

III. BOND REQUIREMENT INFORMATION

1. A litigation financier must be in compliance with the bond requirements of §46A-6N-2(b) of the West Virginia Code.

Check Box indicating the required **surety bond (Form LF-SB1)** or **irrevocable letter of credit** is attached to this application.

§46A-6N-2(b)(1) - Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a **surety bond or irrevocable letter of credit** issued and confirmed by a financial institution authorized by law to transact business in the state of West Virginia in **an amount not less than \$50,000**.

§46A-6N-2(b)(2) - Such bond shall be payable to this state for the use of the Attorney General and any person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.

IV. APPLICANT STATEMENT AND SIGNATURE

By signing below, the applicant affirms that the answers to all questions in this application are true, complete, and correct, and that the applicant shall be designated as a litigation financier pursuant to §46A-6N of the West Virginia Code.

Applicant Signature: _____ **Date:** _____

***Important Legal Notice Regarding Signature:** Per West Virginia Code §31D-1-129. **Penalty for signing false document.** Any person who signs a document he or she knows is false in any material respect and knows that the document is to be delivered to the secretary of state for filing is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail not more than one year, or both.

Important Note: This form is a public document. Please **do NOT** provide any personal identifiable information on this form such as social security number, bank account numbers, credit card numbers, tax identification or driver's license numbers.

IMPORTANT - BEFORE YOU SEND THIS APPLICATION, CHECK THE BOXES BELOW INDICATING YOU HAVE INCLUDED THE FOLLOWING ITEMS:

1. The completed, original **West Virginia Application for Registration as a Litigation Financier (Form LF-1)**, *this application*.
 2. **The surety bond (Form LF-SB1) or irrevocable letter of credit** issued and confirmed by a financial institution authorized by law to transact business in the state of West Virginia in **an amount not less than \$50,000**.
 3. **\$50 Filing Fee**.
- ⇒ **Expedite Service** - Additional fee applies if requesting expedite service. Refer to the attached **Customer Order Request** form for additional fee.

Payment Options -

- **Check or Money Order:** *Make payable to West Virginia Secretary of State.*
- **Credit Card:** You must complete and include the attached **e-Payment Authorization** form.

⇒ **An application missing any part of the above listed items cannot be accepted and will be immediately returned for corrections.**

4. Deliver all the above to one of the processing centers listed in the attached **Filing Submission Instructions**.

Important West Virginia Code Information relating to Litigation Financiers (Senate Bill 360)
The complete code information is found in §46A-6N of the WV Code.

CHAPTER 46A, ARTICLE 6N. CONSUMER LITIGATION FINANCING.

§46A-6N-1. Definitions.

For purposes of this article:

- (1) "Consumer" means any natural person who resides, is present, or is domiciled in this state;
- (2) "Litigation financier" means a person, entity, or partnership engaged in the business of litigation financing; and
- (3) "Litigation financing" or "litigation financing transaction":
 - (A) Means a nonrecourse transaction in which financing is provided to a consumer in return for a consumer's assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal claim; and
 - (B) Does not include:
 - (i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;
 - (ii) A consumer loan, as defined by §46A-1-102 of this code;
 - (iii) A commercial tort claim, as defined by §46-9-102 of this code;
 - (iv) A claim under the Workers' Compensation Law, compiled in chapter 23 of this code; or
 - (v) Normal or course of business lending or financing arrangements between an attorney or law firm and a lending institution.

§46A-6N-2. Litigation financier; registration; bond; public record; rules.

