



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Treasurer TITLE-SERIES: 112-16  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 112-16 Reporting and Claiming Unknown and Unlocatable Interest Owners Reserved Interests

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: §37B-2-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code Section 37B-2-7 requires agency to propose this rule.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2018

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The following West Virginia State Treasurer's Office proposed Legislative Rule was posted for public comment on the West Virginia Secretary of States Office E-Rules Filing System on June 27, 2018 and advertised in the State Register on June 29, 2018. It was also posted on the West Virginia State Treasurers Office website at <http://www.wvsto.gov/Legislative-Rules>

Notices were sent to the agency heads of the Department of Environmental Protection, and the Public Employees Insurance Agency as well as DEP Oil & Gas Office with a request to forward the notice to other interested parties within their agencies. Additionally, notices were sent to the West Virginia Independent Oil & Gas Association, West Virginia Oil & Natural Gas Association, Cabot Oil & Gas Corporation, EQT Equitable Production Company, Waco Oil Gas Co., Inc. (WV), and Dave McMahan, Attorney at Law (representing the West Virginia Surface Owners Rights Organization) with a request to forward the notice to other interested parties.

Comments were received from the Dave McMahan, representing the West Virginia Surface Owners Rights Organization, and from Mark D. Clark representing the West Virginia Independent Oil & Gas Association and the West Virginia Oil & Natural Gas Association.

#### SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This Rule implements the provisions of W. Va. Code §37B-2-1 et seq., the Unknown Unlocatable Interest Owners Act, by establishing the processes and requirements for reporting and claiming property under the Act.

#### STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This is a new rule that W.Va. Code Section 37B-2-7 requires the Treasurer, as Unclaimed Property Administrator, to proposed to effectuate the purposes of the Act.

#### SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

##### A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Engrossed Committee Substitute for House Bill 4268 (2018), which encompasses various Code changes and adds two new acts, the Cotenancy Modernization and Majority Protection Act and the Unknown and Unlocatable Interest Owners Act, is expected to encourage oil and gas development in West Virginia. The Unknown and Unlocatable Interest Owners Act is an integral part of that encouragement by enabling developers to deal with problems they have had for over 100 years in attempting to ensure payment is received by owners. Both Acts are expected to generate additional funds for the state (general revenue by tax collections and moneys for the Oil and Gas Reclamation Fund and PEIA Stability Fund), but there is no way of anticipating the actual dollar impact at this time.

##### B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

See Economic Impact on Revenues of State Government. In addition, if there is more oil and gas development, employment will increase in the industry. With the increased employment will come increased revenues for businesses throughout the state that will provide goods and services to developers and their employees.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	65000	50000
<b>Personal Services</b>	0	30000	45000
<b>Current Expenses</b>	0	5000	5000
<b>Repairs and Alterations</b>	0	5000	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	30000	0
<b>2. Estimated Total Revenues</b>	0	65000	50000

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The Act creates the Unknown and Unlocatable Interest Fund and authorizes the Administrator to deduct expenses from the Fund. After paying claims and deducting expenses, beginning July 1, 2023, the Administrator is to transfer moneys to the Oil and Gas Reclamation Fund and the PEIA Stability

Fund, each of which to receive 50% of the moneys transferred.

In 2019, we anticipate that time of two to three employees will be required to process holder reports and pay claims (segregation of duties) at a cost of \$30,000; current expenses for \$5,000 to cover overhead, advertising and other costs of maintaining the reports and data; and other costs of \$30,000 to have our software enhanced to provide for the holder reports, property received and claims. In subsequent years, there will be only minimal software development required, but we anticipate additional time of employees will be required as more entities report more property, generating more claims.

**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.

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.

2.4. "Owner" means an unknown or unlocatable interest owner.

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 sixty days 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 each calendar quarter shall file a verified report with the administrator by the first day of the month following that calendar quarter and 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, and division orders;

112CSR16

(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. 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.

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

5.7. 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 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.

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

5.9. 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.

5.10. 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.

5.10. 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.

5.11. 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.

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

5.13. 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.

(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 §36-8-4.

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.

**§112-5-11. 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.

**§112-5-12. 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.