WEST VIRGINIA CODE CHAPTER 44 ARTICLE 1

WV Legislature

§44-1-1. Executor has no powers before qualifying.

A person appointed to be the executor of a will shall not have the powers of executor until he or she qualifies by taking an oath and giving bond, unless not required to post bond by §44-1-8 of this code, which shall then be admitted to the records of the clerk of the county in which the will, or an authenticated copy thereof, is admitted to record, except that he or she may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

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§44-1-1a. Online educational training for executors.

Beginning January 1, 2028, the West Virginia State Bar shall make available on its official website educational materials concerning the administration of wills and estates, covering the duties and responsibilities of executors and administrators, including acting as a fiduciary. The materials shall be available to the public without charge, displayed in a conspicuous and easily accessible location on the State Bar's website, and accessible to individuals with sight-impairment.

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§44-1-2. Administration with will annexed.

If there be no executor appointed by the will, or if all the executors therein named refuse the executorship, or fail when required to give such bond, which shall amount to such refusal, or have died, such court, or clerk thereof during the recess of the regular sessions of such court, may grant administration, with the will annexed, to the person who would have been entitled to administration if there had been no will, and he shall take such oath and give such bond.

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§44-1-3. Oath of executor or administrator with will annexed.

The oath of an executor, or of an administrator with the will annexed, shall be in substantially the following form: The writing admitted to record contains the true last will and testament of the deceased, as far as he or she knows or believes, and that he or she will faithfully perform the duties of his or her office to the best of his or her skill and judgment.

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§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.

(a) When a person dies intestate the jurisdiction to hear and determine the right of administration of his or her estate shall be in the county commission or clerk thereof during the recess of the regular sessions of the county commission which would have jurisdiction as to the probate of his or her will, if there were one. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the county commission or clerk shall see fit. If no distributee apply for administration within 30 days from the death of the intestate, the county commission or clerk may grant administration to one or more of the creditors of the decedent, or to any other person who shall be fit.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Any person having an interest in real estate situate in this state that was seized and possessed by a decedent who was a nonresident of this state and who has died intestate without any will, including a personal representative who has qualified in another state or jurisdiction, for which no appointment of an ancillary personal representative or administrator to administer the real estate within this state is necessary for any proper purpose may execute and tender for recording in the county an affidavit setting forth in substance:

(A) A description of the real estate owned by the nonresident decedent at the time of his or her death situate within the county 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 nonresident decedent died intestate without any will presented or probated in this state or in any other state or jurisdiction;

(C) That more than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent’s estate has been otherwise appointed in this state for any proper purpose; and

(D) The names and last known addresses of the decedent’s heirs at law determined under the laws of this state entitled to the real estate situate in this state.

(2) The clerk of the county commission shall record and index the affidavit in the same manner and upon the same fees as affidavits of heirs are recorded and indexed in case of intestate 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

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representative 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

(INTESTATE)

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 on _____(date of death), a resident of _____ County, State of _____. The decedent has left no will so far as I know, and no will of the decedent has been presented or probated in this state or in any other state or jurisdiction.
2. More than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent's estate has been otherwise appointed in the State of West Virginia for any proper purpose.
3. A certified death certificate has been furnished herewith for filing 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.				

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Total

5. The decedent, _____, left as his/her heirs at law in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

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: _____

6. 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]

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_____

Signature of Affiant

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

{seal}

My Commission expires: _____

_____

Notary Public

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§44-1-5. When curator may be appointed; his duties.

The county court, or clerk thereof during the recess of the regular sessions of such court, may appoint a curator of the estate of a decedent, during a contest about his will, or during the infancy or in the absence of an executor, or until administration of the estate be granted, taking from him a bond in a reasonable penalty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator, or before such estate shall lawfully come into possession of such executor or administrator. He may demand, sue for, recover, and receive all debts due to the decedent, and all his other personal estate, and when there is a will may, or if a will be in contest shall, with respect to any real estate whereof the decedent or testator may have died seized or possessed, exercise such rights as the executor or administrator with the will annexed could exercise, including the collection of any rents and profits of such real estate and the leasing of the same for a term not exceeding the period of the curator's incumbency. Upon the qualification of an executor or administrator, such curator shall account with the executor or administrator for, and pay over to him such estate as came into such curator's hands or for which he is liable.

