WEST VIRGINIA CODE CHAPTER 55 ARTICLE 2

WV Legislature

§55-2-1. Entry upon or recovery of lands.

No person shall make an entry on, or bring an action to recover, any land, but within ten years next after the time at which the right to make such entry or to bring such action shall have first accrued to himself or to some person through whom he claims.

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§55-2-1a. Ownership or possession of surface of lands after severance of minerals not adverse to owner of minerals.

Whenever title to any minerals in land and the rights appurtenant thereto have been, or shall hereafter be, severed from title to the surface, the continuity of the possession of such minerals and the rights appurtenant thereto shall not be deemed to have been broken by such severance; and ownership or possession of the surface after severance shall not be adverse to the interests of the owner or owners of such minerals and appurtenant rights.

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§55-2-2. Claim not to preserve right as to lands.

No continual or other claim upon or near any land shall preserve any right of making an entry or bringing an action.

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§55-2-3. Entry upon or recovery of lands by persons under disability.

If at the time at which the right of any person to make an entry on, or bring an action to recover, any land shall have first accrued, such person was an infant or insane, then such person, or the person claiming through him may, notwithstanding such period of ten years shall have expired, make an entry on, or bring an action to recover, such land within five years next after the time at which the person to whom such right shall have first accrued as aforesaid shall have ceased to be under such disability as existed when the same so accrued, or shall have died, whichever shall first have happened.

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§55-2-4. Limitations upon §55-2-3.

The preceding section is subject to these provisos: That no such entry or action shall be made or brought by any person who, at the time at which his right to make or bring the same shall have first accrued, shall be under any such disability, or by any person claiming through him but within twenty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under the same during the whole of such twenty years, or although the term of five years from the period at which he shall have ceased to be under any such disability, or have died, shall not have expired. And when any person shall be under any such disability at the time at which his right to make an entry or bring an action shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or to bring an action, beyond the ten years next after the right of such person shall have first accrued, or the five years next after the period of his death, shall be allowed by reason of any disability of any other person.

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§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

(a) Any lien reserved by any conveyance of real estate or created by any deed of trust or mortgage on real estate expires after the following periods of time, unless suit to enforce the lien is instituted prior to expiration of the time period or unless the lien is extended as specified in subsection (b) or (e) of this section:

(1) If the final maturity date of the obligation is ascertainable from the lien instrument, the lien expires five years after that date.

(2) If the final maturity date of the obligation is not ascertainable from the lien instrument, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(b) If an affidavit or extension notice executed by the secured party or beneficiary of the lien instrument or an amendment to the lien instrument executed by the grantor or mortgagor and the secured party or beneficiary is recorded prior to expiration of the original period of limitation, as specified in subsection (a) of this section, the period of limitation is extended as follows:

(1) If the final maturity date of the obligation, as extended, secured by the lien instrument is ascertainable from the affidavit, extension notice or amendment, the lien expires five years after the date of final maturity of the obligation, as extended.

(2) If the final maturity date of the obligation, as extended, secured by the lien instrument is not ascertainable from the affidavit, extension notice or amendment, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(c) Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

(1) The unpaid balance of the debt and interest secured by the lien instrument;

(2) The final maturity date of the obligation, as extended; and

(3) The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit, extension notice or amendment in the same manner as the original lien instrument and shall note that filing on

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the margin of the page where the original lien instrument is recorded.

(d) If the lien instrument shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.

(e) For purposes of this section only, a lien instrument securing an obligation which is payable on demand expresses no maturity date.

(f) Nothing in this section extinguishes any lien which was reserved or created and in effect prior to July 1, 1998. With respect to any lien reserved or created and in effect prior to July 1, 1998, the lien is valid for twenty years after its stated maturity, or if no maturity date is stated in the lien instrument, for thirty-five years after the date of the lien instrument.

(g) The periods of limitation created by this section may be extended only as provided in this section and may not be extended by any other method or by operation of law.

