

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2746

BY DELEGATE SHOTT

[BY REQUEST OF THE WEST VIRGINIA STATE BAR, WV]

[Introduced January 30, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §44-2-19a; and to amend and reenact section §44-3A-24 of said code, all
3 relating to administration of estates; requiring reports by fiduciary commissioners of
4 unprogressed estates; allowing the county commission to close an estate administratively;
5 providing an appeal procedure; and providing that personal representatives are liable for
6 failure to all persons with an interest in the assets of such an estate.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF
DECEDENTS.**

**§44-2-19a. Reports of delinquent filings and administrative closing of unprogressed
estates.**

1 (a) On the last day of December and June of each year every fiduciary commissioner shall
2 file with the county clerk a list of all estates referred to him or her since the effective date of this
3 section, either generally or for a limited purpose, in which any document required to be filed with
4 him or her in a specified time has not been timely filed, stating the document whose filing is
5 delinquent and the date the same was due to be filed: *Provided*, That the commissioner shall omit
6 from such list any estate and any document for whose filing a proper continuance has been
7 granted.

8 (b) On January 5 and July 5 of each year the county clerk shall file with the county
9 commission a like list of estates since the effective date of this section in which the filing of any
10 paper is delinquent, and embrace therein the lists required to be filed with him or her on the first
11 day of such month by the various commissioners. In the report filed July 5 of each year the county
12 clerk shall further include in the report a list of all estates referred to him or her since the effective
13 date of this section which have not been duly closed within a period of three years from the

14 opening of such estate and in which no progress, or in his or her opinion, unsatisfactory progress,
15 has been made toward settlement, for any cause, within the preceding 12 months.

16 (c) The county commission shall, upon the presentation by the county clerk of all matters
17 and causes reported to it by the semiannual reports required herein of delinquent and
18 unprogressed estates, enter an order in the name of the county commission directing the
19 appointed personal representative to file a statement to show cause why the county commission
20 should not find the personal representative delinquent in his or her administration of the respective
21 estate and should not remove the personal representative from office, administratively close the
22 estate, or take such other action against the personal representative as may be proper:

23 (1) The order to show cause shall be mailed by the county clerk to the personal
24 representative at the last known address appearing in the records of the county clerk and a copy
25 thereof shall also be mailed to the heirs at law, beneficiaries under the will, any creditors who
26 have filed claims which are not released, any surety on any bond, and any other person interested
27 in the estate at their last known addresses appearing in the records of the county clerk.

28 (2) The personal representative shall have 30 days after the mailing of the order to show
29 cause to file properly any delinquent documents required for the administration of the estate or to
30 file a verified statement under oath stating why he or she should not be found delinquent in the
31 administration of the respective estate and should not be removed from office or the estate
32 administratively closed.

33 (3) If within such 30-day time period the personal representative fails to file properly the
34 delinquent documents or fails to file a verified statement or files a verified statement which the
35 county clerk upon review finds and determines does not present good cause, the county clerk
36 shall give notice of such failure, delinquency, or finding to the county commission, the personal
37 representative, the heirs at law, beneficiaries under the will, any creditors who have filed claims
38 which are not released, any surety on any bond, and any other person interested in the estate
39 and shall advise that the personal representative shall be removed from office and such other

40 appropriate person appointed as personal representative as the county commission may
41 determine or that the estate shall be administratively closed 30 days following the date of such
42 notice at a hearing thereon to be held before the county commission at a date and time fixed for
43 presentation. In addition, on the first Monday of the next month, the county clerk shall publish as
44 a Class I-0 legal advertisement, a notice thereof.

45 (4) The personal representative or any person interested may file objection thereto at or
46 prior to the time set by such notice for presentation thereof to the county commission. The
47 commission shall proceed to hear the presentation of such proposed removal or closing and
48 findings and hear interested parties, if any appear, and may enter such appropriate order to
49 approve, modify and approve, or refuse to approve such proposed removal or closing and the
50 findings of the county clerk. An appeal from the decision of such county commission may, without
51 any formal bill of exceptions, be taken to the circuit court of the county by the personal
52 representative or any interested party. The appeal shall be tried and heard in the circuit court, or
53 before the judge thereof in vacation, on the record made before the county clerk and the county
54 commission.

55 (5) If the county commission enters an order administratively closing the estate, the
56 personal representative shall not be discharged or released from any claims or demands related
57 to the decedent, the estate, the property or assets of the decedent or the estate, or the
58 misadministration of the estate by the personal representative and shall be liable to the heirs at
59 law, beneficiaries under the will, any creditors of the decedent or the estate, any surety on any
60 bond, and any other person interested in the estate for any property, asset, or payment to which
61 such person may be entitled. All such persons interested in the estate may commence an action
62 against the personal representative in the circuit court of the county in which the personal
63 representative was appointed within five years from the date of the order of the county commission
64 which administratively closed the estate, and in such action the circuit court may award costs and
65 expenses, including reasonable attorney's fees, against the personal representative.

66 (d) In addition, the county clerk and the fiduciary commissioners, shall be empowered,
67 and where appropriate, may, on their own motion, petition the circuit court to compel compliance
68 with the provisions of this chapter, in the same manner and to the same extent heretofore provided
69 in the case of commissioners of accounts, or by any other proper proceeding.