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§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of any intestate, the person to whom it is granted shall, in the county commission or before the clerk granting it, give bond, unless not required to post bond by §44-1-8 of this code, and take an oath in substantially the following form: The deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

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§44-1-7. Penalty of bond.

(a) Every bond required to be given by an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of such personal estate and of such real estate, or of such personal estate and of such rents and profits, as the case may be.

(b) If on the filing of the appraisement of the estate it shall appear that the penalty of the bond does not comply as to amount with the foregoing requirements, the county commission in which, or the clerk before whom, such bond was given, shall immediately notify such executor or administrator of such fact and require of him or her a new or additional bond, and the failure of such executor or administrator to give the same within a reasonable time shall be sufficient cause for his or her removal.

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§44-1-8. When executor or administrator not to give bond; when surety not required.

(a) Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, and after a hearing, it is required by the county commission that bond ought to be given.

(b) No surety shall be required on the bond of the executor if he or she is also the sole beneficiary of the decedent, unless the will directs otherwise, and no surety shall be required on the bond of the administrator if he or she is the sole distributee of the decedent, unless at the time the will is admitted to probate or the administrator is appointed or at any time thereafter, on the application of any person interested, and after a hearing, it is required by the county commission that surety ought to be given.

(c) In all such cases where no surety is required of the executor or administrator, the executor or administrator shall nevertheless be liable upon his or her bond upon his or her own personal recognizance in the event of default, failure or misadministration by the executor or administrator.

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§44-1-9. Administration de bonis non upon death, resignation or removal of sole surviving executor or administrator; executor or administrator of executor or administrator not authorized to administer estate of first testator or intestate.

In any estate in which there is a will, on the death, resignation or removal of the sole surviving executor of any such will or of an administrator with the will annexed, administration of the estate of the testator, not already administered, may be granted with the will annexed; and in any estate in which there is no will, on the death, resignation or removal of the administrator of such estate, administration of the estate, not already administered, may be granted, to such person as the court shall find it proper to appoint; and no executor or administrator of an executor or administrator shall have authority as such to administer the estate of the first testator or the first intestate.

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§44-1-10. Marriage of female representative does not extinguish authority.

Where an unmarried woman who is personal representative, either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right, and such marriage shall not operate as an extinguishment of her authority.

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§44-1-11. When sheriff to administer estate.

If at any time two months elapse without there being an executor or administrator of the estate of a decedent (except during a contest about the decedent's will, or during the infancy or absence of the executor), the court or clerk before whom the will was admitted to probate, or having jurisdiction to grant administration, shall on motion of any person order the sheriff of the county to take into his or her possession the estate of such decedent and administer the same; whereupon such sheriff, without taking any other oath of office, or giving any other bond or security than he or she may have before taken or given, shall be the administrator or administrator de bonis non of the decedent, with his or her will annexed if there be a will, and shall be entitled to all the rights and bound to perform all the duties of the administrator. For his or her services as administrator of an estate, the sheriff shall receive from the estate a fee of five percent of the estate subject to administration, which fee shall be deposited to the treasury of the county. Every sheriff shall, in the month of January in each year, make a written report to the county commission of his or her county, and if the court is not in session, then he or she shall file the report with the clerk of the court, of the receipts and disbursements of each estate so committed to him or her, and at the end of his or her term of office make a complete report and settlement of each estate so committed to him or her, and shall turn over to his or her successor in office all moneys or property in his or her hands remaining unadministered. The court or clerk may, however, at any time afterward revoke such order and allow any other person to qualify as the executor or administrator; and the court, or the clerk thereof, shall, at the expiration of the term of office of any sheriff, commit to his or her successor in office any and all estates which may appear, by the final report above required to be made by the sheriff at the end of his or her term, not to have been fully administered. Every sheriff to whom any estate shall have been committed, as aforesaid, who shall fail to render any report as required herein, or who shall fail to make such settlement within two months after the end of his or her term of office shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than $500.

