

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Introduced**

## **House Bill 2867**

By Delegates Roop, Drennan, Marple, Foggin, Pritt,  
Cooper, Brooks, Rohrbach, Kump, Canterbury, and  
Maynor

[Introduced February 24, 2025; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §44-1A-2 of the Code of West Virginia, 1931, as amended, relating  
2 to precluding an estate with real property from being processed as a small estate.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.**

**§44-1A-2. Administration of a small estate upon affidavit and without appointment.**

1 (a) Notwithstanding any provisions of this code to the contrary, the small estate of a  
2 decedent who dies domiciled in this state, without owning any interest in any real property, may be  
3 administered upon affidavit and without the appointment of a personal representative, and the  
4 small assets of the decedent may be paid or delivered to the authorized successor as provided in  
5 this article.

6 (b) Any successor of a decedent who dies domiciled in this state, without owning any  
7 interest in any real property, may execute and tender for recording to the clerk of the county  
8 commission, or the fiduciary supervisor of the clerk of the county commission, of the county in this  
9 state which would have jurisdiction over the probate concerning the estate and assets of the  
10 decedent an affidavit made upon oath and under penalty of perjury concerning the small estate  
11 setting forth in substance:

12 (1) The name and current address of the affiant;

13 (2) The name of the decedent, the date of death of the decedent, and the address and  
14 residence of the decedent at his or her death;

15 (3) Whether the decedent had any known will, with the original of the known will to be  
16 attached to the affidavit and tendered for recording in the county as long as the will is in due and  
17 proper form for probate as a will in this state, or whether the decedent died intestate with no known  
18 will;

19 (4) A listing of the names, current addresses, and relationship to the decedent of any  
20 person nominated as a personal representative under the known will, together with a listing of the  
21 names, current addresses, and relationship to the decedent of the beneficiaries under the known

will entitled to the estate or assets of the decedent. If there is no known will of the decedent, a listing of the names, current addresses, and relationship to the decedent of all of the intestate heirs-at-law and distributees of the decedent determined under the laws of intestate descent and distribution of this state;

(5) That the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, consists only of small assets and the aggregate fair market value of all of the small assets does not exceed \$50,000, together with a description or itemization of the small assets with an estimate of value, if known or ascertainable;

~~(6) Whether the decedent died seized and possessed of any probate real estate or interests in probate real property situate in this state and if so, that the aggregate fair market value of all of the real estate or interests in real property situate in this state does not exceed \$100,000, together with a description of the real estate, the county in which it is situate, its assessed value for tax purposes, and its fair market value at the decedent's date of death;~~

~~(7)~~ (6) That if the successor is nominated as a personal representative or executor under the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's date of death and no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction. If the successor is not nominated as a personal representative or executor under the provisions of the will of the decedent, at least 60 days have elapsed since the decedent's date of death, no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a personal representative or executor under the provisions of the will of the decedent; and

~~(8)~~ (7) That the affiant will faithfully administer the small assets of the decedent in accordance with the law and pay or deliver the small assets to the successor or successors so entitled, after paying any known or ascertainable creditors of the decedent.

(c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county

commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or fiduciary supervisor shall record and index the affidavit, together with the original of any will tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration with appointment of a personal representative. The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, may require a certified copy of the decedent's death certificate or other proof of death and residence prior to fulfilling the responsibilities under this article.

(d) A bond, security, or oath is not required when an appointment of a personal representative is not made for a small estate under the provisions of this article.

(e) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this article:

IN THE COUNTY COMMISSION OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

RE: THE ESTATE OF \_\_\_\_\_

DOD: \_\_\_\_\_

AFFIDAVIT FOR SMALL ESTATE

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, being a Successor of the Decedent identified below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is \_\_\_\_\_, and my current address is

\_\_\_\_\_  
\_\_\_\_\_.

2. The Decedent, \_\_\_\_\_, died on

\_\_\_\_\_ (date of death), a resident of \_\_\_\_\_ County, State of

74 West Virginia, with his/her usual residence being  
75 \_\_\_\_\_  
76 \_\_\_\_\_.

77 A certified death certificate has been furnished herewith for filing in this County. I am a Successor  
78 of the decedent as \_\_\_\_\_ (state relationship).

79 3. TESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

80 At the date of death, the Decedent died with an original Last Will and Testament of the  
81 Decedent dated \_\_\_\_\_, without any codicil thereto ( ) or with codicil(s)  
82 thereto dated \_\_\_\_\_ ( ) [Check if applies]. The aforesaid original Last Will and  
83 Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this  
84 County as permitted by West Virginia Code § 44-1A-2(b).

85 Under the Last Will and Testament of the Decedent, the following person(s) is/are  
86 nominated to be the personal representative(s) of the Estate:

87 a. Name: \_\_\_\_\_

88 Address: \_\_\_\_\_

89 \_\_\_\_\_

90 b. Name: \_\_\_\_\_

91 Address: \_\_\_\_\_

92 \_\_\_\_\_

93 Pursuant to the provisions of the above referenced Will of the Decedent, the following  
94 persons are the named beneficiaries of the estate of the Decedent:

95 a. Name: \_\_\_\_\_

96 Address: \_\_\_\_\_

97 \_\_\_\_\_

98 Relationship to Decedent: \_\_\_\_\_

99 Share or percentage or particular item: \_\_\_\_\_

100 b. Name: \_\_\_\_\_

101 Address: \_\_\_\_\_

102 \_\_\_\_\_

103 Relationship to Decedent: \_\_\_\_\_

104 Share or percentage or particular item: \_\_\_\_\_

105 c. Name: \_\_\_\_\_

106 Address: \_\_\_\_\_

107 \_\_\_\_\_

108 Relationship to Decedent: \_\_\_\_\_

109 Share or percentage or particular item: \_\_\_\_\_

110 d. Name: \_\_\_\_\_

111 Address: \_\_\_\_\_

112 \_\_\_\_\_

113 Relationship to Decedent: \_\_\_\_\_

114 Share or percentage or particular item: \_\_\_\_\_

115 e. Name: \_\_\_\_\_

116 Address: \_\_\_\_\_

117 \_\_\_\_\_

118 Relationship to Decedent: \_\_\_\_\_

119 Share or percentage or particular item: \_\_\_\_\_

120 (If more space is needed, attach additional page(s) to affidavit)

