

WEST VIRGINIA CODE: §41-5-13

§41-5-13. Ancillary administration; Probate or recordation of foreign will.

(a) Where a will relative to any personalty or real estate located or situate within this state has been proved or probated outside of this state by another state or jurisdiction within the United States of America, an authenticated copy thereof and the certificate of probate thereof, by such other state or jurisdiction may be offered for probate in this state, in accordance with the provisions of §41-5-5 or §41-5-10 of this code, and an ancillary personal representative, executor, or administrator, as the case may be, may be appointed in this state with like effect and with the same powers, authorities, duties, and liabilities as are given to domiciliary personal representatives, executors, and administrators under the provisions of this code.

(b) Where a will, relative only to real estate situate within this state, has been proved or probated outside of this state by another state or jurisdiction within the United States of America and no appointment of an ancillary personal representative, executor, or administrator to administer the real estate within this state is necessary for any proper purpose, an authenticated copy thereof and the certificate of probate thereof may be admitted to record in any county of this state in which the real estate is situate by any person having an interest in the real estate, including a personal representative who has qualified in the other state or jurisdiction.

(1) The interested person or personal representative shall also execute and tender for recording in the county an affidavit setting forth in substance:

(A) A description of the real estate owned by the decedent at the time of his or her death situate within the county in this state where the affidavit is to be recorded together with its assessed value for tax purposes and its fair market value at the date of death of the decedent;

(B) That the decedent died testate a nonresident of this state and that the authenticated copy of the will and the certificate of probate of the other state or jurisdiction is being or has been recorded in the county; and

(C) The names and last known addresses of the personal representative of the decedent's estate, if any, and of the decedent's devisees or beneficiaries who are devised or given the real estate under the will.

(2) The clerk of the county commission shall record and index the affidavit, together with the authenticated copy of the will and the certificate of probate, 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 may require a certified copy of the decedent's death certificate or

other proof of death and residence prior to fulfilling the clerk's responsibilities under this chapter.

(3) A bond, security, or oath is not required when no appointment of an ancillary personal representative, executor, or administrator is made under the provisions of this section.

(c) 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 section:

THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

IN RE: THE ESTATE OF _____

DOD: _____

AFFIDAVIT FOR ANCILLARY ADMINISTRATION

OF WEST VIRGINIA REAL ESTATE

WITHOUT APPOINTMENT

(TESTATE)

STATE OF _____,

COUNTY OF _____, to-wit:

I, _____, whose address is _____

_____, being first duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

1. The decedent, _____, died testate (with a will) on _____ (date of death), a resident of _____ County, State of _____.
2. On _____ (date), the following person(s) was/were appointed as the personal representative of the Estate of _____ by the _____ (name of foreign court), of _____ (county), _____ (state), being case number _____, if applicable:

1. Name:

Address: _____

1. Name: _____

Address: _____

1. An authenticated copy of the Last Will and Testament dated _____ and the certificate of probate of such other state or jurisdiction is being furnished herewith for recording in this County.
2. The Decedent died owning and possessing the following real estate situate in West Virginia:

Description County Assessed Value Fair Market value

- a.
- b.
- c.
- d.

Total

1. Pursuant to the provisions of the Last Will and Testament of _____, the decedent devised the aforesaid real estate to the following beneficiaries of the estate:

a. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

b. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

c. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

1. The Estate of _____, the decedent, will be/has been fully administered by the domiciliary personal representative under the domiciliary proceedings in the other state or jurisdiction. No appointment of an ancillary personal representative to administer the decedent's real estate within the State of West Virginia is necessary for any proper purpose.
2. I have personal knowledge of the above facts and am interested in the Estate of _____, the decedent, as the () acting domiciliary personal representative, () surviving spouse, () beneficiary under the decedent's will, () heir at law, or () other _____ (describe relationship or interest).
[Check one]

Signature of Affiant

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

{seal}

My Commission expires: _____

Notary Public

(d) When the authenticated copy of the will and the certificate of probate is so offered, as provided in subsection (a) of this section, the county commission, or the clerk thereof in the vacation of the commission, to which or to whom it is offered, shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit the copy to probate as a will of personalty in this state; and if it appears from the copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of land in this state by the laws thereof, the copy may be admitted to probate as a will of real estate. But any person interested may, within one year from the time the authenticated copy is admitted to record, and so probated, upon reasonable notice to the parties interested, object to the same and have the order admitting the same to probate in this state set aside, upon due and satisfactory proof that the authenticated copy was not a true copy of the will, or that the probate of the will has been set aside by the court by which it was admitted to probate, or that the probate was improperly made.

(e) Notwithstanding anything in this section to the contrary, where an original will of a

nonresident decedent exists but has not been proved or probated outside of this state by another state or jurisdiction within the United States of America because the provisions of the laws of the state or jurisdiction do not require the proof or probate of the will, the original of the will may be offered for probate in this state as provided in subsection (a) of this section or may be admitted to record as provided in subsection (b) of this section.