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§55-2-6. Actions to recover on award or contract other than judgment or recognizance.

Every action to recover money, which is founded upon an award, or on any contract other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have accrued, that is to say: If the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator or guardian, curator, committee, sheriff or deputy sheriff, clerk or deputy clerk, or any other fiduciary or public officer, within ten years; if it be upon any other contract in writing under seal, within ten years; if it be upon an award, or upon a contract in writing, signed by the party to be charged thereby, or by his agent, but not under seal, within ten years; and if it be upon any other contract, express or implied, within five years, unless it be an action by one party against his copartner for a settlement of the partnership accounts, or upon accounts concerning the trade or merchandise between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together, but not after.

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§55-2-6a. Deficiencies, injuries or wrongful death resulting from any improvements to or survey of real property; limitation of actions and suits.

No action, whether in contract or in tort, for indemnity or otherwise, nor any action for contribution or indemnity to recover damages for any deficiency in the planning, design, surveying, observation or supervision of any construction or the actual construction of any improvement to real property, or the actual surveying of real property, or, to recover damages for any injury to real or personal property, or, for an injury to a person or for bodily injury or wrongful death arising out of the defective or unsafe condition of any improvement to real property, or the survey of real property, may be brought more than ten years after the performance or furnishing of the services or construction. However, the above period is tolled according to section twenty-one of this article. The period of limitation provided in this section does not commence until the improvement to the real property, or the survey of the real property in question has been occupied or accepted by the owner of the real property, whichever occurs first.

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§55-2-7. Actions on bonds of personal representatives and fiduciaries.

The right of action upon the bond of an executor, administrator, guardian, curator or committee, or of a sheriff acting as such, shall be deemed to have first accrued as follows: Upon a bond of a guardian or curator of a ward, from the time of the ward's attaining the age of eighteen years, or from the termination of the guardian's or curator's office, whichever shall happen first; and upon the bond of any personal representative of a decedent or committee of an insane person, the right of action of a person obtaining execution against such representative or committee, or to whom payment or delivery of estate in the hands of such representative or committee shall be ordered by a court acting upon his account, shall be deemed to have first accrued from the return day of such execution, or from the time of the right to require payment or delivery upon such order, whichever shall happen first. And as to any suit against such fiduciary himself or his representative, which could have been maintained if he had given no bond, there shall be no other limitation than would exist if the preceding section were not passed. Where any such fiduciary, or any other fiduciary, has settled an account under the provisions of article four, chapter forty-four of this code, a suit to hold such fiduciary or his sureties liable for any balance stated in such account to be in his hands shall be brought within ten years after the account has been confirmed. The right to recover money paid under fraud or mistake shall be deemed to accrue, both at law and in equity, at the time such fraud or mistake is discovered, or by the exercise of due diligence ought to have been discovered.

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§55-2-8. Acknowledgment by new promise.

If any person against whom the right shall have so accrued on an award, or on any such contract, shall by writing signed by him or his agent promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action or suit for the moneys so promised within such number of years after such promise as it might originally have been maintained within upon the award or contract, and the plaintiff may either sue on such a promise, or on the original cause of action, and in the latter case, in answer to a plea under the sixth section, may, by way of replication, state such promise, and that such action was brought within such number of years thereafter; but no promise, except by writing as aforesaid, shall take any case out of the operation of the said sixth section, or deprive any party of the benefit thereof. An acknowledgment in writing as aforesaid, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this section.

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§55-2-9. Effect of acknowledgment by personal representative or joint contractor.

No acknowledgment or promise by any personal representative of a decedent, or by one of two or more joint contractors, shall charge the estate of such decedent, or charge any other of such contractors, in any case in which, but for such acknowledgment or promise, the decedent's estate or another contractor could have been protected under the sixth section of this article.

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§55-2-10. Effect of devise for payment of debts.

