

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4706**

BY DELEGATES ANDERSON, J. KELLY, GRAVES, HANSEN,

PETHTEL, EVANS, MILEY, HIGGINBOTHAM, AZINGER,

PAYNTER AND NELSON

[Introduced February 05, 2020; Referred to the  
Committee on Energy then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §37-4-9; and to amend and reenact §55-12A-7 of said code, all relating to  
 3 providing transparency in government by creating reporting procedures and requirements  
 4 concerning funds being held by fiduciaries, commissioners and receivers which are due  
 5 to missing, unknown or unlocatable real estate interest owners from partition lawsuits and  
 6 lawsuits concerning leasing and conveyancing of mineral interests by missing owners;  
 7 providing reporting requirements to the State Treasurer, Legislature, and the Supreme  
 8 Court of Appeals; defining and specifying contents of the reports; establishing reporting  
 9 dates; providing for rule-making; and making technical changes.

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

**CHAPTER 37. REAL PROPERTY.**

**ARTICLE 4. PARTITION.**

**§37-4-9. Reports concerning funds due to unknown or unlocatable interest owners; rule-making.**

1 (a) Notwithstanding the requirements of §36-8-1 et seq. or any other section of the code,  
 2 all special or general receivers, fiduciaries, commissioners or other persons or entities holding  
 3 funds due under this article to owners of real property interests whose name or location is  
 4 unknown or whose interests are otherwise undeliverable to the appropriate party shall provide an  
 5 annual report concerning said funds to the State Treasurer with additional copies provided to the  
 6 Joint Committee on Government and Finance and the Supreme Court of Appeals of the West  
 7 Virginia. The first report shall be submitted on or before October 1, 2021; and each subsequent  
 8 annual report will be submitted on or before October 1, of each year thereafter. Each annual report  
 9 shall concern all funds held, managed, received or paid out on June 30, of the year the report is  
 10 due and shall cover the prior 12-month time period.

11 (b) The report shall specifically identify each special or general receiver, fiduciary,

12 commissioner or other person or entity responsible for the funds being held and managed; identify  
13 the circuit court granting the authority to hold and manage the funds; identify every case number  
14 under which authority to hold and manage the funds was granted; provide an aggregate total  
15 amount of funds being held and managed; provide an aggregate total amount of funds withdrawn  
16 during the period; provide an aggregate total amount of funds deposited during the period; identify  
17 every financial institution, government agency and business where the funds are being held or  
18 invested; and provide a range, highest and lowest, of percentage interest being paid by financial  
19 institutions, government agencies and businesses where the funds are being held or invested;  
20 and provide any other relevant information as determined by the State Treasurer.

21 (c) The State Treasurer, after consultation with the Supreme Court of Appeals of West  
22 Virginia, may create a standardized process for such reporting and shall propose rules for  
23 legislative approval, including emergency rules, in accordance with §29A-3-1 et seq. of this code  
24 to carry out the provisions of this section.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.**

**§55-12A-7. When special commissioner may convey title in mineral interest to surface  
owner; form of deed; payment to surface owner; final report of special  
commissioner; reports concerning funds due to unknown or unlocatable interest  
owners; rule-making.**

1 (a) (1) If an owner of any mineral interest leased under section six of this article remains  
2 unknown or missing, or does not disavow the abandonment, for a period of seven years from the  
3 date of the special commissioner's lease, the special receiver shall report the same to the court,  
4 whereupon the court shall enter an order naming those who then appear to be surface owners as  
5 additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure,

6 of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a  
 7 finding by the court of the present ownership in fee of the surface estate, the court shall: (i) Order  
 8 the special commissioner to convey to the proven surface owner, subject to the special  
 9 commissioner’s lease, the mineral interest specified in the motion, by a deed substantially in the  
 10 form specified in subsection (b) of this section; and (ii) order the special receiver to pay to the  
 11 surface owner the funds which have accrued to the credit of the mineral interests specified in the  
 12 motion to the date of his or her report after payment of all allowable fees, expenses and court  
 13 costs, including special commissioner’s fees paid or to be paid in amounts determined by the  
 14 court. After the date of the special commissioner’s deed, the surface owner grantee shall be  
 15 entitled to receive all proceeds under the lease attributable to the mineral interests specified in  
 16 the deed.

