

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 223

BY SENATOR TRUMP

[Introduced January 12, 2022; referred to
the Committee on the Judiciary]

1 A BILL to amend and reenact §44-2-1 and §44-2-29 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §44-3A-4a and §44-3A-19 of said code; and to amend
3 and reenact §44-4-9 of said code, all relating to the procedure to settle estates of
4 decedents; abolishing the requirement to make a publication of a short form settlement in
5 the estates of decedents; and updating language and style.

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 appraisalment 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 section nine, article one, chapter fifty-nine of this code.

14 (b) If the personal representative delivers to the clerk an appraisalment of the assets of the
15 estate showing their value to be \$200,000 or less, exclusive of real estate specifically devised
16 and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate

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

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

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

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

§44-2-29. Waiver of final settlement.

1 (a) In all estates of decedents subject to administration under this article where a release
2 of lien, if required by the provisions of article eleven, chapter eleven of this code, has been filed
3 with the clerk and more than 90 days have elapsed since the filing of any notice required by the
4 provisions of this article, even though such estate may have been referred to a fiduciary
5 commissioner, a final settlement may be waived by a waiver containing an affidavit made by the
6 personal representative, that the time for filing of claims has expired, that no known and unpaid
7 claims exist against the estate, and that all beneficiaries have each been advised of the share or
8 shares to which each is entitled from the estate. Each beneficiary shall sign the waiver unless the
9 beneficiary receives a bequest of tangible personal property or a bequest of cash.

10 (b) In the case of a deceased beneficiary or a beneficiary under a disability, the duly
11 qualified fiduciary or agent of such beneficiary may sign in lieu of such beneficiary. A fiduciary or
12 agent signing such waiver shall be responsible to the beneficiary for any loss resulting from such
13 waiver.

14 (c) The waiver shall be recorded as in the case of and in lieu of a settlement as provided
15 in section one, article two of this chapter.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.**

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the provisions of this article where more
2 than 60 days has elapsed since the filing of any notice required by section four, an estate may be
3 closed by a short form settlement filed in compliance with this section: *Provided*, That any lien for
4 payment of estate taxes under article eleven, chapter eleven of this code is released and that the
5 release is filed with the clerk.

6 (b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement
7 which shall contain an affidavit made by the fiduciary that the time for filing claims has expired,

8 that no known and unpaid claims exist against the estate and showing the allocation to which
9 each distributee and beneficiary is entitled in the distribution of the estate and contain a
10 representation that the property to which each distributee or beneficiary is entitled has been or
11 upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary
12 has agreed to a different allocation. The application shall contain a waiver signed by each
13 distributee and beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal
14 property or a bequest of cash may not be required to sign the waiver.

15 (c) Such waiver may be signed in the case of a distributee or beneficiary under a disability
16 by the duly qualified personal representative of such distributee or beneficiary. A personal
17 representative signing such waiver shall be responsible to his or her cestui que trust for any loss
18 resulting from such waiver.

19 (d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the
20 allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper
21 parties signed the waiver. ~~both shall be recorded as in the case of and in lieu of settlement. If the~~
22 ~~fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing~~
23 ~~of such settlement give the fiduciary notice as in the case of any other incorrect settlement~~

24 (e) If the short form settlement is proper the fiduciary supervisor shall ~~proceed as in the~~
25 ~~case of any other settlement~~ record the same and mail copies to each beneficiary by first-class
26 mail, postage prepaid. The fiduciary supervisor shall retain the short form settlement for 10 days
27 to allow any beneficiary to appear before the fiduciary supervisor to object or request reference
28 to a fiduciary commissioner. The fiduciary supervisor shall collect a fee of \$10 for recording and
29 mailing the short form settlement. If no objection or request is made to the fiduciary supervisor,
30 the county commission shall upon order confirm the short form settlement of the personal
31 representative, and the personal representative and his or her surety shall be discharged; but if
32 an objection or request is made, the county commission may confirm and record the short form
33 settlement or may refer the estate to a fiduciary commissioner.

