

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Senate Bill 142

By Senators Trump, Oliverio, Stuart, Clements,
Barrett, Phillips, Woodrum, Nelson, and Maroney

[Passed March 07, 2023; in effect 90 days from
passage]

1 AN ACT to amend and reenact §44-2-1 and §44-2-29 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §44-3A-4a and §44-3A-19 of said code; and to amend
3 and reenact §44-4-9 of said code, all relating to the procedure to settle estates of
4 decedents; abolishing the requirement to publish a short form settlement of estates of
5 decedents; providing for short form filing procedure; changing the requirement of a Class II
6 legal advertisement to a Class I legal advertisement for the fiduciary commissioners list of
7 long form settlements; and updating language and style.

Be it enacted by the Legislature of West Virginia:

**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 representative to the county clerk,
2 the estate of his or her decedent, by order of the county commission, must be referred to a
3 fiduciary commissioner for proof and determination of debts and claims, establishment of their
4 priority, determination of the amount of the respective shares of the legatees and distributees, and
5 any other matter necessary for the settlement of the estate: *Provided*, That in counties where there
6 are two or more commissioners, the estates of decedents must be referred to the commissioners
7 in rotation, so there may be an equal division of the work. Notwithstanding any other provision of
8 this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than
9 \$300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal
10 representative; or (ii) a determination by the county commission that the fee is based upon the
11 actual time spent and actual services rendered pursuant to a schedule of fees or rate of
12 compensation for fiduciary commissioners promulgated by the commission in accordance with the
13 provisions of §59-1-9 of this code.

14 (b) If the personal representative delivers to the clerk an appraisal of the assets of the

15 estate showing their value to be \$200,000 or less, exclusive of real estate specifically devised and
16 nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate
17 estate and that the beneficiary is competent at law, the clerk shall record the appraisal. If an
18 unpaid creditor files a claim against the estate, the personal representative has 20 days after the
19 date of the filing of a claim against the estate of the decedent to approve or reject the claim before
20 the estate is referred to a fiduciary commissioner. If the personal representative approves all
21 claims as filed, then no reference may be made.

22 (c) The personal representative shall, within a reasonable time after the date of recordation
23 of the appraisal: (i) File a waiver of final settlement in accordance with the provisions of §44-2-
24 29 of this code; or (ii) make a report to the clerk of his or her receipts, disbursements, and
25 distribution and submit an affidavit stating that all claims against the estate for expenses of
26 administration, taxes, and debts of the decedent have been paid in full. Upon receipt of the waiver
27 of final settlement or report, the clerk shall record the waiver or report and mail copies to each
28 beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for 10
29 days to allow any beneficiary or creditor to appear before the county commission to request
30 reference to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and mailing
31 the waiver of final settlement or report.

32 (d) If no request or objection is made to the clerk or to the county commission, the county
33 commission may confirm the report of the personal representative, and the personal
34 representative and his or her surety shall be discharged; but if an objection or request is made, the
35 county commission may confirm and record the accounting or may refer the estate to its fiduciary
36 commissioners: *Provided*, That the personal representative has 20 days after the date of the filing
37 of a claim against the estate of the decedent to approve or reject the claim before the estate is
38 referred to a fiduciary commissioner, and if all claims are approved as filed, then no reference may
39 be made.

40 (e) For purposes of this section, the term beneficiary means a person designated in a will

41 to receive real or personal property.

§44-2-29. Waiver of final settlement.

1 (a) In all estates of decedents subject to administration under this article where a release of
2 lien, if required by the provisions of §11-11-1 *et seq.* of this code, has been filed with the clerk and
3 more than 90 days have elapsed since the filing of any notice required by the provisions of this
4 article, even though such estate may have been referred to a fiduciary commissioner, a final
5 settlement may be waived by a waiver containing an affidavit made by the personal
6 representative, that the time for filing of claims has expired, that no known and unpaid claims exist
7 against the estate, and that all beneficiaries have each been advised of the share or shares to
8 which each is entitled from the estate. Each beneficiary shall sign the waiver unless the beneficiary
9 receives a bequest of tangible personal property or a bequest of cash.

10 (b) In the case of a deceased beneficiary or a beneficiary under a disability, the duly
11 qualified fiduciary or agent of the beneficiary may sign in lieu of the beneficiary. A fiduciary or agent
12 signing the waiver shall be responsible to the beneficiary for any loss resulting from the waiver.

13 (c) The waiver shall be recorded as in the case of and in lieu of a settlement as provided in
14 §44-2-1 *et seq.* of this code.

