



**INTESTATE INDEMNITY AND ESCROW AGREEMENT - SECURED**

**CASE / FILE NUMBER:** \_\_\_\_\_

**Property Address:** \_\_\_\_\_

**THIS INDEMNITY BOND**, given by \_\_\_\_\_  
("Indemnitor") to WFG National Title Insurance Company ("Company") on \_\_\_\_\_, 201\_\_\_\_\_.

Indemnitor is firmly bound to Company in the sum of \$\_\_\_\_\_.

**WHEREAS**, Indemnitor has requested Company to issue one or more title insurance policies insuring an interest in or title to certain real estate in \_\_\_\_\_ (County/City) Virginia, described in Policy/Commitment No. \_\_\_\_\_ (the "Policy") issued by Company and/or described in the Exhibit attached hereto and made a part hereof without exception to, or providing certain affirmative insurance against, the following matters (the "Exception"):

Any loss as a result of the death of \_\_\_\_\_, (the "Decedent"), who died on \_\_\_\_\_, including, without limitation, claims against the estate ("Estate") of the Decedent for the payment of debts, discovery of a will [ HEIRS], estate taxes owed in connection with the Estate, or any other matter arising from the administration of the Estate (all collectively referred to as the "Exception").

**AND WHEREAS**, Company is unwilling to issue a title insurance policy unless indemnified by Indemnitor as hereinafter provided;

**AND WHEREAS**, to induce Company, Indemnitor has offered to indemnify Company against loss, damage, cost or expense which Company may become liable for by reason of the omission or deletion of the Exception or for providing the affirmative insurance set forth in the Policy against loss, damage, cost or expense which may result from the matters referred to in the Exception;

**AND WHEREAS**, Indemnitor recognizes that Company, in the normal course of its business, may be called upon to issue additional title insurance policies on all or part of said real estate in the future which will afford the same or similar protection;

**NOW, THEREFORE**, Indemnitor, its heirs, administrators, executors, successors, and assigns, or any of them, shall and do at all times save, defend, keep harmless, and indemnify Company, its successors and assigns from all loss, damage, cost, charge, liability or expense, including court costs and attorneys' fees, which Company may sustain, suffer or be put to under its policy or policies of title insurance or otherwise on account of the omission or deletion of the Exception, or affirmative insurance in connection with the Exception, and in the event any claims or liens in connection with the Exception are filed of record, Indemnitor shall cause same to be paid and discharged of record without delay, or otherwise satisfied to Company's satisfaction, then at such time Indemnitor's obligation shall be null and void, otherwise to remain in full force and effect.

As additional inducement to Company, Indemnitor makes the following factual representations:

- No claim has been filed against the Estate for payment of any debts, except as follows:  
[IF NONE, state "NONE."]
- No last will and testament of the Decedent has been discovered, and no persons with an interest in the Estate other than those listed on the List of Heirs filed of record have been discovered or made a claim against the Estate;
- That with respect to the liability of the Estate for any estate taxes [CHECK THE ONE THAT APPLIES]:
  - Federal and state Estate taxes have been paid, as evidenced by the attached documentation. [Provide a copy of the Estate tax return and canceled check evidencing payment.]

**OR**



No federal or state Estate taxes are assessable in connection with the Estate.

As security for the performance of the terms hereof, Indemnitor hereby deposits with Company, or with \_\_\_\_\_, limited title agent for the Company, the receipt of which is acknowledged. Such funds will be held until one year has expired from the date of death of the Decedent, at which time the funds will be returned to the Indemnitor, less any amount paid by or owed to Company under the terms hereof, provided that Indemnitor, or an approved attorney of Company, provides Company with a certificate, in form satisfactory to the Company, to the effect that the representations set forth above continue to be true and correct.

The conditions, covenants, and terms of this Indemnity Bond attached hereto and incorporated herein by reference.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

