WEST VIRGINIA CODE CHAPTER 44 ARTICLE 1A

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§44-1A-1. Short title; definitions.

(a) This article may be cited as the West Virginia Small Estate Act.

(b) For the purposes of this article, the following definitions apply:

(1) "Authorized successor" means the successor of a decedent who files an affidavit and is certified and authorized by the clerk of the county commission or the fiduciary supervisor thereof, pursuant to the provisions of this article.

(2) "Interested Person" means heirs, devisees, distributees, legatees, children, spouses, or creditors of the decedent and beneficiaries and any others having a property right in or a claim against the estate of a decedent or property in a small estate. Interested persons include persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. An interested person may also include a bank, financial institution, credit union, or person that is holding assets related to the estate.

(3) "Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(4) "Small asset" means any probate personal property or asset belonging or presently distributable to the decedent having a fair market value on the decedent's date of death of not more than $50,000. A small asset includes, but is not limited to, cash, 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. A small asset does not include real estate or an interest in real property. A small asset does not include a nonprobate asset of the decedent which would not be subject to administration in the decedent's probate estate.

(5) "Small estate" means a probate estate of a decedent who died domiciled in this state in which: (A) The total aggregate fair market value, on the decedent's date of death, of all probate personal property and all probate personal assets does not exceed $50,000; and (B) the total aggregate fair market value on the decedent's date of death of all real estate or interests in real property situate in this state of which the decedent owned or was seized or possessed does not exceed $100,000, excluding any real estate of the decedent which was held in any nonprobate form. For the purposes of this article, the fair market value of real estate shall be presumed to be 167 percent of the current assessed value of the real estate on the land books as reported by the assessor of the county in which the real estate is situate. It is provided, however, that a probate estate of a testate decedent in which the decedent's will provides for real estate devised to be sold and not a mere power to sell the

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decedent's real estate shall not be considered to be a small estate.

(6) "Successor" means any person, other than a creditor, who is nominated as a personal representative or executor under the provisions of the will of the decedent, or who is entitled under the provisions of the decedent's will or the laws of intestate descent and distribution of this state to a part or all of a small asset of the decedent.

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§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 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

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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 _____ _____.

2. The Decedent, _____, died on _____

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(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: _____

Address: _____

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_____

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: _____

Address: _____

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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.		
b.		
c.		

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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.

Witness my hand and seal this ____ day of _____, 20___.

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_____

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 original issuance of the certificate and authorization but may, upon a showing of good cause

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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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§44-1A-3. Payment or delivery of small assets to authorized successor.

(a) Any person having possession of a small asset of the decedent shall pay or deliver the small asset to the authorized successor of the decedent upon being presented the certificate and authorization of a small estate of the county clerk or fiduciary supervisor.

(b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver the small asset or assets to the successor or successors of the decedent entitled to the small asset as required by the laws of the State of West Virginia.

(c) The authorized successor may discharge his or her fiduciary duty concerning the payment or delivery of the small asset or assets by:

(1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;

(2) Paying or delivering the small asset to a successor entitled to the small asset who is sui juris; or

(3) For any successor entitled to the small asset who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the small asset to the successor's conservator or, if no conservator exists, guardian; to any custodian of an account for the successor under §36-7-1 *et seq*. of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult relative or other person having legal or physical care or custody of the successor to be expended on the successor's behalf directly to the incapacitated or disabled successor or applying it for the successor's benefit. Any successor may be represented and bound under the provisions of virtual representation set forth in §44D-3-1 *et seq*. of this code with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.

(d) Upon the presentation of the certificate and authorization of a small estate, the authorized successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate.

(e) A transfer agent of any security, upon the surrender of any certificate evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the successor entitled to the small asset upon the presentation of the certificate and authorization of small estate.

(f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the small assets constituting the small estate of the decedent is subsequently found to

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exceed $50,000.

(g) The authorized successor is liable to the successors of the decedent, including any personal representative subsequently appointed for the decedent's estate, for any breach of fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a small asset and causing injury to the entitled successor for a period of three years after the date of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary supervisor.

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§44-1A-4. Discharge and release of payor; treatment of real estate in a small estate.

(a) Any person paying or delivering a small asset pursuant to the provisions of this article is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. That person is not required to see the application of the small asset or to inquire into the truth of any statement in the affidavit or the certificate and authorization of a small estate presented under this article.

(b) If any person to whom the certificate and authorization of small estate is presented refuses to pay or deliver any small asset to the authorized successor, the small asset may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to the small asset in the magistrate court or circuit court of this state having jurisdiction.

(c) For any real estate or interest in real property of the decedent which is reported on the recorded affidavit provided in this article, the provisions of §44-8-5, §41-5-19 and §41-5-20 of this code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be duly admitted to probate. The authorized successor or a successor or creditor of a decedent in a small estate may within six months of the issuance of the certificate and authorization of small estate commence a proceeding in equity before the circuit court under the provisions of §44-8-7 of this code to subject real estate to the payment of debts when the small assets are insufficient for the payment thereof.

(d) Nothing in this article releases or discharges any claim which a creditor may have against the decedent, the decedent’s estate, or the assets of the decedent, and creditors of a small estate have the same rights provided under the provisions of §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

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§44-1A-5. Construction of article.

(a) The remedies provided by this article are in addition to, and not in exclusion of, any other remedies provided by the laws of this state.

(b) For any will attached to and tendered with the affidavit provided in this article, the provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an order of the county commission entered on the date of the issuance of the certificate and authorization of a small estate by the county clerk or fiduciary supervisor.

(c) Nothing in this article may be construed to affect or limit the right of a surviving spouse of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1 et seq. of this code.

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