

## INSTRUCTIONS FOR AFFIDAVIT OF PROOF OF SUCCESSION

On June 13, 2005, the State Corporation Commission of the Commonwealth of Virginia entered its order approving plans of liquidation for HOW Insurance Company, a Risk Retention Group, Home Owners Warranty Corporation (“HOW”), and Home Warranty Corporation, (collectively the “HOW Companies”), which, among other things, directed that any residual assets of the HOW Companies (“Residual Assets”) be distributed to those former HOW program builders who, as of October 14, 1994 (*i.e.*, the date the HOW Companies were placed in receivership), had unexpired HOW insurance policies (“Builder Distributees”). In the intervening years, the rights of some Builder Distributees to share in any distribution of Residual Assets have changed, and other persons have succeeded to those rights (*e.g.*, as the result of dissolution, merger, acquisition, incorporation, conversion, assignment, or death).

On March 1, 2019, in Case No. INS-2019-00036, the Deputy Receiver filed with the Virginia State Corporation Commission an Application for Final Order in Aid of Continuing Liquidation (“Application”), a copy of which is posted at [www.howcorp.com](http://www.howcorp.com).

The Application’s Exhibit I-4F is a list of Builder Distributees by HOW builder number and builder name. On July 18, 2019, the Virginia State Corporation Commission issued its Final Order in Aid of Continuing Liquidation in Case No. INS-2019-00036 (“Final Order”), a copy of which is posted at [www.howcorp.com](http://www.howcorp.com).

Since 1994, the rights of some Builder Distributees have changed and other persons have succeeded to those rights. For example, if a company that is a Builder Distributee is no longer in business and has been dissolved, usually the owners or shareholders of that company succeeded the company’s right to a share of residual assets. The former owner or shareholder would probably be the correct person to receive a distribution. If so, they would be a “successor.”

The purpose of the affidavit is to provide sufficient documentation that distributions (payments) owed to a Builder Distributee may instead be distributed to their successor. In most situations a few primary documents (probated court documents, corporate filings, etc.) are sufficient. In situations where some primary documents are unavailable, the affidavit combined with secondary supporting documents may suffice.

Unless a successor has already provided adequate proof of successorship to a Builder Distributee’s rights with respect to Residual Assets, the enclosed form of “Affidavit of Proof of Succession” must be completed, notarized, and submitted to:

PROOF OF SUCCESSION DEPARTMENT  
HOW COMPANIES IN RECEIVERSHIP  
11401 CENTURY OAKS TER STE 310  
AUSTIN, TX 78758-8702

Telephone: (512) 404-6555  
Fax: (512) 404-6530

Otherwise, the funds will be escheated to the applicable state in accordance with state law governing unclaimed property.

All applicable checkboxes and blank spaces on the form must be completed. The form must be signed before a Notary Public and notarized, include sufficient information, and be accompanied by the necessary supporting documents. Photocopies of supporting documents are acceptable, unless noted with an asterisk. No documents submitted, whether originals or copies, will be returned.

You should keep a copy of your affidavit (including supporting documentation attached thereto) and proof of its timely mailing. If you want proof that your affidavit was received, you should send your affidavit via registered or certified mail, return receipt requested.

Each successor to the Builder Distributee must be identified clearly and a separate affidavit submitted by, or on behalf of, each current successor (if there is more than one). If an affidavit is completed on behalf of a current successor, evidence of the authority to submit the affidavit on that person’s behalf must be included as part of, or in addition to, the affidavit. Additional information about the receivership of the HOW Companies is available on the receivership web site: [www.howcorp.com](http://www.howcorp.com).

**Proof of Succession Instructions**

Please type or print your name on the top line of the affidavit. Carefully read all sections to ensure they are true statements. If you do not know every section to be correct, do not use the form affidavit. Reach out to receivership staff for assistance.

The affidavit should be completed and signed by the successor or an agent of the successor. The person who will sign the affidavit should print his or her name on the top line of the affidavit. The following chart provides detailed section-by-section instructions for the affidavit. If you are providing all necessary documentation, please disregard Sections 7–9.