- (a)(1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.
- (2) A litigation financier that is a business entity or partnership is registered in this state if:
 - (A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code;
 - (B) It has a status of active and is in good standing as reflected in the records of the Secretary of State; and
 - (C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its West Virginia application for a certificate of authority, contains a statement that it shall be designated as a litigation financier pursuant to this article.
- (3) A litigation financier that is not a business entity or partnership is registered in this state if:
 - (A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code; and
 - (B) It files an application for registration as a litigation financier on a form prescribed by the Secretary of State that contains the following:
 - (i) Applicant's full legal name;
 - (ii) Business name of applicant, if any;
 - (iii) Physical street address and mailing address of the applicant;
 - (iv) A telephone number through which the applicant can be reached;
 - (v) The name, physical street address, mailing address, and telephone number for a West Virginia registered agent appointed to accept service of process on behalf of the applicant;
 - (vi) A statement that the applicant shall be designated as a litigation financier pursuant to this article; and
 - (vii) Any other information the Secretary of State deems necessary.
 - (b)(1) Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the state of West Virginia in an amount not less than \$50,000.
 - (2) Such bond shall be payable to this state for the use of the Attorney General and any person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.
 - (c) A litigation financier shall amend its registration with the Secretary of State within 30 days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect.
 - (d) The Secretary of State, as appropriate, may promulgate rules in implementing this article, including, but not limited to, the adoption of fees to cover any administrative costs relating to administering this article.

§46A-6N-3. Litigation financier requirements.

A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

- (1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer;
- (2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer's receipt of the funds, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money already provided to the consumer by the litigation financier;
- (3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;
- (4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following:

Continued on next page.

§46A-6N-3. Litigation financier requirements. (Continued)

- (A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;
- (B) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract;
- (C) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney receive or pay such a fee in the future; and
- (D) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract.

§46A-6N-4. Litigation financier prohibitions.

- (a) A litigation financier shall not:
 - (1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to a litigation financier;
 - (2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees;
 - (3) Advertise false or misleading information regarding its products or services;
 - (4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees: Provided, That if a consumer does not have legal representation, the provider may refer the consumer to a local or state ar referral service operated by a bar association;
 - (5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;
 - (6) Attempt to obtain in the litigation for which the litigation financing transaction exists a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, to which the consumer might otherwise be entitled;
 - (7) Attempt to effect in the litigation for which the litigation financing transaction exists mandatory arbitration or otherwise effect waiver of a consumer's right to a trial by jury;
 - (8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;
 - (9) Assign, which includes securitizing, a litigation financing contract, in whole or in part, to a third party, however:
 - (A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains responsibility for collecting payment, administering, or otherwise enforcing the litigation financing contract from making an assignment that is:
 - (i) To a wholly owned subsidiary of the litigation financier;
 - (ii) To an affiliate of the litigation financier that is under common control with the litigation financier; or
 - (iii) A grant of a security interest that is made pursuant to §46-9-101 et seq. of this code or is otherwise permitted by law; and
 - (B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for purposes of this section, "litigation financier" includes a successor-in-interest to a litigation financing contract;
 - (10) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the litigation financier; or
 - (11) Receive any right to direct, nor make any decisions with respect to, the conduct of the consumer's legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.
- (b) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.
- (c) A personal injury attorney or law firm, practicing in the state of West Virginia, retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

§46A-6N-5. Litigation financing contracts; disclosures.

- (a) A litigation financing contract shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.
- (b) Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:
 - (1) Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include:
 - (A) Notification that some or all of the funded amount may be taxable;
 - (B) A description of the consumer's right of rescission;
 - (C) The total funded amount provided to the consumer under the contract;
 - (D) An itemization of charges;
 - (E) The total amount due from the consumer, in six-month intervals for 42 months, including all charges and fees;
 - (F) A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form;
 - (G) In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;
 - (H) A statement that if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the litigation financier;
 - (I) A statement that if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the litigation financier, the litigation financier shall accept a reduced sum as full payment of its funded amount and charges; and
 - (J) The following:

Continued on next page.

§46A-6N-5. Litigation financing contracts; disclosures. (Continued)

Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.

(2) Within the body of the litigation financing contract, the following:

The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;

(3) Within the body of the litigation financing contract, in all capital letters contained within a box, the following:

THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCIER;

(4) Located immediately above the place on the litigation financing contract where the consumer's signature is required, the following:

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

Note: WV Code updated with legislation passed through the 2019 Regular Session.

