

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

House Bill 2967

BY DELEGATES NELSON AND BOGGS

(BY REQUEST OF THE TAX AND REVENUE DEPARTMENT)

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to amend and reenact §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of
2 the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-3 of said
3 code; and to amend and reenact §44-5-3 of said code, all relating generally to
4 administration of estates and trusts; waiving surety requirements for administrators of
5 estates where grantee is sole beneficiary or sole distributee of the decedent; requiring
6 county commission to hold hearing if application filed by interested party to compel
7 nonresident executor otherwise exempt from bond requirements to post bond; requiring
8 county commission to hold hearing if application filed by interested party to compel sole
9 beneficiary to post surety; removing authority of clerk of county commission to require
10 bond or surety from certain executors and administrators upon knowledge; making
11 executor or administrator not required to post surety liable upon his or her own personal
12 recognizance in the event of default, failure or misadministration; requiring interested
13 parties objecting to the qualifications of a personal representative or venue to file notice
14 with the county commission sixty days after the date of first publication; transferring to
15 State Auditor duty to administer fiduciary supervisor qualifying test; requiring State Auditor
16 provide annual training for fiduciary supervisors not licensed to practice law in this state;
17 authorizing action against bond surety when execution on judgment or decree against
18 personal representative is returned without being satisfied; and making technical
19 corrections.

Be it enacted by the Legislature of West Virginia

1 That §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted; that §44-3A-3 of said code be amended
3 and reenacted; and that §44-5-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-1. Executor has no powers before qualifying.

1 A person appointed by a will executor thereof shall not have the powers of executor until
2 he or she qualifies as such by taking an oath and giving bond, unless not required to post bond
3 by section eight of this article, before the county commission in which the will, or an authenticated
4 copy thereof, is admitted to record, or before the clerk thereof in vacation, except that he or she
5 may provide for the burial of the testator, pay reasonable funeral expenses and preserve the
6 estate from waste.

§44-1-6. Bond and oath; termination of grant in certain cases.

1 At the time of the grant of administration upon the estate of any intestate, the person to
2 whom it is granted shall, in the county commission or before the clerk granting it, give bond, unless
3 not required to post bond by section eight of this article, and take an oath that the deceased has
4 left no will so far as he or she knows, and that he or she will faithfully perform the duties of the
5 office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record,
6 or if, after administration is granted to a creditor or other person than a distributee, any distributee
7 who shall not have before refused shall apply for administration, there may be a grant of probate
8 or administration, after reasonable notice to such creditor or other person theretofore appointed,
9 in like manner as if the former grant had not been made, and such former grant shall thereupon
10 cease.

§44-1-7. Penalty of bond.

1 (a) Every bond required to be given by an executor or administrator shall be in a penalty
2 equal, at the least, to the full value of the personal estate of the deceased to be administered; and
3 where there is a will which authorizes the executor or administrator to sell real estate, or receive
4 the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value
5 both of such personal estate and of such real estate, or of such personal estate and of such rents
6 and profits, as the case may be.

7 (b) If on the filing of the appraisal of the estate it shall appear that the penalty of the
8 bond does not comply as to amount with the foregoing requirements, the county commission in

9 which, or the clerk before whom, such bond was given, shall immediately notify such executor or
10 administrator of such fact and require of him or her a new or additional bond, and the failure of
11 such executor or administrator to give the same within a reasonable time shall be sufficient cause
12 for his or her removal.

§44-1-8. When executor or administrator not to give bond; when surety not required.

1 (a) Subject to the provisions of section three, article five of this chapter governing the
2 appointment of a nonresident of this state as an executor, where the will directs that an executor
3 shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to
4 probate or at any time subsequently, on the application of any person interested, and after a
5 hearing, it is required by the county commission that bond ought to be given.

6 (b) No surety shall be required on the bond of the executor if he or she is also the sole
7 beneficiary of the decedent, unless the will directs otherwise, and no surety shall be required on
8 the bond of the administrator if he or she is the sole distributee of the decedent, unless at the time
9 the will is admitted to probate or the administrator is appointed or at any time thereafter, on the
10 application of any person interested, and after a hearing, it is required by the county commission
11 that surety ought to be given.

