

COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 414

(By Senators Prezioso, Edgell and Plymale)

[Originating in the Committee on Finance;
reported February 18, 2014.]

A BILL 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 eliminating the filing of a nonprobate inventory form along with the estate appraisement filing with the Tax Commissioner; providing for the filing of the nonprobate inventory form along with the estate appraisement filing with the clerk of the county commission or fiduciary supervisor only; providing for

confidentiality of nonprobate inventory form; and specifying effective dates.

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 in
6 West Virginia, shall, under oath, list and appraise on a
7 nonprobate inventory form prescribed by the Tax Commissioner
8 all tangible and intangible nonprobate personal property owned
9 by the decedent or in which the decedent had an interest, at its
10 fair market value on the date of the decedent's death. The

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11 nonprobate personal property to be included on the nonprobate

12 inventory form includes, but is not limited to, the following:

13 (1) ~~Personalty~~ Personal property held as joint tenants

14 with right of survivorship with one or more third parties;

15 (2) ~~Personalty~~ Personal property payable on the death of

16 the decedent to one or more third parties;

17 (3) ~~Personalty~~ Personal property held by the decedent as

18 a life tenant;

19 (4) Insurance on the decedent's life payable to

20 beneficiaries other than the executor or administrator of the

21 decedent's estate;

22 (5) Powers of appointment;

23 (6) Annuities;

24 (7) Transfers during the decedent's life in which any

25 beneficial interest passes by trust or otherwise to another

26 person by reason of the death of the decedent;

27 (8) Revocable transfers in trust or otherwise;

28 (9) Taxable gifts under Section 2503 of the United States

29 Internal Revenue Code of 1986; and

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

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

37 (c) The personal representative shall prepare the
38 nonprobate inventory form and file it, together with the
39 appraisement form required by section fourteen, article one,
40 chapter forty-four of this code, for estates of decedents dying
41 on or after ~~the thirteenth day of July, 2001~~ July 13, 2001,
42 with the clerk of the county commission or the fiduciary
43 supervisor within ninety days of the date of qualification of
44 the personal representative in this state: *Provided*, That for
45 estates of decedents dying on or after ~~the said thirteenth day~~
46 ~~of July, 2001~~ July 13, 2001, but before the date the
47 amendments to this section become effective, the requirement
48 to file the nonprobate inventory form with the clerk or

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49 supervisor ~~shall apply~~ applies only if that form has not
50 already been filed with 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
62 eleven, chapter eleven of this code.

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

**CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.**

ARTICLE 1. PERSONAL REPRESENTATIVES.

**§44-1-14. Appraisement 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 appraisement form prescribed by
8 the Tax Commissioner, list the following items owned by the
9 decedent or in which the decedent had an interest and the fair
10 market value of the items at the date of the decedent's death:

11 (1) All probate and nonprobate real estate including, but
12 not limited to, real estate owned by the decedent, as a joint
13 tenant with right of survivorship with one or more parties, as

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14 a life estate, subject to a power of appointment of the
15 decedent, or in which any beneficial interest passes by trust
16 or otherwise to another person by reason of the death of the
17 decedent; and

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

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

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

33 (e) The personal representative shall complete, under
34 oath, a questionnaire included in the appraisal form
35 designed by the Tax Commissioner for the purpose of
36 reporting to the Tax Commissioner whether the estate of the
37 decedent is subject to estate tax as provided in article eleven,
38 ~~chapter eleven of this code~~ and whether the decedent owned
39 or had an interest in any nonprobate personal property:
40 *Provided*, That the Tax Commissioner shall design a
41 questionnaire that is as much as possible phrased in
42 understandable English.

43 (f) The appraisal form ~~must~~ shall be executed and
44 signed by the personal representative. The original
45 appraisal form and two of its copies ~~thereof~~, together
46 with the completed and notarized nonprobate inventory form
47 required by section seven, article eleven, chapter eleven of
48 this code, shall be returned to the clerk of the county
49 commission by whom the personal representative was
50 appointed or to the fiduciary supervisor within ninety days of
51 the date of qualification of the personal representative. The

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52 clerk or supervisor shall inspect the appraisalment form to
53 determine whether it is in proper form. If the appraisalment
54 form is returned to a fiduciary supervisor, within ten days
55 after being received and approved, the supervisor shall
56 deliver the documents to the clerk of the county commission.
57 Upon receipt of the appraisalment form, the clerk of the
58 county commission shall record it with the certificate of
59 approval of the supervisor ~~and mail a certified copy of the~~
60 ~~appraisalment form, together with the unrecorded nonprobate~~
61 ~~inventory form, to the Tax Commissioner.~~ The date of return
62 of an appraisalment form must be entered by the clerk of the
63 county commission in his or her record of fiduciaries. The
64 nonprobate inventory form shall be maintained and preserved
65 by the clerk of the county commission or the fiduciary
66 supervisor, but shall not be recorded in the records of the
67 clerk of the county commission. The nonprobate inventory
68 form ~~shall be considered~~ is confidential tax return
69 information subject to the provisions of section five-d, article
70 ten, chapter eleven of this code and may not be disclosed by

71 the clerk of the county commission and his or her officers
72 and employees or former officers and employees. ~~except to~~
73 ~~the Tax Commissioner as provided in this section~~ Nothing in
74 this section ~~shall~~ may be construed to hinder, abrogate or
75 prevent disclosure of information as authorized in section
76 thirty-five, article eleven, ~~of said~~ chapter eleven of this code.

77 (g) An executed and signed appraisalment form is prima
78 facie evidence:

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

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

81 (3) That the property was received by the personal
82 representative.

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

87 (i) Every personal representative has authority to retain
88 the services of an expert as may be appropriate to assist and
89 advise him or her concerning his or her duties in appraising

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90 any asset or property pursuant to the provisions of this
91 section. An expert so retained shall be compensated a
92 reasonable sum by the personal representative from the assets
93 of the estate. The compensation and its reasonableness is
94 subject to review and approval by the county commission,
95 upon recommendation of the fiduciary supervisor.

96 (j) Except as specifically provided in subdivision (1),
97 subsection (b) of this section and in section seven, article
98 eleven, chapter eleven of this code, the personal
99 representative is not required to list and appraise nonprobate
100 real estate or nonprobate personal property of the decedent
101 on the forms required in this section or section seven of said
102 article.