WEST VIRGINIA CODE CHAPTER 41 ARTICLE 5

WV Legislature

§41-5-1. Custodian of will to deliver same to clerk of county court or executor; liability for neglect.

A person having custody of a will shall, within thirty days after the death of the testator is known to him deliver such will to the clerk of the county court having jurisdiction of the probate thereof, or to the executor named in the will, who shall offer it for probate, or deliver it to the clerk, within a reasonable time. Any person who shall, without reasonable cause, neglect so to deliver a will shall be guilty of a misdemeanor, and, on conviction, be punished by a fine not exceeding $200; and shall in addition be liable to any person interested in such will for all damages caused by such neglect.

WV Legislature

§41-5-2. Clerk to notify executor and beneficiaries, and to keep will safe in his office.

Upon delivery of a will unto him as provided in the next preceding section, the clerk shall notify by mail or otherwise the executor and the beneficiaries named in the will, of such delivery, and shall keep the same safe in his office until proceedings may be had for the probate thereof, or until it is demanded by an executor or other person authorized to demand it for the purpose of having it proved according to law.

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§41-5-3. Compelling production of will and offer of probate.

A county court having jurisdiction to probate a will, or the clerk thereof in the vacation of the court, upon being informed that any person has in his custody the will of a decedent, shall summon him and by proper process compel him to produce the same. Upon the production of the will it shall remain on file in the clerk's office until proceedings are taken for the probate thereof. If any party desires to contest such will he may by application to the court or the clerk thereof in vacation have a rule against the executors and all the beneficiaries named in the will, returnable to the court, to be served in the manner prescribed in this article for service of process upon a petition to probate a will in solemn form, to offer such will for probate. If none of the executors or beneficiaries offers such will for probate within ten days after the return day of the rule, the court of its own motion shall offer the same for probate, so that the parties adversely affected by the will may contest the same.

WV Legislature

§41-5-4. Place of probate.

The county court shall have jurisdiction of the probate of wills according to the following rules:

(a) In the county wherein the testator, at the time of his death, had a mansion house or known place of residence; or

(b) If he had no such house or place of residence, then in the county wherein any real estate devised thereby is situated; or

(c) If there be no real estate devised thereby, and the testator had no such house or place of residence, then in the county wherein he died, or in any county wherein he had any property at the time of his death; or

(d) If he died out of this state, his will or an authenticated copy thereof, may be admitted to probate in any county in this state, wherein there is property devised or bequeathed thereby.

WV Legislature

§41-5-5. Procedure for probate in solemn form.

The county court, sitting in a regular or special session, shall hear and determine all proceedings to admit a will to probate in solemn form. Upon or at any time after the production of a will, any person may offer the will for probate in solemn form by filing in the county court having jurisdiction a petition duly verified by affidavit, stating when and where the testator died, his last place of residence, the nature of his estate, the relationship to decedent and place of residence of each of his heirs at law and distributees, surviving wife or husband, and each of the beneficiaries of the will. Process shall issue against and be served upon all persons interested in the probate of the will to appear at a day named, and show cause why the will should not be admitted to probate. A guardian ad litem for any person under disability shall be appointed, upon whom such process may be served, and such process shall be served upon parties resident in the state, and proceedings by order of publication or service in person without the state shall be had against all nonresidents and against all persons to the petitioner unknown, in the same manner as process is served and such proceeding had in suits in equity. At any time after the petition is filed and before final order is made admitting or refusing to admit the will to probate any person desiring to contest the will may appear and file a notice of contest in the proceeding, stating concisely the grounds of such contest. Thereupon, process shall issue on such notice and be served upon any person whose interest will be adversely affected by a refusal to admit the will to probate to appear and defend his interest. Any person sui juris may waive service of process upon the petition or notice, and the guardian ad litem of any person under disability may waive service of any such process, upon such person and upon himself Process upon the petition or notice shall be served at least ten days before the return day thereof. Any petition or notice of contest hereunder may be filed in the office of, process be issued, served and returned, and a guardian ad litem appointed by, the clerk of the court in the vacation of the court, and the proceeding may be matured and set down for hearing.