§44-3A-19. Summary Long form settlement before fiduciary supervisor.

1 (a) At any time after the expiration of the period for filing claims, the fiduciary supervisor
2 may proceed with ~~summary~~ a complete long form settlement under this section if the estate has
3 not been referred to a fiduciary commissioner or if the estate, having been referred to a fiduciary
4 commissioner generally or for a specific reason, has been withdrawn and placed before the
5 fiduciary supervisor for settlement.

6 The fiduciary supervisor shall require that the personal representative, or the personal
7 representative may on his or her own motion, timely file a proposed long form settlement which
8 shall include:

9 (1) Proof of payment of all claims filed against the estate or proof of such payment has
10 been provided for;

11 (2) Verification under oath that the personal representative, after exercise of due diligence,
12 knows of no other claims against the estate;

13 (3) Verification and accounting of any income received by the personal representative from
14 the benefit of the estate;

15 (4) Provisions for the payment of all taxes due from the estate or proof that all such taxes
16 have been paid;

17 (5) A proposed plan of distribution; and

18 (6) Any and all other information deemed appropriate by the fiduciary supervisor.

19 (b) The provisions of this section to the contrary notwithstanding, any claim paid by the
20 personal representative to any creditor or beneficiary within such 120 days, shall not abrogate in
21 any way, the liability of the personal representative under the provisions of section twenty-six,
22 twenty-seven or twenty-eight of this article.

23 (c) At the time such proposed settlement is filed, or prior thereto, the personal
24 representative shall prepare and furnish to the fiduciary supervisor, and such supervisor shall
25 review, a return of all inheritance taxes due the state, pursuant to article eleven, chapter eleven

26 of this code, by reason of the death of the decedent, who shall approve any proper return filed
27 with him or her.

28 Such supervisor shall compare the proposed settlement with any proper inheritance tax
29 return and with the appraisement and any and all other documents deemed appropriate by the
30 supervisor in order to investigate the propriety of such proposed settlement.

31 (d) The supervisor may, if ~~he~~ the supervisor deems it appropriate, reject such settlement
32 and give notice in writing to the personal representative of the matters disapproved and the
33 reasons therefor and fix a time, no later than forty-five days after the date of such notice, for the
34 personal representative to amend the proposed settlement. The personal representative may,
35 within the time specified by the supervisor, amend the settlement, otherwise satisfy the supervisor
36 of the propriety of all or part of such proposed settlement, or insist on the propriety thereof, with
37 or without amendment thereof.

38 (e) The supervisor shall, after ~~he~~ the supervisor is satisfied as to the propriety of the
39 settlement or, after the period set by ~~him~~ the supervisor for amendment thereof has expired,
40 prepare a report of ~~his~~ the supervisor's recommendations to the county commission with respect
41 thereto and ~~his~~ the supervisor's findings and determinations, which shall include ~~his~~ the
42 supervisor's findings with respect to:

43 (1) A proper appraisement has been filed which conforms to the requirements of section
44 fourteen, article one of this chapter;

45 (2) The claims of creditors have been paid or have been properly provided for in proper
46 order of preference and proportions;

47 (3) A proper inheritance tax return has been made and the taxes due thereon paid or that
48 payment has been provided for;

49 (4) Any real property in this state owned by the decedent at the time of his or her death
50 has been properly transferred upon the books of the assessor or that the assessor has been
51 notified of the facts and circumstances sufficient to cause the transfer to be noted upon the books

52 of the assessor;

53 (5) A proper distribution to the parties entitled thereto has been proposed by the personal
54 representative of the estate;

55 (6) Minors and other persons under disability who own or are entitled to an interest in the
56 estate are or have been protected; and

57 (7) Any other matter or matters deemed pertinent by the fiduciary supervisor.

58 (f) The fiduciary supervisor shall give notice of such proposed settlement and findings to
59 the State Tax Commissioner, all creditors whose claims have not been fully paid or otherwise
60 satisfied and all beneficiaries which notice shall include a copy of the proposed settlement and
61 shall advise that the subject estate shall be settled according thereto 30 days following the date
62 of such notice. In addition, on the first Monday of the next month, the supervisor shall publish as
63 a Class I-0 legal advertisement, a notice that the accounts of the personal representative are
64 before him or her for approval.

