recorded, a certified copy of such assignment shall be filed and recorded in the county where such property is situated. The assent of the trustee, subscribed and acknowledged by him shall appear in writing embraced in or at the end of, or endorsed upon the assignment, before the same is recorded. In all cases where an assignment is made by a corporation the right to recover the amount due from stockholders on unpaid capital stock issued to or subscribed by them shall pass to the trustee whether mentioned in the assignment or not.

No such assignment, conveyance or transfer shall be valid and no title to the property assigned, conveyed or transferred shall vest in the trustee unless the same be executed as hereinabove provided and unless the same be recorded within five days after the date of the execution thereof. The clerk shall record such instruments in the deed books in his office, and shall also keep them on file in his office.

WV Legislature

§38-13-2. Oath and bond of trustee; requiring further security.

Before the trustee shall have any power or authority to sell, dispose of or convert to the purposes of the trust any of the assigned property he shall qualify as such by taking an oath and giving a bond in a penalty double the amount of the estate, with a solvent surety company as surety, before the clerk of the county court of the county in which such assignment, conveyance or transfer has been recorded. The oath of the trustee shall be that he will faithfully perform the duties of the office of trustee to the best of his skill and judgment, and will account for and pay over all money that comes into his hands as such trustee. The bond of the trustee shall be approved by the clerk, shall be conditioned that the trustee shall faithfully perform the duties of trustee to the best of his skill and judgment and account for and pay over all money that may come into his hands as trustee, and shall be filed in the office of the clerk. At any time after the giving of such bond the clerk may, upon his own motion, or upon the application of any party in interest, and on five days' notice given to the assignor, trustee and surety, increase the amount of the bond or require further security to be given, whenever in his judgment the penalty of the bond or the security afforded by it is not adequate.

WV Legislature

§38-13-3. Reference to fiduciary commissioner; appraisers.

Upon the qualification of the trustee, the clerk shall refer the estate to a fiduciary commissioner of the county: Provided, That in counties where there are two or more such commissioners, such estate shall be referred to such commissioners in rotation; and the clerk shall appoint three disinterested appraisers to appraise all the property belonging to the estate and, within seven days after their appointment, they shall make to the fiduciary commissioner a report thereof in writing duly sworn to.

WV Legislature

§38-13-4. Trustee to file schedule; substitute trustee.

Within ten days after the recordation of an assignment, conveyance or transfer the trustee shall cause to be made and filed with the clerk of the county commission of the county where the same is recorded a schedule containing:

(1) The name, occupation, place of residence and place of business of the debtor;

(2) A full and true account of all creditors of the debtor, stating the last-known place of residence of each, if known, or if unknown, the fact to be stated; the sum owing to each, with the true cause and consideration thereof; and a full statement of any existing security for the payment of the same;

(3) A full and true inventory of all the debtor's estate at the date of the assignment, both real and personal, in law and in equity, with the liens and encumbrances existing thereon. The trustee shall verify the schedule so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief, and shall state the sources of his information and the grounds of his belief. The trustee shall at the same time file a duplicate of the said schedule with the fiduciary commissioner to whom the estate has been referred. In case said trustee shall be unable to make and file such schedule, within ten days, the fiduciary commissioner may, upon application under oath, showing such inability, allow him such further time as shall be necessary, not exceeding thirty days. If the trustee fails to make and file such schedule within said ten days or such further time as may be allowed, the fiduciary commissioner shall require, by order, the trustee forthwith to appear before him and show cause why he should not be removed, and, if good cause be not shown, such trustee shall be removed and a meeting of the creditors shall be called by the fiduciary commissioner, at which meeting a substitute trustee shall be elected. Any person interested in the trust estate may apply for such order and demand such removal.

WV Legislature

§38-13-5. Notice by trustee to creditors; publication and mailing.

Within ten days after the filing of the schedule the trustee shall cause to be published a notice reading substantially as follows:

"To the creditors of .....:

Take notice that a general assignment for the benefit of creditors was made by the above named debtor to ....., trustee, on ..... and that said assignment has been duly recorded in the office of the clerk of the county commission of ..... County.

All persons having claims against the said debtor are hereby notified that the same shall be presented to the undersigned trustee on or before ..... The estate has been referred to ....., fiduciary commissioner, and the first meeting of the creditors will be held in his office at ....., in ..... County, West Virginia, on ....., at ..... o'clock .....M. Dated this ..... day of .....

(Signed) ....., Trustee

(Address of Trustee)....."

Said notice shall be published 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 in which the assignment, conveyance or transfer was recorded.

A copy of said notice shall be mailed by the trustee on or before the date of the first publication thereof to every creditor whose name appears in the schedule or of whom the trustee has notice, to the assignor and to the fiduciary commissioner and an affidavit evidencing such mailing and publication shall be filed by the trustee with the fiduciary commissioner.

WV Legislature

§38-13-6. Filing and proof of claims.