WV Legislature

§41-5-6. Hearing and decision.

If no contest be made, the court may, on the return day of the summons on the petition, and, if contest be made, on the return day of the process upon notice of contest, or at any day thereafter fixed by the court, proceed to hear and determine the question of probate, and enter such order or judgment thereon as the law and the evidence in the case requires.

WV Legislature

§41-5-7. Appeal from probate order -- When to be taken; procedure.

Any person feeling himself aggrieved by any order or judgment of the county commission admitting or refusing to admit any will to probate may, within three months, or, if such a person be under any disability within three months after such disability ceases, file his petition in the circuit court of such county, or before the clerk thereof, appealing to the circuit court from such order or judgment, stating in the petition the grounds of appeal and the parties interested in the probate of the will; and, in case of appeal, it shall be the duty of the clerk of the county commission promptly to transmit to the clerk of the circuit court, the will and all original papers filed or used in the proceedings for probate, together with copies of all orders made therein. The clerk of the circuit court shall, upon the filing of such petition, issue process thereon, and the case shall be proceeded in, tried and determined in such court, regardless of the proceedings before the county commission, and in the same manner and in all respects as if the application for such probate had been originally made to the circuit court.

WV Legislature

§41-5-8. Appeal from probate order -- Other testamentary papers to be produced; jury trial if desired.

If there be more than one testamentary paper in question in any such proceeding, the circuit court shall order them all to be produced. The circuit court shall order a trial by jury, if demanded by any person interested, to ascertain whether the will in question, or if there be more than one, which of them, or what part or parts of either or any of them, is the true will of the decedent; and, if trial by jury be not asked, the circuit court shall proceed to try and decide the question of probate, and shall make and enter in relation thereto such final judgment or order as the law and the evidence may require. A copy of such judgment or order shall be returned to, filed and recorded in, the office of the clerk of the county court, and also any will established in such proceedings and admitted to probate in the circuit court shall be returned to, filed, and recorded (if not already of record) in such office.

WV Legislature

§41-5-9. Order as bar to suit in equity.

Every such order or judgment of a county court not appealed from in proceedings for probate in solemn form, or in an ex parte proceeding which has been converted into a proceeding in solemn form by a contest therein, and every such order or judgment of a circuit court on appeal, shall be a bar to a bill in equity to impeach or establish such will, unless upon grounds which would give to a court of equity jurisdiction over other judgments at law.

WV Legislature

§41-5-10. Ex parte procedure to probate; appeal.

At, or at any time after, the production of a will, any person may move the county court having jurisdiction, or the clerk thereof in the vacation of the court, for the probate of such will, and the court or the clerk thereof, as the case may be, may, without notice to any party, proceed to hear and determine the motion and admit the will to probate, or reject the same. The probate of, or refusal to probate, any will, so made by the clerk, shall be reported by him to the court at its next regular session, and, if no objection be made thereto, and none appear to the court, the court shall confirm the same. If any person entitled to contest the probate of a will shall appear before the clerk of the court before a decision is made by him admitting or refusing to admit the will to probate, or before the county court at any time before it has made an order confirming the action of the clerk in admitting or refusing to admit such will to probate, or before such court in any ex parte proceeding to probate a will made in the court in the first instance before it has made an order admitting or refusing to admit the will to probate, and file a notice of contest of the probate of the will, stating distinctly the several grounds of objection, process on such notice shall be issued and the proceeding thereafter shall be heard before the county court only, and in all respects in the same manner as if the will had been offered for probate in solemn form; and any judgment entered by the county court on such proceeding shall have the same effect, and an appeal shall lie therefrom, as if the original proceeding to probate the will had been made in solemn form: Provided, That the only notice to the parties interested or process against them required in such case shall be upon the notice of contest. In all ex parte proceedings in which there is no contest, the action of the clerk in admitting the will to probate, when confirmed by the court, shall have the same effect in all respects as if the will had been admitted to probate and record by the county court in the first instance.

