

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2759

BY DELEGATE SHOTT

(BY REQUEST OF THE WEST VIRGINIA STATE BAR

PROBATE COMMITTEE)

[Introduced January 30, 2019; Referred

to the Committee on the Judiciary.]

1 A BILL to amend and reenact §41-5-13 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §44-1-4 of said code; and to amend said code by adding thereto a new
3 section, designated §44-1-14b, all relating to the administration of estates and providing
4 for the ancillary administration of West Virginia real estate owned by nonresidents by
5 affidavit and without administration.

Be it enacted by the Legislature of West Virginia:

CHAPTER 41. WILLS.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-13. Ancillary administration; Probate or recordation of foreign will.

1 (a) Where a will relative to ~~an~~ any personalty or real estate located or situate within this
2 state has been proved ~~without the same~~ or probated outside of this state by another state or
3 jurisdiction within the United States of America, an authenticated copy thereof and the certificate
4 of probate thereof, by such other state or jurisdiction may be offered for probate in this state, in
5 accordance with the provisions of §41-5-5 or §41-5-10 of this code, and an ancillary personal
6 representative, executor, or administrator, as the case may be, may be appointed in this state
7 with like effect and with the same powers, authorities, duties, and liabilities as are given to
8 domiciliary personal representatives, executors, and administrators under the provisions of this
9 code.

10 (b) Where a will, relative only to real estate situate within this state, has been proved or
11 probated outside of this state by another state or jurisdiction within the United States of America
12 and no appointment of an ancillary personal representative, executor, or administrator to
13 administer the real estate within this state is necessary for any proper purpose, an authenticated
14 copy thereof and the certificate of probate thereof may be admitted to record in any county of this
15 state in which the real estate is situate by any person having an interest in the real estate,
16 including a personal representative who has qualified in the other state or jurisdiction.

17 (1) The interested person or personal representative shall also execute and tender for
18 recording in the county an affidavit setting forth in substance:

19 (A) A description of the real estate owned by the decedent at the time of his or her death
20 situate within the county in this state where the affidavit is to be recorded together with its
21 assessed value for tax purposes and its fair market value at the date of death of the decedent;

22 (B) That the decedent died testate a nonresident of this state and that the authenticated
23 copy of the will and the certificate of probate of the other state or jurisdiction is being or has been
24 recorded in the county; and

25 (C) The names and last known addresses of the personal representative of the decedent's
26 estate, if any, and of the decedent's devisees or beneficiaries who are devised or given the real
27 estate under the will.

28 (2) The clerk of the county commission shall record and index the affidavit, together with
29 the authenticated copy of the will and the certificate of probate, in the same manner and upon the
30 same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of
31 probate administration with appointment of a personal representative. The clerk of the county
32 commission may require a certified copy of the decedent's death certificate or other proof of death
33 and residence prior to fulfilling the clerk's responsibilities under this chapter.

34 (3) A bond, security, or oath is not required when no appointment of an ancillary personal
35 representative, executor, or administrator is made under the provisions of this section.

36 (c) A document substantially in the following form may be used as the affidavit provided in
37 subsection (b) of this section with the effect as prescribed in this section:

38 **THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA**

39 **IN RE: THE ESTATE OF _____**

40 **DOD: _____**

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**AFFIDAVIT FOR ANCILLARY ADMINISTRATION
OF WEST VIRGINIA REAL ESTATE
WITHOUT APPOINTMENT
(TESTATE)**

STATE OF _____,
COUNTY OF _____, to-wit:
I, _____, whose address is _____

being first duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

1. The decedent, _____, died testate (with a will) on _____ (date of death), a resident of _____ County, State of _____.

2. On _____ (date), the following person(s) was/were appointed as the personal representative of the Estate of _____ by the _____ (name of foreign court), of _____ (county), _____ (state), being case number _____, if applicable:

a. Name: _____
Address: _____

b. Name: _____

Address: _____

3. An authenticated copy of the Last Will and Testament dated _____ and the certificate of probate of such other state or jurisdiction is being furnished herewith for recording in this County.

70 4. The Decedent died owning and possessing the following real estate
 71 situate in West Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

72

73 5. Pursuant to the provisions of the Last Will and Testament of
 74 _____, the decedent devised the aforesaid real estate to the
 75 following beneficiaries of the estate:

76 a. Name: _____

77 Address: _____

78 Relationship to Decedent: _____

79 Share or percentage: _____

80 b. Name: _____

81 Address: _____

82 Relationship to Decedent: _____

83 Share or percentage: _____

84 c. Name: _____

85 Address: _____

86 Relationship to Decedent: _____

87 Share or percentage: _____

88 d. Name: _____

89 Address: _____

90 Relationship to Decedent: _____

91 Share or percentage: _____

92 6. The Estate of _____, the decedent, will be/has been fully
93 administered by the domiciliary personal representative under the domiciliary
94 proceedings in the other state or jurisdiction. No appointment of an ancillary
95 personal representative to administer the decedent's real estate within the State
96 of West Virginia is necessary for any proper purpose.