The trustee shall specify in the notice a date on or before which claims shall be presented to him which date shall be not less than thirty days nor more than sixty days after the date of the first publication of the notice, and no claim filed with the trustee after the date specified in the notice shall be recognized or allowed, except that if a surplus remain after the payment of the claims presented on or before the date specified such surplus shall be applied to the payment of the claims presented after that date. Claims of creditors shall be itemized, accompanied by proper vouchers, and verified by the affidavit of the creditor or his duly authorized agent, stating the character of the claim, whether open account, note, bond, bill, writing obligatory, judgment, decree or other evidence of debt, and the amount thereof, and from what date and on what items interest runs and at what percent per annum, and stating further that the claim is just and true, and that the creditor, or any prior owner of the claim, if such there was, has not received any part of the money stated to be due, or any security or satisfaction for the same, except what is credited. The vouchers for a judgment or decree shall be an abstract thereof; for a specialty, bond, note, bill of exchange, writing obligatory, or other instrument, shall be the instrument itself, or a true copy thereof, verified by the fiduciary commissioner, or proof of the same in case the instrument be lost; and for an open account, an itemized copy of the account. A surety may prove a claim of a creditor which he has secured when such creditor fails or refuses to do so. Every claim so itemized, so accompanied by proper vouchers, and so verified, shall be taken to be proved and shall be allowed unless, before the trustee shall make up his report of claims, the assignor or a creditor or any party in interest shall file before the trustee a counter-affidavit denying the claim in whole or in part; and when such counter-affidavit is so filed the trustee shall at once refer the claim to the fiduciary commissioner who shall at the request of the claimant fix a time and place for hearing evidence of and against such claim and give reasonable notice of such time and place to the claimant and the party objecting. All hearings on disputed claims shall be completed within seven days after the last day on which claims may be presented to the trustee, unless for good cause shown the fiduciary commissioner extends the time for such hearings.

WV Legislature

§38-13-7. Liens requiring or not requiring proof; waiver by lienor; delinquent taxes; sales of property subject to liens or taxes.

Creditors holding valid liens of the following character on property belonging to the estate, to-wit: Vendor's lien reserved in a deed duly recorded; lien created by deed of trust or mortgage, duly recorded, on real or personal property; judgment lien on real estate, duly docketed in the county in which the real estate is situated; lien on personal property created by execution, duly docketed in the county in which the property is located; reservation of title contained in conditional sales contract, duly filed, need not file proof of their said secured claims with the trustee, and in the event they do not do so the property affected shall be sold by the trustee subject to any such liens; but if said creditors file proofs of their secured claims with the trustee and request that the property affected shall be sold by the trustee free of said liens and deliver to the trustee a consent in writing, duly acknowledged in the manner provided for the acknowledgment of releases of liens, the trustee may, if he deems it in the best interest of the estate, record said consent in the release book in the office of the clerk of the county court of the county in which the property is located, and sell the property free and clear of the said lien, but the said lien shall attach to the proceeds of the property at the sale, and the trustee shall pay the said proceeds to the secured creditor to the amount of the secured claim, without any deduction for costs of administration. Creditors holding landlord's liens and other liens not included in those mentioned above shall file proof of their claims in the manner and within the time prescribed for proving unsecured claims, otherwise they shall not be recognized or allowed; but if they are properly filed the lien shall attach to the proceeds of the sale of the property covered thereby. The trustee may sell property belonging to the estate subject to delinquent taxes, or may sell free of taxes, and pay the same, but no proof of delinquent taxes need be filed with the trustee.

WV Legislature

§38-13-8. First meeting of creditors; substitute trustee.

The fiduciary commissioner shall preside over the first meeting of the creditors which shall be held not less than ten nor more than twenty days after the date of the first publication of the notice thereof by the trustee. The assignor and the trustee shall attend the meeting, and either or both of them may be publicly examined at the meeting at the instance of any creditor. The creditors shall at the meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate, and the meeting may be adjourned from time to time if the creditors see fit. If a majority in number and amount of all the unsecured creditors of the assignor, including those absent as well as those present, desire that the trustee named in the assignment shall not serve, at the first meeting of the creditors such a majority may elect a substitute trustee who shall have all the rights, powers and duties conferred upon the trustee named in the assignment. The substitute trustee shall qualify by taking the oath and giving a proper bond before the clerk, and a copy of the order appointing the substitute trustee shall be recorded in each county in which the assignment is recorded. Creditors may be represented at meetings by their agents, employees, or attorneys, duly authorized in writing.

WV Legislature

§38-13-9. Sales by trustee; creditors may prescribe manner and terms; powers of fiduciary commissioner; compromising claims; continuing operation of business.