WV Legislature

§41-5-11. Impeachment or establishment of will -- By person who was not party to prior proceeding; trial by jury.

After a judgment or order entered as aforesaid in a proceeding for probate ex parte, any person interested who was not a party to the proceeding, or any person who was not a party to a proceeding for probate in solemn form, may proceed by complaint to impeach or establish the will, on which complaint, if required by any party, a trial by jury shall be ordered, to ascertain whether any, and if any, how much, of what was so offered for probate, be the will of the decedent. The court may require all other testamentary papers of the decedent to be produced, and the inquiry shall then be which one of all, or how much of any, of the testamentary papers is the will of the decedent. If the judgment or order was entered by the circuit court on appeal from the county commission, such complaint shall be filed within six months from the date thereof, and if the judgment or order was entered by the county commission and there was no appeal therefrom, such complaint shall be filed within six months from the date of such order of the county commission. If no such complaint be filed within the time prescribed, the judgment or order shall be forever binding. Any complaint filed under this section shall be in the circuit court of the county wherein probate of the will was allowed or denied.

WV Legislature

§41-5-12. Impeachment or establishment in court -- By person under disability or nonresident.

Notwithstanding the two preceding sections, any person interested who, at the time of the judgment or order is under the age of eighteen years, or is a convict or a mentally incapacitated person, may file a complaint to impeach or establish the will, within one year after he becomes of age, or other disability ceases; and any person interested who, at that time, resided out of the state, or was proceeded against by publication, may, unless he actually appeared as a party or was personally summoned, file such complaint within one year after the entry of such judgment or order.

WV Legislature

§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.

WV Legislature

(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: _____

2. Name: _____

Address: _____

WV Legislature

3. 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.
4. 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			

5. 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: _____

WV Legislature

6. 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.
7. 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

WV Legislature

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.

WV Legislature

§41-5-14. When depositions admissible.

The deposition of an attesting witness or other person may be read on the hearing of any proceeding to probate a will, when under the facts and circumstances the deposition of the witness would have been admissible on the trial of an action at law in the circuit court. In any proceeding in which there is no contest, the deposition may be taken at any time after the will is offered for probate, and without notice to any person. Any such deposition may be in the form of an affidavit. In any case in which there is a contest, depositions may be taken at any time after the service of process upon the notice of contest, and after notice to all parties adversely interested as prescribed for the taking of depositions in actions at law, and the depositions shall be taken and certified and returned as required in other cases. In any case in which the deposition of an attesting witness is required, the clerk of the county court shall transmit the original will by some safe method of conveyance to an officer authorized to take depositions at the place where the deposition is to be taken. A copy of the will shall be made and filed by the clerk in his office before the original is sent out for the purpose of taking depositions. In any case, with the consent of all parties appearing, or of their counsel, a photostatic copy of the original will may be used in taking the deposition of an attesting witness instead of the original document. Any party may have compulsory process to compel the attendance of a witness as in any suit in the circuit court. In any proceeding to probate or record an authenticated copy of a will that has been probated in another jurisdiction, depositions may be taken as in an original proceeding to probate.

WV Legislature

§41-5-15. Proof of will while testator living.

Any or all of the attesting witnesses to any will, at the request of the testator, may make and subscribe an affidavit before any officer authorized to administer oaths, in or out of the state, stating such facts as would be required of them in testimony in court to establish and prove the will; and if the testator shall preserve such affidavits with the will, and the same are produced and offered in evidence when the will is offered for probate, they shall be admissible in evidence and have the same probative value as if the affiants had appeared in court or before the clerk thereof and testified to the facts stated in the affidavit: Provided, That such affidavits shall not be admissible in evidence in any case in which there is a contest over the will.

WV Legislature

§41-5-16. Statements of particulars in will contests.