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

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the provisions of this article where more
2 than 60 days has elapsed since the filing of any notice required by §44-3A-4 of this code, 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 pursuant to §11-11-1 *et seq.* of this code is released and that the
5 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, that
8 no known and unpaid claims exist against the estate, showing the allocation to which each
9 distributee and beneficiary is entitled in the distribution of the estate, and contain a representation
10 that the property to which each distributee or beneficiary is entitled has been or upon approval of
11 the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a
12 different allocation. The application shall contain a waiver signed by each distributee and
13 beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal property or a
14 bequest of cash may not be required to sign the waiver.

15 (c) The waiver may be signed in the case of a distributee or beneficiary under a disability by
16 an agent under a power of attorney or the duly qualified guardian or conservator of the distributee
17 or beneficiary. An agent, guardian, or conservator signing the waiver shall be responsible to the
18 distributee or beneficiary for any loss resulting from the 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.

22 (e) If the short form settlement is proper the fiduciary supervisor shall record the same and
23 mail copies to each distributee and beneficiary by first-class mail, postage prepaid. The fiduciary
24 supervisor shall retain the short form settlement for 10 days to allow any distributee and
25 beneficiary to appear before the fiduciary supervisor to object or request a referral to a fiduciary
26 commissioner. The fiduciary supervisor shall collect a fee of \$10 for recording and mailing the
27 short form settlement. If no objection or referral request is made to the fiduciary supervisor, the
28 county commission shall upon order, confirm the short form settlement of the personal
29 representative, and the personal representative and his or her surety shall be discharged. If an
30 objection or request is made, the county commission may confirm and record the short form
31 settlement or may refer the estate to a fiduciary commissioner.

§44-3A-19. Long form settlement before fiduciary supervisor.

1 (a) At any time after the expiration of the period for filing claims, the fiduciary supervisor
2 may proceed with a complete long form settlement under this section if the estate has not been
3 referred to a fiduciary commissioner or if the estate, having been referred to a fiduciary
4 commissioner generally or for a specific reason, has been withdrawn and placed before the
5 fiduciary supervisor for settlement.

6 The fiduciary supervisor shall require that the personal representative, or the personal
7 representative may on his or her own motion, timely file a proposed long form settlement which
8 shall include:

9 (1) Proof of payment of all claims filed against the estate or proof that payment has been
10 provided for;

11 (2) Verification under oath that the personal representative, after exercise of due diligence,
12 knows of no other claims against the estate;

13 (3) Verification and accounting of any income received by the personal representative from
14 the benefit of the estate;

15 (4) Provisions for the payment of all taxes due from the estate or proof that all such taxes
16 have been paid;

17 (5) A proposed plan of distribution; and

18 (6) Any and all other information deemed appropriate by the fiduciary supervisor.

19 (b) The provisions of this section to the contrary notwithstanding, any claim paid by the
20 personal representative to any creditor or beneficiary before the expiration of the period for filing
21 claims shall not abrogate in any way the liability of the personal representative pursuant to §44-3A-
22 26, §44-3A-27, or §44-3A-28 of this code.

23 (c) At the time the proposed settlement is filed, or prior thereto, the personal representative
24 shall prepare and furnish to the fiduciary supervisor, and the supervisor shall review, a return of all
25 inheritance taxes due the state, pursuant to §11-11-1 *et seq.* of this code, by reason of the death of
26 the decedent, who shall approve any proper return filed with him or her.

27 The supervisor shall compare the proposed settlement with any proper inheritance tax
28 return and with the appraisal and any and all other documents deemed appropriate by the
29 supervisor in order to investigate the propriety of the proposed settlement.

30 (d) The supervisor may, if he or she considers it appropriate, reject the settlement and give
31 notice in writing to the personal representative of the matters disapproved and the reasons
32 therefor and fix a time, no later than 45 days after the date of the notice, for the personal
33 representative to amend the proposed settlement. The personal representative may, within the
34 time specified by the supervisor, amend the settlement, otherwise satisfy the supervisor of the
35 propriety of all or part of such proposed settlement, or insist on the propriety thereof, with or
36 without amendment thereof.

37 (e) The supervisor shall, after he or she is satisfied as to the propriety of the settlement or,
38 after the period set by him or her for amendment thereof has expired, prepare a report of his or her
39 recommendations to the county commission with respect thereto and his or her findings and
40 determinations, which shall include his or her findings with respect to:

41 (1) A proper appraisal has been filed which conforms to the requirements of §44-1-14
42 of this code;

43 (2) The claims of creditors have been paid or have been properly provided for in proper
44 order of preference and proportions;

45 (3) A proper inheritance tax return has been made and the taxes due thereon paid or that
46 payment has been provided for;

47 (4) Any real property in this state owned by the decedent at the time of his or her death has
48 been properly transferred upon the books of the assessor or that the assessor has been notified of
49 the facts and circumstances sufficient to cause the transfer to be noted upon the books of the
50 assessor;

51 (5) A proper distribution to the parties entitled thereto has been proposed by the personal
52 representative of the estate;

53 (6) Minors and other persons under disability who own or are entitled to an interest in the
54 estate are or have been protected; and

55 (7) Any other matter or matters deemed pertinent by the fiduciary supervisor.

