WEST VIRGINIA CODE CHAPTER 55 ARTICLE 4

WV Legislature

§55-4-1. When ejectment a proper remedy.

The action of ejectment is retained and may be brought as heretofore, subject to the provisions hereinafter contained. It may also be brought in the same cases in which a writ of right might have been brought prior to July 1, in the year eighteen hundred and fifty, in the state of Virginia, and by any person claiming real estate in fee or for life, or for years, either as heir, devisee, purchaser, or otherwise.

WV Legislature

§55-4-2. Venue

Every such action shall be brought in the circuit court, or any other court given by any statute concurrent jurisdiction to try actions of ejectment, of the county in which the real estate, or some part thereof, is.

WV Legislature

§55-4-3. Interest of plaintiff.

No person shall bring such action unless he has, at the time of commencing it, a subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or some share, interest, or portion thereof.

WV Legislature

§55-4-4. Parties defendant.

If the premises be occupied, the occupant shall be named defendant in the declaration; and whether they be occupied or not, any person exercising acts of ownership thereon, or claiming title thereto, or any interest therein, at the commencement of the action, may also be named as defendant in the declaration. If a lessee be made defendant without joining his landlord, such landlord may appear and be made defendant with, or in place of his lessee.

WV Legislature

§55-4-5. How action commenced.

The action shall be commenced by the service of a declaration in which the name of the real claimant shall be inserted as plaintiff; and all the provisions of law concerning a lessor of a plaintiff shall apply to such plaintiff.

WV Legislature

§55-4-6. Declaration.

It shall be sufficient for the plaintiff to aver in his declaration that, on some day specified therein (which shall be after his title accrued), he was possessed of the premises claimed, and that, being so possessed thereof, the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, or exercises acts of ownership thereon or claims title thereto some interest therein, to his damage, such sum as the plaintiff shall state. The plaintiff shall also state whether he claims in fee or for his life, or for the life of another, or for years, specifying such lives, or the duration of such terms; and when he claims an undivided share or interest, he shall state the same. The premises shall be described in the declaration with convenient certainty, so that from such description possession thereof may be delivered.

WV Legislature

§55-4-7. Joinder of parties plaintiff.

The declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count and separately in others.

WV Legislature

§55-4-8. Service of declaration and notice; order of publication.

To such declaration there shall be subjoined a written or printed notice by the plaintiff, or his attorney, addressed to the defendant and notifying him that such declaration will be filed on some specified rule day, in the clerk's office of the court in which the action is to be prosecuted, or in such court on some day named at the next term thereof, and that if he fails to appear and plead thereto, within the time required by law, judgment will be given against him Such declaration and notice may be served in the same manner as other notices may by law be served. But if the defendant do not reside in the county where the action is brought, or cannot be found therein, such service may be made in any part of the state where he may reside or be found; and if he do not reside in the state, or cannot be found therein, so that such service cannot be made, an order of publication, as provided by law in other cases, may be awarded against him and all the laws in force in relation to judgments and decrees obtained on publication and proceedings in such cases shall be applicable to the proceedings and judgment had and rendered in such action on such publication.

WV Legislature

§55-4-9. Rule to plead; default judgment.

Upon filing the declaration and notice, with proof of the service thereof as aforesaid, the plaintiff shall be entitled to a rule upon the defendant to appear and plead at the next rule day, if the same be filed at rules, or if filed in court, to appear and plead within such time as shall be prescribed by the court; and if the defendant fail so to appear and plead, his default shall be entered and judgment given against him

WV Legislature

§55-4-10. Plea or demurrer; issue on plea; evidence admissible.

The defendant may demur to the declaration, as in personal actions, or plead thereto, or do both. But he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration. Upon such plea, the defendant may give in evidence any matter which, if pleaded in the former writ of right, would have barred the action of the plaintiff.

WV Legislature

§55-4-11. Equitable title of vendee as defense.

A vendor, or any person claiming under him shall not at law recover against a vendee, or those claiming under him lands sold by such vendor to such vendee, when there is a writing stating the purchase, and the terms thereof, signed by the vendor or his agent.

