

# WEST VIRGINIA CODE: §56-7-6

## **§56-7-6. Proof of debt before commissioner by affidavit; counter affidavit.**

Every creditor in any chancery cause pending in any court before a commissioner in chancery under a decree of reference in such cause may establish his debt or demand against the debtor, if it be for the recovery of money due on contract, by filing before the commissioner with such debt or demand, completely itemized where it is upon an account, the affidavit or affidavits of any person or persons competent and not disqualified by law (which competency the affidavit or affidavits shall affirmatively show in every case where the creditor is seeking to prove a debt or demand against a deceased debtor or his estate) to testify as a witness or as witnesses before the commissioner about or concerning the debt or demand in question, such affidavit or affidavits stating every essential element necessary to constitute proof of such debt or demand, the same as though affiant or affiants had testified before the commissioner as a witness or as witnesses in person, unless the debtor, his personal representative, or any party, or creditor, or other person interested shall file before the commissioner a counter affidavit denying the correctness of the debt or demand, as a whole or in part, or the validity of any lien by which it is secured, in which case the creditor presenting such debt or demand shall be required to produce his witness or witnesses before the commissioner, reasonable notice of which shall be given in writing to the creditor or his attorney, and the taking of the testimony relative to such debt or demand, or the validity of such lien, as the case may be, shall be proceeded with before the commissioner in like manner as if no affidavit or affidavits had been filed. In every case, however, where such debt or demand is evidenced by a contract in writing, or by a judgment or decree, or is secured by a lien, such affidavit or affidavits alone shall not be sufficient to establish such debt or demand; but such creditor shall also produce before such commissioner as additional proof the written evidence of such debt and shall file the same or a copy thereof certified by the commissioner, or a certified copy of such judgment or decree, and, if such judgment or decree be recorded in the judgment lien docket, a certified transcript of such recordation; and, if the debt or demand be secured by any other lien than that of a judgment or decree, he shall file the original or a certified copy of the writing by which such lien is evidenced.

Any transcript of a judgment or decree of a court or justice of this state, introduced in evidence in any court or before such commissioner, shall *prima facie* be presumed unpaid unless such judgment or decree appear to have been rendered more than ten years prior to the time of such proof.