# WEST VIRGINIA CODE CHAPTER 44 ARTICLE 2

WV Legislature

## §44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributes, and any other matter necessary for the settlement of the estate: *Provided*, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than $300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in accordance with the provisions of §59-1-9 of this code.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their 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, the clerk shall record the appraisement. If an unpaid creditor files a claim against the estate, the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

(c) The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of §44-2-29 of this code; or (ii) make a report to the clerk of his or her receipts, disbursements, and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes, and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for 10 days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of $10 for recording and mailing the waiver of final settlement or report.

(d) If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: *Provided*, That the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner, and if all claims are approved as filed, then no reference may be made.

WV Legislature

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

WV Legislature

**§44-2-2.**

Repealed.

Acts, 2015 Reg. Sess., Ch. 113.

WV Legislature

**§44-2-3.**

Repealed.

Acts, 2015 Reg. Sess., Ch. 113.

WV Legislature

## §44-2-4. Mailing of notice to creditors, distributees and legatees.

When the fiduciary commissioner has fixed the time for presentation of claims, the personal representative shall file with such fiduciary commissioner a list of the names and post- office addresses of all known creditors of the estate and of all distributees and legatees, to each of whom the fiduciary commissioner shall cause a copy of such notice to be forwarded by United States mail, addressed according to such list. But failure to mail, or to receive, such notice shall not relieve any creditor, distributee or legatee of the duty to present and prove his claim as required by such notice, nor in any way affect the proceedings pursuant to such notice.

WV Legislature

## §44-2-5. Claims to be proved by vouchers and affidavits in first instance.

Every claim against the estate of a decedent shall be itemized, verified by affidavit, accompanied by proper vouchers and shall state the character of the claim, whether open account, note, bond, bill, writing obligatory, judgment, decree or other evidence of debt and the amount thereof and from what date and on what items interest runs and at what percent per annum and stating further that the claim is just and true and that the creditor, or any prior owner of the claim, if there was one, has not received any part of the money stated to be due or any security or satisfaction for the same, except what is credited. The voucher for a judgment or decree shall be an abstract thereof; for a specialty, bond, note, bill of exchange, writing obligatory or other instrument, shall be the instrument itself, or a true copy thereof, or proof of the same in case the instrument be lost; and for an open account, an itemized copy of the account. This section does not apply to taxes.

WV Legislature

## §44-2-6. Claims taken to be proved; objections to claims; hearings; funeral expenses.

Every claim so itemized, so accompanied by proper vouchers, and so verified, shall be taken to be proved, and shall be allowed, unless before the commissioner shall make up his report of claims the personal representative or a distributee, or a legatee, or, in the case of estates that appear to be insolvent, a creditor, shall file before the commissioner a counter affidavit, denying the claim in whole or in part; and when said counter affidavit is so filed the commissioner shall fix a time and place for hearing evidence for and against such claim and give reasonable notice of such time and place to the claimant, the party objecting, and the personal representative. If the commissioner, having held such hearing, does not allow any such claim, the claimant shall pay the expense of having the testimony adduced at such hearing recorded and/or transcribed. The commissioner, in the exercise of his sound discretion, may require that the claimant post a bond or other security sufficient to pay the estimated cost of having such testimony recorded and transcribed as a condition precedent to holding such hearing. If such claim, having been disallowed by the commissioner, subsequently shall be allowed as a claim against the estate, the claimant shall be entitled to recover from the estate the expenses so paid. Claims for funeral expenses shall be made and determined in the same manner as any other claims.

WV Legislature

## §44-2-7. Claims may be presented before publication of notice.

Claims against any decedent's estate may be filed with or presented to the fiduciary commissioner to whom the estate has been referred, at any time following the qualification of the personal representative, notwithstanding the notice to creditors shall not have been published previously to such filing or presentation.

