

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2266

(BY DELEGATE(S) SHOTT, ELLINGTON AND GEARHEART)

[Passed March 14, 2015;
in effect ninety days from passage.]

AN ACT to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5-9a; to amend and reenact §44-1-14a of said code; to amend said code by adding thereto a new section, designated §44-1-30; and to amend and reenact §44-2-1 of said code, all relating generally to administration of estates; repealing provision requiring fiduciary commissioner to publish notice of time for receiving claims against decedents' estates; changing requirements for publication by county clerk; requiring legal residences to be included on certificates of death; reducing

creditors claim period from ninety to sixty days; increasing value of estates for which a fiduciary commissioner need not be appointed; and authorizing clerk of the county commission to require a certified copy of a decedent's certificate of death or other proof of death and residence.

Be it enacted by the Legislature of West Virginia:

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-9a. Legal residences to be included on certificates of death.

- 1 In order to assist clerks of county commission fulfill their
- 2 responsibilities under chapter forty-four of this code, the State
- 3 Registrar shall require persons completing certificates of death,
- 4 to include any known legal residences of the decedent, if
- 5 different than the place of death.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

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

- 1 (a) Within thirty days of the filing of the appraisal of
- 2 any estate or within one hundred twenty days of the date of
- 3 qualification of the personal representative if an appraisal is

4 not filed as required in section fourteen of this article, the clerk
5 of the county commission shall publish, once a week for two
6 successive weeks, in a newspaper of general circulation within
7 the county of the administration of the estate, a notice, which is
8 to include:

9 (1) The name of the decedent;

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

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

13 (4) The name and address of any attorney representing the
14 personal representative;

15 (5) The name and address of the fiduciary commissioner, if
16 any;

17 (6) The date of first publication;

18 (7) A statement that claims against the estate must be filed
19 within sixty days of the date of first publication in accordance
20 with article two or article three-a of this chapter;

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

25 (9) A statement that an interested person objecting to the
26 qualifications of the personal representative or the venue or
27 jurisdiction of the court must be filed with the county commis-
28 sion within sixty days after the date of first publication or thirty
29 days of service of the notice, whichever is later; and

30 (10) If the appraisal of the assets of the estate shows the
31 value to be \$200,000 or less, exclusive of real estate specifically

32 devised and nonprobate assets, or, if it appears to the clerk that
33 there is only one beneficiary of the probate estate and that the
34 beneficiary is competent at law, a statement substantially as
35 follows: “Settlement of the estate of the following named
36 decedents will proceed without reference to a fiduciary commis-
37 sioner unless within sixty days from the first publication of this
38 notice a reference is requested by a party in interest or an unpaid
39 creditor files a claim and good cause is shown to support
40 reference to a fiduciary commissioner”. If a party in interest
41 requests the fiduciary commissioner to conclude the administra-
42 tion of the estate or an unpaid creditor files a claim, no further
43 notice to creditors shall be published in the newspaper, and the
44 personal representative shall be required to pay no further fees,
45 except to the fiduciary commissioner for conducting any
46 hearings, or performing any other duty as a fiduciary commis-
47 sioner. The time period for filing claims against the estate shall
48 expire upon the time period set out in the notice to creditors
49 published by the clerk of the county commission as required in
50 this subsection (a). If an unpaid creditor files a claim, the
51 fiduciary commissioner shall conduct a hearing on the claim
52 filed by the creditor, otherwise, the fiduciary commissioner shall
53 conclude the administration of the estate as requested by the
54 interested party.

55 (11) This notice shall be published as a Class II legal
56 advertisement in compliance with the provisions of article three,
57 chapter fifty-nine of this code. The publication of such notice
58 shall be equivalent to personal service on creditors, distributees
59 and legatees.

60 (b) If no appraisal is filed within the time period
61 established pursuant to section fourteen of this article, the county
62 clerk shall send a notice to the personal representative by first
63 class mail, postage prepaid, indicating that the appraisal has
64 not been filed.