At the first meeting of creditors a majority in number and amount of the creditors present may prescribe in what manner and on what terms the property belonging to the estate shall be sold, and the trustee shall not sell, or otherwise dispose of, any property belonging to the estate prior to the first meeting of the creditors, unless expressly authorized to do so by the fiduciary commissioner after good cause therefor has been shown. The trustee shall not sell or otherwise dispose of, the property belonging to the estate for less than seventy-five percent of its appraised value without the approval of the fiduciary commissioner. The trustee may compromise or compound any claim or debt belonging to the estate with the approval of the fiduciary commissioner. All sales by the trustee shall be made at public auction, unless otherwise ordered by the fiduciary commissioner or authorized by the creditors. The trustees shall give at least ten days' notice by mail to all of the creditors of the time and place of sale of any property belonging to the estate of the value of $500, or more, and shall advertise the sale 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. Such notice and advertisement may be waived by the creditors at their first meeting. Upon application to the fiduciary commissioner, and for good cause shown, the trustee may be authorized to sell any portion of the estate at private sale, in which case he shall keep an accurate record of each article sold, the price received therefor and to whom sold, which account he shall file with the fiduciary commissioner. Upon application by the trustee or a creditor setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be loss if the same is not sold immediately, the fiduciary commissioner, if satisfied, of the facts stated and that the sale is required in the interests of the estate, may order the same to be sold without notice or with such notice as he may direct. Upon application by the trustee or a creditor setting forth that it is for the best interest of the estate that the trustee continue to operate the business, the fiduciary commissioner may authorize the trustee to operate the business until the first meeting of the creditors, at which meeting a majority in number and amount of the creditors present shall determine whether such operation is to be continued thereafter.

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§38-13-10. Trustee's report to fiduciary commissioner; notice to creditors of filing and second meeting.

Within ten days after the last day on which claims may be presented to him the trustee shall file with the fiduciary commissioner a report showing the names of the creditors whose claims have not been contested and who have filed proper proofs of claims, and the amounts thereof; the names of the creditors whose claims have been contested, and the amounts thereof; the disposition he has made of the property belonging to the estate; the costs and expenses he has incurred; the amount of money he has on hand and the name of the bank in which it is deposited; the property of the estate not disposed of and his plans for disposing of the same. The trustee shall attach to said report all proofs of claims, vouchers, exhibits, accounts, writings, affidavits and counter- affidavits which have been filed with him The trustee shall at once notify each creditor who has presented a claim that the report has been filed, and that a meeting of the creditors will be held before the fiduciary commissioner on a date specified in the notice, which date shall not be less than five days after the notice is mailed nor more than ten days after the report is filed.

WV Legislature

§38-13-11. Report by fiduciary commissioner; appeal from decision; allowance of expenses and fees; directions to trustee; dividends; closing trusteeship.

At the meeting of the creditors held following the filing of the trustee's report the fiduciary commissioner shall file a report showing how much, if anything, he has allowed on each of the disputed claims. Any party interested may, within ten days thereafter, appeal from the decision of the fiduciary commissioner to the circuit court of the county without any formal bill of exceptions, and the appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary commissioner. At the same meeting the fiduciary commissioner shall approve such expenditures, costs and expenses as he may find necessary and proper in the administration of the estate; shall direct the payment of proper fees and fiduciary commissions; shall direct the trustee to distribute the funds in his hands belonging to secured creditors; and shall direct the trustee to pay a dividend of an equal percent on all allowed claims, except such as have priority or are secured. A secured creditor whose claim is in excess of the security held may share in such dividend on such excess only. The trustee shall not pay such dividend until the time has expired within which an appeal may be taken from the decision of the fiduciary commissioner on a disputed claim, and if any such appeal is pending the trustee shall retain in his hands sufficient money to pay the same dividend thereon, should the claim be allowed on appeal, and shall distribute the remainder to the creditors entitled thereto. After paying any dividend the trustee shall file with the fiduciary commissioner a copy of a dividend sheet showing to whom the dividend was paid. If all of the property belonging to the estate has not been disposed of at the time of said meeting, the trustee shall from time to time make further reports to the fiduciary commissioner, and the fiduciary commissioner may direct the trustee to pay further costs, expenses, fees and dividends. Dividends which are unclaimed for six months shall be distributed among the remaining creditors whose claims have been allowed. After the trustee has disposed of all the property belonging to the estate, and has paid out all of the funds which have come into his hands, he shall without delay make a final report in duplicate to the fiduciary commissioner showing all his receipts and disbursements, and if the fiduciary commissioner finds the same correct and approves it, the fiduciary commissioner shall enter an order discharging the trustee, a copy of which order the fiduciary commissioner shall furnish to the surety on the bond of the trustee, and the fiduciary commissioner shall transmit a copy of said order and a copy of the final report of the trustee to the clerk of the county commission to be filed.

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§38-13-12. Powers, duties and qualifications of trustee; substitute for unqualified, removed, deceased or disabled trustee.

