

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 414

(SENATORS PREZIOSO, EDGELL AND PLYMALE, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; TO TAKE EFFECT JULY 1, 2014.]

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(SENATORS PREZIOSO, EDGELL AND PLYMALE, *original sponsors*)

[Passed March 8, 2014; to take effect July 1, 2014.]

AN ACT to amend and reenact §11-11-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §44-1-14 of said code, all relating to the filing of estate appraisement and nonprobate inventory forms; eliminating certain filing with the Tax Commissioner; providing for maintenance and preservation of certain forms by the county clerk; providing for disclosure of certain forms under certain circumstances; and providing for confidentiality of certain forms under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §11-11-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §44-1-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.

1 (a) The personal representative of every resident decedent
2 who owned or had an interest in any nonprobate personal
3 property, and the personal representative of every nonresident
4 decedent who owned or had an interest in any nonprobate
5 personal property which is a part of the taxable estate located
6 in West Virginia, shall, under oath, list and appraise on a
7 nonprobate inventory form prescribed by the Tax
8 Commissioner all tangible and intangible nonprobate
9 personal property owned by the decedent or in which the
10 decedent had an interest, at its fair market value on the date
11 of the decedent's death. The nonprobate personal property to
12 be included on the nonprobate inventory form includes, but
13 is not limited to, the following:

14 (1) Personal property held as joint tenants with right of
15 survivorship with one or more third parties;

16 (2) Personal property payable on the death of the
17 decedent to one or more third parties;

18 (3) Personal property held by the decedent as a life
19 tenant;

20 (4) Insurance on the decedent's life payable to
21 beneficiaries other than the executor or administrator of the
22 decedent's estate;

23 (5) Powers of appointment;

24 (6) Annuities;

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25 (7) Transfers during the decedent's life in which any
26 beneficial interest passes by trust or otherwise to another
27 person by reason of the death of the decedent;

28 (8) Revocable transfers in trust or otherwise;

29 (9) Taxable gifts under Section 2503 of the United States
30 Internal Revenue Code of 1986; and

31 (10) All other nonprobate personal property included in
32 the federal gross estate of the decedent.

33 (b) For purposes of this section, "nonprobate personal
34 property" means all personal property which does not pass by
35 operation of the decedent's will or by the laws of intestate
36 descent and distribution or is otherwise not subject to
37 administration in a decedent's estate at common law.

38 (c) The personal representative shall prepare the
39 nonprobate inventory form and file it, together with the
40 appraisal form required by section fourteen, article one,
41 chapter forty-four of this code, for estates of decedents dying
42 on or after July 13, 2001, with the clerk of the county
43 commission or the fiduciary supervisor within ninety days of
44 the date of qualification of the personal representative in this
45 state: *Provided*, That for estates of decedents dying on or
46 after July 13, 2001, but before the date the amendments to
47 this section become effective, the requirement to file the
48 nonprobate inventory form with the clerk or supervisor
49 applies only if that form has not already been filed with the
50 Tax Commissioner.

51 (d) The nonprobate inventory form shall be maintained
52 and preserved by the clerk of the county commission or the
53 fiduciary supervisor, but shall not be recorded in the records
54 of the clerk of the county commission. The nonprobate

55 inventory form is confidential tax return information subject
56 to the provisions of section five-d, article ten, chapter eleven
57 of this code and may not be disclosed by the clerk of the
58 county commission and his or her officers and employees or
59 former officers and employees. Nothing in this section may
60 be construed to hinder, abrogate or prevent disclosure of
61 information as authorized in section thirty-five, article eleven,
62 chapter eleven of this code.

63 (e) Any personal representative who fails to comply with
64 the provisions of this section, without reasonable cause, is
65 guilty of a misdemeanor and, upon conviction thereof, shall
66 be fined not less than \$25 nor more than \$500.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisalment of real estate and probate personal property of decedents; disposition; hiring of experts.

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and personal
3 probate property, or any real estate or personal probate
4 property in which the deceased person had an interest at the
5 time of his or her death, as provided in this section.

