

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2266**

4 (By Delegates Shott, Ellington and Gearheart)

5 (Originating in the House Committee on Judiciary)

6 [February 4, 2015]

7
8
9
10 A BILL to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; and to
11 amend and reenact §44-1-14a of said code, relating to the publication requirements of the
12 administration of estates.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; and
15 that §44-1-14a of said code be amended and reenacted to read as follows:

16 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

17 **§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of**
18 **personal representative.**

19 (a) Within thirty days of the filing of the appraisal of any estate or within one hundred
20 twenty days of the date of qualification of the personal representative if an appraisal is not filed
21 as required in section fourteen of this article, the clerk of the county commission shall publish, once
22 a week for two successive weeks, in a newspaper of general circulation within the county of the

1 administration of the estate, a notice, which is to include:

2 (1) The name of the decedent;

3 (2) The name and address of the county commission before whom the proceedings are
4 pending;

5 (3) The name and address of the personal representative;

6 (4) The name and address of any attorney representing the personal representative;

7 (5) The name and address of the fiduciary commissioner, if any;

8 (6) The date of first publication;

9 (7) A statement that claims against the estate must be filed within ninety days of the date of
10 first publication in accordance with ~~the provisions of~~ article two or article three-a of this chapter;

11 (8) A statement that any person seeking to impeach or establish a will must make a complaint
12 in accordance with ~~the provisions of~~ section eleven, twelve or thirteen, article five, chapter forty-one
13 of this code;

14 (9) A statement that an interested person objecting to the qualifications of the personal
15 representative or the venue or jurisdiction of the court must be filed with the county commission
16 within three months after the date of first publication or thirty days of service of the notice,
17 whichever is later; and

18 (10) If the appraisal of the assets of the estate shows the value to be \$100,000 or less,
19 exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that
20 there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a
21 statement substantially as follows: "Settlement of the estate of the following named decedents will
22 proceed without reference to a fiduciary commissioner unless within ninety days from the first

1 publication of this notice a reference is requested by a party in interest or an unpaid creditor files a
2 claim and good cause is shown to support reference to a fiduciary commissioner." If a party in
3 interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid
4 creditor files a claim, no further notice to creditors shall be published in the newspaper, and the
5 personal representative shall be required to pay no further fees, except to the fiduciary commissioner
6 for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time
7 period for filing claims against the estate shall expire upon the time period set out in the notice to
8 creditors published by the clerk of the county commission as required in this subsection (a). ~~In the~~
9 ~~event that~~ If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on
10 the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the
11 administration of the estate as requested by the interested party.

12 (11) This notice shall be published as a Class II legal advertisement in compliance with the
13 provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be
14 equivalent to personal service on creditors, distributees and legatees.

15 (b) If no appraisal is filed within the time period established pursuant to section fourteen
16 of this article, the county clerk shall send a notice to the personal representative by first class mail,
17 postage prepaid, indicating that the appraisal has not been filed. ~~Notwithstanding any other~~
18 ~~provision of this code to the contrary, the county clerk shall publish the notice required in subsection~~
19 ~~(a) of this section within six months of the qualification of the personal representative.~~

20 (c) The personal representative shall promptly make a diligent search to determine the names
21 and addresses of creditors of the decedent who are reasonably ascertainable.

22 (d) The personal representative shall, within ninety days after the date of first publication,

1 serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail,
2 postage prepaid, or by personal service on the following persons:

3 (1) If the personal representative is not the decedent's surviving spouse and not the sole
4 beneficiary or sole heir, the decedent's surviving spouse, if any;

5 (2) If there is a will and the personal representative is not the sole beneficiary, any
6 beneficiaries;

7 (3) If there is not a will and the personal representative is not the sole heir, any heirs;

8 (4) The trustee of any trust in which the decedent was a grantor, if any; and

9 (5) All creditors identified under subsection (c) of this section, other than a creditor who filed
10 a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

11 (e) Any person interested in the estate who objects to the qualifications of the personal
12 representative or the venue or jurisdiction of the court, shall file notice of an objection with the
13 county commission within ninety days after the date of the first publication as required in subsection
14 (a) of this section or within thirty days after service of the notice as required by subsection (d) of this
15 section, whichever is later. If an objection is not timely filed, the objection is forever barred.

16 (f) A personal representative acting in good faith is not personally liable for serving notice
17 under this section, notwithstanding a determination that notice was not required by this section. A
18 personal representative acting in good faith who fails to serve the notice required by this section is
19 not personally liable. The service of the notice in accordance with this subsection may not be
20 construed to admit the validity or enforceability of a claim.

21 (g) The clerk of the county commission shall collect a fee of \$20 for the publication of the
22 notice required in this section.

- 1 (h) For purposes of this section, the term beneficiary means a person designated in a will to
- 2 receive real or personal property.