WEST VIRGINIA CODE CHAPTER 44 ARTICLE 3A

WV Legislature

§44-3A-1. Election to make article applicable.

(a) Any county commission which has not heretofore elected to proceed under provisions of this article may do so in accord with this section.

(b) Prior to the adoption of the optional procedure provided for under this article, the county commission shall fix a time for public hearing on the issue of adoption of the fiduciary supervisor system as described in this article and cause to be published as a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of the code, setting forth the reasons for the hearing, its date, place and time. Whenever ten percent or more of the voters of the county participating in the next preceding general election shall so petition the county commission in writing, the commission shall within sixty days of the filing of such petition conduct the public hearing provided by this subsection. The provisions hereof relating to the publication of notice of such hearing shall apply to the hearing held pursuant to such petition. The notice in either case shall also recite that within fifteen days after the public hearing the commission, after consideration of the following factors, will make a final determination whether to proceed under this article:

(1) The relatively expeditious and efficient administration and settlement of estates;

(2) The relative cost and convenience to the public and to the estates;

(3) Whether the fees provided under this article would be insufficient to fund the salary and expenses of a fiduciary supervisor as described in this article;

(4) Whether the county commission and the public interest is served by the availability of the unsupervised administration of estates having sole beneficiaries based upon the local needs of the county;

(5) The availability of physical facilities necessary for the administration of this article.

(c) At the hearing the county commission shall receive both written and oral comment from any citizen upon the desirability of proceeding under the provisions of this article. It may limit the time for oral presentations and permit additional written presentations to be filed up to three days after the hearing.

(d) Within sixty days of the public hearing, the commission shall enter an order either adopting or rejecting the provisions of this article.

(e) The county commission shall make such orders for the closing of estates opened prior to the effective date of the order adopting the provisions of this article as it may deem expedient which are not inconsistent with the express provisions of this chapter.

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§44-3A-2. Nature of office of fiduciary supervisor and fiduciary commissioner; duties of county commission with respect to orders and findings of such supervisor or commissioner.

Except as may be provided in article thirteen of this chapter, the office of fiduciary supervisor and of fiduciary commissioner shall not be construed to vest judicial power in the holder or holders thereof. Such offices are created to aid and assist the county commission in the proper and expeditious performance of the duties of such commissions with respect to the administration of estates and trusts and every order or finding of any fiduciary supervisor or fiduciary commissioner shall be subject to confirmation and approval of the county commission, and be considered for confirmation at the next regular or special session of the commission and be promptly confirmed or, if not confirmed, a date set for hearing thereon. Every order of the fiduciary supervisor or fiduciary commissioner shall remain in effect while awaiting confirmation by the county commission unless the commission provides an alternative means of effectuating the purpose or purposes of the order by providing a lawful alternative thereto. Every fiduciary supervisor and fiduciary commissioner shall have the power to sign and issue process directed to the various parties in any proceeding before them and may summon witnesses, administer oaths and take testimony with respect thereto as may be required to carry out the purposes of this chapter, but they shall apply to the county commission or to the circuit court, as may be appropriate and lawful for any order to compel obedience to any such process or order issued by any such fiduciary supervisor or fiduciary commissioner or to compel the obedience with any of the provisions of this chapter.

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§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualification; training program; salary.

(a) There is hereby created within the county commission an office, designated the fiduciary supervisor, who shall be appointed by order of the commission and whose office, with the consent of the clerk of the county commission, shall be housed within the office of such clerk or shall be housed in such other office as the commission may designate. Such fiduciary supervisor shall at the local option of each such commission, be either a part-time or full-time employee as may be required by the county commission and shall receive such salary as may be fixed by order of the county commission.