12 (c) In all such cases where no surety is required of the executor or administrator, the
13 executor or administrator shall nevertheless be liable upon his or her bond upon his or her own
14 personal recognizance in the event of default, failure or misadministration by the executor or
15 administrator.

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

1 (a) Within thirty days of the filing of the appraisal of any estate or within one hundred
2 twenty days of the date of qualification of the personal representative if an appraisal is not
3 filed as required in section fourteen of this article, the clerk of the county commission shall publish,

4 once a week for two successive weeks, in a newspaper of general circulation within the county of
5 the administration of the estate, a notice, which is to include:

6 (1) The name of the decedent;

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

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

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

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

12 (6) The date of first publication;

13 (7) A statement that claims against the estate must be filed within sixty days of the date of
14 first publication in accordance with article two or article three-a of this chapter;

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

18 (9) A statement that an interested person objecting to the qualifications of the personal
19 representative or the venue or jurisdiction of the court must be filed with the county commission
20 within sixty days after the date of first publication or thirty days of service of the notice, whichever
21 is later; and

22 (10) If the appraisal of the assets of the estate shows the value to be \$200,000 or
23 less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the
24 clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent
25 at law, a statement substantially as follows: "Settlement of the estate of the following named
26 decedents will proceed without reference to a fiduciary commissioner unless within sixty days
27 from the first publication of this notice a reference is requested by a party in interest or an unpaid
28 creditor files a claim and good cause is shown to support reference to a fiduciary commissioner".

29 If a party in interest requests the fiduciary commissioner to conclude the administration of the

30 estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the
31 newspaper, and the personal representative shall be required to pay no further fees, except to
32 the fiduciary commissioner for conducting any hearings, or performing any other duty as a
33 fiduciary commissioner. The time period for filing claims against the estate shall expire upon the
34 time period set out in the notice to creditors published by the clerk of the county commission as
35 required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall
36 conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall
37 conclude the administration of the estate as requested by the interested party.

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

41 (b) If no appraisal is filed within the time period established pursuant to section
42 fourteen of this article, the county clerk shall send a notice to the personal representative by first
43 class mail, postage prepaid, indicating that the appraisal has not been filed.

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

46 (d) The personal representative shall, within sixty days after the date of first publication,
47 serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail,
48 postage prepaid or by personal service on the following persons:

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

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

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

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

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

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

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

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

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

§44-1-26. Action on bond of personal representative.

1 Where an execution on a judgment or decree against a personal representative is returned
2 without being satisfied, there may be forthwith brought and prosecuted an action against the
3 surety in any bond given by such personal representative for the faithful discharge of his or her
4 duties.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF OF CLAIM

**§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for
qualification; training program; salary.**

1 (a) There is hereby created within the county commission an office, designated the
2 fiduciary supervisor, who shall be appointed by order of the commission and whose office, with
3 the consent of the clerk of the county commission, shall be housed within the office of such clerk
4 or shall be housed in such other office as the commission may designate. Such fiduciary
5 supervisor shall at the local option of each such commission, be either a part-time or full-time
6 employee as may be required by the county commission and shall receive such salary as may be
7 fixed by order of the county commission.

8 (b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of
9 the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all
10 matters referred to such commissioners and shall make all ex parte settlements of the accounts
11 of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