WV Legislature

§55-4-12. Payment or performance by mortgagor as defense.

The payment of the whole sum, or the performance of the whole duty, or the accomplishment of the whole purpose, which any mortgage or trust deed may have been made to secure or effect, shall prevent the grantee or his heirs from recovering at law, by virtue of such mortgage or trust deed, property thereby conveyed, whenever the defendant would in equity be entitled to a decree revesting the legal title in him without condition.

WV Legislature

§55-4-13. Notice of equitable defense; resort to equity not barred.

A defendant shall not be allowed to avail himself of either of the two preceding sections, unless notice in writing of such defense shall be filed with his plea. Whether he shall or shall not make or attempt such defense, he shall not be precluded from resorting to equity for any relief to which he would have been entitled, if the said sections had not been enacted.

WV Legislature

§55-4-14. Consent rules not to be used; what plaintiff must prove generally.

The consent rules shall not be used. The plaintiff need not prove an actual entry on or possession of the premises demanded, or receipt of any profits thereof, nor any lease, entry or ouster, except as hereinafter provided. But it shall be sufficient for him to show a right to the possession of the premises at the time of the commencement of the suit.

WV Legislature

§55-4-14a. When proof required of location of reservations or exceptions contained in instruments of title.

In any action, suit or other judicial proceeding involving the title to land embraced in the exterior boundaries of any patent, deed, or other writing, which reserves or accepts one or more parcels of land from the operation of such patent, deed or other writing, if there be no claim made by a party to the proceedings that the land in controversy, or any part thereof, lies within such reservation or exception, such patent, deed, or other writing, shall be construed, and shall have the same effect, as if it contained no such reservation or exception; and if any party to such proceeding claims that the land in controversy, or any part thereof, lies within such reservation or exception, the burden shall be upon him to prove the fact, and all land not shown by a preponderance of the evidence to lie within such reservation or exception shall be deemed to lie without the same.

This section shall apply in cases involving the right to the proceeds of any such land when condemned or sold, as well as in cases where the title to land is directly involved, and shall apply in any case in which the title to any part of the land, or its proceeds, but for this section, would or might be in the state.

WV Legislature

§55-4-15. What plaintiff must prove against cotenant.

If the action be by one or more tenants in common, or joint tenants, or coparceners, against their cotenants, the plaintiff shall be bound to prove actual ouster or some other act amounting to a total denial of the plaintiff's right as cotenant.

WV Legislature

§55-4-16. Extent of possession under patent, deed or other writing.

In a controversy affecting land, when a person claiming under a patent, deed or other writing shall enter upon and take possession of any part of the land in controversy under such patent, deed or other writing, for which some other person has the better title, such adversary possession under such patent, deed or other writing shall be taken and held to extend to the boundaries embraced or included by such patent, deed or other writing, unless the person having the better title shall have actual adverse possession of some part of the land embraced by such patent, deed or other writing.

WV Legislature

§55-4-17. Verdict as to parties.

If the jury be of opinion for the plaintiffs, or any of them, the verdict shall be for the plaintiffs or such of them as appear to have the right to the possession of the premises, or any part thereof, and against such of the defendants as were in possession thereof, or exercised acts of ownership thereon, or claimed title thereto or any interest therein, at the commencement of the action. Where any plaintiff appears to have no such right, the verdict as to such plaintiff shall be for the defendants. If the action be against several defendants, and a joint possession of all be proved, and the plaintiff be entitled to a verdict, it shall be against all, whether they plead separately or jointly.

WV Legislature

§55-4-18. Verdict as to premises.

When the right of the plaintiff is proved to all the premises claimed, the verdict shall be for the premises generally, as specified in the declaration; but if it be proved to only a part or share of the premises, the verdict shall specify such part particularly as the same is proved, and with the same certainty of description as is required in the declaration. If the verdict be for an undivided share or interest in the premises claimed, it shall specify the same; and if for an undivided share or interest of a part of the premises, it shall specify such share or interest, and describe such part as before required. The verdict shall also specify the estate found in the plaintiff, whether it be in fee or for life, stating for whose life, or whether it be a term of years, and specifying the duration of such term.