It shall be the duty of the trustee to collect and reduce to money the property belonging to the estate; to keep all funds belonging to the estate on deposit in a sound bank; to report promptly to the creditors any claims presented to him which are not provable or are incorrect or false so that counter-affidavits may be filed thereto; to file the reports and give the notices herein provided for; to close up the estate as expeditiously as possible; to furnish such information concerning the estate as may be requested by parties in interest; to keep regular accounts; to pay dividends as often as is compatible with the best interests of the estate. The trustee shall, as to all property transferred by the assignment, be deemed vested with all the rights, remedies and powers of a creditor holding a lien thereon by legal or equitable proceedings. The trustee shall be a resident of West Virginia, and shall not occupy the position of relative, creditor, attorney, agent or employee to the assignor, nor an officer of the assignor, if the assignor be a corporation, and if an assignment, conveyance or transfer be made to such person it shall not for that reason be void, but shall be deemed to be for the benefit of all the creditors of the assignor, and the clerk, at the request of any party in interest, may refer the estate to a fiduciary commissioner who shall proceed to call a meeting of the creditors, at which meeting a majority in number and amount of the creditors present shall elect a substitute trustee. Upon the petition of one or more creditors showing misconduct or incompetency of the trustee, or on the petition of the trustee himself showing sufficient reason therefor, and after due notice of not less than five days to the assignor, trustee, the surety on the bond of the trustee, and the creditors whose claims have been filed with the trustee, the fiduciary commissioner may, after hearing the parties in interest, remove or discharge the trustee; and in that event a majority in number and amount of the creditors present shall elect a substitute trustee. If the trustee shall die or become unable to act, the fiduciary commissioner shall call a meeting of the creditors whose claims have been filed with the trustee, after notice of not less than five days, and a majority in number and amount of the creditors present at the hearing shall elect a substitute trustee.

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§38-13-13. Powers and duties of fiduciary commissioner.

Fiduciary commissioners shall have power to preside over all meetings of creditors; to preside over all examinations of the assignor or trustee; to allow and disallow all claims presented to them for determination; to administer oaths to witnesses; to issue subpoenas for the attendance of any person for examination; to examine accounts filed by trustees hereunder, to hear and determine any objections thereto, and to surcharge any trustee for any moneys improperly expended or for which the trustee shall have failed to account; to authorize the business of the assignor to be conducted for limited periods by the trustee if necessary in the best interests of the estate; to reopen estates whenever it appears that they have been closed before being fully administered; to authorize a trustee to bring an action, which he is hereby empowered to maintain, against any person who has received, taken, or in any manner interfered with the estate, property or effects of the debtor, in fraud of his creditors, and which might have been avoided by a creditor of the assignor, and the trustee may recover the property so transferred or its value; to require or allow any inventory or schedule filed to be corrected or amended, and require and compel from time to time supplemental inventories or schedules to be made and filed; to determine the excess of the claims of secured creditors over and above the value of the securities held by them; to require the trustee to render and file the accounts and reports herein provided for; to authorize and approve the payment of costs, expenses, fees and commissions; to declare dividends; to discharge the trustee and his surety after the trustee has properly completed the performance of his duties; to authorize the appointment of an attorney for the trustee if necessary in the best interests of the estate.

WV Legislature

§38-13-14. Duties of assignor.

The assignor shall comply with all lawful orders of the fiduciary commissioner, examine the correctness of all claims presented against the estate if ordered by the fiduciary commissioner so to do, and if any are incorrect or false notify the trustee thereof immediately; deliver to the trustee all his books, papers and records; execute and deliver such papers relating to the estate as shall be ordered by the fiduciary commissioner; execute and deliver to the trustee proper transfers of all his property outside the State of West Virginia; attend the first meeting of the creditors; and submit to an examination under oath concerning the conduct of his business, the cause of his inability to pay his debts, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and all matters which may affect the administration and settlement of his estate, but no testimony given by him shall be offered in evidence against him in any criminal proceedings. The books and papers of the assignor shall at all times be subject to the inspection and examination of any creditor.

WV Legislature

§38-13-15. Fiduciary commissioner to certify to circuit court disobedience of order, etc.; punishment for contempt by court.

The fiduciary commissioner shall certify the facts to the circuit court of the county if any person shall disobey or resist any order, process or writ which may be issued, or misbehave during any hearing, or neglect to produce, having been ordered to do so, any pertinent documents, or refuse to appear, take the oath, or be examined according to law, after having been subpoenaed. Upon the filing of such certificate by any fiduciary commissioner the judge shall in a summary manner hear the evidence of the acts complained of, and, if it is such as to warrant him in so doing, he may punish such person in the same manner and to the same extent as for a contempt committed before the court.

WV Legislature

§38-13-16. Expenses and fees of trustee, fiduciary commissioner, appraisers and attorneys for trustee.