12 (c) The county commission shall determine that the person to be appointed as fiduciary
13 supervisor is fully qualified by education or experience, or both, to perform the duties assigned to
14 such office by this chapter or other provisions of this code. Such person shall have the requisite
15 knowledge of the legal issues raised and problems presented by any of the proceedings had and
16 documents filed pursuant to the chapter, the procedures required with respect thereto, the rights
17 of all parties and interested persons with respect to such procedures and the duties to be
18 performed in examining and approving the several and various papers and documents presented
19 to the fiduciary supervisor. The State Auditor shall design and supervise a test to be given to all
20 persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this
21 state, if any, which test shall include such matters as the Tax Commissioner deems appropriate
22 to determine the proficiency, experience, knowledge and skill to perform all of the duties imposed
23 upon or to be imposed upon fiduciary supervisors generally. Such test shall be administered under
24 the authority of the State Auditor by such person or persons as he or she may designate either at
25 the county wherein the fiduciary supervisor is to serve or at such other place as the State Auditor
26 may designate. The results of the test given to any person or persons shall be kept confidential

27 except as to those persons who have completed the same to the satisfaction of the State Auditor
28 and except as to those persons who may desire their individual test results to be made public.
29 The State Auditor shall at least annually conduct a training program for fiduciary supervisors who
30 are not licensed to practice law in this state. The training program shall be conducted at such
31 times and places and consist of such subjects as the State Auditor may determine. All fiduciary
32 supervisors who are not licensed to practice law shall be required to attend such training programs
33 and those supervisors as are so licensed may attend.

34 (d) The fiduciary supervisor shall give bond with good security to be approved by the
35 county commission in an amount equal to the amount posted by the clerk of the county
36 commission in the county wherein such fiduciary supervisor is to serve.

37 (e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary
38 supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall
39 engage in the practice of law, for compensation or otherwise, with respect to the administration
40 of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect
41 to any proceedings before him or her or which are or may be referred to a fiduciary commissioner
42 in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage
43 in the practice of law with respect to matters referred to him or her as such commissioner. Any
44 fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor
45 have been delegated or fiduciary commissioner or special fiduciary commissioner who so
46 engages in the practice of law contrary to the limited prohibitions of this section, shall be removed
47 from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor
48 and, upon conviction thereof, shall be fined \$1,000.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no individual who is a nonresident of this
2 state, nor any banking institution which does not maintain a main office or branch office within this

3 state nor any corporation having its principal office or place of business outside this state, may be
4 appointed or act as executor, administrator, curator, testamentary guardian, guardian or
5 conservator in this state, except that:

6 (1) An individual who is a nonresident of this state may be appointed ancillary administrator
7 of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully
8 acting as executor in said decedent's state of domicile and submits letters of probate
9 authenticated by the probate authorities of the decedent's state of domicile to the clerk of the
10 county commission of any county of this state wherein ancillary administration is sought;

11 (2) An individual who is a nonresident of this state may be appointed ancillary administrator
12 of a nonresident decedent's assets situate in this state if such nonresident individual is acting as
13 administrator in said decedent's state of domicile and submits letters of administration
14 authenticated by the probate authorities of the decedent's state of domicile to the clerk of the
15 county commission of any county of this state wherein ancillary administration is sought;

16 (3) An individual who is a nonresident of this state may be appointed and act as
17 testamentary guardian of a nonresident infant and thereby exercise dominion and control over
18 such nonresident infant's assets situate in this state upon submission of authenticated
19 documentation that such nonresident testamentary guardian was so appointed at the place of
20 domicile of the nonresident infant. Such authenticated documentation shall be submitted to the
21 clerk of the county commission of any county of this state wherein assets belonging to such
22 nonresident infant are situate;

23 (4) An individual who is a nonresident of this state and who is named executor by a
24 resident decedent may qualify and act as executor in this state;

25 (5) An individual who is a nonresident of this state may be appointed and act as
26 administrator of a resident decedent's assets in this state if appointed in accordance with the
27 provisions of section four, article one of this chapter;

28 (6) An individual who is a nonresident of this state may be appointed as the testamentary
29 guardian of a resident infant if appointed in accordance with the provisions of section one, article
30 ten of this chapter; and

31 (7) An individual who is a nonresident of this state may be appointed as guardian or
32 conservator of a resident incompetent: *Provided*, That such appointment is made in accordance
33 with the provisions of article two, chapter forty-four-a of this code and if such nonresident
34 individual may otherwise qualify as guardian or conservator.