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§44-1-12. Letters of administration.

A copy of the order whereby certificate is granted to any personal representative for obtaining probate or letters of administration, shall be as effectual as the probate or letters made out in due form. Nevertheless, the clerk of the court, in which such order is made, shall, when required by any personal representative, make out such probate or letters in due form.

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§44-1-13. Affidavit showing heirs, distributees, devisees and legatees of decedent.

At the time of the qualification of an executor or administrator, the court or clerk before whom he qualifies shall require such executor or administrator to file his own affidavit, or the affidavit of some credible person, showing the names and, as far as possible, the addresses of the persons who would take any part of the estate of the decedent as heirs or distributees in cases of the intestacy of the decedent and of the persons who are devisees and legatees under the will, if any, of the decedent, and their relationship to decedent, and the clerk of the court shall record such affidavit in the fiduciary record, which affidavit and the record thereof shall be prima facie evidence of what is contained therein. The personal representative shall not receive any compensation for his services until such names and addresses be furnished by affidavit as aforesaid, unless he shows by affidavit that such heirs, distributees, devisees and legatees and their addresses are unknown to him and that after diligent inquiry he has been unable to ascertain their names and addresses.

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§44-1-13a.

Repealed.

Acts, 2002 Reg. Sess., Ch. 142.

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§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition; hiring of experts.

(a) The personal representative of an estate of a deceased person shall appraise the deceased's real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b) After having taken the appropriate oath, the personal representative shall, on the appraisement form prescribed by the Tax Commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent's death:

(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(2) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(c) Any real estate or interest in real estate so appraised must be identified with particularity and description. The personal representative shall identify the source of title in the decedent and the location of the realty for purposes of real property ad valorem taxation.

(d) For purposes of this section, the term "probate personal property" means all personal property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.

(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the Tax Commissioner for the purpose of reporting whether the decedent owned or had an interest in any nonprobate personal property: Provided, That the Tax Commissioner shall design a questionnaire that is as much as possible phrased in understandable English.

(f) The appraisement form shall be executed and signed by the personal representative. The original appraisement form and two of its copies, together with the completed and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is

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returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be maintained and preserved by the clerk of the county commission or the fiduciary supervisor, but shall not be recorded in the records of the clerk of the county commission. The nonprobate inventory form is confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees. Nothing in this section may be construed to hinder, abrogate or prevent disclosure of information as authorized in section thirty-five, article eleven, chapter eleven of this code.

(g) An executed and signed appraisement form is prima facie evidence:

(1) Of the value of the property listed;

(2) That the property is subject to administration; and

(3) That the property was received by the personal representative.

(h) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $500.

(i) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and its reasonableness is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

(j) Except as specifically provided in subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven, article eleven, chapter eleven of this code.

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§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisement of any estate or within one hundred twenty days of the date of qualification of the personal representative if an appraisement is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

(1) The name of the decedent;

(2) The name and address of the county commission before whom the proceedings are pending;

(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and

(10) If the appraisement of the assets of the estate shows the value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner”. If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The

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time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid or by personal service on the following persons:

(1) If the personal representative is not the decedent’s surviving spouse and not the sole beneficiary or sole heir, the decedent’s surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within sixty days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this

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subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of $20 for the publication of the notice required in this section.

(h) For purposes of this section, the term “beneficiary” means a person designated in a will to receive real or personal property.

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§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for filing of objections.

(a) Within 30 days of the filing of a foreign will of a nonresident of this state without appointment of an ancillary personal representative, executor, or administrator as provided in the provisions of §41-5-13(b) of this code or within 30 days of the filing of an affidavit concerning the intestacy of a nonresident of this estate without appointment of an ancillary intestate administrator as provided in the provisions of §44-1-4(b) of this code, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the filing of the foreign will or the affidavit, a notice which is to include:

(1) The name and last known address of the decedent;

(2) The name and address of the county commission before whom the foreign will or affidavit has been filed and a statement that no appointment or administration is being made pursuant to the provisions of law but that a foreign will or affidavit of heirs of the decedent has been filed with the county commission;

(3) The name and address of the party filing the foreign will or affidavit and his or her relationship to the decedent;

(4) The date of first publication of the notice;

(5) A statement that an interested person objecting to the filing of the foreign will or affidavit or objecting to the absence of appointment or administration being made in this state must be filed with the county commission within 60 days after the date of first publication or 30 days of service of the notice, whichever is later.