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

§44-3A-24. Reports of delinquent filings.

1 (a) On the last day of January and July December and June of each year every fiduciary
2 commissioner and special fiduciary commissioner shall file with the fiduciary supervisor a list of
3 all estates referred to him or her since the effective date of this section, either generally or for a
4 limited purpose in which any appraisal or other document required to be filed with him or her
5 in a specified time has not been timely filed, stating the document whose filing is delinquent and
6 the date the ~~same~~ document was due to be filed: *Provided*, That the commissioner shall omit from
7 ~~such~~ the list any estate and any document for whose filing a proper continuance has been granted.

8 (b) On January 5 and July 5 of each year the fiduciary supervisor shall file with the county
9 commission a like list of estates referred to him or her since the effective date of this section in
10 which the filing of any paper is delinquent, and embrace therein the lists required to be filed with
11 him or her on the first day of such the month by the various commissioners. In the report filed July
12 5 of each year the fiduciary supervisor shall further include in the report a list of all estates referred
13 to him or her since the effective date of this section which have not been duly closed and in which
14 no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement,
15 for any cause, within the preceding 12 months.

16 (c) The county commission, after consultation with the fiduciary supervisor shall take care
17 to require prompt disposition of all matters and causes reported to it by the semiannual reports
18 required herein of delinquent and unprogressed estates; enter an order in the name of the county

19 commission directing the appointed personal representative to file a statement to show cause
20 why the county commission should not find the personal representative delinquent in his or her
21 administration of the respective estate and should not remove the personal representative from
22 office; administratively close the estate; or take such other action against the personal
23 representative as may be proper.

24 (1) The order to show cause shall be mailed by the fiduciary supervisor to the personal
25 representative at the last known address appearing in the records of the fiduciary supervisor. A
26 copy of the order shall also be mailed to the heirs at law, beneficiaries under the will, any creditors
27 who have filed claims which are not released, any surety on any bond, and any other person
28 interested in the estate at their last known addresses appearing in the records of the fiduciary
29 supervisor.

30 (2) The personal representative shall have 30 days after the mailing of the order to show
31 cause to file properly any delinquent documents required for the administration of the estate or to
32 file a verified statement, under oath, stating why he or she should not be found delinquent in the
33 administration of the respective estate and should not be removed from office or the estate
34 administratively closed.

35 (3) If, within the 30-day time period, the personal representative fails to file properly the
36 delinquent documents, or fails to file a verified statement, or files a verified statement which the
37 fiduciary supervisor upon review finds and determines does not present good cause, the fiduciary
38 supervisor shall give notice of the failure, delinquency, or finding to the county commission, the
39 personal representative, the heirs at law, beneficiaries under the will, any creditors who have filed
40 claims which are not released, any surety on any bond, and any other person interested in the
41 estate and shall advise that the personal representative shall be removed from office and such
42 other appropriate person appointed as personal representative as the county commission may
43 determine or that the estate shall be administratively closed 30 days following the date of the
44 notice at a hearing thereon to be held before the county commission at a date and time fixed for

45 presentation. In addition, on the first Monday of the next month, the fiduciary supervisor shall
46 publish a notice of this action as a Class I-0 legal advertisement.

47 (4) The personal representative or any person interested may file an objection at, or prior
48 to, the time set by the notice for presentation to the county commission. The commission shall
49 proceed to hear the presentation of the proposed removal or closing and findings and hear
50 interested parties, if any appear, and may enter an appropriate order to approve, modify and
51 approve, or refuse to approve, the proposed removal or closing and the findings of the fiduciary
52 supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner
53 generally for supervision or for the purpose of the resolution of any disputed matter. An appeal
54 from the decision of the county commission may, without any formal bill of exceptions, be taken
55 to the circuit court of the county by the personal representative or any interested party. The appeal
56 shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record
57 made before the fiduciary supervisor and the county commission.

58 (5) If the county commission enters an order administratively closing the estate, the
59 personal representative may not be discharged or released from any claims or demands related
60 to the decedent, the estate, the property or assets of the decedent or the estate, or the
61 misadministration of the estate by the personal representative and shall be liable to the heirs at
62 law, beneficiaries under the will, any creditors of the decedent or the estate, any surety on any
63 bond, and any other person interested in the estate for any property, asset, or payment to which
64 such person may be entitled. All such persons interested in the estate may commence an action
65 against the personal representative in the circuit court of the county in which the personal
66 representative was appointed within five years from the date of the order of the county commission
67 which administratively closed the estate, and in that action the circuit court may award costs and
68 expenses, including reasonable attorney's fees, against the personal representative.

69 In addition, the fiduciary supervisor and the fiduciary commissioners, shall be empowered,
70 and where appropriate, shall on their own motion, petition the circuit court to compel compliance

- 71 with the provisions of this chapter, in the same manner and to the same extent heretofore provided
72 in the case of commissioners of accounts, or by any other proper proceeding.

NOTE: The purpose of this bill is to allow the county commission to administratively close unprogressed or dormant estates. If the County Commission administratively closes an estate, the personal representative is still liable in a civil action to heirs, beneficiaries, or interested parties for property or assets of the decedent or the estate.

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