



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Treasurer

RULE TYPE: Legislative

TITLE-SERIES: 112-16

RULE NAME: Reporting and Claiming Unknown and
Unlocatable Interest Owners Reserved
Interests

CITE AUTHORITY: §37B-2-7

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 16
REPORTING AND CLAIMING
UNKNOWN AND UNLOCATABLE INTEREST OWNERS RESERVED INTERESTS

§112-16-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code §37B-2-1, et seq., relating to the Unknown and Unlocatable Interest Owners Act concerning wells developed in accordance with West Virginia Code §37B-1-1 et seq., the Cotenancy Modernization and Majority Protection Act.

1.2. Authority. -- W. Va. Code §37B-2-7.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect five years from the effective date.

§112-16-2. Definitions.

For the purposes of this rule, the definitions and use of terms contained in W. Va. Code §37B-1-1 et seq., §37B-2-1 et seq. and §36-8-1 et seq., have the same use and meaning as prescribed to them by the Code, unless a different meaning is clearly required by the context. Additionally, for purposes of this rule, the following definitions apply:

2.1. "Act" means the Unknown and Unlocatable Interest Owners Act, W. Va. §37B-2-1, et seq.

2.2. "Holder" means a person or entity obligated to hold for the account of, or deliver or pay to, an owner.

2.3. "Negative report" means a report for which there is no property or information required to be reported under the Act.

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2.4. "Owner" means an unknown or unlocatable interest owner as defined in West Virginia Code §37B-1-3.

2.5. "Property" means a reserved interest of an owner reportable under the Act.

2.6. "UUPA" means the Uniform Unclaimed Property Act, W. Va. Code §36-8-1, et seq., and the rules promulgated in accordance with the UUPA.

§112-16-3. Conflict.

The Act and the UUPA are to be read in conjunction with each other and not in conflict. In the event of a conflict, the administrator shall establish the controlling provision.

§112-16-4. Presumption of Abandonment.

Reserved interests are presumed abandoned and reportable under the Act when a holder has not paid the owner and is unable to identify or locate the owner.

§112-16-5. Due Diligence and Reporting.

5.1. Holders shall make reasonable efforts to identify and locate every owner of a reserved interest in the possession of the holder not less than once per calendar year before submitting a report to the administrator. Holders may not charge the expenses of identifying or locating an owner against the amount owed the owner.

5.2. If a holder has been unable to determine the name of an owner, due diligence under this §112-16-5 is not required.

5.3. Holders shall file reports in the form and format established by the administrator.

5.4. Holders of property reportable shall file their initial report within 120 days from the date upon which the property became reportable. The report shall be verified and filed with the administrator containing the following:

(a) any information that identifies the reserved interest, including without limitation, the legal description of the real property interest, name of the county and district in which the mineral property is located, tax map and parcel of the associated surface property at the time of the report, tax map

and parcel of the mineral interests at the time of the report, watershed and stream information, American Petroleum Institute number for the well or wells, and division orders;

(b) a designation of the reserved interest as belonging to an owner and all information known about the owner, including, without limitation, any names, addresses, social security number or taxpayer identification number, date of birth, date of death, driver's license number, telephone numbers and e-mail addresses; and

(c) date or dates which the reserved interest became payable under the Act.

5.5. After the initial report is filed, holders shall file a subsequent report each calendar quarter with the administrator by the first day of the month following that calendar quarter with any additional information that identifies the reserved interest and owner that may be available to the holder.

5.6. Safe Harbor for Reporting - Holders have until the first day of the second month following each calendar quarter to report before penalties and interest are assessable.

5.7. Holders shall remit the amount of any reportable property concurrently with the filing of the associated report.

5.8. A report is not considered an adequate report if the administrator determines the report is incomplete or missing information or the remittance does not match the report. If the administrator determines the report is not adequate, the administrator shall notify the holder and the holder shall file a corrected report or remittance, or the holder shall file an explanation for the absence of information or any inconsistency identified by the administrator, with the administrator within twenty calendar days after the administrator returned the report or remittance to the holder.

5.9. The administrator shall create an account for each owner of property reported after determining the report and remittance appear correct.