(b) This notice shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication of the notice is equivalent to personal service on creditors, devisees or beneficiaries under the will, and heirs at law of the decedent.

(c) The party filing the foreign will or affidavit shall, not later than 30 days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, at the last known address by first class mail, postage prepaid or by personal service on the following persons:

(1) The decedent’s surviving spouse, if any;

(2) If there is a will, the personal representative or personal representatives named therein;

(3) If there is a will, all devisees or beneficiaries named therein;

(4) The heirs at law of the decedent determined under the laws of this state; and

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(5) Any known creditors of the decedent residing or located in this state or who may claim a lien or interest against the real estate of the decedent situate in this state.

(d) Any person interested in the estate who objects to the filing of the foreign will or affidavit or objects to the absence of appointment or administration being made in this state shall file notice of an objection with the county commission within 60 days after the date of the first publication as required in subsection (a) of this section or within 30 days after service of the notice as required by subsection (c) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred. The county commission upon receiving any timely objection thereto shall schedule a hearing or hearings thereon and order relief, if any, it considers proper including, but not limited to, an order directing that full and complete ancillary administration of the estate of the nonresident decedent be made in this state.

(e) The clerk of the county commission shall collect a fee that is the amount of the publication of the notice required in this section.

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§44-1-15. Duty of personal representative; debt not extinguished by appointment of debtor as executor.

It shall be the duty of every personal representative to administer well and truly the whole personal estate of his decedent. The appointment of a debtor as executor shall not extinguish the debt.

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§44-1-16. When administrator de bonis non may administer assets for which former personal representative liable.

When the powers of a personal representative have ceased and an administrator de bonis non of the decedent's estate has been appointed and qualified, it shall be lawful for the personal representative whose powers have ceased, or his personal representative if he shall have died, to pay and deliver to such administrator de bonis non, or for him to demand, receive, and recover the assets of his decedent, whether converted or not, for which such former personal representative is responsible: Provided, however, That the administrator de bonis non shall have given, or shall give, a bond sufficient to cover the additional assets, so to be paid or delivered to him or so to be demanded and received by him The administrator de bonis non shall administer the same as assets received in due course of administration, and his receipt therefor shall be a voucher in the settlement of the accounts of the former personal representative, and shall exempt such former personal representative from all liability for any of such assets paid over and delivered to such administrator de bonis non. But this section shall not be construed as exempting such former personal representative and his sureties from liability for any breach of duty, with respect to such assets, committed by him before they were paid over and delivered by him as aforesaid.

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§44-1-17. Food and fuel for family.

The provisions and fuel (or so much thereof as may be necessary) which, at the death of any person, shall have been laid in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any livestock necessary for the food of the family may be killed for that use before the sale or distribution of the estate.

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§44-1-18. What estate not to be sold.

Unless it be necessary for the payment of funeral expenses, charges of administration or debts, the personal representative shall not sell estate which the will directs not to be sold.

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§44-1-19. Sale of goods likely to be impaired in value.

Of the goods not mentioned in the preceding section, other than such as are exempt by any provision of law, the personal representative shall, as soon as convenient, sell at public auction such as are likely to be impaired in value by keeping, giving a reasonable credit (except for small sums), and taking bond with good security.

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§44-1-20. When to sell other goods.

If the goods so sold be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell so much of the other goods and chattels as may be necessary to pay the same, having regard to the privilege of specific legacies.

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§44-1-21. Estate for life of another is assets.

Any estate for the life of another shall go to the personal representative of the party entitled to the estate, and be assets in his hands, and be applied and distributed as the personal estate of such party.

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§44-1-22. Suits by and against.

A personal representative may sue or be sued upon any judgment for or against, or any contract of or with, his decedent.