97 7. I have personal knowledge of the above facts and am interested in the
98 Estate of _____, the decedent, as the () acting domiciliary
99 personal representative, () surviving spouse, () beneficiary under the
100 decedent's will, () heir at law, or () other _____
101 (describe relationship or interest). [Check one]

102

103 _____
104 Signature of Affiant
105

106 Taken, subscribed, and sworn to before me the undersigned authority by
107 _____, this ____ day of _____, 20__.

108 {seal}

109 My Commission expires: _____

110 _____
111 Notary Public
112

113 (d) When ~~such copy~~ the authenticated copy of the will and the certificate of probate is so
114 offered, as provided in subsection (a) of this section, the county commission, or the clerk thereof
115 in the vacation of the commission, to which or to whom it is offered, shall presume, in the absence
116 of evidence to the contrary, that the will was duly executed and admitted to probate as a will of
117 personalty in the state or country of the testator's domicile, and shall admit ~~such~~ the copy to
118 probate as a will of personalty in this state; and if it appears from ~~such~~ the copy that the will was
119 proved in the foreign court of probate to have been so executed as to be a valid will of land in this
120 state by the laws thereof, ~~such~~ the copy may be admitted to probate as a will of real estate. But

121 any person interested may, within one year from the time ~~such~~ the authenticated copy is admitted
122 to record, and so probated, upon reasonable notice to the parties interested, object to the same
123 and have the order admitting the same to probate in this state set aside, upon due and satisfactory
124 proof that ~~such~~ the authenticated copy was not a true copy of ~~such~~ the will, or that the probate of
125 ~~such~~ the will has been set aside by the court by which it was admitted to probate, or that ~~such~~ the
126 probate was improperly made.

127 (e) Notwithstanding anything in this section to the contrary, where an original will of a
128 nonresident decedent exists but has not been proved or probated outside of this state by another
129 state or jurisdiction within the United States of America because the provisions of the laws of the
130 state or jurisdiction do not require the proof or probate of the will, the original of the will may be
131 offered for probate in this state as provided in subsection (a) of this section or may be admitted
132 to record as provided in subsection (b) of this section.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.

1 (a) When a person dies intestate the jurisdiction to hear and determine the right of
2 administration of his or her estate shall be in the county ~~court~~ commission or clerk thereof during
3 the recess of the regular sessions of ~~such court~~ the county commission which would have
4 jurisdiction as to the probate of his or her will, if there were one. Administration shall be granted
5 to the distributees who apply therefor, preferring first the husband or wife, and then such of the
6 others entitled to distribution as ~~such court~~ the county commission or clerk shall see fit. If no
7 distributee apply for administration within 30 days from the death of the intestate, ~~such court~~ the
8 county commission or clerk may grant administration to one or more of his the creditors of the
9 decedent, or to any other person who shall be fit.

10 (b) Notwithstanding the provisions of subsection (a) of this section:

11 (1) Any person having an interest in real estate situate in this state that was seized and
12 possessed by a decedent who was a nonresident of this state and who has died intestate without
13 any will, including a personal representative who has qualified in another state or jurisdiction, for
14 which no appointment of an ancillary personal representative or administrator to administer the
15 real estate within this state is necessary for any proper purpose may execute and tender for
16 recording in the county an affidavit setting forth in substance:

17 (A) A description of the real estate owned by the nonresident decedent at the time of his
18 or her death situate within the county where the affidavit is to be recorded together with its
19 assessed value for tax purposes and its fair market value at the date of death of the decedent;

20 (B) That the nonresident decedent died intestate without any will presented or probated in
21 this state or in any other state or jurisdiction;

22 (C) That more than 60 days have passed since the death of the decedent and no personal
23 representative or administrator of the decedent's estate has been otherwise appointed in this
24 state for any proper purpose; and

25 (D) The names and last known addresses of the decedent's heirs at law determined under
26 the laws of this state entitled to the real estate situate in this state.

27 (2) The clerk of the county commission shall record and index the affidavit in the same
28 manner and upon the same fees as affidavits of heirs are recorded and indexed in case of
29 intestate administration with appointment of a personal representative. The clerk of the county
30 commission may require a certified copy of the decedent's death certificate or other proof of death
31 and residence prior to fulfilling the clerk's responsibilities under this chapter.

32 (3) A bond, security, or oath is not required when no appointment of an ancillary personal
33 representative or administrator is made under the provisions of this section.

34 (c) A document substantially in the following form may be used as the affidavit provided in
35 subsection (b) of this section with the effect as prescribed in this section:

36 THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

37 IN RE: THE ESTATE OF _____

38 DOD: _____

39 AFFIDAVIT FOR ANCILLARY ADMINISTRATION

40 OF WEST VIRGINIA REAL ESTATE

41 WITHOUT APPOINTMENT

42 (INTESTATE)

43

44 STATE OF _____,

45 COUNTY OF _____, to-wit:

46

47 I, _____, whose address is _____

48 _____, being first

49 duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

50

51 1. The decedent, _____, died on

52 _____ (date of death), a resident of _____ County, State of

53 _____.

