WEST VIRGINIA CODE CHAPTER 39 ARTICLE 3

WV Legislature

§39-3-1. Admission to record of certified copy when original writing lost, mislaid or destroyed.

If any writing be admitted to record in any county of this state or of any other state, and it be proper for such writing to be admitted to record in a county of this state, and the same before having been admitted to record in such county be lost, mislaid or destroyed, on affidavit of such fact, the clerk of the county court of such county wherein such writing is to be recorded may admit to record a copy of such writing from the records of any county of any state wherein it is recorded properly certified by the clerk of such county court or other officer corresponding thereto; and the record of the copy so admitted shall have the same effect as if the original had been admitted to record at the time when the copy was admitted. The clerk of the county court of any county shall also admit to record such copy of a record or paper as is mentioned in section nine, article one of chapter fifty-seven of this code.

WV Legislature

§39-3-2. Lost records or papers recorded or filed anew.

Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, or any book containing the record of wills, deeds or other papers, or where any paper filed in a clerk's office, is lost, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in such book, or any attested copy of the record thereof, or of an attested copy of anything else in such book, or of any paper so filed, shall, on application, record or file the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it is made was authenticated or attested. Such record shall have the same effect that the record or paper for which it is substituted would have had.

WV Legislature

§39-3-3. Recordation of certified copies at instance of county court when record lost or destroyed.

Where any records have been or shall be lost or destroyed, by fire or otherwise, and the contents thereof shall have been recorded in the clerk's office of any court of any county in this state, or in the Auditor's office, or in any other proper office in this state, the county court of the county wherein such records are so lost or destroyed may cause duly certified copies of the same to be procured from the Auditor's office, such clerk's office or other proper office of any county; and it shall be the duty of the Auditor or the clerk of any court of this state, or other custodian of records, to permit such copies to be made, and, when correctly copied and certified to be true copies of such record, the same shall be recorded in the proper clerk's office of the county wherein such records are lost or destroyed, in well-bound books provided for that purpose, whereupon the record thereof shall have the same force and effect as evidence for all purposes as the original records have, or would have had, and copies may be taken and certified by the clerk in whose office such copied records may be, which copies, when so made and certified by such clerk, shall be received as prima facie evidence for all purposes, and with like effect as copies from original records. And the county court of any county desiring to procure copies of any such records in other counties or offices shall make provision for the payment of such fees therefor as may be allowed by law or agreed upon.

WV Legislature

§39-3-4. Loss of court records; reentries.

Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, is lost, and there can be again entered correctly, by means of any writing, any matters which were in such book, the court may cause its clerk to have such matters reentered, and such entries shall have the same effect as the original entries.

WV Legislature

§39-3-5. Loss of original papers in any cause or appellate court record; effect of papers supplied.

If, in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the case is, or in which, but for such loss, it would or ought to be, may docket the same, and, on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof; or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer; or, in case the record and papers, or any part thereof, be lost or destroyed, the court below may, upon application of either party, upon reasonable notice to the opposite party, supply such record or part thereof, from the best evidence before it, either documentary or parol, which may be used in the court of appeals for the same purposes that the original might be. The court may, however, at the instance of either party, or in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff, instead of proceeding as hereinbefore provided for, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss, notwithstanding the expiration of the time within which suit must otherwise have been brought. If a cause has been decided and the original papers therein have been lost, the court by which the cause was decided, on affidavit of such loss, by some person interested therein and who was a party in such suit, may redocket such cause, and upon motion of such affiant, and after reasonable notice to all parties interested in such cause, shall supply such lost papers or parts thereof by authenticated copies of the same or proof of the contents thereof, and the papers thus supplied shall have the same effect as the papers for which they are substituted would have had.

WV Legislature

§39-3-6. When books or papers deemed lost.

Where any book or paper is obliterated, defaced or injured so as to be in whole or in part illegible, or is destroyed, or carried away and concealed, or is in the possession or control of armed rebels or a public enemy, it shall be deemed lost for the purposes of this article.

WV Legislature

§39-3-7. Procedure to prove contents of lost papers or records -- Generally.

Any person desirous of proving the contents of any paper filed in a clerk's office or anything which was of record in any book therein may, if such paper or book be lost within the meaning of this article, present to the circuit court of the county wherein such paper or book was filed or kept, a petition specifying with reasonable certainty the nature of the paper or record, the contents of which he desires to prove, and what persons may be affected by such proof. Reasonable notice of the time and place of proceeding on such petition shall be given to the parties interested. Such notice may be served as prescribed in sections one and two, article two, chapter fifty-six of this code. If any person who may be affected by the proof be an infant or insane person, a guardian ad litem shall be appointed to attend to the case on his or her behalf. Whereupon such court shall make an order referring such petition to one of the commissioners of the court, who shall take proof of the contents of such record or paper, and make report of same, with the evidence taken by him to the court. Such report shall be filed in the office of the clerk of such court at least ten days before it shall be acted upon by the court, when the court may confirm or recommit the same or make any order in relation thereto which may be necessary and proper. If such report be confirmed by the court, it shall be recorded in the book where the original paper was or should have been recorded; or if it was a paper on file in the office, shall be filed away where such paper was or should have been filed; and such report, when finally confirmed and recorded or filed, shall in all cases be prima facie evidence of what is stated therein, and, after ten years from the confirmation of such report, shall be conclusive evidence of what is stated therein.

