

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 223

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 28, 2022]

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 publish a short form settlement of estates of
5 decedents; providing for short form filing procedure; 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 appraisal 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 distributees, 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 appraisal 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 20 days after the
19 date of the filing of a claim against the estate of the decedent to approve or reject the claim before
20 the estate is referred to a fiduciary commissioner. If the personal representative approves all
21 claims as filed, then no reference may be made.

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

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

40 (e) 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~~ §11-11-1 et seq. of this code,
3 has been filed with the clerk and more than 90 days have elapsed since the filing of any notice
4 required by the provisions of this article, even though such estate may have been referred to a
5 fiduciary commissioner, a final settlement may be waived by a waiver containing an affidavit made
6 by the personal representative, that the time for filing of claims has expired, that no known and
7 unpaid claims exist against the estate, and that all beneficiaries have each been advised of the
8 share or shares to which each is entitled from the estate. Each beneficiary shall sign the waiver
9 unless the 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~~ the beneficiary may sign in lieu of ~~such~~ the beneficiary. A
12 fiduciary or agent signing ~~such~~ the waiver shall be responsible to the beneficiary for any loss
13 resulting from ~~such~~ the 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~~ §44-2-1 et seq. of this code.

**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~~ §44-3A-4 of this
3 code, an estate may be closed by a short form settlement filed in compliance with this section:

4 *Provided*, That any lien for payment of estate taxes ~~under article eleven, chapter eleven~~ pursuant
5 to §11-11-1 et seq. of this code is released and that the 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, showing the allocation to which each
9 distributee and beneficiary is entitled in the distribution of the estate, and contain a representation
10 that the property to which each distributee or beneficiary is entitled has been or upon approval of
11 the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a
12 different allocation. The application shall contain a waiver signed by each distributee and
13 beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal property or a
14 bequest of cash may not be required to sign the waiver.

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

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

25 (e) If the short form settlement is proper the fiduciary supervisor shall ~~proceed as in the~~
26 ~~case of any other settlement~~ record the same and mail copies to each beneficiary by first-class
27 mail, postage prepaid. The fiduciary supervisor shall retain the short form settlement for 10 days
28 to allow any beneficiary to appear before the fiduciary supervisor to object or request a referral to
29 a fiduciary commissioner. The fiduciary supervisor shall collect a fee of \$10 for recording and

30 mailing the short form settlement. If no objection or referral request is made to the fiduciary
31 supervisor, the county commission shall upon order, confirm the short form settlement of the
32 personal representative, and the personal representative and his or her surety shall be
33 discharged. If an objection or request is made, the county commission may confirm and record
34 the short form 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~~ that payment
10 has 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,~~ before the expiration

21 of the period for filing claims shall not abrogate in any way the liability of the personal
22 representative ~~under the provisions of section twenty six, twenty seven or twenty eight of this~~
23 ~~article pursuant to §44-3A-26, §44-3A-27, or §44-3A-28 of this code.~~

24 (c) At the time ~~such~~ the proposed settlement is filed, or prior thereto, the personal
25 representative shall prepare and furnish to the fiduciary supervisor, and ~~such~~ the supervisor shall
26 review, a return of all inheritance taxes due the state, pursuant to ~~article eleven, chapter eleven~~
27 §11-11-1 et seq. of this code, by reason of the death of the decedent, who shall approve any
28 proper return filed with him or her.

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

32 (d) The supervisor may, if he or she ~~deems~~ considers it appropriate, reject ~~such~~ the
33 settlement and give notice in writing to the personal representative of the matters disapproved
34 and the reasons therefor and fix a time, no later than ~~forty five~~ 45 days after the date of ~~such~~ the
35 notice, for the personal representative to amend the proposed settlement. The personal
36 representative may, within the time specified by the supervisor, amend the settlement, otherwise
37 satisfy the supervisor of the propriety of all or part of such proposed settlement, or insist on the
38 propriety thereof, with or without amendment thereof.

39 (e) The supervisor shall, after he or she is satisfied as to the propriety of the settlement
40 or, after the period set by him or her for amendment thereof has expired, prepare a report of his
41 or her recommendations to the county commission with respect thereto and his or her findings
42 and determinations, which shall include his or her 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~~ §44-1-14 of this code;

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~~ the proposed settlement and findings
59 to the 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~~ the notice. In addition, on the first Monday of the next month, the supervisor shall publish,
63 as a Class I-0 legal advertisement, a notice that the accounts of the personal representative are
64 before him or her for approval.

65 (g) ~~Such~~ The notice shall be divided into two sections: Settlements approved and
66 settlements not approved and notice of the date and time that the names shall be presented to
67 the county commission, which date shall not be more than 15 days after ~~such~~ the publication.
68 ~~Such~~ The 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 20..., at
74 o'clock,M., which settlements have been presented to me by the fiduciary of ~~such~~ the estates
75 and which 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 20...,
88

89 Fiduciary Supervisor

90County, W. Va.

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

98 ~~(h)~~ (i) If no dispute or objection to the proposed settlement has arisen, the fiduciary
99 supervisor shall direct the personal representative to conclude the affairs of the estate as outlined
100 in the proposed settlement or amended proposed settlement. Upon receipt by ~~such~~ the supervisor
101 of 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 §44-
5 2-1, §44-2-29, and §44-3A-4a of this code. ~~He~~ The fiduciary commissioner shall state the names
6 of the fiduciaries, the nature of their accounts, whether as they act as personal representative,
7 guardian, curator, or committee and the names of their decedents, or of the persons for whom
8 they are guardians, curators, or committees. ~~He~~ The fiduciary commissioner shall also publish
9 ~~such~~ the list each month as a Class II legal advertisement in compliance with the provisions of
10 ~~article three, chapter fifty nine~~ §59-3-1 et seq. of this code, and the publication area for ~~such~~ the
11 publication shall be the county. The first publication of the list shall be made on ~~said~~ the first
12 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.