Trustees shall be allowed their reasonable and necessary disbursements for the costs and expenses and shall receive for their services commissions of all moneys disbursed or turned over by them to any person, including lienholders and secured creditors, which commissions shall be ten percent on the first $1,500 or less, five percent on moneys in excess of $1,500 and less than $10,000, three percent on moneys in excess of $10,000 and less than $25,000, and two percent on moneys in excess of $25,000, or such additional compensation as a majority in number and amount of the creditors present at the meeting provided for in section ten of this article, or at a subsequent meeting held for the purpose of fixing compensations, shall allow, but the compensation shall in no case be less than $50. Fiduciary commissioners shall be allowed their reasonable and necessary disbursements for costs and expenses and shall receive for their services such compensation as the court shall from time to time prescribe. The fiduciary commissioner shall indicate, in writing, the compensation he believes he is entitled to receive for services performed. Appraisers shall receive for their services a fair and reasonable allowance which shall be fixed by the fiduciary commissioner upon a petition therefor showing the amount of time spent by the appraisers in the performance of their duties. Attorneys for the trustee shall receive for their service a fair and reasonable allowance which shall be fixed by the fiduciary commissioner upon petition showing the service rendered by them.

WV Legislature

§38-14-1. Short title.

This article may be known as the "Self-Service Storage Lien Act".

WV Legislature

§38-14-2. Definitions.

As used in this article, unless the context clearly requires otherwise:

(1) "Default" means the failure by the occupant to perform on time any obligation or duty set forth in the rental agreement or this article;

(2) "Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(3) "Leased space" means the individual storage space at the self-service storage facility which is rented to an occupant pursuant to a rental agreement;

(4) "Occupant" means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement;

(5) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility. The operator is not a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(6) "Personal property" means movable property, not affixed to land. Personal property includes goods, wares, merchandise, motor vehicles, trailers, watercraft, and household items and furnishings;

(7) "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of leased space at a self-service storage facility;

(8) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a "self-service" basis; and

(9) "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

WV Legislature

§38-14-3. Self-service storage lien.

(a) The operator has a lien on all personal property stored within each leased space for agreed rent, labor, late fees, and other charges and for expenses reasonably incurred in its sale or disposition pursuant to this article. The lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.

(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the operator has a lien on the vehicle or watercraft as long as the motor vehicle or watercraft remains stored within the leased space.

(c) The rental agreement shall contain:

(1) A statement advising the occupant of the existence of the lien and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default;

(2) A statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days; and

(3) A statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien if the occupant is in default may be advertised:

(A) In a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located;

(B) By electronic mail or text; or

(C) On an online website.

WV Legislature

§38-14-4. Late fees.

The operator may charge a late fee not to exceed $20 or 20 percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of five days or more.

WV Legislature

§38-14-5. Enforcement of lien.

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale or dispose of the personal property if the operator can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b)(1) Before conducting a sale under subsection (a) of this section, the operator shall, subject to subdivision (2) of this subsection, notify the occupant of the default by hand delivery, verified mail, electronic mail, or text at the occupant's last known address.

(2)(A) The operator may not notify the occupant of the default by electronic mail unless:

(i) The rental agreement specifies, in bold type, that notice may be given by electronic mail or text; and

(ii) The occupant provides the occupant's initials next to the statement in the rental agreement specifying that notice of default may be given by electronic mail or text.

(B) If the operator notifies the occupant of the default by electronic mail or text at the occupant's last known address and does not receive a response, return receipt, or a confirmation of delivery, the operator shall send the notice of default to the occupant by hand delivery or by verified mail to the occupant's last known postal address.

(C) Additional requirements for members of the military apply under the Soldiers and Sailors Relief Act, 50 U.S.C. §§3901-4043.

(3) The notice shall include:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which will become due before the date of sale, and the date those additional charges will become due;

(C) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

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(E) The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice.

(4) (A) Subject to paragraph (B) of this subdivision, at least three days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online website.

(B) The operator may not advertise the sale in the manner provided under subparagraph (ii) or (iii) of this paragraph unless the occupant provides the occupant's initials next to the statement in the rental agreement required under this article.

(c) The operator may dispose of the personal property if the operator has complied with subsection (b) of this section and the property has not been purchased.

(d) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

(e) A sale under this section shall be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator.

(f)(1) If a sale is held under this section, the operator shall:

(A) Satisfy the lien from the proceeds of the sale; and

(B) Mail the balance, if any, by certified mail to the occupant at the occupant's last known address of the occupant.

(2) (A) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall hold the balance for one year after the date of sale for delivery on demand to the operator.

(B) After expiration of the one-year period, the balance is presumed abandoned.

(g) A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) If the operator complies with the provisions of this article, the operator's liability to the occupant is limited to the net proceeds received from the sale of the personal property less the amount of the operator's lien.

(i) If an occupant is in default, the operator may deny the occupant access to the leased

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space.

(j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's personal property is stored by hand delivery or verified mail.

(B) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(2) Notices shall be considered delivered when:

(A) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(B) Sent by electronic mail to the occupant's last known address.

(k)(1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal property towed or removed from the self-service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator is immune from civil liability for any damage to the personal property towed or removed from the self-service storage facility under subdivision (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(l) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant's leased space, the limit is the maximum value of the stored personal property.

(m) Nothing in this article impairs or affects the rights of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.

