

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

House Bill 2867

By Delegates Roop, Drennan, Marple, Foggin, Pritt,
Cooper, Brooks, Rohrbach, Kump, Canterbury, and
Maynor

[Introduced February 24, 2025; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §44-1A-2 of the Code of West Virginia, 1931, as amended, relating
2 to precluding an estate with real property from being processed as a small estate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.

§44-1A-2. Administration of a small estate upon affidavit and without appointment.

1 (a) Notwithstanding any provisions of this code to the contrary, the small estate of a
2 decedent who dies domiciled in this state, without owning any interest in any real property, may be
3 administered upon affidavit and without the appointment of a personal representative, and the
4 small assets of the decedent may be paid or delivered to the authorized successor as provided in
5 this article.

6 (b) Any successor of a decedent who dies domiciled in this state, without owning any
7 interest in any real property, may execute and tender for recording to the clerk of the county
8 commission, or the fiduciary supervisor of the clerk of the county commission, of the county in this
9 state which would have jurisdiction over the probate concerning the estate and assets of the
10 decedent an affidavit made upon oath and under penalty of perjury concerning the small estate
11 setting forth in substance:

12 (1) The name and current address of the affiant;

13 (2) The name of the decedent, the date of death of the decedent, and the address and
14 residence of the decedent at his or her death;

15 (3) Whether the decedent had any known will, with the original of the known will to be
16 attached to the affidavit and tendered for recording in the county as long as the will is in due and
17 proper form for probate as a will in this state, or whether the decedent died intestate with no known
18 will;

19 (4) A listing of the names, current addresses, and relationship to the decedent of any
20 person nominated as a personal representative under the known will, together with a listing of the
21 names, current addresses, and relationship to the decedent of the beneficiaries under the known

22 will entitled to the estate or assets of the decedent. If there is no known will of the decedent, a
23 listing of the names, current addresses, and relationship to the decedent of all of the intestate
24 heirs-at-law and distributees of the decedent determined under the laws of intestate descent and
25 distribution of this state;

26 (5) That the decedent's entire personal probate estate as of the date of the decedent's
27 death, wherever located, consists only of small assets and the aggregate fair market value of all of
28 the small assets does not exceed \$50,000, together with a description or itemization of the small
29 assets with an estimate of value, if known or ascertainable;

30 ~~(6) Whether the decedent died seized and possessed of any probate real estate or~~
31 ~~interests in probate real property situate in this state and if so, that the aggregate fair market value~~
32 ~~of all of the real estate or interests in real property situate in this state does not exceed \$100,000,~~
33 ~~together with a description of the real estate, the county in which it is situate, its assessed value for~~
34 ~~tax purposes, and its fair market value at the decedent's date of death;~~

35 ~~(7)~~ (6) That if the successor is nominated as a personal representative or executor under
36 the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's date
37 of death and no application for the appointment of a personal representative for the decedent is
38 pending or has been granted in any jurisdiction. If the successor is not nominated as a personal
39 representative or executor under the provisions of the will of the decedent, at least 60 days have
40 elapsed since the decedent's date of death, no application for the appointment of a personal
41 representative for the decedent is pending or has been granted in any jurisdiction, and no affidavit
42 of small estate has been filed by a successor nominated as a personal representative or executor
43 under the provisions of the will of the decedent; and

44 (8) (7) That the affiant will faithfully administer the small assets of the decedent in
45 accordance with the law and pay or deliver the small assets to the successor or successors so
46 entitled, after paying any known or ascertainable creditors of the decedent.

47 (c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county
 48 commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county
 49 clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or
 50 fiduciary supervisor shall record and index the affidavit, together with the original of any will
 51 tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of
 52 beneficiaries or heirs are recorded and indexed in case of probate administration with appointment
 53 of a personal representative. The clerk of the county commission, or the fiduciary supervisor of the
 54 clerk of the county commission, may require a certified copy of the decedent's death certificate or
 55 other proof of death and residence prior to fulfilling the responsibilities under this article.

56 (d) A bond, security, or oath is not required when an appointment of a personal
 57 representative is not made for a small estate under the provisions of this article.

58 (e) A document substantially in the following form may be used as the affidavit provided in
 59 subsection (b) of this section with the effect as prescribed in this article:

60 IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

61 RE: THE ESTATE OF _____

62 DOD: _____

63 AFFIDAVIT FOR SMALL ESTATE

64 STATE OF _____,

65 COUNTY OF _____, to-wit:

66 I, _____, being a Successor of the Decedent identified
 67 below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the
 68 best of my knowledge and belief as follows:

69 1. My name is _____, and my current address is
 70 _____
 71 _____.

72 2. The Decedent, _____, died on
 73 _____ (date of death), a resident of _____ County, State of
 74 West Virginia, with his/her usual residence being
 75 _____
 76 _____.

77 A certified death certificate has been furnished herewith for filing in this County. I am a Successor
 78 of the decedent as _____ (state relationship).

79 3. TESTACY () [Check if applies] or () [Check if Not Applicable]

80 At the date of death, the Decedent died with an original Last Will and Testament of the
 81 Decedent dated _____, without any codicil thereto () or with codicil(s)
 82 thereto dated _____ () [Check if applies]. The aforesaid original Last Will and
 83 Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this
 84 County as permitted by West Virginia Code § 44-1A-2(b).