35 (b) Nonresident individuals enumerated in subsection (a) of this section shall give bond
36 with corporate surety thereon, qualified to do business in this state, and the amount of such bond
37 shall not be less than double the value of the personal assets and double the value of any real
38 property authorized to be sold or double the value of any rents and profits from any real property
39 which the nonresident individual is authorized to receive, except that:

40 (1) Any nonresident individual enumerated in subsection (a) of this section who is the
41 spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident
42 decedent shall give bond with corporate surety thereon qualified to do business in this state, with
43 such penalty as may be fixed pursuant to the provisions of sections seven or eight, article one of
44 this chapter, as approved by the clerk of the county commission;

45 (2) Where the terms of a decedent's will directs that a nonresident individual enumerated
46 in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent's will shall
47 not give bond or give bond at a specified amount, it shall not be required or shall be required only
48 to the extent required under the terms of the will, unless at the time the will is admitted to record
49 or at any time subsequently, on the application of any person interested, or from the knowledge
50 of the commission or clerk admitting the will to record, it is deemed proper that greater bond be
51 given.

52 (c) When a nonresident individual is appointed as executor, administrator, testamentary
53 guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said

54 individual thereby constitutes the clerk of the county commission wherein such appointment was
55 made as his or her true and lawful attorney-in-fact upon whom may be served all notices and
56 process in any action or proceeding against him or her as executor, administrator, testamentary
57 guardian, guardian or conservator or with respect to such estate, and such qualification shall be
58 a manifestation of said nonresident individual's agreement that any notice or process, which is
59 served in the manner hereinafter provided in this subsection, shall be of the same legal force and
60 validity as though such nonresident was personally served with notice and process within this
61 state. Service shall be made by leaving the original and two copies of any notice or process
62 together with a fee of \$5 with the clerk of such county commission. The fee of \$5 shall be
63 deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof
64 the day and hour of service and shall file such copy in his or her office and such service shall
65 constitute personal service upon such nonresident: *Provided*, That the other copy of such notice
66 or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver
67 to addressee only, by said clerk or to such nonresident at the address last furnished by him or her
68 to said clerk and either: (1) Such nonresident's return receipt signed by him or her; or (2) the
69 registered or certified mail bearing thereon the stamp of the post office department showing that
70 delivery therefore was refused by such nonresident is appended to the original notice or process
71 filed therewith in the office of the clerk of the county commission from which such notice or process
72 was issued. No notice or process may be served on such clerk of the county commission or
73 accepted by him or her less than thirty days before the return date thereof. The clerk of such
74 county commission shall keep a record in his or her office of all such notices and processes and
75 the day and hour of service thereof. The provision for service of notice or process herein provided
76 is cumulative and nothing herein contained shall be construed as bar to service by publication
77 where proper or the service of notice or process in any other lawful mode or manner.

78 (d) The personal estate of a resident decedent, infant or incompetent may not be removed
79 from this state until the inventory or appraisalment of that resident decedent's, infant's or

80 incompetent's assets have been filed and any new or additional bond required to satisfy the
81 penalty specified in subsection (b) of this section has been furnished. The liability of a nonresident
82 executor, administrator, testamentary guardian, guardian or conservator and of any such surety
83 shall be joint and several and a civil action on any such bond may be instituted and maintained
84 against the surety, notwithstanding any other provision of this code to the contrary, even though
85 no civil action has been instituted against such nonresident.

86 (e) Any such nonresident who removes from this state assets administered in and situate
87 in this state without complying with the provisions of this section, the provisions of article eleven
88 of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a
89 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the
90 county jail for not more than one year, or, in the discretion of the court, by both such fine and
91 confinement.

92 (f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to
93 file an accounting required by this chapter, and the failure continues for two months after the due
94 date, he or she may, upon notice and hearing, be removed or subjected to any other appropriate
95 order by the county commission, and if his or her failure or refusal to account continues for six
96 months, he or she shall be removed by the county commission.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2017.

.....
Governor