6 (b) After having taken the appropriate oath, the personal
7 representative shall, on the appraisalment form prescribed by
8 the Tax Commissioner, list the following items owned by
9 the decedent or in which the decedent had an interest and
10 the fair market value of the items at the date of the
11 decedent's death:

12 (1) All probate and nonprobate real estate including, but
13 not limited to, real estate owned by the decedent, as a joint
14 tenant with right of survivorship with one or more parties, as
15 a life estate, subject to a power of appointment of the
16 decedent, or in which any beneficial interest passes by trust
17 or otherwise to another person by reason of the death of the
18 decedent; and

19 (2) All probate personal property, whether tangible or
20 intangible, including, but not limited to, stocks and bonds,
21 bank accounts, mortgages, notes, cash, life insurance payable
22 to the executor or administrator of the decedent's estate and
23 all other items of probate personal property.

24 (c) Any real estate or interest in real estate so appraised
25 must be identified with particularity and description. The
26 personal representative shall identify the source of title in the
27 decedent and the location of the realty for purposes of real
28 property ad valorem taxation.

29 (d) For purposes of this section, the term "probate
30 personal property" means all personal property which passes
31 by or under the decedent's will or by the laws of intestate
32 descent and distribution or is otherwise subject to
33 administration in a decedent's estate under common law.

34 (e) The personal representative shall complete, under
35 oath, a questionnaire included in the appraisal form
36 designed by the Tax Commissioner for the purpose of
37 reporting whether the decedent owned or had an interest in
38 any nonprobate personal property: *Provided*, That the Tax
39 Commissioner shall design a questionnaire that is as much as
40 possible phrased in understandable English.

41 (f) The appraisal form shall be executed and signed
42 by the personal representative. The original appraisalment

43 form and two of its copies, together with the completed and
44 notarized nonprobate inventory form required by section
45 seven, article eleven, chapter eleven of this code, shall be
46 returned to the clerk of the county commission by whom the
47 personal representative was appointed or to the fiduciary
48 supervisor within ninety days of the date of qualification of
49 the personal representative. The clerk or supervisor shall
50 inspect the appraisal form to determine whether it is in
51 proper form. If the appraisal form is returned to a
52 fiduciary supervisor, within ten days after being received and
53 approved, the supervisor shall deliver the documents to the
54 clerk of the county commission. Upon receipt of the
55 appraisal form, the clerk of the county commission shall
56 record it with the certificate of approval of the supervisor.
57 The date of return of an appraisal form must be entered
58 by the clerk of the county commission in his or her record of
59 fiduciaries. The nonprobate inventory form shall be
60 maintained and preserved by the clerk of the county
61 commission or the fiduciary supervisor, but shall not be
62 recorded in the records of the clerk of the county
63 commission. The nonprobate inventory form is confidential
64 tax return information subject to the provisions of section
65 five-d, article ten, chapter eleven of this code and may not be
66 disclosed by the clerk of the county commission and his or
67 her officers and employees or former officers and employees.
68 Nothing in this section may be construed to hinder, abrogate
69 or prevent disclosure of information as authorized in section
70 thirty-five, article eleven, chapter eleven of this code.

71 (g) An executed and signed appraisal form is prima
72 facie evidence:

73 (1) Of the value of the property listed;

74 (2) That the property is subject to administration; and

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75 (3) That the property was received by the personal
76 representative.

77 (h) Any personal representative who refuses or declines,
78 without reasonable cause, to comply with the provisions of
79 this section is guilty of a misdemeanor and, upon conviction
80 thereof, shall be fined not less than \$25 nor more than \$500.

81 (i) Every personal representative has authority to retain
82 the services of an expert as may be appropriate to assist and
83 advise him or her concerning his or her duties in appraising
84 any asset or property pursuant to the provisions of this
85 section. An expert so retained shall be compensated a
86 reasonable sum by the personal representative from the assets
87 of the estate. The compensation and its reasonableness is
88 subject to review and approval by the county commission,
89 upon recommendation of the fiduciary supervisor.

90 (j) Except as specifically provided in subdivision (1),
91 subsection (b) of this section and in section seven, article
92 eleven, chapter eleven of this code, the personal
93 representative is not required to list and appraise nonprobate
94 real estate or nonprobate personal property of the decedent on
95 the forms required in this section or section seven, article
96 eleven, chapter eleven of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2014.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the..... Day of, 2014.

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Governor