<b>Section 1</b>	Fill in all blanks (please print legibly or type).	
	Name of Builder Distributee	This is the name of the Builder Distributee as it appeared in the HOW Companies’ records, as listed in Exhibit I-4F of the Application.
	Builder Distributee’s Builder Number	If you know it, please enter the “former HOW Companies’ Builder # _____.”
	Name of Current Successor to Builder Distributee	This is the individual or company who is the legal successor to the Builder Distributee.

	Relationship to Builder Distributee	This is the basis and percentage of the affiant’s successorship to the Builder Distributee. Examples include: (1) ___ % shareholder upon dissolution of Builder Distributee; (2) ___ % heir to shareholder of dissolved Builder Distributee; (3) ___ % heir to sole proprietor Builder Distributee; (4) surviving company of merger with Builder Distributee; (5) L.L.C. resulting from the conversion of the Builder Distributee from a corporation to an L.L.C.; and (6) name change.
	Last 4 digits of Social Security Number or Tax Identification Number (TIN)	If the successor is an individual, please provide the last four digits of a social security number. If the successor is a business entity, please provide the last four digits of an employer identification number.
<b>Section 2</b>	<p>Please provide in your own words a true explanation of how you became the successor to the percentage of the Builder Distributee’s distribution rights that you indicated in Section 1. Provide as much detail as possible, in chronological order.</p> <p>For example, the heir to a shareholder of a dissolved corporate Builder Distributee might write:</p> <p><i>XYZ Builders, Inc., the Builder Distributee, an Illinois corporation, was dissolved in November 1995. At the time it was dissolved there were only two shareholders, Adam Smith and Beth Smith, who each owned half of the total shares. Adam passed away in June 2005. I, Cesar Smith, am the only heir, by Will, of Adam Smith’s estate. I am the successor of half of any amount owed to XYZ Builders, Inc. I have attached to this affidavit Adam’s probated Will and Death Certificate, Shareholder Documentation identifying Adam as a 50% shareholder of XYZ Builders, Inc., and a Certificate of Dissolution for XYZ Builders, Inc.</i></p>	
<b>Section 3</b>	Please select only one check box.	
<b>Section 4</b>	<p>Please select only one check box.</p> <p>If you believe the Builder Distributee was ever a debtor in bankruptcy, select the second option.</p> <p>If you believe that any successor, prior to the current Successor, was a debtor in bankruptcy at the same time they were successors to the rights of the Builder Distributee, select the second box. A successor’s bankruptcy proceeding that was finalized before the Builder Distributee’s rights passed to the successor does not need to be reported.</p> <p><i>In the above example, if Adam Smith was a debtor in bankruptcy after XYZ Builders, Inc. dissolved in 1995, Cesar Smith should select the second option.</i></p> <p>If you select the second option, please attach as an exhibit to the affidavit, a note explaining the bankruptcy including, if available: (1) the bankruptcy chapter under which any case proceeded; (2) the location of the bankruptcy court; (3) the case</p>	

	number; and (4) the address and telephone number of the U.S. Trustee in that jurisdiction. Carefully read this section to ensure it is a true statement.
<b>Section 5</b>	Carefully read this section to ensure it is a true statement.
<b>Section 6</b>	Carefully read this section to ensure it is a true statement.
<b>Section 7</b>	Carefully read this section to ensure it is a true statement.

**Explanation of Supporting Documents**

If the Builder Distributee (or an intervening successor) was a business entity that no longer exists, the current successor should provide an affidavit (attaching supporting documents, if available), to establish:

- That the entity was dissolved (*e.g.*, IRS Form 966 Corporate Liquidation/Dissolution, Certificate of Dissolution from the Secretary of State’s office, Articles of Dissolution filed with the Secretary of State, or similar proof); and
- The successor’s percentage ownership of the entity at the time of its dissolution (*e.g.*, “sole shareholder,” or “51% shareholder”).

The successor of a dissolved entity must also provide a W-9 with the successor’s name on line 1, F/DBA [Name of dissolved entity] on line 2, and with the rest of the W-9 completed according to the W-9 instructions.