WV Legislature

§38-14-6. Other legal remedies may be used.

The provisions of this article do not preempt or limit the owner's use of any additional remedy otherwise allowed by law.

WV Legislature

§38-14-7. Duties; care, custody, and control of property.

(a) The operator shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property.

(b) Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space remains vested in the occupant.

(c) An occupant may not use a self-service storage facility for residential purposes.

(d) An occupant may not store hazardous waste or contraband in the leased space.

WV Legislature

§38-14-8. Savings clause.

All rental agreements entered into prior to July 1, 2019, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

WV Legislature

§38-14-9. Effective date and application of article.

The provisions of this article apply to all rental agreements entered into or extended or renewed after July 1, 2019.

WV Legislature

§38-15-1.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-2.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-3.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-4.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-5.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-6.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-7.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-8.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-9.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-10.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-11.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-12.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-13.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-14.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-15.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-16.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-17.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-18.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-19.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§38-15-20.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

PART I. DEFINITIONS.

§38-16-101. Definitions; application of definitions.

For the purposes of this article, the words and phrases defined in the following sections of this part I, and any variation of those words and phrases required by the context, have the meanings ascribed to them in this part I. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

§38-16-102. Court of competent jurisdiction defined.

"Court of competent jurisdiction" means a circuit court, magistrate court or administrative agency within this state or a court or administrative agency of another state, or a court or administrative agency of the federal government having jurisdiction and due legal authority to establish a charge against or an interest in real or personal property by ordering or authorizing the imposition of a lien against the property.

WV Legislature

§38-16-103. Federal government defined.

"Federal government" means the government of the United States of America and includes the executive, legislative and judicial branches; and the term also includes quasi-public corporations and independent commissions or authorities primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

WV Legislature

§38-16-104. Federal official or employee defined.

"Federal official or employee" means an officer or employee of the federal government temporarily or permanently in the service of the United States, members of the military or naval forces of the United States, members of the National Guard, and persons acting on behalf of the United States in an official capacity, whether with or without compensation.

WV Legislature

§38-16-105. Lien defined.

"Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

WV Legislature

§38-16-106. Nonconsensual common law lien defined.

"Nonconsensual common law lien" means a fraudulent lien that is misrepresented as a valid lien because it:

(1) Is not provided for by a specific statute;

(2) Does not derive its existence from the consent of the owner of the affected property; and

(3) Is not an equitable lien or other lien imposed by a court of competent jurisdiction.

WV Legislature

§38-16-107. Purported court defined.

"Purported court" means a so-called common law court or other purported court or purported judicial entity that is not expressly created or established under the Constitution or the laws of this state or of the United States.

WV Legislature

§38-16-108. State or local official or employee defined.

"State or local official or employee" means a person, whether appointed or elected, providing services to a branch of state government or to a political subdivision of this state, whether with or without compensation.

WV Legislature

PART II. COMMON LAW LIENS.

§38-16-201. Bonafide liens are not affected by this article.

Regardless of whether such liens may also be considered to be common law liens, nothing in this article is intended to affect:

(1) Statutory liens arising under an enactment of the Legislature;

(2) Equitable liens, constructive liens and other liens that are imposed by a court of competent jurisdiction; or

(3) Consensual liens now or hereafter recognized under the common law of this state.

WV Legislature

§38-16-202. Real property common law liens unenforceable; personal property common law liens limited.

(a) A common law lien against real property is invalid and is not recognized or enforceable in this state.

(b) A common law lien claimed against personal property is invalid and is not recognized or enforceable if, at the time the lien is claimed, the claimant does not have:

(1) Actual possession, lawfully acquired, of specific personal property against which the lien is asserted; or

(2) Exclusive control, lawfully acquired, of specific personal property against which the lien is asserted.

(c) A valid common law lien claimed against personal property is destroyed or terminated if the person entitled to the lien fails to retain possession or control of the property, unless the person against whom the lien is asserted agrees, in writing, that the lien may continue after delivery of the property from the possession of the lienholder.

WV Legislature

PART III. PROVISIONS GOVERNING THE FILING OF CLAIMS OF COMMON LAW LIENS.

§38-16-301. Filing or recording a claim of nonconsensual commonlaw lien is of no force or effect.

A nonconsensual common law lien is invalid and does not constitute a charge against property or create an interest in property. The filing or recording of a document that purports to evidence a nonconsensual common law lien is a nullity and is of no force or effect.

WV Legislature

§38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.

A clerk of a county commission or other person has no duty to accept for filing or recording any purported claim of a common law lien, because a common law lien is neither authorized by statute nor imposed by a court of competent jurisdiction. A clerk of a county commission or other person has no duty to reject for filing or recording any claim of a common law lien, and the inadvertent or negligent recordation of a claim of a common law lien by a clerk of a county commission or other recorder does not create a cause of action against that official.

WV Legislature

§38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.

(a) Any claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties is invalid unless it arises from a specific order of a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.