No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent this article from operating against such debts, unless it plainly appear to be the testator's intent that it shall not so operate.

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§55-2-11. Action or scire facias on recognizance.

Every action or scire facias upon a recognizance shall, if it be not a recognizance of bail, be commenced within ten years next after the right to bring the same shall have first accrued; and, if it be a recognizance of bail, within three years after the right to bring the same shall have first accrued.

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§55-2-12. Personal actions not otherwise provided for.

Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property; (b) within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries; and (c) within one year next after the right to bring the same shall have accrued if it be for any other matter of such nature that, in case a party die, it could not have been brought at common law by or against his personal representative.

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§55-2-13. Foreign judgments and decrees.

Every action or suit upon a judgment or decree rendered in any other state or country shall be barred, if by the laws of such state or country such action or suit would there be barred, and the judgment or decree be incapable of being otherwise enforced there. And whether so barred or not, no action against a person who shall have resided in this state during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

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§55-2-14. Suit to repeal land grant.

A bill in equity to repeal, in whole or in part, any grant of land by this state or of the state of Virginia, shall be brought within ten years next after the date of such grant, and not after.

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§55-2-15. Special and general savings as to persons under disability.

(a) A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged, shall be brought against the perpetrator of the sexual assault or sexual abuse, within 18 years after reaching the age of majority, or within four years after discovery of the sexual assault or sexual abuse, whichever is longer. A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged shall be brought against a person or entity which aided, abetted, or concealed the sexual assault or sexual abuse within 18 years after reaching the age of majority.

(b) If any person to whom the right accrues to bring any personal action other than an action described in subsection (a) of this section, suit, or scire facias, or any bill to repeal a grant, shall be, at the time the same accrues, an infant or insane, the same may be brought within the like number of years after his or her becoming of full age or sane that is allowed to a person having no such impediment to bring the same after the right accrues, or after such acknowledgment as is mentioned in §55-2-8 of this code, except that it shall in no case be brought after 20 years from the time when the right accrues.

(c) The amendments to this section enacted during the 2020 Regular Session of the Legislature are intended to extend the statute of limitations for all actions whether or not an earlier established period of limitation has expired.

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§55-2-16. Death before right to sue.

If a person die before the time at which any right mentioned in this article would have accrued to him if he had continued alive, and there be an interval of more than five years between the death of such person and the qualification of his personal representative, such personal representative shall, for the purposes of this article, be deemed to have qualified on the last day of such five years.

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§55-2-17. When suit prevented by defendant; actions on foreign contracts.

Where any such right as is mentioned in this article shall accrue against a person who had before resided in this state, if such person shall, by departing without the same, or by absconding or concealing himself or by any other indirect ways or means, obstruct the prosecution of such right, or if such right has been or shall be hereafter obstructed by war, insurrection or rebellion, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted. But if another person be jointly or severally liable with the person so obstructing the prosecution of such right, and no such obstruction exist as to him the exception contained in this section as to the person so absconding shall not apply to him in any action or suit brought against him to enforce such liability. And upon a contract which was made and was to be performed in another state or country, by a person who then resided therein, no action shall be maintained after the right of action thereon is barred either by the laws of such state or country or by the laws of this state.

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§55-2-18. Extension of period for new action after dismissal or reversal where the action is timely filed.

(a) For a period of one year from the date of an order dismissing an action or reversing a judgment, a party may refile the action if the initial pleading was timely filed and: (i) The action was involuntarily dismissed for any reason not based upon the merits of the action; or (ii) the judgment was reversed on a ground which does not preclude a filing of new action for the same cause.

(b) For purposes of subsection (a) of this section, a dismissal not based upon the merits of the action includes, but is not limited to:

(1) A dismissal for failure to post an appropriate bond;

(2) A dismissal for loss or destruction of records in a former action; or

(3) A dismissal for failure to have process timely served, whether or not the party is notified by the court of the pending dismissal.

