WEST VIRGINIA CODE: §44-1A-2

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

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

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

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

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

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

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

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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

(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

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_____.

2. The Decedent, _____, died on _____ (date of death), a resident of _____ County, State of West Virginia, with his/her usual residence being

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

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

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

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

a. Name:_____

Address: _____

_____

b. Name:_____

Address: _____

_____

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

a. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

b. Name: _____

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Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

c. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

d. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

e. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

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

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

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

a. Name: _____

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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: _____

e. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

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

5. 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 the small assets does not exceed $50,000. The small assets of the Decedent are described and itemized as follows:

Description	Fair Market value
a.	

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b.
c.
d.
e.
f.
Total

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

6. The Decedent did not ( ) die seized and possessed of any probate real estate or interests in probate real estate in the state of West Virginia.

7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above 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;

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.

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

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

(h) The authorized successor may act under the certificate and authorization of small estate issued under the provisions of this article for a period of six months from the date of the

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original issuance of the certificate and authorization but may, upon a showing of good cause in an application made to the county clerk or fiduciary supervisor, be granted an extension of an additional time period not to exceed six months upon issuance of an extended certificate and authorization of small estate to be issued by the county clerk or fiduciary supervisor.

(i) If at any time after the original issuance of the certificate and authorization by the county clerk or fiduciary supervisor, the authorized successor or an interested person determines that the probate estate of the decedent does not qualify as a small estate because the aggregate values of all of the small assets of the decedent exceed the values provided in this article, upon application by an interested person the county clerk or fiduciary supervisor shall rescind the certificate and authorization of the small estate and shall mail a written order of rescission to the authorized successor and other interested persons, and a probate under the other provisions of this article shall be commenced by an interested person.

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