

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4235

BY DELEGATE SHOTT

[Introduced January 22, 2016; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia,
 2 1931, as amended, relating to notice requirements for claims against an estate; time limits
 3 on short form settlements of estates; and barring recovery for claims against an estate not
 4 presented within specified time period.

Be it enacted by the Legislature of West Virginia:

1 That §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as
 2 amended, be amended and reenacted, all to read as follows:

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

§44-3A-4. Notice of claim; settlement in certain cases.

1 (a) The fiduciary supervisor shall at least once a month as a Class II legal advertisement
 2 in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be
 3 published in a newspaper of general circulation within the county wherein letters of administration
 4 have been granted, a notice substantially as follows:

5 NOTICE OF FILING OF ESTATE ACCOUNTS

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

7 I have before me the estates of the following deceased persons and the accounts of the
 8 fiduciaries of their respective estates:

9 Name of Decedent:

10 Name of Fiduciary:

11 Address:

12 Name of Decedent:.....

13 Name of Fiduciary:

14 Address:

15 Name of Decedent:

16 Name of Fiduciary:

17 Address:

18 All persons having claims against the estate(s) of any of the above-named deceased
19 persons whether due or not, are notified to exhibit their claims with vouchers thereof, legally
20 verified, to the fiduciary of such deceased person as shown herein within ~~seventy-five~~ sixty days
21 of the first publication hereof; or, if not so exhibited to such fiduciary by that date, to exhibit the
22 same at the office of the undersigned fiduciary supervisor at the address shown below within
23 ~~ninety~~ sixty days of the first publication of this notice; otherwise any or all such claims may by law
24 be excluded from all benefits of said estate(s). No claims against the estate shall be accepted by
25 the fiduciary supervisor after the last date shown above. All beneficiaries of said estate(s) may
26 appear either before the above-named fiduciary by the date first shown above, or thereafter before
27 the undersigned fiduciary supervisor by the date last shown above to examine said claims and
28 otherwise protect their respective interests.

29 Given under my hand this day of, 19 20.....

30

31 Fiduciary Supervisor

32 County, W.Va.

33 (b) All such claims are to be filed with the appropriate fiduciary at the address shown in
34 such notice within ~~seventy-five~~ sixty days of the date of the first publication of such notice or with
35 the fiduciary supervisor within ~~ninety~~ sixty days of such date. No claims against the estate shall
36 be accepted by the fiduciary supervisor after the last date shown above.

37 (c) Subject to the provisions of this section, at the end of the ~~ninety-day~~ sixty-day period
38 set forth in such notice, the fiduciary supervisor may proceed with supervision of all estates
39 referred to him or her for proof and determination of debts and claims, establishment of their
40 priority, determination of the amount of the respective shares of the legatees and distributees and
41 any and all other matter or matters necessary and proper for the settlement of the estate,

42 including, but not limited to, his or her recommendations concerning the approval of the fees of
43 any fiduciary commissioner to whom the estate may have been referred, determination that
44 inheritance taxes, if any, occasioned by the death of the decedent or returnable by reason thereof
45 have been returned upon such estate and such taxes have been paid or such payment provided
46 for and whether a release therefor has been issued by the proper authority, all matters required
47 by section nineteen of this article and all other matters deemed proper by him or her.

§44-3A-4a. Short form settlement.

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

§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

1 Every person having a claim against a deceased person, whether due or not, who shall
2 not, when notice to creditors has been published as prescribed in this article, have presented his
3 or her claim on or before the ~~ninety-day~~ sixty-day time period fixed in such notice, or before that
4 time have instituted an action thereon, shall, notwithstanding the same be not barred by some
5 other statute of limitations that is applicable thereto, be barred from recovering such claim of or
6 from the personal representative, or from thereafter setting off the same by way of counterclaim
7 or otherwise against the personal representative in any action whatever; except that if a surplus
8 remain after providing for all claims presented in due time, or on which action shall have been
9 commenced in due time, and such surplus shall not have been distributed by the personal
10 representative to the beneficiaries of the estate, and the claimant prove that he or she had no
11 actual notice of the publication to creditors nor knowledge of the proceedings before the fiduciary
12 supervisor or fiduciary commissioner, such creditor may prove his or her claim by action or suit
13 and have the same allowed out of such surplus; and, in order that such late claims if proved may
14 be provided for, the fiduciary supervisor or fiduciary commissioner shall reopen his or her report
15 if the same has not been returned to the county commission, or if returned shall make and return
16 a supplemental report.

NOTE: The purpose of this bill is to make the time period for claims against the estate

uniform in all counties. During the 2015 legislative session, House Bill 2266 changed the claims period from ninety to sixty days in all counties that use a fiduciary commissioner system. This bill will make identical change in the counties that have elected to use the fiduciary supervisor system.

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