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

68 (d) The personal representative shall, within sixty days after
69 the date of first publication, serve a copy of the notice, published
70 pursuant to subsection (a) of this section, by first class mail,
71 postage prepaid, or by personal service on the following persons:

72 (1) If the personal representative is not the decedent's
73 surviving spouse and not the sole beneficiary or sole heir, the
74 decedent's surviving spouse, if any;

75 (2) If there is a will and the personal representative is not the
76 sole beneficiary, any beneficiaries;

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

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

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

85 (e) Any person interested in the estate who objects to the
86 qualifications of the personal representative or the venue or
87 jurisdiction of the court, shall file notice of an objection with the
88 county commission within ninety days after the date of the first
89 publication as required in subsection (a) of this section or within
90 thirty days after service of the notice as required by subsection
91 (d) of this section, whichever is later. If an objection is not
92 timely filed, the objection is forever barred.

93 (f) A personal representative acting in good faith is not
94 personally liable for serving notice under this section, notwith-

95 standing a determination that notice was not required by this
96 section. A personal representative acting in good faith who fails
97 to serve the notice required by this section is not personally
98 liable. The service of the notice in accordance with this subsec-
99 tion may not be construed to admit the validity or enforceability
100 of a claim.

101 (g) The clerk of the county commission shall collect a fee of
102 \$20 for the publication of the notice required in this section.

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

**§44-1-30. Death certificate or other proof of death and residence
may be required.**

1 The clerk of the county commission may require a certified
2 copy of a decedents death certificate or other proof of death and
3 residence prior to fulfilling the clerk's responsibilities under this
4 chapter.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisalment by the personal
2 representative to the county clerk, the estate of his or her
3 decedent, by order of the county commission, must be referred
4 to a fiduciary commissioner for proof and determination of debts
5 and claims, establishment of their priority, determination of the
6 amount of the respective shares of the legatees and distributes,
7 and any other matter necessary for the settlement of the estate:
8 *Provided*, That in counties where there are two or more commis-
9 sioners, the estates of decedents must be referred to the commis-
10 sioners in rotation, so there may be an equal division of the
11 work. Notwithstanding any other provision of this code to the

12 contrary, a fiduciary commissioner may not charge to the estate
13 a fee greater than \$300 and expenses for the settlement of an
14 estate, except upon: (I) Approval of the personal representative;
15 or (ii) a determination by the county commission that the fee is
16 based upon the actual time spent and actual services rendered
17 pursuant to a schedule of fees or rate of compensation for
18 fiduciary commissioners promulgated by the commission in
19 accordance with the provisions of section nine, article one,
20 chapter fifty-nine of this code.

21 (b) If the personal representative delivers to the clerk an
22 appraisal of the assets of the estate showing their value to be
23 \$200,000 or less, exclusive of real estate specifically devised and
24 nonprobate assets, or if it appears to the clerk that there is only
25 one beneficiary of the probate estate and that the beneficiary is
26 competent at law, the clerk shall record the appraisal. If an
27 unpaid creditor files a claim against the estate, the personal
28 representative has twenty days after the date of the filing of a
29 claim against the estate of the decedent to approve or reject the
30 claim before the estate is referred to a fiduciary commissioner.
31 If the personal representative approves all claims as filed, then
32 no reference may be made.

33 The personal representative shall, within a reasonable time
34 after the date of recordation of the appraisal: (I) File a
35 waiver of final settlement in accordance with the provisions of
36 section twenty-nine of this article; or (ii) make a report to the
37 clerk of his or her receipts, disbursements and distribution and
38 submit an affidavit stating that all claims against the estate for
39 expenses of administration, taxes and debts of the decedent have
40 been paid in full. Upon receipt of the waiver of final settlement
41 or report, the clerk shall record the waiver or report and mail
42 copies to each beneficiary and creditor by first-class mail,
43 postage prepaid. The clerk shall retain the report for ten days to
44 allow any beneficiary or creditor to appear before the county
45 commission to request reference to a fiduciary commissioner.

46 The clerk shall collect a fee of \$10 for recording and mailing the
47 waiver of final settlement or report.

48 If no request or objection is made to the clerk or to the
49 county commission, the county commission may confirm the
50 report of the personal representative, the personal representative
51 and his or her surety shall be discharged; but if an objection or
52 request is made, the county commission may confirm and record
53 the accounting or may refer the estate to its fiduciary commis-
54 sioners: *Provided*, That the personal representative has twenty
55 days after the date of the filing of a claim against the estate of
56 the decedent to approve or reject the claim before the estate is
57 referred to a fiduciary commissioner and if all claims are
58 approved as filed, then no reference may be made.

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

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