WV Legislature

§39-3-8. Procedure to prove contents of lost papers or records -- Right to rehearing.

Such court may, however, without notice or the appointment of a guardian ad litem, proceed on such petition in accordance with the preceding section and with like effect: Provided, That any person whose interest may be affected by the proceedings under this section, or who in any case shall have been proceeded against by publication, or the personal representative of any such, shall have the same rights, as to a rehearing, that may be allowed by law to nonresident defendants in actions at law or suits in equity.

WV Legislature

§39-3-9. Taking testimony as to lost records -- Action by county clerk.

Whenever the book or books in which are required to be recorded deeds, wills or other papers relating to the title or boundaries of lands, have been, or may hereafter be, burned, lost or destroyed, it shall be lawful for the clerk of the county court of the county in which such burning, loss or other destruction took place to take such testimony in relation to such title papers as is hereinafter provided.

WV Legislature

§39-3-10. Taking testimony as to lost records -- Record.

He shall provide a well-bound book at the expense of the county in which to record such testimony as he may take for the purpose aforesaid. Such testimony shall be taken at his office, between the hours of nine o'clock a.m., and five o'clock p.m., and the taking thereof shall be commenced not later than one year and concluded not later than five years after such burning, loss or destruction.

WV Legislature

§39-3-11. Taking testimony as to lost records -- Publication of notice.

Such clerk shall give notice, as hereinafter provided, of the time and place of the commencement of taking such testimony. A copy of which notice, together with the affidavit of publication, shall be recorded in the book aforesaid. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The costs of publishing such notice shall be paid by the county.

WV Legislature

§39-3-12. Taking testimony as to lost records -- Subjects of inquiry.

On the day fixed by such notice, such clerk shall take and record in such book the testimony of any credible person, who may appear before him touching the existence or execution of any deed, will, or other title paper which was recorded in any book burned, lost or destroyed, as aforesaid. The witness shall describe the paper as nearly as may be; and if a deed be the subject of inquiry, the names of the grantor and grantee, the date thereof, and the number of acres called for shall be stated as nearly as the witness can recollect. The witness shall further state as accurately as he is able the locality of the land conveyed; the name of the tract, if it had any; whether it is improved or unimproved, and if improved, who made the improvements; who lived upon the same, and how long; what the calls were with regard to corners, boundaries, or adjacent lands; and anything else which the clerk may deem material to describe the title to the land, or to locate the same. If a will or other title paper than a deed be the subject of inquiry, the witness shall describe the same with the same particularity as in the case of a deed.

WV Legislature

§39-3-13. Taking testimony as to lost records -- Powers of clerk; death, etc., of clerk.

For the purpose of taking such testimony, such clerk shall have authority to summon witnesses and enforce their attendance when desired by any person interested, in like manner as witnesses are compelled to appear before commissioners in chancery; to compel the production before him of any document, paper or book that he may deem pertinent for the purpose of any particular inquiry; and to administer oaths to such witnesses as may be brought before him Any person who shall wilfully swear falsely before such clerk to any material fact shall be guilty of perjury, and, upon conviction thereof, shall be punished as in other cases of perjury. When the testimony in any case shall have been partly taken by a clerk, and he shall die or his place be otherwise vacated before such testimony is completed, the successor of such clerk may complete the taking of the same with like effect as if it had been completed by the clerk who began to take the same.

WV Legislature

§39-3-14. Taking testimony as to lost records -- Fees payable to clerk and witnesses.

The person at whose instance such testimony is taken shall pay to such clerk for his services in such behalf the same fees as are allowed to commissioners in chancery, and to witnesses the same compensation as is allowed to witnesses in other cases. All such fees due the clerk shall be collected by him and paid into the county treasury, and may be collected in the same manner and by the same remedies as costs in a common-law action.

WV Legislature

§39-3-15. Taking testimony as to lost records -- Adjournments; completion and preservation of testimony.

Such clerk may adjourn the taking of such testimony from day to day or from time to time, not exceeding thirty days at any one adjournment, until he shall have completed and closed his duties under the provisions of this article, but not continuing the taking thereof beyond the period prescribed in section ten of this article; after which he shall preserve the book or books containing his proceedings among the records of his office. Such clerk shall give certified copies of such depositions, whenever requested by any person to do so, and he shall receive the same compensation therefor as for other certified copies.

WV Legislature

§39-3-16. Taking testimony as to lost records -- Admissibility of depositions or copies.

The depositions taken as aforesaid shall be admissible in all suits or controversies in relation to the title or boundaries of lands in such county, whenever such depositions are relevant and no higher or better evidence can be had; and copies of such depositions, when duly certified by the clerk of the county court of such county, shall be admissible in any court the same as the original.

WV Legislature