

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 246

BY SENATORS WELD AND CLINE

[Introduced January 10, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-2-1 of the Code of West Virginia, 1931, as amended, relating
 2 to appraisement of a decedents' estate and proceedings which determine if reference to
 3 fiduciary commissioner is to be made; and adding language to be contained in an
 4 appraisement showing nonprobate assets that are not to be sold by the personal
 5 representative of the estate.

Be it enacted by the Legislature of West Virginia:

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 appraisement by the personal representative to the county clerk,
 2 the estate of his or her decedent, by order of the county commission, must be referred to a
 3 fiduciary commissioner for proof and determination of debts and claims, establishment of their
 4 priority, determination of the amount of the respective shares of the legatees and distributes, and
 5 any other matter necessary for the settlement of the estate: *Provided*, That in counties where
 6 there are two or more commissioners, the estates of decedents must be referred to the
 7 commissioners in rotation, so there may be an equal division of the work. Notwithstanding any
 8 other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate
 9 a fee greater than \$300 and expenses for the settlement of an estate, except upon: (i) Approval
 10 of the personal representative; or (ii) a determination by the county commission that the fee is
 11 based upon the actual time spent and actual services rendered pursuant to a schedule of fees or
 12 rate of compensation for fiduciary commissioners promulgated by the commission in accordance
 13 with ~~the provisions of~~ §59-1-9 of this code.

14 (b) If the personal representative delivers to the clerk an appraisement of the assets of the
 15 estate showing their value to be \$200,000 or less, exclusive of real estate not to be sold by the
 16 personal representative ~~specifically devised~~ and nonprobate assets, or if it appears to the clerk

17 that there is only one beneficiary of the probate estate and that the beneficiary is competent at
18 law, the clerk shall record the appraisal. If an unpaid creditor files a claim against the estate,
19 the personal representative has 20 days after the date of the filing of a claim against the estate of
20 the decedent to approve or reject the claim before the estate is referred to a fiduciary
21 commissioner. If the personal representative approves all claims as filed, then no reference may
22 be made.

23 The personal representative shall, within a reasonable time after the date of recordation
24 of the appraisal: (i) File a waiver of final settlement in accordance with ~~the provisions of §44-~~
25 2-29 of this code; or (ii) make a report to the clerk of his or her receipts, disbursements and
26 distribution and submit an affidavit stating that all claims against the estate for expenses of
27 administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver
28 of final settlement or report, the clerk shall record the waiver or report and mail copies to each
29 beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for
30 10 days to allow any beneficiary or creditor to appear before the county commission to request
31 reference to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and mailing
32 the waiver of final settlement or report.

33 If no request or objection is made to the clerk or to the county commission, the county
34 commission may confirm the report of the personal representative, the personal representative
35 and his or her surety shall be discharged; but if an objection or request is made, the county
36 commission may confirm and record the accounting or may refer the estate to its fiduciary
37 commissioners: *Provided*, That the personal representative has 20 days after the date of the filing
38 of a claim against the estate of the decedent to approve or reject the claim before the estate is
39 referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may
40 be made.

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

NOTE: The purpose of this bill is to add language to be contained in an appraisal of a decedents' estate showing non-probate assets that are not to be sold by the personal representative.

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