WV Legislature

§55-4-19. Judgment; assignment of dower.

The judgment for the plaintiff shall be that he recover the possession of the premises, according to the verdict of the jury, if there be a verdict; or if the judgment be by default, or on demurrer, according to the description thereof in the declaration. If the action be brought to recover dower which has not been assigned before the commencement of such action, the court in which the judgment is rendered may have dower assigned by commissioners appointed for that purpose. If the action be against several defendants, and it appear on the trial that any of them occupy distinct parcels, in severalty or jointly, the plaintiff may recover several judgments against them for the parcels so held by one or more of the defendants separately from others. The plaintiff may recover any specific or any undivided part or share of the premises, though it be less than he claimed in the declaration.

WV Legislature

§55-4-20. Change in plaintiff's right pending action; additional party plaintiff.

If the right or title of the plaintiff in ejectment be that of a tenant for life or for a term of years, and such right or title shall expire after the commencement of the action, but before trial, the verdict shall be according to the fact, and judgment shall be entered for his damages sustained by the withholding of the premises by the defendant; and as to the premises claimed, the judgment shall be that the defendant go thereof without day. But the right of the plaintiff to recover in the action shall not be affected or impaired by reason of any conveyance or transfer of the legal title to the premises in controversy, by or from the plaintiff to another, pending the action. And where any such conveyance or transfer is made, the person in whom the legal title to such premises is thereby vested may, at any time before trial, on motion of either party, be made a party plaintiff in the action, either with or without an amendment of the declaration, as the court may deem proper; and in such case, if the plaintiff recover, the verdict and judgment may be for all the plaintiffs, or for such of them as may be entitled to the possession of the premises at the time of the trial.

WV Legislature

§55-4-21. Mesne profits and damages.

If the plaintiff file with his declaration a statement of the profits and other damages which he means to demand, and the jury find in his favor, they shall at the same time, unless the court otherwise order, assess the damages for mesne profits of the land for any period not exceeding five years previous to the commencement of the suit until the verdict, and also the damages for any destruction or waste of the buildings or other property during the same time for which the defendant is chargeable.

WV Legislature

§55-4-22. How damages assessed.

If there be no issue of fact tried in the cause, and judgment is to be rendered for the plaintiff on demurrer, default, or otherwise, such damages shall be assessed by the court, unless either party shall move to have them assessed by a jury, or the court shall think proper to have them so assessed, in which case a jury shall be impaneled to assess them.

WV Legislature

§55-4-23. Claim for improvements.

If the defendant intends to claim allowance for improvements made upon the premises by himself or those under whom he claims, he shall file with his plea, or at a subsequent time before the trial (if for good cause allowed by the court), a statement of his claim therefor, in case judgment be rendered for the plaintiff.

WV Legislature

§55-4-24. Balance as between damages and improvements.

In such case, the damages of the plaintiff and the allowance to the defendant for improvements shall be estimated and the balance ascertained, and judgment therefor rendered, as prescribed in article five of this chapter.

WV Legislature

§55-4-25. Postponing assessment of damages and allowance for improvements.

On motion of either party, the court may order the assessment of such damages and allowance to be postponed until after the verdict on the title is recorded.

WV Legislature

§55-4-26. Effect of judgment.

Any such judgment in an action of ejectment shall be conclusive as to the right of the possession established in such action upon the party against whom it is rendered, and, subject to the provisions of section two, article eleven of this chapter, against all persons claiming from, through, or under such party, by title accruing after the commencement of such action, except as hereinafter mentioned.

WV Legislature

§55-4-27. Effect of judgment as to persons under disability.

If any person against whom such judgment is rendered shall be at the time of the judgment an infant, or insane, the judgment shall be no bar to an action commenced within three years after the removal of such disability.

WV Legislature

§55-4-28. Right to recover mesne profits and damages against person other than defendant.