56 (f) The fiduciary supervisor shall give notice of the proposed settlement and findings to the
57 Tax Commissioner, all creditors whose claims have not been fully paid or otherwise satisfied, and
58 all beneficiaries, which notice shall include a copy of the proposed settlement and shall advise that
59 the subject estate shall be settled according thereto 30 days following the date of the notice. In
60 addition, on the first Monday of the next month, the supervisor shall publish, as a Class I-0 legal
61 advertisement, a notice that the accounts of the personal representative are before him or her for
62 approval.

63 (g) The notice shall be divided into two sections: Settlements approved and settlements
64 not approved and notice of the date and time that the names shall be presented to the county
65 commission, which date shall not be more than 15 days after the publication. The advertisement
66 shall be sufficient if substantially as follows:

67 NOTICE OF PROPOSED SETTLEMENT OF ESTATES

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

69 I have before me the proposed final settlements of the estates of the following deceased
70 persons, which shall be presented to the county commission of County, at the
71 Courthouse thereof, in the City of, on the day of, 20..., at o'clock,
72M., which settlements have been presented to me by the fiduciary of the estates and which
73 proposed settlements I have either approved or have not approved as indicated below:

74 APPROVED

75 Name(s) of Decedent:
76
77

78 NOT APPROVED

79 Name(s) of Decedent:
80

81 Any person having any interest in the estate of any deceased person may appear before
82 the county commission at the time and place hereinabove specified and thereupon protect his or
83 her interests as they may appear or else may be forever thereafter barred from asserting such
84 interests.

85 Given under my hand this day of, 20...,
86

87 Fiduciary Supervisor

88County, W. Va.

89 (h) Any person may examine the proposed settlement in the office of the fiduciary
90 supervisor and file objection thereto at or prior to the time set by the notice for presentation thereof
91 to the county commission. The commission shall proceed to hear the presentation of the proposed
92 settlement and findings and hear interested parties, if any appear, and approve, modify and
93 approve, or refuse to approve the proposed settlement and the findings of the fiduciary supervisor.
94 Alternatively, the commission may refer the cause to a fiduciary commissioner generally for
95 supervision or for the purpose of the resolution of any disputed matter.

96 (i) If no dispute or objection to the proposed settlement has arisen, the fiduciary supervisor
97 shall direct the personal representative to conclude the affairs of the estate as outlined in the
98 proposed settlement or amended proposed settlement. Upon receipt by the supervisor of
99 evidence to his or her satisfaction that all claims including claims of beneficiaries have been
100 satisfied and that all taxes have been paid, he or she shall submit his or her report of the proposed
101 or amended proposed settlement to the county commission for ratification, confirmation, and
102 approval as otherwise provided by law.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-9. Publication of list of fiduciaries prior to settlements.

1 Every fiduciary commissioner shall, on the first Monday of every month, prepare a list of
2 the fiduciaries whose accounts are at the date of such list before the fiduciary commissioner for
3 settlement, except those that may have been mentioned in some previous list and except those for
4 whom a short form settlement has been filed in accordance with the provisions of §44-2-1, §44-2-
5 29, and §44-3A-4a of this code. The fiduciary commissioner shall state the names of the
6 fiduciaries, the nature of their accounts, whether as they act as personal representative, guardian,
7 curator, or committee and the names of their decedents, or of the persons for whom they are
8 guardians, curators, or committees. The fiduciary commissioner shall also publish the list each
9 month as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this
10 code, and the publication area for the publication shall be the county. The publication of the list
11 shall be made on the first Monday of the month, or on some following day of the same week. No
12 account of any fiduciary shall be completed by any fiduciary commissioner until it has been
13 mentioned in a list, nor until the completion of the publication. Any fiduciary commissioner who
14 fails to publish this list shall be fined \$20. The cost of the publication of the list shall be borne by the
15 fiduciary commissioner, but the fiduciary commissioner may charge to, and collect from, each of
16 the fiduciaries in the list the proportionate part of the cost thereof as and when the fiduciary
17 commissioner collects the fees for settling the accounts of the fiduciary.