65 Such notice shall be divided into two sections: Settlements approved and settlements not
66 approved and notice of the date and time that the names shall be presented to the county
67 commission, which date shall not be more than 15 days after such publication. Such
68 advertisement shall be sufficient if substantially as follows:

69 NOTICE OF PROPOSED SETTLEMENT OF ESTATES

70 To the Creditors and Beneficiaries of the within named deceased persons:

71 I have before me the proposed final settlements of the estates of the following deceased
72 persons, which shall be presented to the county commission of County, at the
73 Courthouse thereof, in the City of, on the day of, 19..., at o'clock,
74M., which settlements have been presented to me by the fiduciary of such estates and which
75 proposed settlements I have either approved or have not approved as indicated below:

76 APPROVED

77 Name(s) of Decedent:

78

79

80 NOT APPROVED

81 Name(s) of Decedent:

82

83 Any person having any interest in the estate of any such deceased person, may appear
84 before the county commission at the time and place hereinabove specified and thereupon protect
85 his or her interests as they may appear or else may be forever thereafter barred from asserting
86 such interests.

87 Given under my hand this day of, 19...,

88

89 Fiduciary Supervisor

90County, W. Va.

91 (g) Any person may examine such proposed settlement in the office of the fiduciary
92 supervisor and file objection thereto at or prior to the time set by such notice for presentation
93 thereof to the county commission. The commission shall proceed to hear the presentation of such
94 proposed settlement and findings and hear interested parties, if any appear, and approve, modify
95 and approve, or refuse to approve such proposed settlement and the findings of the fiduciary
96 supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner
97 generally for supervision or for the purpose of the resolution of any disputed matter.

98 (h) If no dispute or objection to the proposed settlement has arisen, the fiduciary supervisor
99 shall direct the personal representative to conclude the affairs of the estate as outlined in the
100 proposed settlement or amended proposed settlement. Upon receipt by such supervisor of
101 evidence to his or her satisfaction that all claims including claims of beneficiaries have been
102 satisfied and that all taxes have been paid, he or she shall submit his or her report of the proposed
103 or amended proposed settlement to the county commission for ratification, confirmation and

104 approval as otherwise provided by law.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-9. Publication of list of fiduciaries prior to settlements.

1 Every fiduciary commissioner shall, on the first Monday of every month, prepare a list of
 2 the fiduciaries whose accounts are at the date of such list before ~~him~~ the fiduciary commissioner
 3 for settlement, except those that may have been mentioned in some previous list and except
 4 those for whom a short form settlement has been filed in accordance with the provisions of
 5 sections 1 and 29 of article 2 of this chapter and section 4a of article 3A of this chapter. ~~He~~ The
 6 fiduciary commissioner shall state the names of the fiduciaries, the nature of their accounts,
 7 whether as they act as personal representative, guardian, curator or committee and the names of
 8 their decedents, or of the persons for whom they are guardians, curators or committees. ~~He~~ The
 9 fiduciary commissioner shall also publish such list each month as a Class II legal advertisement
 10 in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication
 11 area for such publication shall be the county. The first publication of the list shall be made on said
 12 first Monday of the month, or on some following day of the same week. No account of any fiduciary
 13 shall be completed by any fiduciary commissioner until it has been mentioned in such a list, nor
 14 until the completion of the publication. Any fiduciary commissioner who fails to publish this list
 15 shall be fined \$20. The cost of the publication of the list shall be borne by the fiduciary
 16 commissioner, but ~~he~~ the fiduciary commissioner may charge to, and collect from, each of the
 17 fiduciaries in the list ~~his~~ the proportionate part of the cost thereof as and when the fiduciary
 18 commissioner collects ~~his~~ the fees for settling the accounts of the fiduciary.

NOTE: The purpose of this bill is to abolish the requirement to make publication of a short form settlement in the estates of decedents. The bill also updates language and style.

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