(b) A person is not obligated to accept for filing any purported claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties unless the claim is accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. A person has no duty to reject for filing or recording any claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties, and the inadvertent or negligent recordation of such a claim by a clerk of a county commission or other recorder does not create a cause of action against that official.

(c) If a claim of lien as described in subsection (a) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney or other counsel representing the federal agency of which the individual is an official or employee; the assistant Attorney General or other counsel representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the prosecuting attorney or municipal attorney or other counsel representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien, at his or her last known address. The clerk of the county commission shall file and index the notice of invalid lien in the same class of records in which the purported claim of lien was originally filed.

WV Legislature

§38-16-304. No duty to disclose record of common law lien.

No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court of competent jurisdiction.

WV Legislature

§38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.

A clerk of the county commission or other person is not liable for the acceptance for filing of an invalid claim of a nonconsensual common law lien, nor for the acceptance for filing of a notice of invalid lien. A clerk of the county commission or other person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a purported common law lien of record.

WV Legislature

§38-16-306. No duty to disclose fraudulent lien record; lien of purported court is a nullity.

(a) An attorney, title insurance company or other title examiner does not have a duty to disclose a fraudulent court record, document, or instrument purporting to create a nonconsensual common law lien asserting a claim on real property or an interest in real property in connection with a sale, conveyance, mortgage, or other transfer of the real property or interest in real property.

(b) A purported judgment lien or document establishing or purporting to establish a judgment lien against property in this state, that is issued or purportedly issued by a court or a purported court other than a court established under the laws of this state or the United States, is a nullity and has no effect in the determination of any title or right to the property.

WV Legislature

PART IV. ACTIONS TO STRIKE OR REMOVE NONCONSENSUAL COMMON LAW LIEN.

§38-16-401. Notice by clerk of fraudulent lien.

(a) If a clerk of the county commission has a reasonable basis to believe in good faith that a document or instrument purporting to evidence an invalid nonconsensual common law lien has been filed or recorded or offered for filing or recording, the clerk shall provide a written notice as follows:

(1) If the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, the clerk shall provide written notice of the filing, recording, or submission for filing or recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) If the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b)(1) If the document is not yet filed or recorded, the clerk shall provide written notice under subsection (a) not later than the second business day after the date that the document is submitted for filing or recording; or

(2) If the document or instrument has been previously filed or recorded, the clerk shall provide written notice under subsection (a) not later than the second business day after the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) The document is styled as a judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court; or

(2) The document or instrument purports to create a lien or security interest or otherwise create a charge against real or personal property and:

(A) It is not a document or instrument provided for by the Constitution or laws of this state or of the United States;

(B) It is not created by implied or express consent or agreement of the alleged obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by implied or express consent or agreement of an agent, fiduciary, or other

WV Legislature

representative of that person; or

(C) It is not an equitable, constructive, or other lien imposed by a court of competent jurisdiction.

WV Legislature

§38-16-402. Action on fraudulent judgment lien.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the clerk of the circuit court a motion, verified by affidavit, that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF _____COUNTY, WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF A DOCUMENT

PURPORTING TO CREATE A JUDGMENT LIEN

Now comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a purported judgment lien filed in the office of the clerk of the county commission, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of official duties as Clerk of the county commission of (county name) County, West Virginia, the county clerk received and filed or filed and recorded the attached documentation containing (number) pages. The documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called "(name of purported court)" against one (name of purported debtor).

III.

Movant alleges that the purported court referred to in the attached documentation is one described in W.Va. Code, §38-16-108, as not legally created or established under the Constitution or laws of this state or of the United States, and that the document therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

WV Legislature

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,

COUNTY OF _____, To-wit:

I, _____, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that _____, whose name (or names) is (or are) signed to the attached motion, dated the _____ day of _____, _____, has (or have) this day acknowledged the same before me, in my said _____.

Given under my hand this _____ day of _____, _____.

Notary Public, State of West Virginia

Notary's printed name:

My commission expires:

(c) A motion filed under this section may be ruled on by a circuit judge in the county where the subject documentation was filed. The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial evidence. The court's review may be made ex parte without delay or notice of any kind.

(d) The clerk of the circuit court may not charge a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's findings of fact and conclusions of law under this section.

WV Legislature

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF_____ COUNTY,

WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this Court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the Court under W.Va. Code, §38-16-101, et seq.

The Court finds as follows (only an item checked and initialed is a valid court ruling):

[ ] The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

[ ] The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

Signed this _____ day of _____, _____.

_____

Judge, circuit court of County, West Virginia

WV Legislature

§38-16-403. Action on fraudulent lien on property.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property, and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent, may complete and file with the clerk of the circuit court a verified motion that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF ..... , WEST VIRGINIA

In Re: A Purported Lien or Claim Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION

PURPORTING TO CREATE A LIEN OR CLAIM

Now comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, West Virginia, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation.

II.