WV Legislature

## §44-2-8. Proof of contingent or unliquidated claims.

Whenever at the death of any person there shall be a contingent or unliquidated claim against his estate, or an outstanding bond, recognizance or undertaking upon which the deceased shall have been principal or surety or indemnitor, and on which at the time of his death the liability is still contingent or unliquidated, the claimant or the surety shall have the right to file with the fiduciary commissioner or personal representative, as the case may be, at the time provided for in the notice, proof of his claim in the same manner as other claims, stating in his affidavit the facts upon which such contingent or unliquidated liability is based and the probable amount thereof. When so filed there shall be no distribution of the assets of the estate, except as otherwise provided in this article, without the reservation of sufficient moneys to pay, when the amount is finally determined, such contingent or unliquidated claim, or a proportion thereof equal to what is paid to other creditors of the same class. If such liability becomes fixed before a fiduciary commissioner completes his report, then evidence of the same may be filed with the fiduciary commissioner in lieu of the contingent claim herein provided for, and such claim as fixed shall be a debt of the estate.

WV Legislature

## §44-2-9. Continuances until all claims and objections passed on.

The commissioner may adjourn from time to time the hearing for the presentation of claims as well as the hearings for proof of disputed claims until all the presented claims and the objections to any claims be fully heard and passed on.

WV Legislature

## §44-2-10. Personal representative to exhibit offsets to claims.

When a creditor against whom the deceased had any claim or claims shall present a claim the personal representative may exhibit any offset, if the same be such as has survived, that he may have to such claim, and the commissioner shall ascertain and allow the balance against or in favor of the estate.

WV Legislature

## §44-2-11. How heir or devisee may protect himself against lien on property.

Any heir or devisee entitled to have any lien on the real estate that descended or was devised to him discharged out of the personal estate, or any legatee entitled to have a lien on specific personalty discharged out of the other personalty, may, if the creditor holding any such lien fails to present and prove his claim, present and prove such claim, and have the same allowed or provided for, within the same time, to the same extent, and by the same means as such creditor.

WV Legislature

## §44-2-12. No claim barred by statute of limitations to be allowed.

No claim barred by any statute of limitations shall be allowed by a commissioner against the estate of a decedent.

WV Legislature

## §44-2-13. Effect of presenting claim as to statute of limitations.

The filing with or presentation to the fiduciary commissioner or to the county clerk of any claim against the estate of a decedent shall, so far as the running of any statute of limitations is involved, have the same effect as the institution of a civil action or suit on such claim.

WV Legislature

## §44-2-14. Advance payment of certain claims.

The fiduciary commissioner may authorize, and the personal representative may make, payment of funeral expenses, claims of physicians and nurses for services rendered during the last illness of the decedent, and accounts of druggists, hospitals and sanitariums for articles furnished and services rendered during the same period, to the extent that any of the same are preferred; also of debts due the United States, debts due the State of West Virginia, and taxes, in advance of the determination of other claims.

WV Legislature

## §44-2-15. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.

Nothing in this article contained shall be construed to prevent any personal representative, when he shall think it necessary, from commencing any action or suit against any person, or from prosecuting to final judgment or decree any action or suit commenced by the deceased in his lifetime, if the cause of such action or suit survives, for the recovery of any debt or claim, or from having execution on any judgment or decree. The defendant in any such action or suit shall, notwithstanding he may have already filed his claim before a fiduciary commissioner, set off any claim he may have against the deceased, if proper to be allowed as a setoff; and if final judgment or decree shall be rendered in favor of the defendant, the same shall be certified by the clerk of the court rendering it to the fiduciary commissioner before whom the estate of the deceased is pending, and the amount thereof shall be allowed in the same manner as other claims against such estate filed and proved before the fiduciary commissioner.

WV Legislature

## §44-2-16. Fiduciary commissioner to report on claims of creditors, assets and shares of distributees and legatees.

After the completion of the hearings for the presentation of claims and for reception of proof for and against disputed claims, but not later than five months from the qualification of the personal representative, the fiduciary commissioner may, and upon motion of any interested person, shall prepare a report of claims against the estate, showing in such report all the claims presented, or exhibited in offset, or certified to the fiduciary commissioner by any court, and stating as to each claim how much was allowed and how much disallowed, together with the final balance, whether in favor of the creditor or the estate. The fiduciary commissioner shall also show in such report what assets are in the hands of the personal representative, and shall designate how the same shall be applied to the payment of debts and claims; also in what order of priority the claims shall be paid and also what sum shall be reserved to pay contingent or unliquidated claims and claims not matured, or a proportion of any such claim equal to what is allowed to other creditors of the same class, when payment of such claims shall become proper. Such report shall also show what persons are entitled to share in the estate as legatees, and as such in what property or amounts; or as distributees, and as such in what proportions.