Filing Submission Instructions - Business Division

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING FORMS.

Please follow the instructions included with the application. Failure to include any of the required information on the form may cause the filing to be rejected.

All forms may be downloaded from our web site www.wvsos.gov.

SUBMIT THE COMPLETED APPLICATION WITH THE [CUSTOMER ORDER REQUEST](#) FORM TO ONE OF THE OFFICES BELOW. CHOOSE EXPEDITED OR STANDARD PROCESSING SERVICE. IF NOT USING THE CUSTOMER ORDER REQUEST FORM AND YOU ARE REQUESTING EXPEDITED SERVICE, YOU MUST INCLUDE THE WORD "EXPEDITE" AND THE LEVEL OF EXPEDITED SERVICE BEING REQUESTED (24-HOUR, 2-HOUR OR 1-HOUR) IN YOUR CORRESPONDENCE. BE SURE TO INCLUDE THE CORRECT ADDITIONAL EXPEDITED FEE. THIS FEE IS IN ADDITION TO THE REGULAR FILING FEE (*SEE FEES BELOW*).

CHOOSE ONE OF THE FOLLOWING PROCESSING SERVICES:

1 EXPEDITED SERVICE (24-hour, 2-hour and 1-hour; *Requires standard filing fee plus additional expedite fee, *see below*)

<u>Expedite Service</u>	<u>*Fee</u>	EXPEDITED SERVICE requests may be submitted by:
24-Hour	\$ 25.00	- E-mail to efilings@wvsos.com
2-Hour	\$250.00	- Fax
1-Hour	\$500.00	- Walk in delivery

2 STANDARD PROCESSING (5-10 business days)

Standard filing fees apply. STANDARD PROCESSING requests may be submitted by:
- E-mail to CorpFilings@wvsos.com
- Fax
- Walk in delivery (drop off service only filed within 5-10 business days)

INCLUDE PAYMENT:

Be sure to enclose the correct filing fee with your filing. If paying by credit card, be sure to include the [e-Payment Authorization](#) form with your filing. **Your filing will be rejected if the payment is not included or if the e-Payment Authorization form is not included if paying by credit card.**

SUBMIT COMPLETED FILING TO ONE OF THE BUSINESS CENTERS BELOW:

BUSINESS SERVICE CENTERS
Standard and Expedited Filings

Charleston Office

One-Stop Business Center

13 Kanawha Blvd. West
Suite 201
Charleston, WV 25302
Phone: (304) 558-8000
Fax: (304) 558-8381
Hours: Mon. - Fri. 8:30a - 5:00p EST

Clarksburg Office

North Central WV Business Center

153 West Main Street
Suite G- Third Floor
Clarksburg, WV 26301
Phone: (304) 367-2775
Fax: (304) 627-2243
Hours: Mon. -Fri. 9:00a - 5:00p EST

Martinsburg Office

Eastern Panhandle Business Center

229 E. Martin Street
Martinsburg, WV 25401
Phone: (304) 356-2654
Fax: (304) 260-4360
Hours: Mon. - Fri. 9:00a - 5:00p EST

Rev. 9/2018

Customer Order Request

SUBMIT THIS COMPLETED FORM WITH YOUR FILING.

READ CAREFULLY BEFORE SUBMITTING - Expedite service is NOT AVAILABLE for the following filings:

- >> Tax Department filings including Sole Proprietorships, General Partnerships, and Associations
- >> Dissolution or Withdrawal of Corporation, Voluntary Association or Business Trust

Order Processing Requested*:

*** Expedite Processing Requires Additional Fees ***

Standard Processing**
(Avg. processing turnaround
5-10 business days)

24-HOUR Expedite***
(additional \$25.00 fee included)

2-HOUR Expedite
(additional \$250.00 fee included)

1-HOUR Expedite
(additional \$500.00 fee included)

Email to: CorpFilings@wvsos.com

Email to: eFilings@wvsos.com

ALL Requests for Copies of documents email to: Copies@wvsos.gov

*"Processing" indicates the filing will be completed and registered in the Secretary of State registration database.

