

1 **H. B. 3077**

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3 (By Delegates Shott, McCuskey and Sponaugle)  
4 [Introduced March 25, 2013; referred to the  
5 Committee on the Judiciary then Finance.]  
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10 A BILL to repeal §44-2-2 and §44-2-3 of the Code of West Virginia,  
11 1931, as amended, and to amend and reenact §44-1-14a of said  
12 code, relating to the publication requirements of the  
13 administration of estates.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931,  
16 as amended, be repealed; and that §44-1-14a of said code be amended  
17 and reenacted to read as follows:

18 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

19 **§44-1-14a. Notice of administration of estate; time limits for**  
20 **filing of objections; liability of personal**  
21 **representative.**

22 (a) Within thirty days of the filing of the appraisalment of  
23 any estate or within ninety days of the date of qualification of

1 the personal representative if an appraisal is not filed as  
2 required in section fourteen of this article, the clerk of the  
3 county commission shall publish, once a week for two successive  
4 weeks, in a newspaper of general circulation within the county of  
5 the administration of the estate, a notice, which is to include:

6 (1) The name of the decedent;

7 (2) The name and address of the county commission before whom  
8 the proceedings are pending;

9 (3) The name and address of the personal representative;

10 (4) The name and address of any attorney representing the  
11 personal representative;

12 (5) The name and address of the fiduciary commissioner, if  
13 any;

14 (6) The date of first publication;

15 (7) A statement that claims against the estate must be filed  
16 within ninety days of the date of qualification of the personal  
17 representative in accordance with ~~the provisions of~~ article two or  
18 article three-a of this chapter;

19 (8) A statement that any person seeking to impeach or  
20 establish a will must make a complaint in accordance with ~~the~~  
21 ~~provisions of~~ section eleven, twelve or thirteen, article five,  
22 chapter forty-one of this code;

23 (9) A statement that an interested person objecting to the  
24 qualifications of the personal representative or the venue or

1 jurisdiction of the court must be filed with the county commission  
2 within three months after the date of first publication or thirty  
3 days of service of the notice, whichever is later; and

4 (10) If the appraisalment of the assets of the estate shows the  
5 value to be \$100,000 or less, exclusive of real estate specifically  
6 devised and nonprobate assets, or, if it appears to the clerk that  
7 there is only one beneficiary of the probate estate and that the  
8 beneficiary is competent at law, a statement substantially as  
9 follows: "Settlement of the estate of the following named  
10 decedents will proceed without reference to a fiduciary  
11 commissioner unless within ninety days from the first publication  
12 of this notice a reference is requested by a party in interest or  
13 an unpaid creditor files a claim and good cause is shown to support  
14 reference to a fiduciary commissioner." If a party in interest  
15 requests the fiduciary commissioner to conclude the administration  
16 of the estate or an unpaid creditor files a claim, no further  
17 notice to creditors shall be published in the newspaper, and the  
18 personal representative shall be required to pay no further fees,  
19 except to the fiduciary commissioner for conducting any hearings,  
20 or performing any other duty as a fiduciary commissioner. The time  
21 period for filing claims against the estate shall expire upon the  
22 time period set out in the notice to creditors published by the  
23 clerk of the county commission as required in this subsection (a).  
24 ~~In the event that~~ If an unpaid creditor files a claim, the

1 fiduciary commissioner shall conduct a hearing on the claim filed  
2 by the creditor, otherwise, the fiduciary commissioner shall  
3 conclude the administration of the estate as requested by the  
4 interested party.

5 (b) If no appraisal is filed within the time period  
6 established pursuant to section fourteen of this article, the  
7 county clerk shall send a notice to the personal representative by  
8 first class mail, postage prepaid, indicating that the appraisal  
9 has not been filed. ~~Notwithstanding any other provision of this~~  
10 ~~code to the contrary, the county clerk shall publish the notice~~  
11 ~~required in subsection (a) of this section within six months of the~~  
12 ~~qualification of the personal representative.~~

13 (c) The personal representative shall promptly make a diligent  
14 search to determine the names and addresses of creditors of the  
15 decedent who are reasonably ascertainable.

16 (d) The personal representative shall, within ninety days  
17 after the date of first publication, serve a copy of the notice,  
18 published pursuant to subsection (a) of this section, by first  
19 class mail, postage prepaid, or by personal service on the  
20 following persons:

21 (1) If the personal representative is not the decedent's  
22 surviving spouse and not the sole beneficiary or sole heir, the  
23 decedent's surviving spouse, if any;

24 (2) If there is a will and the personal representative is not

1 the sole beneficiary, any beneficiaries;

2       (3) If there is not a will and the personal representative is  
3 not the sole heir, any heirs;

4       (4) The trustee of any trust in which the decedent was a  
5 grantor, if any; and

6       (5) All creditors identified under subsection (c) of this  
7 section, other than a creditor who filed a claim as provided in  
8 article two of this chapter or a creditor whose claim has been paid  
9 in full.

10       (e) Any person interested in the estate who objects to the  
11 qualifications of the personal representative or the venue or  
12 jurisdiction of the court, shall file notice of an objection with  
13 the county commission within ninety days after the date of the  
14 first publication as required in subsection (a) of this section or  
15 within thirty days after service of the notice as required by  
16 subsection (d) of this section, whichever is later. If an  
17 objection is not timely filed, the objection is forever barred.

18       (f) A personal representative acting in good faith is not  
19 personally liable for serving notice under this section,  
20 notwithstanding a determination that notice was not required by  
21 this section. A personal representative acting in good faith who  
22 fails to serve the notice required by this section is not  
23 personally liable. The service of the notice in accordance with  
24 this subsection may not be construed to admit the validity or

1 enforceability of a claim.

2       (g) The clerk of the county commission shall collect a fee of  
3 \$20 for the publication of the notice required in this section.

4       (h) For purposes of this section, the term beneficiary means  
5 a person designated in a will to receive real or personal property.

NOTE: The purpose of this bill is to simplify and make uniform the publication requirements required during the administration of an estate.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.