85 Under the Last Will and Testament of the Decedent, the following person(s) is/are
 86 nominated to be the personal representative(s) of the Estate:

87 a. Name: _____
 88 Address: _____
 89 _____

90 b. Name: _____
 91 Address: _____
 92 _____

93 Pursuant to the provisions of the above referenced Will of the Decedent, the following
 94 persons are the named beneficiaries of the estate of the Decedent:

95 a. Name: _____
 96 Address: _____
 97 _____

98 Relationship to Decedent: _____

99 Share or percentage or particular item: _____

100 b. Name: _____

101 Address: _____

102 _____

103 Relationship to Decedent: _____

104 Share or percentage or particular item: _____

105 c. Name: _____

106 Address: _____

107 _____

108 Relationship to Decedent: _____

109 Share or percentage or particular item: _____

110 d. Name: _____

111 Address: _____

112 _____

113 Relationship to Decedent: _____

114 Share or percentage or particular item: _____

115 e. Name: _____

116 Address: _____

117 _____

118 Relationship to Decedent: _____

119 Share or percentage or particular item: _____

120 (If more space is needed, attach additional page(s) to affidavit)

121 4. INTESTACY () [Check if applies] or () [Check if Not Applicable]

122 At the date of death, the Decedent died intestate with no known will. The Decedent left as
123 his/her heirs-at-law and distributees in accordance with the laws of intestate descent and
124 distribution of the State of West Virginia the following persons:

125 a. Name: _____

126 Address: _____

127 Relationship to Decedent: _____

128 Share or percentage: _____

129 b. Name: _____

130 Address: _____

131 Relationship to Decedent: _____

132 Share or percentage: _____

133 c. Name: _____

134 Address: _____

135 Relationship to Decedent: _____

136 Share or percentage: _____

137 d. Name: _____

138 Address: _____

139 Relationship to Decedent: _____

140 Share or percentage: _____

141 e. Name: _____

142 Address: _____

143 Relationship to Decedent: _____

144 Share or percentage: _____

145 (If more space is needed, attach additional page(s) to affidavit)

146 5. The Decedent's entire personal probate estate, as of the date of the Decedent's death,
147 wherever located, consists only of small assets and the aggregate fair market value of the small

148 assets does not exceed \$50,000. The small assets of the Decedent are described and itemized as
 149 follows:

	Description	Fair Market value
.		
.		
.		
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.		
.		
.		
	Total	

150 (If more space is needed, attach additional page(s) to affidavit)

151 6. The Decedent did / did not [Check one which applies] die seized and possessed
 152 of any probate real estate or interests in probate real estate in the state of West Virginia. If the
 153 ~~Decedent died seized and possessed of any probate real estate or interest in real estate in the~~
 154 ~~state of West Virginia, the aggregate fair market value of all of the real estate or interests in real~~
 155 ~~property situate in this state does not exceed \$100,000 and the real estate of the Decedent in West~~
 156 ~~Virginia is as follows:~~

	Description	County	Assessed Value	Fair Market value
	Total			

157 (If more space is needed, attach additional page(s) to affidavit)

158 7. [Check if applies] or [Check if Not Applicable] If the affiant is a Successor who
 159 was nominated as a personal representative or executor under the provisions of the above Will of

160 the Decedent, at least 30 days have elapsed since the Decedent's date of death and no
161 application for the appointment of a personal representative for the Decedent is pending or has
162 been granted in any jurisdiction;

163 or

164 () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who was
165 NOT nominated as a personal representative or executor under the provisions of the above Will of
166 the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed since
167 the Decedent's date of death and no application for the appointment of a personal representative
168 for the Decedent is pending or has been granted in any jurisdiction, and no affidavit of Small Estate
169 has been filed by a Successor nominated as a personal representative or executor under the
170 provisions of the Will of the Decedent.

171 8. The undersigned Affiant will faithfully administer the small assets of the Decedent in
172 accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

173 Witness my hand and seal this ____ day of _____, 20__.

174 _____

175 Signature of Affiant/Successor

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

178 {seal}

179 My Commission expires: _____

180 _____

181 Notary Public

182 (f) Upon acceptance and recording of the affidavit provided in this section, the county clerk
183 or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is
184 nominated in an attached will, and the beneficiaries under the will when the decedent dies with a
185 will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit,

186 and shall issue a certificate and authorization of a small estate to the authorized successor who
187 completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small
188 assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor
189 or successors of the decedent entitled pursuant to the provisions of this article and the other laws
190 of the State of West Virginia and with authority to faithfully perform the duties of the office
191 necessary to collect and administer the small assets of the decedent including, but not limited to,
192 making application for and executing receipts, assignments, transfers, releases, waivers,
193 applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent
194 concerning the small assets, pursuing litigation for or against the decedent or the decedent's
195 estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

196 (g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or
197 fiduciary supervisor any interested person in the estate of the decedent files a written objection
198 with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or
199 fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report,
200 and recommendation which may, among other things, revoke the certificate and authorization of
201 small estate and require full and complete probate administration of the estate of the decedent in
202 accordance with the other applicable provisions of this article. Upon any revocation of the
203 certificate and authorization of small estate, the authorized successor shall provide an accounting
204 and report of all payments or deliveries made of the small assets of the decedent.

205 (h) The authorized successor may act under the certificate and authorization of small
206 estate issued under the provisions of this article for a period of six months from the date of the
207 original issuance of the certificate and authorization but may, upon a showing of good cause in an
208 application made to the county clerk or fiduciary supervisor, be granted an extension of an
209 additional time period not to exceed six months upon issuance of an extended certificate and
210 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

211 (i) If at any time after the original issuance of the certificate and authorization by the county
212 clerk or fiduciary supervisor, the authorized successor or an interested person determines that the
213 probate estate of the decedent does not qualify as a small estate because the aggregate values of
214 all of the small assets ~~or the real estate~~ of the decedent exceed the values provided in this article,
215 upon application by an interested person the county clerk or fiduciary supervisor shall rescind the
216 certificate and authorization of the small estate and shall mail a written order of rescission to the
217 authorized successor and other interested persons, and a probate under the other provisions of
218 this article shall be commenced by an interested person.