WV Legislature

**§44-2-16a. Apportionment of federal and state estate taxes; fiduciary to deduct taxes from shares of beneficiaries.**

(1) For the purposes of this section the term "persons interested in the estate" shall include all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy, or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power, taxable under any estate tax law of the United States or this state heretofore or hereafter enacted.

(2) Whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding, that an executor, administrator, curator or other person acting in a fiduciary capacity, has paid an estate tax levied or assessed under the provisions of any estate tax law of the United States or this state heretofore or hereafter enacted, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate, except that in making such proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of such person or the property passing to him and except that notwithstanding the preceding provisions of this sentence in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

(3) In all cases in which any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary as such, he shall be entitled, and it shall be his duty, to recover from whomever is in possession, or from the persons interested in the estate, the proportionate amount of such tax payable by the persons interested in the estate with which such persons interested in the estate are chargeable under the provisions of this section.

(4) No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property with respect to which a federal or West Virginia estate tax is imposed until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred is paid to such fiduciary, or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

(5) But it is expressly provided that the foregoing provisions of this section are subject to the



WV Legislature

following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of such estate taxes, and to designate the fund or funds or property out of which such payment shall be made, and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this section had not been enacted.

(6) The provisions of this section shall be applicable to estates of decedents dying after the enactment of this section.

WV Legislature

## §44-2-17. How contingent and unliquidated claims and claims not matured may be provided for.

The fiduciary commissioner in his report on claims shall direct the personal representative to withhold from distribution to beneficiaries sufficient assets to take care of such contingent and unliquidated claims and claims not matured as shall be presented to and proved before the fiduciary commissioner, or a proportion thereof equal to what is paid to other creditors of the same class, and such assets shall be so withheld until such contingent liability becomes fixed, or such unliquidated liability becomes liquidated, or until such claims not matured mature, as the case may be, at which time such assets shall be disbursed or distributed as the fiduciary commissioner in his report may have designated and the circumstances may require. But in any case where there are sufficient assets to pay all liquidated claims against any estate, any legatee or distributee of the estate shall be entitled to be paid his or her share of the full surplus of the estate, after payment of, or provision for, all liquidated claims, both those matured and those not matured has been made, upon such legatee's or distributee's giving to the personal representative a bond, executed by himself or some other person, with sufficient security, to be approved by the county commission, or the clerk thereof during the recess of the commission, conditioned to refund a due proportion of any unliquidated or contingent debts or demands which may afterwards appear against the decedent or become liquidated or have their liability fixed, and of the costs attending their recovery. Such bond shall be filed in the clerk's office where probate of the will or administration of the estate was had, and recorded by such clerk in the record of bonds. After the giving of any such bond or bonds, creditors holding unliquidated or contingent debts and demands shall, as to the estate distributed by virtue of the giving of such bond or bonds, look only to such bond or bonds for the payment of such debts and demands.

WV Legislature

## §44-2-18. Exceptions to fiduciary commissioner's report; return of report.

After preparing a report of claims as hereinafter provided, the fiduciary commissioner shall give notice thereof, either verbally or in writing, delivered personally or by mail, to all parties interested or their attorneys, and hold the report and the evidence taken in connection therewith in his office for ten days for the examination of parties interested. Any party may inspect such report and evidence and file exceptions thereto before said fiduciary commissioner; and the fiduciary commissioner, in all cases, shall return with his report all the evidence taken in connection with any claim listed in such report, and the exceptions, if any, taken to the report, and shall submit such remarks upon the exceptions as he may deem pertinent. After the expiration of such ten days the fiduciary commissioner shall return the report, evidence, exceptions and remarks to the county commission, and until the report is acted upon by the county commission it shall be subject to further exceptions by the same or other parties interested.