Nothing in this article shall prevent the plaintiff from recovering mesne profits, or damages done to the premises, from any person other than the defendants, who may be liable to such action.

WV Legislature

§55-4-29. Default or surrender by tenant for life.

If any tenant for life of land make default or surrender, the heirs, or those entitled to the remainder, may, before judgment, be admitted to defend their right, or after judgment may assert their right, without prejudice from such default or surrender.

WV Legislature

§55-4-30. Right of entry not tolled by descent cast.

The right of entry on, or action for, land shall not be tolled or defeated by descent cast.

WV Legislature

§55-4-31. Petition for ascertainment and designation of boundary line or lines of real estate.

Any person having a subsisting interest in real estate and a right to its possession, or to the possession of some share, interest or portion thereof, upon petition filed in the court which would have jurisdiction in an action of ejectment concerning such real estate, shall have the right to have ascertained and designated by the said court, the true boundary line or lines to such real estate, as to one or more of the coterminous landowners. Petitioner in his petition shall state whether his interest is in fee, for life, for a term or otherwise, and shall describe with reasonable certainty said real estate and the boundary line or lines thereof which he seeks to establish. A plat showing such real estate and boundary line or lines, filed with the petition, may serve the purposes of such description.

The petitioner shall make defendants to said petition all persons having a present interest in the boundary line or lines sought to be ascertained and designated, and the case shall be commenced by serving a copy of the petition upon the defendant or defendants. If the petition shall have been served on the defendant or defendants and filed in the clerk's office not less than thirty days preceding the first day of a term of court the case shall be matured for trial at said term. The defendant or defendants may file an answer to said petition which shall state the grounds of defense, if any, and the parties shall be deemed to be at issue, which issue shall be the true boundary line or lines of such real estate. The trial shall be conducted as other trials at law, and the same rules of evidence shall apply and the same defenses may be made as in other actions at law. A trial by jury may be waived by consent of the parties, and the case be tried by the court. Counsel for the petitioner shall have the right to open and conclude the argument. The judgment of the court shall be recorded in the law order book, and in the current deed book in the office of the clerk of the county court, and indexed in the names of the parties.

The judge of the court in term time or vacation may direct such surveys to be made as he may deem necessary. The judgment of the court, unless reversed, shall forever settle, determine, and designate the true boundary line or lines in question, and be binding upon the parties, their heirs, devisees, and assigns. The judgment may be enforced in the same manner as a judgment in an action of ejectment. A writ of error from the Supreme Court of Appeals shall lie to such judgment in like manner as in a common-law action.

In a proceeding under this section, no claim for rents, profits or damages shall be considered.

WV Legislature

§55-4-31a. Resolution of boundary disputes; corrective deeds; petition for ascertainment and designation of boundary line or lines of real estate.

Where a survey has been made to establish the boundary to a parcel of land and there is a dispute between two or more owners of the land so surveyed as to the location of the boundary as located by such surveyor, the surveyor may make or cause to be made a review of the appropriate deeds of the parcels of land involved to determine the correct property description and location of the line.

If there is not sufficient evidence at the site of the parcels involved to ascertain the true location of the boundary line, the parties to the dispute may secure the judgment and knowledge of another licensed land surveyor or surveyors or registered professional engineer or engineers as to the true location. If an agreement is reached between all of the owners of the land involved in the dispute, then a straw deed or deed of correction shall be made, with the signatures of all parties affixed thereto.

If after the intervention of the additional surveyor, surveyors, engineer or engineers, there still exists a dispute as to the location of the boundary line, then any party may bring an action pursuant to section thirty-one of this article in the circuit court of the county where the land is located to ascertain the true location of the boundary line: Provided, That in any such action no party to such action shall be permitted to introduce into evidence any agreement with respect to the boundary dispute between two or more parties to the action if such agreement is not embodied in a corrective or straw deed executed by the parties.

Nothing in this section shall prevent or be deemed a condition precedent to the institution of an action under section thirty-one of this article.

WV Legislature