121 4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

122 At the date of death, the Decedent died intestate with no known will. The Decedent left as  
123 his/her heirs-at-law and distributees in accordance with the laws of intestate descent and  
124 distribution of the State of West Virginia the following persons:

125 a. Name: \_\_\_\_\_

126 Address: \_\_\_\_\_

127 Relationship to Decedent: \_\_\_\_\_

128 Share or percentage: \_\_\_\_\_

129 b. Name: \_\_\_\_\_

130 Address: \_\_\_\_\_

131 Relationship to Decedent: \_\_\_\_\_

132 Share or percentage: \_\_\_\_\_

133 c. Name: \_\_\_\_\_

134 Address: \_\_\_\_\_

135 Relationship to Decedent: \_\_\_\_\_

136 Share or percentage: \_\_\_\_\_

137 d. Name: \_\_\_\_\_

138 Address: \_\_\_\_\_

139 Relationship to Decedent: \_\_\_\_\_

140 Share or percentage: \_\_\_\_\_

141 e. Name: \_\_\_\_\_

142 Address: \_\_\_\_\_

143 Relationship to Decedent: \_\_\_\_\_

144 Share or percentage: \_\_\_\_\_

145 (If more space is needed, attach additional page(s) to affidavit)

146 5. The Decedent's entire personal probate estate, as of the date of the Decedent's death,

147 wherever located, consists only of small assets and the aggregate fair market value of the small

148 assets does not exceed \$50,000. The small assets of the Decedent are described and itemized as

149 follows:

	Description	Fair Market
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		value
.		
.		
.		
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.		
.		
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	Total	

150 (If more space is needed, attach additional page(s) to affidavit)

151 6. The Decedent did ☐ / did not ☐ [Check one which applies] die seized and possessed  
 152 of any probate real estate or interests in probate real estate in the state of West Virginia. If the  
 153 ~~Decedent died seized and possessed of any probate real estate or interest in real estate in the~~  
 154 ~~state of West Virginia, the aggregate fair market value of all of the real estate or interests in real~~  
 155 ~~property situate in this state does not exceed \$100,000 and the real estate of the Decedent in West~~  
 156 ~~Virginia is as follows:~~

	Description	Cou nty	Ass essed Value	Fai r Market value
	Total			

157 (If more space is needed, attach additional page(s) to affidavit)

158 7. ☐ [Check if applies] or ☐ [Check if Not Applicable] If the affiant is a Successor who  
 159 was nominated as a personal representative or executor under the provisions of the above Will of  
 160 the Decedent, at least 30 days have elapsed since the Decedent's date of death and no  
 161 application for the appointment of a personal representative for the Decedent is pending or has  
 162 been granted in any jurisdiction;



or

( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was NOT nominated as a personal representative or executor under the provisions of the above Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit of Small Estate has been filed by a Successor nominated as a personal representative or executor under the provisions of the Will of the Decedent.

8. The undersigned Affiant will faithfully administer the small assets of the Decedent in accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Affiant/Successor

Taken, subscribed, and sworn to before me the undersigned authority by \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

{seal}

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(f) Upon acceptance and recording of the affidavit provided in this section, the county clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is nominated in an attached will, and the beneficiaries under the will when the decedent dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized successor who completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor

189 or successors of the decedent entitled pursuant to the provisions of this article and the other laws  
190 of the State of West Virginia and with authority to faithfully perform the duties of the office  
191 necessary to collect and administer the small assets of the decedent including, but not limited to,  
192 making application for and executing receipts, assignments, transfers, releases, waivers,  
193 applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent  
194 concerning the small assets, pursuing litigation for or against the decedent or the decedent's  
195 estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

196 (g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or  
197 fiduciary supervisor any interested person in the estate of the decedent files a written objection  
198 with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or  
199 fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report,  
200 and recommendation which may, among other things, revoke the certificate and authorization of  
201 small estate and require full and complete probate administration of the estate of the decedent in  
202 accordance with the other applicable provisions of this article. Upon any revocation of the  
203 certificate and authorization of small estate, the authorized successor shall provide an accounting  
204 and report of all payments or deliveries made of the small assets of the decedent.

205 (h) The authorized successor may act under the certificate and authorization of small  
206 estate issued under the provisions of this article for a period of six months from the date of the  
207 original issuance of the certificate and authorization but may, upon a showing of good cause in an  
208 application made to the county clerk or fiduciary supervisor, be granted an extension of an  
209 additional time period not to exceed six months upon issuance of an extended certificate and  
210 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

211 (i) If at any time after the original issuance of the certificate and authorization by the county  
212 clerk or fiduciary supervisor, the authorized successor or an interested person determines that the  
213 probate estate of the decedent does not qualify as a small estate because the aggregate values of  
214 all of the small assets ~~or the real estate~~ of the decedent exceed the values provided in this article,

215 upon application by an interested person the county clerk or fiduciary supervisor shall rescind the  
216 certificate and authorization of the small estate and shall mail a written order of rescission to the  
217 authorized successor and other interested persons, and a probate under the other provisions of  
218 this article shall be commenced by an interested person.

NOTE: The purpose of this bill is to preclude an estate with real property from being processed as a small 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.