WV Legislature

## §44-2-19. Hearing on report and exceptions; appeal; effect of confirmation.

The hearing on the report of claims returned by a fiduciary commissioner shall be had at the first term of the county commission occurring not earlier than ten days after its return. If there be no exceptions to such report it shall be confirmed, but if excepted to, the county commission shall pass upon the exceptions and make its order thereon, without hearing or receiving any new evidence; but if good cause be shown for the introduction of further proof regarding any matter contained in such report, the report shall be referred back to the fiduciary commissioner for the taking of further proof and the making of a supplemental report. An appeal from the decision of such county commission on such report and exceptions and on the supplemental report and exceptions, if there be such supplemental report, may, without any formal bill of exceptions, be taken to the circuit court of the county. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary commissioner and on order of the county commission. After the report of the fiduciary commissioner on the claims against the estate of any decedent has been confirmed by the county commission, or the circuit court on appeal, or corrected and confirmed after appeal, the same shall be forever binding and final.

WV Legislature

**§44-2-19a. Reports of delinquent filings and administrative closing of unprogressed estates.**

(a) On the last day of December and June of each year every fiduciary commissioner shall file with the county clerk a list of all estates referred to him or her since the effective date of this section, either generally or for a limited purpose, in which any document required to be filed with him or her in a specified time has not been timely filed, stating the document whose filing is delinquent and the date the same was due to be filed: Provided, That the commissioner shall omit from such list any estate and any document for whose filing a proper continuance has been granted.

(b) On January 5 and July 5 of each year the county clerk shall file with the county commission a like list of estates since the effective date of this section in which the filing of any paper is delinquent, and embrace therein the lists required to be filed with him or her on the first day of such month by the various commissioners. In the report filed July 5 of each year the county clerk shall further include in the report a list of all estates referred to him or her since the effective date of this section which have not been duly closed within a period of three years from the opening of such estate and in which no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement, for any cause, within the preceding 12 months.

(c) The county commission shall, upon the presentation by the county clerk of all matters and causes reported to it by the semiannual reports required herein of delinquent and unprogressed estates, enter an order in the name of the county commission directing the appointed personal representative to file a statement to show cause why the county commission should not find the personal representative delinquent in his or her administration of the respective estate and should not remove the personal representative from office, administratively close the estate, or take such other action against the personal representative as may be proper:

(1) The order to show cause shall be mailed by the county clerk to the personal representative at the last known address appearing in the records of the county clerk and a copy thereof shall also be mailed to the heirs at law, beneficiaries under the will, any creditors who have filed claims which are not released, any surety on any bond, and any other person interested in the estate at their last known addresses appearing in the records of the county clerk.

(2) The personal representative shall have 30 days after the mailing of the order to show cause to file properly any delinquent documents required for the administration of the estate or to file a verified statement under oath stating why he or she should not be found delinquent in the administration of the respective estate and should not be removed from office or the estate administratively closed.

(3) If within such 30-day time period the personal representative fails to file properly the delinquent documents or fails to file a verified statement or files a verified statement which

WV Legislature

the county clerk upon review finds and determines does not present good cause, the county clerk shall give notice of such failure, delinquency, or finding to the county commission, the personal representative, the heirs at law, beneficiaries under the will, any creditors who have filed claims which are not released, any surety on any bond, and any other person interested in the estate and shall advise that the personal representative shall be removed from office and such other appropriate person appointed as personal representative as the county commission may determine or that the estate shall be administratively closed 30 days following the date of such notice at a hearing thereon to be held before the county commission at a date and time fixed for presentation. In addition, on the first Monday of the next month, the county clerk shall publish as a Class I-0 legal advertisement, a notice thereof.

(4) The personal representative or any person interested may file objection thereto at or prior to the time set by such notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of such proposed removal or closing and findings and hear interested parties, if any appear, and may enter such appropriate order to approve, modify and approve, or refuse to approve such proposed removal or closing and the findings of the county clerk. An appeal from the decision of such county commission may, without any formal bill of exceptions, be taken to the circuit court of the county by the personal representative or any interested party. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the county clerk and the county commission.

(d) In addition, the county clerk and the fiduciary commissioners, shall be empowered, and where appropriate, may, on their own motion, petition the circuit court to compel compliance with the provisions of this chapter, in the same manner and to the same extent heretofore provided in the case of commissioners of accounts, or by any other proper proceeding.

