

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2866**

BY DELEGATES ANDERSON, J. KELLY, HIGGINBOTHAM,

PETHTEL AND PORTERFIELD

[Originating in the Committee on Judiciary,

February 21, 2019.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural  
3 gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within  
4 a specified time and without cost, a recordable release for terminated, expired, or canceled  
5 oil or natural gas leases; providing for a procedure by which a lessor may serve notice to  
6 a lessee, if a lessee fails to timely provide the release; providing requirements for the  
7 content of the notice; requiring a lessee to timely notify the lessor in writing of a dispute  
8 regarding the termination, expiration, or cancellation of the oil and natural gas lease;  
9 providing for an affidavit of termination, expiration, or cancellation with specified contents;  
10 providing that with proper notification by the lessor and in the absence of a dispute by the  
11 lessee, an affidavit of termination, expiration, or cancellation may be recorded with the  
12 county clerk; providing a requirement that county clerks accept and record said affidavit;  
13 and providing that communications between the parties do not effect any claim or defense.

*Be it enacted by the Legislature of West Virginia:*

#### **ARTICLE 4. COVENANTS.**

##### **§36-4-9b Release of terminated, expired or canceled oil or natural gas leases.**

1 (a) Not more than 90 days after the termination, expiration, or cancellation of an oil or  
2 natural gas lease, the lessee(s) shall deliver without cost to the lessor(s) a properly executed and  
3 notarized release of the lease in recordable form. The terms “lessee(s)” and “lessor(s)” as used  
4 in this section mean all of the current owner or owners of an interest in the subject lease or the  
5 minerals burdened by such lease unless otherwise defined or modified.

6 (b) If the lessee fails to provide a timely release as required in §36-4-9b(a) of this code, a  
7 lessor seeking a release may serve notice on the current lessees of record and all other lessees  
8 known to the lessor seeking the release of the lessees’ failure to provide such release. The notice  
9 shall contain the following:

10 (1) A statement that:

11 (A) The lease is believed to be terminated, expired, or canceled according to its terms,  
12 including the date of such termination, expiration, or cancellation and a statement of the basis  
13 therefore: *Provided*, That, no writing made under this subsection shall constitute a modification,  
14 limit, or waiver or otherwise prejudice any claim or defense of the lessor(s) in law or equity;

15 (B) The lessee has a duty to provide a release pursuant to §36-4-9b(a) of this code; and

16 (C) If the release or a written challenge to the termination, expiration, or cancellation, is  
17 not received by the lessor seeking the release from the lessee within 90 days from receipt of this  
18 notice, the lessor seeking the release, has the right to file an affidavit of termination, expiration,  
19 or cancellation under §36-4-9b(e) of this code.

20 (2) The name and address of the lessor seeking the release;

21 (3) A brief description of the land covered by the lease including, but without limitation, the  
22 state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying  
23 information;

24 (4) If there is or has been a well on the land covered by the lease, the name or API number  
25 of the well, if known to the lessor seeking the release; and

26 (5) The recording information for the lease, or a memorandum of lease, in the public  
27 records of the county or counties, along with the execution date of the lease, and the identity of  
28 the original lessor and original lessee under the lease.

29 (c) Service of notice under §36-4-9b(b) of this code shall be made either personally or by  
30 certified mail to all of the current lessees of record and lessees otherwise known to the lessor  
31 seeking the release at their last known business addresses, or, if service cannot be made by  
32 those means, by publication once a week for two consecutive weeks in a newspaper of general  
33 circulation in the county or counties in which the lands covered by the lease are located.

34 (d) If, after receiving a notice of termination, expiration, or cancellation under §36-4-9b(b)  
35 of this code, a lessee disputes that the oil or natural gas lease is terminated, expired, or canceled  
36 as stated in the notice, the lessee must, not more than 90 days after receipt of the notice, deliver

37 a written challenge to the lessor seeking the release, detailing the basis for the dispute: *Provided,*  
38 That no writing made under this subsection shall constitute a modification, limit, or waiver or  
39 otherwise prejudice any claim or defense of the lessee(s) in law or equity;

40 (e) A lessor seeking the release, who has served a notice under §36-4-9b(b) of this code  
41 and fails to receive a timely challenge from the lessee under §36-4-9b(d) of this code, may record  
42 an affidavit of termination, expiration, or cancellation of an oil or natural gas lease in the office of  
43 the county clerk in the county or counties where the lands covered by the lease are situated. The  
44 county clerk of each county shall accept all such affidavits and shall enter and record them in the  
45 official records of that county and shall index each in the indices under the names, as appear in  
46 the affidavit, of the original lessors, the original lessees, the current lessees, and the lessor  
47 seeking the release.

48 (f) An affidavit of termination, expiration, or cancellation of an oil or natural gas lease shall  
49 be in the form of an affidavit and contain the following information:

50 (1) The name and address of the affiant;

51 (2) The names and addresses of the lessors seeking the release and all current lessees  
52 of record or otherwise known to the affiant;

53 (3) A brief description of the land covered by the lease including, but without limitation,  
54 the state, county, tax district, tax map and parcel, watershed, historical farm name, or other  
55 identifying information;

56 (4) If there is or has been a well on the land, the name or API number of the well, if known  
57 to the affiant;

58 (5) The recording information for the lease, or a memorandum of lease, in the public record  
59 of the county or counties, along with the execution date of the lease and the names of the original  
60 lessors and the original lessees.

61 (6) A brief recitation of the facts known to the affiant relating to the termination, expiration,  
62 or cancellation of the lease including relevant dates and evidence of service of notice, if available;

63           (7) A statement that the lessor seeking the release complied with their duty to serve proper  
64 notice to the current lessees of record and all other lessees known to the lessor seeking the  
65 release under §36-4-9b(b) of this code and that the lessees failed to provide a timely challenge  
66 to the notice as provided in §36-4-9b(d) of this code; and

67           (8) The notarized signature of the affiant.

68           (g) The lessor is not required to use the provisions of this section to establish that a lease  
69 is terminated, expired, cancelled or otherwise no longer in effect. A lessor's decision not to use  
70 the provisions of this section is not evidence that a lease is still in effect.