

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 2991

(By Delegates Cann, Kominar, Amores,
Stemple, Palumbo and Hrutkay)



Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

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H. B. 2991

(BY DELEGATES CANN, KOMINAR, AMORES,
STEMPLE, PALUMBO AND HRUTKAY)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §44-2-1 of the code of West Virginia, 1931, as amended, relating to the fee charged by fiduciary commissioners in settling an estate.

Be it enacted by the Legislature of West Virginia:

That §44-2-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§44-2-1. Reference of decedents' estates; proceedings thereon.

- 1 (a) Upon the return of the appraisal by the personal
- 2 representative to the county clerk, the estate of his or her
- 3 decedent, by order of the county commission, must be referred
- 4 to a fiduciary commissioner for proof and determination of
- 5 debts and claims, establishment of their priority, determination
- 6 of the amount of the respective shares of the legatees and

7 distributees, and any other matter necessary for the settlement
8 of the estate: *Provided*, That in counties where there are two or
9 more commissioners, the estates of decedents must be referred
10 to the commissioners in rotation, so there may be an equal
11 division of the work. Notwithstanding any other provision of
12 this code to the contrary, a fiduciary commissioner may not
13 charge to the estate a fee greater than three hundred dollars and
14 expenses for the settlement of an estate, except upon: (i)
15 Approval of the personal representative; or (ii) a determination
16 by the county commission that the fee is based upon the actual
17 time spent and actual services rendered pursuant to a schedule
18 of fees or rate of compensation for fiduciary commissioners
19 promulgated by the commission in accordance with the
20 provisions of section nine, article one, chapter fifty-nine of this
21 code.

22 (b) If the personal representative delivers to the clerk an
23 appraisal of the assets of the estate showing their value to
24 be one hundred thousand dollars or less, exclusive of real estate
25 specifically devised and nonprobate assets, or if it appears to
26 the clerk that there is only one beneficiary of the probate estate
27 and that the beneficiary is competent at law, the clerk shall
28 record the appraisal. If an unpaid creditor files a claim
29 against the estate, the personal representative has twenty days
30 after the date of the filing of a claim against the estate of the
31 decedent to approve or reject the claim before the estate is
32 referred to a fiduciary commissioner. If the personal representa-
33 tive approves all claims as filed, then no reference may be
34 made.

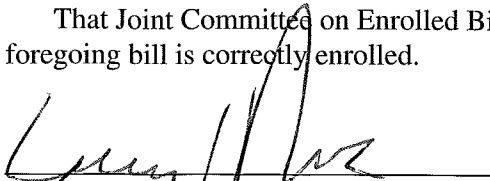
35 The personal representative shall, within a reasonable time
36 after the date of recordation of the appraisal: (i) File a
37 waiver of final settlement in accordance with the provisions of
38 section twenty-nine of this article; or (ii) make a report to the
39 clerk of his or her receipts, disbursements and distribution and
40 submit an affidavit stating that all claims against the estate for

41 expenses of administration, taxes and debts of the decedent
42 have been paid in full. Upon receipt of the waiver of final
43 settlement or report, the clerk shall record the waiver or report
44 and mail copies to each beneficiary and creditor by first-class
45 mail, postage prepaid. The clerk shall retain the report for ten
46 days to allow any beneficiary or creditor to appear before the
47 county commission to request reference to a fiduciary commis-
48 sioner. The clerk shall collect a fee of ten dollars for recording
49 and mailing the waiver of final settlement or report.

50 If no request or objection is made to the clerk or to the
51 county commission, the county commission may confirm the
52 report of the personal representative, the personal representative
53 and his or her surety shall be discharged; but if an objection or
54 request is made, the county commission may confirm and
55 record the accounting or may refer the estate to its fiduciary
56 commissioners: *Provided*, That the personal representative has
57 twenty days after the date of the filing of a claim against the
58 estate of the decedent to approve or reject the claim before the
59 estate is referred to a fiduciary commissioner and if all claims
60 are approved as filed, then no reference may be made.

61 (c) For purposes of this section, the term beneficiary means
62 a person designated in a will to receive real or personal prop-
63 erty.

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



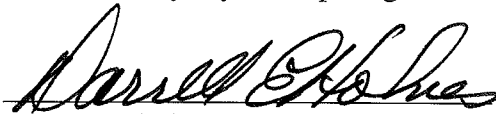
Chairman Senate Committee



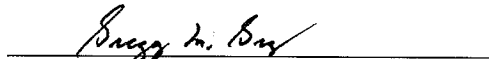
Chairman House Committee

Originating in the House.

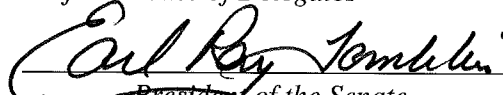
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

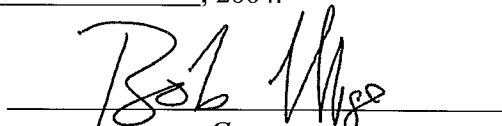


President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE 3/31/04

TIME 10:00am