WV Legislature

## §44-2-20. Report of claims to be recorded.

The report of claims, and the supplemental report of claims, if there be one, when confirmed by the county court, shall be recorded by the clerk of the county court in his office.

WV Legislature

## §44-2-21. Order in which debts of decedent are to be paid.

(a) If the applicable assets of the estate are insufficient to pay all claims against the estate in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;

(2) Reasonable funeral expenses;

(3) Debts and taxes with preference under federal law;

(4) Unpaid child support which is due and owing at the time of the decedent's death;

(5) Debts and taxes with preference under other laws of the State of West Virginia;

(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(7) All other claims.

(b) If the applicable assets of the estate are insufficient to pay all claims within a class, those claims within that class shall be paid on a prorata basis. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) Notwithstanding the provisions of subsection (a) of this section, if the payment of all funeral expenses of the decedent is provided for by an irrevocable preneed funeral contract or trust, neither the decedent's estate nor the decedent's surviving spouse shall have any obligation for the payment of such funeral expenses.

WV Legislature

## §44-2-22. Creditors to be paid in order of classification; when classes paid ratably.

No payment shall be made to creditors of any one class until all those of the preceding class or classes shall be fully paid; and when the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after six months from his qualification, pays a debt of his decedent, shall not thereby be personally liable for any debt or demand against the decedent of equal or superior dignity, whether it be of record or not, unless before such payment he shall have notice of such debt or demand by action, suit or presentation thereof to the fiduciary commissioner within the time allowed by law.

WV Legislature

## §44-2-23. When personal representative not liable for funds distributed.

If any personal representative after six months from the qualification of the first executor or administrator of the estate, and after the report of claims, if any, has been made by the fiduciary commissioner and been confirmed by the county commission, and after withholding such funds as the fiduciary commissioner shall direct to meet any contingent and unmatured claims and claims in action or suit, shall pay any legacy given by the will, or distribute any of the estate of his decedent in accordance with the fiduciary commissioner's report as confirmed, if any, or according to law in case of intestacy or according to the will, if any, such personal representative shall not, on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within the time fixed for presentation of claims or for suing thereon, such claim was duly presented or action or suit thereon commenced and process served on such personal representative.

WV Legislature

## §44-2-24. When claims and legacies may be paid and estate distributed.

After the report of a fiduciary commissioner, if any, on the claims against the estate of any decedent has been confirmed as aforesaid, and after six months from the time of the qualification of the first executor or administrator shall have elapsed, the personal representative may pay the claims allowed by the fiduciary commissioner against the decedent's estate or certified to him by courts wherein judgments or decrees against the estate have been rendered, according to the order of payment set forth in the fiduciary commissioner's report, or as directed by the fiduciary commissioner, and pay legacies and distribute the surplus among the parties entitled thereto in the amounts and proportions determined by the fiduciary commissioner withholding such sum as such report as confirmed states to be necessary for the payment of any contingent, unliquidated, or disputed claims, or claims not matured, or the proportions of any such equal to what is allowed to other creditors of the same class, and upon the determination from time to time of any such claims further payments and distributions may be made as the circumstances require. If the personal representative shall fail or refuse to pay claims and make distribution within one month following the time when he may legally do so, and no appeal has been taken from the order of confirmation of the report on claims, any party interested may institute a civil action against such personal representative to compel payment and distribution as provided by section twenty-two, article four of this chapter.

WV Legislature

## §44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.

Notwithstanding any other provision of law, if an estate is otherwise ready for final settlement and the personal representative holds any sum or sums of money necessary for the payment or distribution of any contingent, unliquidated, unmatured or disputed bequest or claim, which cannot be paid or distributed because the whereabouts of the claimant or distributee are unknown, or cannot be paid or distributed for any other reason, he may, with the consent of the fiduciary commissioner to whom the estate has been referred, pay such sum or sums to the general receiver of the circuit court in the county in which the estate is being administered. Any such payment, together with a receipt therefor, shall be reflected and shown in said fiduciary commissioner's final report. After said report is confirmed by the county commission, such personal representative shall not be personally liable for any such aforesaid bequest or claim.