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§55-2-19. Application of statute of limitation to state.

Every statute of limitation, unless otherwise expressly provided, shall apply to the state.

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§55-2-19a. Collection of taxes due state or any subdivision thereof.

Every action or process to collect any tax (other than ad valorem tax on real or personal property and the taxes administered under the provisions of article ten, chapter eleven of this code), interest and penalty due the state or any subdivision thereof shall be brought or issued within five years next after the date on which the taxpayer is required by the statute or ordinance imposing the tax, interest and penalty to file a return and pay the tax due thereunder, unless a different limitation is specifically prescribed by such statute or ordinance. The limitation provided by this section shall likewise apply to enforcement of the lien, if any, securing the payment of such tax, interest and penalty, but shall not apply in event of fraud or in event the taxpayer wholly fails to file the return required by the statute or ordinance imposing the tax.

The official of the state or any subdivision thereof who is charged with the duty of collecting any tax, interest and penalty, the collection of which is affected by the limitation hereinbefore provided, may, before the running of the five-year period of such limitation has been completed, enter into a written agreement with the taxpayer consenting to an extension of such period for an additional period of not to exceed two years, and any action or process may be brought or issued to collect such tax, interest and penalty at any time prior to the expiration of the period so agreed upon. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

The provisions of this section as hereby amended shall apply to tax periods ending on or after July 1, 1978, and the provisions of this section as in effect prior to the enactment hereof shall apply to tax periods ending before said date.

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§55-2-20. Limitations applicable to proceedings pending or rights of action accruing before effective date of code.

No action, suit, scire facias, or other proceeding, which may be pending on the day before this code takes effect, or the right to prosecute which, under the laws in force on that day, shall have accrued before that day, shall be barred by this article, any further or otherwise than as follows: The same, if pending on that day, shall be subject to such limitation as it would have been subject to if this code had not been enacted, and where not so pending, if the right to prosecute the same shall exist on that day, for a certain number of years prescribed by any statute, the same, or such other action as may be substituted therefor by this code, may be prosecuted within such time as the same might have been prosecuted if this article had not been enacted, and not after; and where not so pending, if the right to prosecute the same shall exist on that day, in the case in which no certain number of years shall have been prescribed therefor by statute, the same, or such other action as may be substituted therefor by this code, may be prosecuted within such time as the same would have to be prosecuted if the right to bring it had accrued on the next day after this code takes effect.

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§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.

(a) After a civil action is commenced, the running of any statute of limitation is tolled for, and only for, the pendency of that civil action as to any claim that has been or may be asserted in the civil action by counterclaim, whether compulsory or permissive, or cross-claim : Provided, That if a permissive counterclaim would be barred but for the provisions of this section, the permissive counterclaim may be asserted only in the action tolling the statute of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

(b) Any defendant who desires to file a third-party complaint shall have one hundred eighty days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer, to bring any third-party complaint against any non-party person or entity: Provided, That any new party brought into litigation by a third-party complaint shall be afforded, from the date of service of process of the third-party complaint, an additional 180-day period, or the remaining statute of limitations period, whichever is longer, to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled during this time period.

(c) For purposes of this section, the term "third-party complaint" means a claim brought by a defendant against any person or entity that was not originally a party to the underlying civil action, where the new claim is made a part of the underlying civil action.

(d) This section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This section does not limit the ability of a court to use the doctrine of equitable tolling or the discovery rule to toll the statute of limitations in any action, including any third-party complaint that would otherwise be subject to subsection (b) of this section.

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§55-2-22. Effect of bankruptcy.

The running of any statute of limitation shall be tolled for any claim or cause of action for which the prosecution of the same within the period of limitation has been stayed by the provisions of the United States bankruptcy code or by an order entered in a bankruptcy proceeding pending the duration of the stay or the effective period of the order and for a period thereafter of the remaining period of limitation or for one year, whichever is longer.

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