For the trial of any appeal under the provisions of sections seven and ten of this article, or for the trial of any issues to be submitted to a jury under the provisions of sections eight and eleven of this article, if good cause therefor be shown, and there be no unreasonable delay in applying for such order, the circuit court, or judge thereof in vacation, may order the contestants to file a particular statement of the facts expected to be proved by them at the trial, and may stay the proceedings until a reasonable time after such order is complied with; and in like manner after the contestants have filed such statement, if good cause therefor appear, and there be no unreasonable delay in applying for such order, such court, or judge thereof in vacation, may order the proponents of the will to file a particular statement of the facts expected to be proved by them at the trial; which statement, in either case, shall be made under the oath of the parties or their attorneys to the effect that the affiants believe the same will be supported by evidence at the trial. If either the contestants or the proponents fail to file any such statement when so required, or if any such statement after the same has been filed be adjudged insufficient in whole or in part, the court, or the judge thereof in vacation, may, as justice may require, grant further time for filing same, or permit the statement filed to be amended, or may, at the trial, exclude the evidence offered by the party in default as to any matter which he has so failed to state or has insufficiently stated. But no statement which is sufficient to inform the adverse parties of the nature and substance of the facts to be shown against or in support of the will shall be adjudged insufficient; nor shall any such statement in any manner affect the burden or order of proof imposed by law on the parties.

WV Legislature

§41-5-17. Probated wills to be recorded and indexed.

Every will or authenticated copy of a will, when admitted to probate under the provisions of this article, shall be recorded by the clerk of the county court, and indexed by him in a general index of wills, and every such will or copy when recorded shall remain in his office except when removed therefrom by the order of a court, or under a subpoena duces tecum, or otherwise as provided by law.

WV Legislature

§41-5-18. Recording in other counties; duty of personal representative or devisee.

A duly certified copy of such will when probated, or of an authenticated copy of a foreign will admitted to record as a will of real estate, may be recorded in any other county of the state wherein there is any real estate devised by such will. It is the duty of the personal representative of the testator to record an authenticated copy of such will in each county in which any real estate is located of which the personal representative under the powers conferred by the will may make sale and disposition, and the duty of the devisee or devisees, claiming title under the will to any real estate of which the personal representative may not by the powers conferred in the will make sale and disposition, to cause such copy to be recorded in each county in which any such real estate is located.

WV Legislature

§41-5-19. Title of bona fide purchasers of real estate from heirs.

The title of a bona fide purchaser without notice and for valuable consideration from the heir or heirs at law of a person who has died heretofore, or who may die hereafter, having title to any real estate of inheritance in this state, shall not be affected by a devise of such real estate made by the decedent, unless within one year after the testator's death the will devising the same, or if such will has been probated without this state, an authenticated copy thereof, shall be filed for probate before the court having jurisdiction for that purpose, or the clerk thereof, and shall afterwards be admitted to probate as a will of real estate and be recorded in the proper clerk's office: Provided, however, That if any devisee under such will mentioned in this section is at the time of the testator's death an infant, or insane, or a convict, the limitation created by this section shall not affect such infant, insane person or convict until after the expiration of one year from the removal of such disability.

WV Legislature

§41-5-20. Title to real estate devised by wills; rights of devisees and bona fide purchasers.

The title of a bona fide purchaser of real estate, without notice and for valuable consideration, from the devisee or devisees of a testator, a will of whom has been duly admitted to probate devising such real estate, shall not be affected or impaired by any devise or other disposition of any such real estate by the testator by or in any other will or wills executed by him subsequent to the instrument already admitted to probate as his last will and testament, unless any such subsequently executed will (or if any such will has been probated without the state, an authenticated copy thereof) shall be filed for probate in the court having jurisdiction for that purpose, or with the clerk thereof, within one year next after the testator's death and shall afterwards be admitted to probate as the will of such real estate and entered of record in the proper clerk's office: Provided, however, That if any devisee under any such subsequently executed will is at the time of the testator's death an infant, or insane, or a convict, the limitation created by this section shall not affect the rights of any such infant, insane person or convict until after the expiration of one year from the removal of such disability.

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