Any person entitled to any funds paid to a general receiver of a circuit court pursuant to the provisions of this section may petition the circuit court in a summary proceeding for an order directing the distribution of such funds. Any person believed to have any claim to or interest in said funds shall be made a party defendant to such petition and shall be given such notice of any hearing thereon as the circuit court may direct. The circuit court shall enter an order directing the distribution of said funds to the person or persons entitled thereto. The costs of said proceedings shall be paid from the funds.

WV Legislature

## §44-2-25. When personal representative not compelled to make distribution.

A personal representative shall not be compelled to pay any legacy given by the will, or make distribution of the estate of his decedent, until after six months from the date of the order conferring authority on the first executor or administrator of such decedent, and not then unless the report of claims against the estate made by the fiduciary commissioner has been confirmed, and no appeal has been taken from the county commission's order of confirmation.

WV Legislature

## §44-2-26. When claims not presented and proved barred of recovery from personal representative.

Every person including the State Tax Commissioner, having a claim against a deceased person, whether due or not, who has not, after notice to creditors has been published as prescribed in this article, presented his claim on or before the time fixed in such notice, or before that time has not instituted a civil action or suit thereon, shall, notwithstanding the same be not barred by some other statute of limitations that is applicable thereto, be barred from recovering such claim of or from the personal representative, or from thereafter setting off the same against the personal representative in any action or suit whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action or suit shall have been commenced in due time, and such surplus shall not have been distributed by the personal representative to the beneficiaries of the estate, and the claimant prove that he had no actual notice of the publication to creditors nor knowledge of any proceedings before the fiduciary commissioner, such creditor may prove his claim by action or suit and have the same allowed out of such surplus; and, in order that such late claims if proved may be provided for, the fiduciary commissioner shall reopen his report if the same has not been returned to the county commission, or if returned, shall make and return a supplemental report: Provided, That, as to real estate, the provisions of subsection (b), section one of this article shall apply.

WV Legislature

**§44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.**

(a) Every creditor who has not presented his claim to the fiduciary commissioner before distribution of the surplus by the personal representative, or before that time has not instituted a civil action or suit thereon against the personal representative, may, if not barred by limitation, bring a civil action against the distributees and legatees, jointly or severally, at any time within two years after such distribution. But no distributee or legatee shall be required to pay to creditors suing by virtue of this section a greater sum than the value of what was received by him out of the decedent's estate, nor shall any distributee or legatee be required to pay to any one creditor a greater proportion of such creditor's debt than the value of what was received by such distributee or legatee bears to the total estate distributed. A creditor suing by virtue of this section shall not recover against such distributees and legatees the costs of his civil action.

(b) Any creditor of a deceased person upon whose estate there is no administration pursuant to subsection (b), section one of this article, may, if not barred by limitation, bring a civil action against the sole beneficiary at any time within two years after recordation of the appraisement.

WV Legislature

## §44-2-28. When enforcement of lien to secure claim barred.

When the right to bring action or suit against distributees and legatees on any claim against the decedent shall become barred, the right to enforce such claim against real estate shall also become barred to the extent that such claim could have been collected out of the personal assets of decedent. The provisions of this section shall not apply to liens upon real property acquired or created in the lifetime of decedent, made or created to secure claims due and payable in future installments or at a future date.

WV Legislature

## §44-2-29. Waiver of final settlement.

(a) In all estates of decedents subject to administration under this article where a release of lien, if required by the provisions of §11-11-1 *et seq*. of this code, has been filed with the clerk and more than 90 days have elapsed since the filing of any notice required by the provisions of this article, even though such estate may have been referred to a fiduciary commissioner, a final settlement may be waived by a waiver containing an affidavit made by the personal representative, that the time for filing of claims has expired, that no known and unpaid claims exist against the estate, and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate. Each beneficiary shall sign the waiver unless the beneficiary receives a bequest of tangible personal property or a bequest of cash.

(b) In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of the beneficiary may sign in lieu of the beneficiary. A fiduciary or agent signing the waiver shall be responsible to the beneficiary for any loss resulting from the waiver.

(c) The waiver shall be recorded as in the case of and in lieu of a settlement as provided in §44-2-1 *et seq*. of this code.

WV Legislature