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§44-1-23. Actions for goods carried away, waste or damage to estate of or by decedent.

A civil action may be maintained by or against a personal representative for the taking or carrying away of any goods, or for the waste or destruction of, or damage to, any estate of or by his decedent.

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§44-1-24. Action for waste by representative.

A suit may be maintained against the personal representative of an executor in his own wrong, or the personal representative of a rightful executor or administrator by whom any waste may have been committed.

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§44-1-25. Administrator de bonis non may have scire facias.

Where a suit is pending or a judgment or decree has been rendered in this state in favor of a personal representative, upon a contract made or for a cause of action which accrued in the lifetime of the decedent, the administrator de bonis non of such decedent may sue forth a scire facias to have execution upon such judgment or decree, or to revive and prosecute to judgment or decree the suit so pending, if the personal representative who brought it could have maintained the same.

WV Legislature

§44-1-26. Action on bond of personal representative.

Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the surety in any bond given by such personal representative for the faithful discharge of his or her duties.

WV Legislature

§44-1-27. Not chargeable beyond assets; pleas allowed.

No personal representative or any surety of his shall be chargeable beyond the assets of the decedent by reason of any omission or mistake in pleading or false pleading of such representative. And in the action allowed by the preceding section the defendants may plead any pleas and offer any evidence which would be admissible in an action against a personal representative suggesting a devastavit.

WV Legislature

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

(a) When the State of West Virginia, any of its political subdivisions, the United States, or any employer owes wages, salary, pension payments, or money allowed for burial expenses to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the amount owed does not exceed $5,000, the State of West Virginia, any of its political subdivisions, the United States, or the decedent's employer, after 120 days from the death of the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect.

(b) When the Treasurer holds property in accordance with §36-8-1 *et seq*. of this code on behalf of a decedent upon whose estate there has been no qualification, and the amount of the property is $5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the Treasurer holds property in accordance with §36-8-1 *et seq*. of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of intestate descent and distribution.

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed $5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, after 120 days from the death of the decedent, that person may pay the amount owed to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, "person" includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.

(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

WV Legislature

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

(a) Subject to the requirements and conditions of subsection (b) of this section, a personal representative, trustee, administrator, or executor of a decedent or a decedent's estate is hereby granted the authority to:

(1) Sell a conservation or preservation easement under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq.* of this code;

(2) Donate a conservation or preservation easement under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq.* of this code; or

(3) Amend a conservation or preservation easement created prior to the decedent's death under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq*. of this code and recorded on the decedent's real property as may be permitted by applicable law and the conservation or preservation easement.

(b) The personal representative, trustee, administrator, or executor shall ensure that the sale, donation, amendment, or transfer, of a conservation or preservation easement complies with the following:

(1) The proposed sale, donation, transfer or amendment satisfies the requirements set forth in the provisions of §20-12-8a of this code, as applicable to the particular easement;

(2) The proposed sale, donation, transfer, or amendment is to a qualified conservation organization or holder and the organization or holder agrees to accept the conservation or preservation easement; and

(3) The sale, donation, transfer, or amendment must meet one of the following conditions:

(A) In the case of an administrator of a decedent's intestate estate, all heirs with interests in the real estate affected provide written consent which shall be recorded with the easement; or

(B) In the case of a personal representative or executor of a decedent's testate estate, or the trustee of a trust, the will, trust, or other governing instrument authorizes or directs the personal representative, executor, or trustee to sell or donate a conservation or preservation easement; or

(C) The sale, donation, transfer, or amendment of the conservation or preservation easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the property.

WV Legislature

§44-1-30. Death certificate or other proof of death and residence may be required.

The clerk of the county commission may require a certified copy of a decedents death certificate or other proof of death and residence prior to fulfilling the clerk's responsibilities under this chapter.

WV Legislature

§44-1-31. Administration of oath; execution of bond.

An oath required in this chapter may be taken before any person authorized to administer oaths under the laws of this state or any other state. A bond may be executed, if not in person before the county clerk, before any person authorized to administer oaths under the laws of this state or any other state.

WV Legislature