WEST VIRGINIA CODE: §55-12A-5

§55-12A-5. Persons to be joined as defendants; contents of verified petition; notice; guardian ad litem.

(a) The person filing a petition under this article shall join as defendants to the action all unknown or missing owners or abandoning owners having record title to the particular minerals sought to be developed, and the unknown heirs, successors and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.

(b) The petition shall be verified. It shall contain allegations of the facts showing (1) the entitlement of the petitioner to file the petition, (2) an identification of the defendants and the mineral interest of each as far as practical under the circumstances, (3) a description of the tract of land which is the subject of the petition, (4) the interest in the particular minerals sought to be developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any right to possess or enjoy their interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person, (8) such other information known to the petitioner which might be helpful in identifying or locating the present owners thereof, and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument embracing the interest to be leased, (10) such additional instruments as are necessary to show the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or easement of record, that is to say, a lease or easement from landowners who are not defendants, embracing all or part of the tract of land which is the subject of the petition, for any mineral development by the lessee or easement owner of record of the minerals sought by the petition; and the petition may contain allegations of the facts showing that (12) mineral development would be advantageous to the defendants and would further the public policy stated in section one of this article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral interest under section six of this article, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest.

(c) If personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and (2) no later than the first day of

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publication, file a lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses, (2) the date and record data of the instrument or other conveyance which immediately created the mineral interest, (3) an adequate description of the land as contained therein, (4) the source of title of the last known owners of the mineral interests, and (5) a statement that the action is brought for the purpose of authorizing the execution and delivery of a valid and present mineral lease for development of the particular minerals described in the petition, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there be such, of all named defendants. In addition, the court may in its discretion order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown or missing owners.

(d) The circuit court shall appoint a guardian ad litem for any unknown or missing owner or abandoning owner and their unknown heirs, successors and assigns not known to be alive. The compensation and expenses of the guardian ad litem shall be fixed by the court and paid by the petitioner under terms ordered by the court.

WV Legislature