**INDEMNITOR(S):**

1) \_\_\_\_\_

2) \_\_\_\_\_

Individually: \_\_\_\_\_

Individually: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

**THE CONDITIONS, COVENANTS AND TERMS OF THE INDEMNITY BOND:**

1. The obligations of Indemnitor and under this Indemnity Bond shall continue until the liability of Company under the Policy, including, without limitation, any additional title insurance policies (collectively, the "Policies") issued in reliance upon the Indemnity Bond has been fully discharged.
2. Indemnitor agrees that, if at any time Company deems it necessary in order to satisfy its obligations under any of the Policies, Company may, in its sole discretion, without notice to Indemnitor, pay, satisfy, compromise or do any other act necessary in Company's judgment to obtain a release or discharge of the Exception to the title and in doing so may apply any or all of the collateral deposited with Company to its limited title agent, if any, as satisfaction of the matters set forth as the Exception to the title, and specifically authorizes Company to sell any collateral deposited with Company as security. Notwithstanding anything herein which may be construed to the contrary, Indemnitor agrees that Company shall not have to pay, incur or sustain monetary loss in any amount before being entitled to so apply the collateral deposited hereunder or to call upon Indemnitor to provide to Company additional funds necessary to pay, satisfy, compromise or do any other act necessary to obtain a release or discharge of the Exception to the title or otherwise satisfy Company's obligations under any Policies; and Indemnitor shall promptly furnish such funds as demanded.
3. If Company shall sustain or incur loss or damage, either because no collateral was deposited or the collateral was insufficient, or because Indemnitor failed to provide sufficient funds upon demand by Company, Indemnitor shall become indebted to Company in an amount equal to the loss and loss expense sustained or incurred by Company and agrees to repay Company that amount on demand, together with interest thereon at the rate of 8% per annum from the date of demand.
4. If Indemnitor fails timely to take such steps that in the opinion of Company are necessary to remove the matters set forth herein as the Exception to the title, on or before the agreed date (if any) as provided herein, Company is authorized in its own discretion to take whatever steps, including but not limited to the commencement of legal action or payment of money that Company determines necessary or advisable to remove said matters, and upon demand, Indemnitor shall advance to Company all funds necessary, including all costs, attorneys' fees, and other expenses.
5. In this Indemnity Bond, wherever the context so requires, the singular number includes the plural, and where more than one



person is included as Indemnitor, the obligations of this Indemnity Bond shall be binding on all such persons jointly and severally. "Person" herein includes individuals, husband and wife (jointly & severally), corporations, partnerships and all other entities having executed this instrument as Indemnitors. If any Indemnitor be not bound hereunder for any reason, this Indemnity Bond shall still be binding upon any other Indemnitor. "Policy" shall be deemed to include a title insurance binder or commitment; and "Commitment" shall be deemed to include a title insurance binder.

6. This Indemnity Bond shall be liberally construed in the interest of and for the protection of Company. If any provision hereof is held to be void or unenforceable under the laws of any jurisdiction covering its construction or enforcement, this Indemnity Bond shall not be void or vitiated thereby, but shall be construed to be in force with the same effect as though such provision was omitted.
7. The liability of Indemnitor under this Indemnity Bond is direct and primary and is not conditioned or contingent upon prior pursuit of any remedies. Indemnitor shall be liable for and shall pay promptly to Company all costs, expense and attorneys' fees incurred by Company in enforcing its rights hereunder.
8. This Indemnity Bond shall be binding upon each Indemnitor, and each of their heirs, assigns, and legal successors, and shall inure to the benefit of Company, its successors or assigns, including, without limitation, any other insurer involved in reinsuring, in any manner, any liability of Company under any Policies (and endorsements) issued in reliance hereon.
9. Except as specifically modified by the written escrow instruction(s) received and accepted by the Escrow Agent, the following paragraphs 10 through 14 shall apply with respect to any funds held pursuant to this Indemnity.
10. WFG National Title Insurance Company, or its duly authorized limited title agent identified above, is hereby referred to as Escrow Agent.
11. All checks, money orders or drafts will be processed for collection in the normal course of business. Escrow Agent may commingle funds received by Escrow Agent with funds of others in escrow, and may, without limitation, deposit such funds in its custodial or escrow accounts with any reputable trust company, bank, savings bank, savings association, or other financial services entity, including any affiliate of Escrow Agent. It is understood that Escrow Agent shall be under no obligation, except to the extent expressly instructed in writing, to invest the funds deposited with Escrow Agent on behalf of any depositor. Any funds deposited with Escrow Agent will be deemed to be the property of Escrow Agent. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes governing unclaimed property.
12. Escrow Agent shall not be liable for any loss or damage resulting from the following: a) Any loss, loss of value or impairment of funds which have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a depository institution if such loss, loss of value or impairment results from failure, insolvency or suspension of a depository institution; and b) Escrow Agent's compliance with any legal process including, but not limited to, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed. NOTE: This paragraph shall not be construed to limit Escrow Agent's liability for its own gross negligence or willful misconduct.
13. In the event of a dispute, Escrow Agent is authorized to deposit the escrow into Court for a determination as to the proper disposition of said funds. In the event that the funds are deposited in Court, Escrow Agent shall be entitled to file a claim in the proceeding for its costs and counsel fees, if any.
14. In the event that litigation is initiated relating to these funds, the parties hereto agree that Escrow Agent shall be held harmless from any and all attorneys' fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's gross negligence or willful misconduct. The parties hereto agree to indemnify Escrow Agent for all such attorneys' fees, court costs and expenses. To the extent that Escrow Agent holds funds under the terms of this escrow, the parties agree that the Escrow Agent may charge such funds with any such attorneys' fees, court costs and expenses as they are incurred by the Escrow Agent.