5.10. If the administrator is unable to locate an owner within one year of receiving the report, the administrator may contact the holder and obtain any other information from the holder that the holder may have pertaining to the property. The holder shall provide any information requested by the

administrator if known or available to the holder, including, without limitation, any prior payments to the owner, information about the lease under which the reserved interest was created, permits, title opinions, and filings with any governmental entity. In addition, the holder shall provide the names and any other available information for or pertaining to family members, guardians, conservators, joint owners, co-owners, co-tenants, beneficiaries, and surface owners, including, without limitation, any names, addresses, social security number or taxpayer identification number, date of birth, date of death, driver's license number, telephone numbers and e-mail addresses.

5.11. Records relating to the property of a holder failing to submit an adequate report or remittance within the time required by the Act are subject to examination. This includes records of another person or entity with records relating to the property created or held for or on behalf of the holder.

5.12. The administrator may assess interest and penalties in accordance with W. Va. Code §36-8-24 against a holder failing to file a report and remittance on or before the time specified in the Act or as authorized by the administrator.

5.13. A holder discovering unreported property shall file a report immediately upon discovery of the omission. The holder shall identify the property as being reported late and the reason for the omission.

5.14. A holder does not have to file a negative report, but may choose to do so for recordkeeping purposes.

5.15. A holder seeking an extension of time in which to report or remit shall file a request with the administrator for receipt by the administrator a minimum of thirty (30) calendar days prior to the due date using the extension form provided by the administrator.

(a) A request by a holder for an extension of time to report or remit the amount due shall include a reasonable cause for delaying the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required under subsection 5.1. of this rule.

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(b) The administrator shall respond to each request for extension within twenty (20) days after receipt of the request.

(c) Unless otherwise authorized by the administrator, the holder shall submit a payment of 80% of the estimated amount due upon receipt of the extension.

(d) The administrator may grant the holder an extension of not less than thirty (30) days and no more than ninety (90) days from the date the report and/or remittance are due.

§112-16-6. Payment or Delivery.

Holders shall remit the amount of property reportable in the manner determined by the administrator, including, without limitation, by electronic funds transfer.

§112-16-7. Advertising.

In addition to the published notice required in W. Va. Code §36-8-9, the administrator may use other forms of advertising that, in the judgment of the administrator, would be in the best interests of the reported owners of the unclaimed property.

§112-16-8. Crediting interest to owner's account.

The administrator may invest the moneys deposited in an owner's account with the West Virginia Board of Treasury Investments, and then credit any earnings received to the account. Interest shall accrue to an owner's account from the date the funds are invested to the third anniversary of the receipt by the administrator.

§112-16-9. Claims.

9.1. After property has been paid or delivered to the administrator, another state may recover any property subject to W. Va. Code §36-8-14.

9.2. A person, excluding another state, claiming property paid or delivered to the administrator shall file a claim on a form prescribed and provided by the administrator. In addition to the prescribed form, the claimant shall:

(a) provide a photo copy or documentation of his or her driver's license, or other acceptable form of identification approved by the administrator;

(b) complete an affidavit or an electronic verification prescribed by the administrator;

(c) complete a claim form electronically; and

(d) provide any other evidence the administrator may require in order to authorize and pay the claim.

§112-16-10. Holder paying claim.

10.1. In the event a holder pays a claim to an owner for property previously paid to the administrator, the holder may file a request for reimbursement with the administrator. The administrator will verify the payment is for property previously reported and paid. The holder shall provide the documentation requested by the administrator and then the administrator shall reimburse the holder within ninety (90) days of the date the administrator verifies the amount due the holder.

10.2. The administrator shall remit any earnings on the owner's account to the owner paid by the holder.

§112-16-11. Periods of Limitation.

11.1. The administrator shall commence an action against a holder within ten years after the time the property was first reported or specifically placed in issue.

11.2. A holder which conceals property, willfully or otherwise, does not have the protection of the stated limitations period provided in W. Va. Code §36-8-19.

§112-16-12. Requests for Reports and Examination of Records.

12.1. The administrator shall notify the holder in writing ten (10) days prior to an examination of the holder's records, conducted pursuant to §36-8-20 of the UUPA. The administrator may waive the ten-day notice, prior to performing an examination, if the administrator determines that the existence of the records may be in jeopardy by use of the advance notice provision.

12.2. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records or by any other reasonable method of estimation. Any other reasonable

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method of estimation shall not include a determination of ownership interests or prices, unless the holder has made no reports.