On (date), in the exercise of official duties as Clerk of the county commission of (county name) County, West Virginia, the county clerk received and filed and recorded the documentation attached hereto and containing (number) pages. The documentation purports to have created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by W.Va. Code, §38-16-101, et seq., and that the documentation or instrument should therefore not be accorded lien status.

IV.

WV Legislature

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Rule 11 of the West Virginia Rules of Civil Procedure for Trial Courts of Record, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,

COUNTY OF _____, To-wit:

I, _____, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that _____, whose name (or names) is (or are) signed to the attached motion, dated the _____ day of _____, _____, has (or have) this day acknowledged the same before me, in my said _____.

Given under my hand this _____ day of _____, ____.

_____

Notary Public, State of West Virginia

Notary's printed name:

My commission expires:

(c) A motion under this section may be ruled on by a circuit judge in the county where the subject document was filed. The court's finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence. The

WV Legislature

court's review may be made ex parte without delay or notice of any kind.

(d) The clerk of the circuit court may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the findings of fact and conclusions of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under W.Va., Code, §38-16-101, et seq.

The court finds as follows (only an item checked and initialed is a valid court ruling):

[ ] The documentation or instrument attached to the motion herein IS asserted against real or personal property or an interest in real or personal property and:

(1) IS provided for by specific state or federal statutes or Constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by consent of an agent, fiduciary, or other representative of that person; or

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the Constitution or laws of this state or of the United States.

WV Legislature

[ ] The documentation or instrument attached to the motion:

(1) IS NOT provided for by specific state or federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the Constitution or laws of this state or the United States; or

(4) IS NOT asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by this documentation or instrument.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

Signed this _____ day of _____, _____.

Judge,

circuit court of County, West Virginia

WV Legislature

§38-16-404. Costs and attorneys' fees.

If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the movant.

WV Legislature

§38-16-405. Warning sign.

A clerk of the county commission shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk's office stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.

WV Legislature

§38-16-406. Documents filed with Secretary of State.

(a) If the lien or other claim that is the subject of judicial findings of fact and conclusions of law authorized by this article is one that is authorized by law to be filed with the Secretary of State, any person may file a certified copy of the judicial findings of fact and conclusions of law in the records of the Secretary of State, who shall file the certified copy of the finding in the same class of records as the subject document or instrument was originally filed and index it using the same names that were used in indexing the subject document or instrument.

(b) The Secretary of State may charge a filing fee of $5 for filing a certified copy of judicial findings of fact and conclusions of law under this section.

WV Legislature

PART V. LIABILITY FOR FRAUDULENT COURT RECORD OR A FRAUDULENT LIEN.

§38-16-501. Liability.

(a) A person may not make, present, or use a document or other record with:

(1) Knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;

(2) Intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Constitution or laws of this state or the United States, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and

(3) Intent to cause another person to suffer:

(A) Physical injury;

(B) Financial injury; or

(C) Mental anguish or emotional distress.

(b) A person who violates subsection (a) is liable to each injured person for:

(1) The greater of:

(A) $10,000; or

(B) The actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney's fees; and

(4) Exemplary damages in an amount determined by the court.

WV Legislature

§38-16-502. Cause of action.

The following persons may bring an action to enjoin violation of this article or to recover damages under this article:

(1) In the case of a fraudulent judgment lien, the person against whom the judgment is rendered; and

(2) In the case of a fraudulent lien or claim against real or personal property or an interest in real or personal property, the obligor or debtor, or a person who owns an interest in the real or personal property.

WV Legislature

§38-16-503. Venue.

An action under this part 5 may be brought in any circuit court in the county in which the recorded document is recorded or in which the real property is located.

WV Legislature

§38-16-504. Filing fees.

(a) The fee for filing an action under this chapter is $15. The plaintiff must pay the fee to the clerk of the court in which the action is filed. Except as provided by subsection (b), the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with the action.

(b) The fee for service of notice of an action under this section charged to the plaintiff may not exceed:

(1) Twenty dollars if the notice is delivered in person; or

(2) The cost of postage if the service is by registered or certified mail.

(c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay.

(d) Since the fee imposed under subsection (a) of this section is less than the filing fee the court imposes for filing other similar actions, if the plaintiff prevails in the action, the court may order a defendant to pay to the court the differences between the fee paid under subsection (a) and the filing fee the court imposes for filing other similar actions.

WV Legislature

§38-16-505. Plaintiff's costs.

(a) The court shall award the plaintiff the costs of bringing the action if:

(1) The plaintiff prevails; and

(2) The court finds that the defendant, at the time the defendant caused the recorded document to be recorded or filed, knew or should have known that the recorded document is fraudulent.

(b) For purposes of this section, the costs of bringing the action include all court costs, attorney's fees, and related expenses of bringing the action, including investigative expenses.

WV Legislature

§38-16-506. Effect on other law.

This part 5 is cumulative of other law under which a person may obtain judicial relief with respect to a recorded document or other record.

WV Legislature