**Standard Processing applications received by E-MAIL or FAX must include the e-Payment Authorization form with credit card information.

***NOTE: Orders filed in person through any Secretary of State office location requesting the filing be processed will be assessed a 24-HOUR Expedite fee of \$25.00 per order.

Name of Entity: _____

Return filing to:
(Return Address) _____

Contact Name: _____

Phone: _____

Return Delivery Options: Email or Fax options do not receive a copy via mail; must be ordered separately.

Email to: _____

Fax to: _____

Hold for Pick Up

Mail to Return Address above

FedEx: Acct # _____

Other (explain below):

UPS: Acct # _____

Order Description (include items being ordered and fee breakdown):

* PLEASE NOTE: Original paperwork is kept by this office. Include a copy of the original filing if you want a file stamped copy returned to you at no extra charge. **Certified copy requests are an additional \$15 per certified copy being requested.**

Total Amount:

Payment Method:

Check/Money Order

Credit Card

(Must attach [e-Payment Authorization](#) request form including payment information.)

Cash (*Do Not mail cash*)

Pre-paid Acct #: _____

Attach signed pre-paid slip.

24-hour, 2-hour and 1-hour Expedite Service Guidelines

IMPORTANT: To ensure expedited service, please mark “EXPEDITE” in a conspicuous place at the top of the service request. Please indicate method of delivery.

24-HOUR EXPEDITE SERVICE

The Secretary of State offers a 24-hour expedite service on most business organization filings processed by this office. If you choose to utilize this service, please enclose with your filing the additional expedite fee. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. You must mark the document with your “**24-HOUR EXPEDITE**” request. If using a cover letter, note that you are requesting 24-hour expedited service, and include your telephone number and return information. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made. This office *does not* fax confirmation of a 24-hour expedite.

The fee for 24-hour handling is \$25.00 in addition to the usual fee for service. Please consult our fee schedules for the appropriate fee. If you require assistance, please contact this office.

Time Constraints: Under most circumstances, each filing submitted receives same day filing date and may be picked up in the office by the end of the same business day. Filings to be mailed the next business day if received by 2:00 pm of receipt date and no later than the 2nd business day if received after 2:00 pm. Expedite period begins when filing or service request is received in this office in acceptable fileable form.

2-HOUR EXPEDITE SERVICE

The Secretary of State offers a 2-hour expedite service on most filings processed by this office. If you choose to utilize the 2-hour expedite service, please enclose with your filing an additional \$250.00 per filing and/or order. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. Complete and submit the 2-hour customer order instruction form. If not using our order form, state clearly in your cover letter that you are requesting 2-hour expedited service and include your telephone number and return information. Attach the order form or cover sheet to the *top* of your filing and submit to this office. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made.

1-HOUR EXPEDITE SERVICE

The Secretary of State offers a 1-hour expedite service on most filings processed by this office. If you choose to utilize the 1-hour expedite service, please enclose with your filing an additional \$500.00 per filing and/or order. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. Complete and submit the 1-hour customer order instruction form. If not using our order form, state clearly in your cover letter that you are requesting 1-hour expedited service and include your telephone number and return information. Attach the order form or cover sheet to the *top* of your filing and submit to this office. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made.

1-Hour and 2-Hour Time Constraints: Each filing submitted for either 1-hour or 2-hour expedite receives same day filing date and will be acknowledged by fax or e-mail within expedite service time. Failure to indicate method of acknowledgement (fax or e-mail) or to provide a correct fax number or e-mail address may prevent the Secretary of State from acknowledging the filing of such documents. Filings may be picked up within the expedite service period. Filings to be mailed will be mailed out no later than the next business day following receipt. Expedite period begins when filing or service request is received in this office in fileable form.

The Secretary of State reserves the right to extend the expedite period in times of extreme volume, staff shortages or equipment malfunction. These extensions are few and will rarely extend more than a few hours.