54 The decedent has left no will so far as I know, and no will of the
54 decedent has been presented or probated in this state or in any other state or jurisdiction.

55 2. More than 60 days have passed since the death of the decedent and no personal

56 representative or administrator of the decedent's estate has been otherwise appointed in the

57 State of West Virginia for any proper purpose.

58 3. A certified death certificate has been furnished herewith for filing in this County.

59 4. The Decedent died owning and possessing the following real estate situate in West

60 Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

61

62 5. The decedent, _____, left as his/her heirs at law in accordance with
 63 the laws of intestate descent and distribution of the State of West Virginia the following persons:

64 a. Name: _____

65 Address: _____

66 Relationship to Decedent: _____

67 Share or percentage: _____

68 b. Name: _____

69 Address: _____

70 Relationship to Decedent: _____

71 Share or percentage: _____

72 c. Name: _____

73 Address: _____

74 Relationship to Decedent: _____

75 Share or percentage: _____

76 d. Name: _____

77 Address: _____

78 Relationship to Decedent: _____

79 Share or percentage: _____

80 6. No appointment of an ancillary personal representative to administer the decedent's real
81 estate within the State of West Virginia is necessary for any proper purpose.

82 7. I have personal knowledge of the above facts and am interested in the Estate of
83 _____, the decedent, as the () acting domiciliary personal representative, (
84) surviving spouse, () beneficiary under the decedent's will, () heir at law, or () other
85 _____ (describe relationship or interest). [Check one]

86
87 _____
88 Signature of Affiant
89

90 Taken, subscribed, and sworn to before me the undersigned authority by
91 _____, this _____ day of _____, 20____.

92 {seal}

93 My Commission expires: _____
94 _____
95 Notary Public

**§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for
filing of objections.**

1 (a) Within 30 days of the filing of a foreign will of a nonresident of this state without
2 appointment of an ancillary personal representative, executor, or administrator as provided in the
3 provisions of §41-5-13(b) of this code or within 30 days of the filing of an affidavit concerning the
4 intestacy of a nonresident of this estate without appointment of an ancillary intestate administrator
5 as provided in the provisions of §44-1-4(b) of this code, the clerk of the county commission shall
6 publish, once a week for two successive weeks, in a newspaper of general circulation within the
7 county of the filing of the foreign will or the affidavit, a notice which is to include:

8 (1) The name and last known address of the decedent;

9 (2) The name and address of the county commission before whom the foreign will or
10 affidavit has been filed and a statement that no appointment or administration is being made
11 pursuant to the provisions of law but that a foreign will or affidavit of heirs of the decedent has
12 been filed with the county commission;

13 (3) The name and address of the party filing the foreign will or affidavit and his or her
14 relationship to the decedent;

15 (4) The date of first publication of the notice;

16 (5) A statement that an interested person objecting to the filing of the foreign will or affidavit
17 or objecting to the absence of appointment or administration being made in this state must be
18 filed with the county commission within 60 days after the date of first publication or 30 days of
19 service of the notice, whichever is later.

20 (b) This notice shall be published as a Class II legal advertisement in compliance with the
21 provisions of §59-3-1 et seq. of this code. The publication of the notice is equivalent to personal
22 service on creditors, devisees or beneficiaries under the will, and heirs at law of the decedent.

23 (c) The party filing the foreign will or affidavit shall, not later than 30 days after the date of
24 first publication, serve a copy of the notice, published pursuant to subsection (a) of this section,
25 at the last known address by first class mail, postage prepaid or by personal service on the
26 following persons:

27 (1) The decedent's surviving spouse, if any;

28 (2) If there is a will, the personal representative or personal representatives named therein;

29 (3) If there is a will, all devisees or beneficiaries named therein;

30 (4) The heirs at law of the decedent determined under the laws of this state; and

31 (5) Any known creditors of the decedent residing or located in this state or who may claim
32 a lien or interest against the real estate of the decedent situate in this state.

33 (d) Any person interested in the estate who objects to the filing of the foreign will or affidavit
34 or objects to the absence of appointment or administration being made in this state shall file notice

35 of an objection with the county commission within 60 days after the date of the first publication as
36 required in subsection (a) of this section or within 30 days after service of the notice as required
37 by subsection (c) of this section, whichever is later. If an objection is not timely filed, the objection
38 is forever barred. The county commission upon receiving any timely objection thereto shall
39 schedule a hearing or hearings thereon and order relief, if any, it considers proper including, but
40 not limited to, an order directing that full and complete ancillary administration of the estate of the
41 nonresident decedent be made in this state.

42 (e) The clerk of the county commission shall collect a fee of \$20 for the publication of the
43 notice required in this section.

NOTE: The purpose of this bill is to provide for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

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

However, the forms provided in §41-5-13 and §44-1-4 although new, are not underscored for clarity purposes.