17 (2) If the boundaries of the mineral tract subject to the special commissioner’s lease  
 18 encompass two or more surface tracts, a separate deed shall be made for the mineral interest  
 19 underlying each surface tract. If a surface tract is ~~owner~~ owned by more than one person, the  
 20 deed respecting that surface tract shall convey the mineral interest according to the surface estate  
 21 and interest of each surface owner.

22 (b) The special commissioner’s deed may be made in the following form, or to the same  
 23 effect:

24 This deed, made the \_\_\_\_day of \_\_\_\_\_, 19\_\_\_\_, between  
 25 \_\_\_\_\_, special commissioner, grantor, and  
 26 \_\_\_\_\_, grantee,

27 Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by  
 28 an order of the circuit court of \_\_\_\_\_ County, West Virginia, entered on the \_\_\_\_day  
 29 of \_\_\_\_\_, 19\_\_\_\_, in civil action no. \_\_\_\_\_ therein pending, to convey the mineral  
 30 interest more particularly described below to the grantee,

31 Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the

32 special commissioner’s lease mentioned below, and further subject to all other liens and  
 33 encumbrances of record, that certain mineral interest in \_\_\_\_\_ County, West Virginia,  
 34 more particularly described in the cited order of the circuit court as follows: (here insert the  
 35 description in the order); and being (here specify “all” or “a portion”) of the mineral interest  
 36 described in that certain special commissioner’s lease dated \_\_\_\_\_, 19\_\_\_\_, of record in  
 37 the office of the clerk of \_\_\_\_\_ County, in \_\_\_\_\_ book\_\_\_\_\_, at page \_\_\_\_\_.

38 Witness the following signature.

39 \_\_\_\_\_

40 Special Commissioner

41 (c) Upon the delivery of the deed or deeds and the payment or payments as directed in  
 42 subsection (a) of this section, the special commissioner shall make a final report to the court; and  
 43 upon approval thereof, the court shall order the discharge of the special commissioner’s bond.

44 (d) Prior to the delivery of the special commissioner’s deed, no deed from a surface owner  
 45 to another shall sever ownership of the surface as such from ownership of any benefits under this  
 46 article. The provisions of any Any deed granting or reserving an interest purporting to create such  
 47 a severance shall be void.

48 (e) (1) Notwithstanding the requirements of this article or any other section of code, all  
 49 special or general receivers, fiduciaries, commissioners or other persons or entities holding funds  
 50 due under this article to owners of real property interests whose name or location is unknown or  
 51 whose interests are otherwise undeliverable to the appropriate party, shall provide an annual  
 52 report concerning said funds as provided in subdivision (2) of this subsection to the State  
 53 Treasurer with additional copies provided to the Joint Committee on Government and Finance  
 54 and the Supreme Court of Appeals of West Virginia. The first report shall be submitted on or  
 55 before October 1, 2021; and each subsequent annual report will be submitted on or before  
 56 October 1 of each year thereafter. Each annual report shall concern all funds held, managed,  
 57 received or paid out on June 30 of the year the report is due and shall cover the prior 12-month

58 time period.

59 (2) The report shall specifically identify each special or general receiver, fiduciary,  
60 commissioner or other person or entity responsible for the funds being held and managed; identify  
61 the circuit court granting the authority to hold and manage the funds; identify every case number  
62 under which authority to hold and manage the funds was granted; provide an aggregate total  
63 amount of funds being held and managed; provide an aggregate total amount of funds withdrawn  
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65 every financial institution, government agency and business where the funds are being held or  
66 invested; and provide a range, highest and lowest, of percentage interest being paid by financial  
67 institutions, government agencies and businesses where the funds are being held or invested;  
68 and provide any other relevant information as determined by the State Treasurer.

69 (3) The State Treasurer, after consultation with the Supreme Court of Appeals of West  
70 Virginia, may create a standardized process for such reporting and shall propose rules for  
71 legislative approval, including emergency rules, in accordance with §29A-3-1 et seq. of this code  
72 to carry out the provisions of this section.

NOTE: The purpose of this bill is to provide transparency in government by creating reporting procedures and requirements concerning funds being held by fiduciaries, commissioners and receivers which are due to missing, unknown or unlocatable real estate interest owners from partition lawsuits and lawsuits concerning leasing and conveyancing of mineral interests by missing owners. The bill provides reporting requirements to the State Treasurer, Legislature and the Supreme Court of Appeals and defines the contents of the reports. The bill establishes reporting dates, provides for rule-making; and makes technical changes.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.