If the Builder Distributee (or an intervening successor) was the non-surviving entity as the result of a merger, the successor should provide proof of the merger (*e.g.*, Certificate of Merger from the Secretary of State’s office, Articles of Merger filed with the Secretary of State, or similar proof), as well as a W-9 with the successor’s name on Line 1, F/DBA [Name of the non-surviving entity] on Line 2, and with the rest of the W-9 completed according to the W-9 instructions.

If the Builder Distributee (or an intervening successor) was a business entity that still exists but has only changed its name and/or address, the current successor should provide:

- A Change of Address and/or Name Form;
- Proof of the change of name and/or address (*e.g.*, Secretary of State document reflecting same); and
- A completed W-9 Form with the Builder Distributee’s current name on Line 1, and F/DBA [Previous Name of Builder Distributee] on Line 2, and with the rest of the W-9 completed according to the W-9 instructions.

If the Builder Distributee (or an intervening successor) was an individual person who is no longer living, the current successor submitting the affidavit must establish his or her status as personal representative, administrator, or executor of the estate (if the estate is the current successor) or must establish how he or she came into succession of the Builder Distributee’s (or

intervening successor's) rights. Depending on state law and the amount of the claim, an heir by intestacy (without a probated Will) may need to make a filing with a court. It might be appropriate to hire a probate attorney.

Please see the following chart for examples of appropriate documentation if the Builder Distributee or a prior successor is no longer living:

If you are:	Please provide:
<b>A Personal Representative, Administrator, or Executor of an Open Estate</b>	<ul style="list-style-type: none"> <li>• Records, certified by the clerk of court within the past year, reflecting the right to act for the estate; and</li> <li>• Certified/Authenticated Death Certificate.</li> </ul>
<b>Heir by Will</b>	<ul style="list-style-type: none"> <li>• Certified copy of probate court order identifying the beneficiaries and the proportional entitlement of each to the estate; or</li> <li>• An affidavit that the above is unavailable, and authenticated documentation from which the beneficiaries and their proportional entitlement can be determined, possibly including:               <ul style="list-style-type: none"> <li>• Death Certificate, certified if available;</li> <li>• Will;</li> <li>• Order admitting the Will to probate;</li> <li>• Order of Discharge;</li> <li>• Petition for Discharge with exhibits; and</li> <li>• Petition for Administration.</li> </ul> </li> </ul> <p>NOTE: Under no circumstances is a Will standing alone sufficient.</p>
<b>Heir by intestacy (without a Will)</b>	<ul style="list-style-type: none"> <li>• Certified copy of probate court order identifying the beneficiaries, and the proportional entitlement of each to the estate; or</li> <li>• Affidavit of Heirship, Small Estate Affidavit, or Judicial Determination of Heirship, if valid in your state; or</li> <li>• An affidavit that the above is unavailable, plus authenticated documentation from which the beneficiaries and their proportional entitlement can be determined, possibly including:               <ul style="list-style-type: none"> <li>• Death Certificate, certified if available; and</li> <li>• Evidence of the successor's relationship to the deceased (<i>i.e.</i>, copy of Birth Certificate, Marriage</li> </ul> </li> </ul>

	License, Obituary identifying relatives published in print or online, etc.).
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If you are not the Builder Distributee or successor-owner but are requesting the property on the successor-owner's behalf, in addition to the above and the owner's ID:

<b>If you are:</b>	<b>Please provide:</b>
<b>An individual on behalf of a Proprietorship/Partnership</b>	Documentation reflecting authorization to assert claims, and receive payments for the proprietorship/partnership
<b>Parent</b>	Birth Certificate
<b>Legal Guardian</b>	Letters of Guardianship
<b>Trustee</b>	Trust document and a recent I.R.S. Form1099
<b>Power of Attorney</b>	P.O.A. document

Death, Birth, and Marriage Certificates can be ordered from the state records office. In most cases, they can be ordered online. Probate documents are kept by the county where the Will was probated. The I.R.S. or state tax agency may have copies of pertinent tax documents. The state corporation commission or secretary of state may have copies of dissolution and other corporate documents.

If any documentation is determined to be unobtainable after duly attempting to collect all the required documentation, you may include evidence of the attempt in your affidavit. Other evidence may be required to establish your right as successor to the Builder Distributee's right to share in any distribution of Residual Assets.