(b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all matters referred to such commissioners and shall make all ex parte settlements of the accounts of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

(c) The county commission shall determine that the person to be appointed as fiduciary supervisor is fully qualified by education or experience, or both, to perform the duties assigned to such office by this chapter or other provisions of this code. Such person shall have the requisite knowledge of the legal issues raised and problems presented by any of the proceedings had and documents filed pursuant to the chapter, the procedures required with respect thereto, the rights of all parties and interested persons with respect to such procedures and the duties to be performed in examining and approving the several and various papers and documents presented to the fiduciary supervisor. The State Auditor shall design and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this state, if any, which test shall include such matters as the Tax Commissioner deems appropriate to determine the proficiency, experience, knowledge and skill to perform all of the duties imposed upon or to be imposed upon fiduciary supervisors generally. Such test shall be administered under the authority of the State Auditor by such person or persons as he or she may designate either at the county wherein the fiduciary supervisor is to serve or at such other place as the State Auditor may designate. The results of the test given to any person or persons shall be kept confidential except as to those persons who have completed the same to the satisfaction of the State Auditor and except as to those persons who may desire their individual test results to be made public. The State Auditor shall at least annually conduct a training program for fiduciary supervisors who are not licensed to practice law in this state. The training program shall be conducted at such times and places and consist of such subjects as the State Auditor may determine. All fiduciary supervisors who are not licensed to practice law shall be required to attend such training programs and those supervisors as are so licensed may attend.

(d) The fiduciary supervisor shall give bond with good security to be approved by the county commission in an amount equal to the amount posted by the clerk of the county commission in the county wherein such fiduciary supervisor is to serve.

(e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall engage in the practice of law, for compensation or otherwise, with respect to the administration of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect to any proceedings before him or her or which are or may be referred to a fiduciary commissioner in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage in the practice of law with respect to matters referred to him or her as such commissioner. Any fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor have been delegated or fiduciary commissioner or special fiduciary commissioner who so engages in the practice of law contrary to the limited prohibitions of this section, shall be removed from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000.

WV Legislature

§44-3A-4. Notice of claim; settlement in certain cases.

(a) The fiduciary supervisor shall at least once a month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be published in a newspaper of general circulation within the county wherein letters of administration have been granted, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the estates of the following deceased persons and the accounts of the fiduciaries of their respective estates:

Name of Decedent:

Name of Fiduciary:

Address:

Name of Decedent:

Name of Fiduciary:

Address:

Name of Decedent:

Name of Fiduciary:

Address:

All persons having claims against the estate(s) of any of the above-named deceased persons whether due or not, are notified to exhibit their claims with vouchers thereof, legally verified, to the fiduciary of such deceased person as shown herein within sixty days of the first publication hereof; or, if not so exhibited to such fiduciary by that date, to exhibit the same at the office of the undersigned fiduciary supervisor at the address shown below within sixty days of the first publication of this notice; otherwise any or all such claims may by law be excluded from all benefits of said estate(s). No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above. All beneficiaries of said estate(s) may appear either before the above-named fiduciary by the date first shown above, or thereafter before the undersigned fiduciary supervisor by the date last shown above to examine said claims and otherwise protect their respective interests.

Given under my hand this ..... day of ....., 20.....

.....

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Fiduciary Supervisor

..... County, W.Va.

(b) All such claims are to be filed with the appropriate fiduciary at the address shown in such notice within sixty days of the date of the first publication of such notice or with the fiduciary supervisor within sixty days of such date. No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above.

(c) Subject to the provisions of this section, at the end of the sixty-day period set forth in such notice, the fiduciary supervisor may proceed with supervision of all estates referred to him or her for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees and any and all other matter or matters necessary and proper for the settlement of the estate, including, but not limited to, his or her recommendations concerning the approval of the fees of any fiduciary commissioner to whom the estate may have been referred, determination that inheritance taxes, if any, occasioned by the death of the decedent or returnable by reason thereof have been returned upon such estate and such taxes have been paid or such payment provided for and whether a release therefor has been issued by the proper authority, all matters required by section nineteen of this article and all other matters deemed proper by him or her.

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§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the provisions of this article where more than 60 days has elapsed since the filing of any notice required by §44-3A-4 of this code, an estate may be closed by a short form settlement filed in compliance with this section: *Provided*, That any lien for payment of estate taxes pursuant to §11-11-1 *et seq*. of this code is released and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement which shall contain an affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate, showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate, and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal property or a bequest of cash may not be required to sign the waiver.

(c) The waiver may be signed in the case of a distributee or beneficiary under a disability by an agent under a power of attorney or the duly qualified guardian or conservator of the distributee or beneficiary. An agent, guardian, or conservator signing the waiver shall be responsible to the distributee or beneficiary for any loss resulting from the waiver.

(d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver.

