

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

House Bill 2867

BY DELEGATES ROOP, DRENNAN, MARPLE, FOGGIN,

PRITT, COOPER, BROOKS, ROHRBACH, KUMP,

CANTERBURY, AND MAYNOR

[Passed April 10, 2025; in effect 90 days from
passage (July 9,2025)]

1 AN ACT to amend and reenact §44-1A-2 of the Code of West Virginia, 1931, as amended, relating
2 to precluding an estate with probate real property or with an interest in probate real
3 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 probate real property or without
3 owning any interest in probate real property, may be administered upon affidavit and without the
4 appointment of a personal representative, and the small assets of the decedent may be paid or
5 delivered to the authorized successor as provided in this article.

6 (b) Any successor of a decedent who dies domiciled in this state, without owning any
7 probate real property or without owning any interest in probate real property, may execute and
8 tender for recording to the clerk of the county commission, or the fiduciary supervisor of the clerk
9 of the county commission, of the county in this state which would have jurisdiction over the probate
10 concerning the estate and assets of the decedent an affidavit made upon oath and under penalty
11 of perjury concerning the small estate 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
28 of the small assets does not exceed \$50,000, together with a description or itemization of the
29 small assets with an estimate of value, if known or ascertainable;

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

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

42 (c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county
43 commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county
44 clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or
45 fiduciary supervisor shall record and index the affidavit, together with the original of any will
46 tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of

47 beneficiaries or heirs are recorded and indexed in case of probate administration with
48 appointment of a personal representative. The clerk of the county commission, or the fiduciary
49 supervisor of the clerk of the county commission, may require a certified copy of the decedent's
50 death certificate or other proof of death and residence prior to fulfilling the responsibilities under
51 this article.

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

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

56 IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

57 RE: THE ESTATE OF _____

58 DOD: _____

59 AFFIDAVIT FOR SMALL ESTATE

60 STATE OF _____,

61 COUNTY OF _____, to-wit:

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

65 1. My name is _____, and my current address is

66 _____
67 _____.

68 2. The Decedent, _____, died on

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

70 West Virginia, with his/her usual residence being

71 _____
72 _____.

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

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

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

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

83 a. Name: _____

84 Address: _____

85 _____

86 b. Name: _____

87 Address: _____

88 _____

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

91 a. Name: _____

92 Address: _____

93 _____

94 Relationship to Decedent: _____

95 Share or percentage or particular item: _____

96 b. Name: _____

97 Address: _____

98 _____

99 Relationship to Decedent: _____

100 Share or percentage or particular item: _____

101 c. Name: _____

102 Address: _____

103 _____

104 Relationship to Decedent: _____

105 Share or percentage or particular item: _____

106 d. Name: _____

107 Address: _____

108 _____

109 Relationship to Decedent: _____

110 Share or percentage or particular item: _____

111 e. Name: _____

112 Address: _____

113 _____

114 Relationship to Decedent: _____

115 Share or percentage or particular item: _____

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

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

118 At the date of death, the Decedent died intestate with no known will. The Decedent left as

119 his/her heirs-at-law and distributees in accordance with the laws of intestate descent and

120 distribution of the State of West Virginia the following persons:

121 a. Name: _____

122 Address: _____

123 Relationship to Decedent: _____

124 Share or percentage: _____

125 b. Name: _____

126 Address: _____

127 Relationship to Decedent: _____

128 Share or percentage: _____

129 c. Name: _____

130 Address: _____

131 Relationship to Decedent: _____

132 Share or percentage: _____

133 d. Name: _____

134 Address: _____

135 Relationship to Decedent: _____

136 Share or percentage: _____

137 e. Name: _____

138 Address: _____

139 Relationship to Decedent: _____

140 Share or percentage: _____

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

142 5. The Decedent's entire personal probate estate, as of the date of the Decedent's death,
 143 wherever located, consists only of small assets and the aggregate fair market value of the small
 144 assets does not exceed \$50,000. The small assets of the Decedent are described and itemized
 145 as follows:

	Description	Fair Market value
a.		
b.		
c.		
d.		
e.		
f.		

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

6. The Decedent did not () die seized and possessed of any probate real estate or interests in probate real estate in the state of West Virginia.				

147 7. () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who
 148 was nominated as a personal representative or executor under the provisions of the above Will
 149 of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no
 150 application for the appointment of a personal representative for the Decedent is pending or has
 151 been granted in any jurisdiction;

152 or
 153 () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who
 154 was NOT nominated as a personal representative or executor under the provisions of the above
 155 Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed
 156 since the Decedent's date of death and no application for the appointment of a personal

157 representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit
158 of Small Estate has been filed by a Successor nominated as a personal representative or executor
159 under the provisions of the Will of the Decedent.

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

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

163 _____

164 Signature of Affiant/Successor

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

167 {seal}

168 My Commission expires: _____

169 _____

170 Notary Public

171 (f) Upon acceptance and recording of the affidavit provided in this section, the county clerk
172 or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is
173 nominated in an attached will, and the beneficiaries under the will when the decedent dies with a
174 will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit,
175 and shall issue a certificate and authorization of a small estate to the authorized successor who
176 completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small
177 assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor
178 or successors of the decedent entitled pursuant to the provisions of this article and the other laws
179 of the state of West Virginia and with authority to faithfully perform the duties of the office
180 necessary to collect and administer the small assets of the decedent including, but not limited to,
181 making application for and executing receipts, assignments, transfers, releases, waivers,
182 applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent

183 concerning the small assets, pursuing litigation for or against the decedent or the decedent's
184 estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

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

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

200 (i) If at any time after the original issuance of the certificate and authorization by the county
201 clerk or fiduciary supervisor, the authorized successor or an interested person determines that
202 the probate estate of the decedent does not qualify as a small estate because the aggregate
203 values of all of the small assets of the decedent exceed the values provided in this article, upon
204 application by an interested person the county clerk or fiduciary supervisor shall rescind the
205 certificate and authorization of the small estate and shall mail a written order of rescission to the
206 authorized successor and other interested persons, and a probate under the other provisions of
207 this article shall be commenced by an interested person.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2025.

.....
Governor