(e) If the short form settlement is proper the fiduciary supervisor shall record the same and mail copies to each distributee and beneficiary by first-class mail, postage prepaid. The fiduciary supervisor shall retain the short form settlement for 10 days to allow any distributee and beneficiary to appear before the fiduciary supervisor to object or request a referral to a fiduciary commissioner. The fiduciary supervisor shall collect a fee of $10 for recording and mailing the short form settlement. If no objection or referral request is made to the fiduciary supervisor, the county commission shall upon order, confirm the short form settlement of the personal representative, and the personal representative and his or her surety shall be discharged. If an objection or request is made, the county commission may confirm and record the short form settlement or may refer the estate to a fiduciary commissioner.

WV Legislature

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

When the personal representative shall deliver to the fiduciary supervisor, the appraisement required by section fourteen, article one of this chapter, and is notified as to the completeness thereof, the fiduciary supervisor shall, unless otherwise ordered by the county commission, proceed to receive claims and proceed to supervise settlement of the estate.

The county commission shall not remove the estate from supervision by the fiduciary supervisor and no reference to a fiduciary commissioner shall be made if the appraisement, properly completed, shows the total value of all assets included in the estate which are subject to administration (exclusive of real property, unless the will, if any, requires administration thereof) to be $100,000 or less: Provided, That if a dispute arises as to a matter of law or fact, then the matter may be referred to a fiduciary commissioner for the sole purpose of taking evidence as to making a recommendation as to the disputed facts and applicable law in such dispute.

The county commission shall not refer any estate to a fiduciary commissioner:

(a) If the personal representative is also the sole beneficiary of the estate; nor

(b) If the surviving spouse is the sole beneficiary of the estate unless the spouse requests such reference; nor

(c) (1) If all the beneficiaries of the estate advise the fiduciary supervisor by verified writing that no dispute is likely to arise with respect to the administration of the estate; and (2) it appears to the county commission or to the fiduciary supervisor thereof that there are ample assets in the estate to satisfy all claims of creditors and others against the estate and that proper distribution thereof will be made, including the payment of all taxes due thereon; and (3) if the personal representative agrees thereto; nor

(d) If the county commission or fiduciary supervisor, subject to the approval of the county commission, finds that there are ample assets in the estate to satisfy all claims of creditors and others against the estate and that proper distribution thereof will be made including, but not limited to, the payment of all taxes due thereon and that no disputed question of law or fact has arisen or is likely to arise.

The commission shall, before making any reference to a fiduciary commissioner, find by its order that none of the prohibitions contained in this section obtains: Provided, That in any case in which a reference would otherwise be prohibited, the commission may refer a matter for the sole purpose of resolving a disputed question of law or fact or may, if the matter can be resolved expeditiously, permit the fiduciary supervisor to conduct the necessary proceedings and to prepare a recommendation on such disputed question.

In the event reference is made because of the failure to meet any of the conditions in the preceding paragraph which preclude reference to a fiduciary commissioner, such reference

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may be made generally or for the sole purpose of determining those matters in dispute. In any event, such reference shall be withdrawn at any time upon the settlement or determination or resolution of the reason or reasons giving rise to such reference or at any other time deemed appropriate by the county commission or by the fiduciary supervisor, subject to the approval of the county commission. If no such reference is made and it is later found that a dispute or other condition has arisen which makes reference to a fiduciary commissioner necessary, then reference to a fiduciary commissioner may be made, either generally or for the settlement, determination or resolution of the dispute or condition and shall, in any event, be later withdrawn at any time required by this section or deemed appropriate by the fiduciary supervisor with the approval of the county commission.

In counties where there are two or more such fiduciary commissioners, the estates of decedents shall be referred to such commissioners in rotation in order that, so far as possible, there may be an equal division of the work.

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§44-3A-6. Claims to be proved by vouchers and affidavits in first instance.

Every claim against the estate of a decedent shall be itemized, accompanied by a proper voucher, stating 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 such there was, hath not received any part of the money stated to be due, or any security or satisfaction for the same, except what is credited. The vouchers 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 shall not apply to taxes.

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§44-3A-7. Claims 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 fiduciary supervisor 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 such clerk a counter affidavit, denying the claim in whole or in part. When said counter affidavit is so filed the fiduciary supervisor shall forthwith refer the matter to a fiduciary commissioner, the provisions of section five of this article notwithstanding, who shall within ten days of the receipt of the reference 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 such fiduciary commissioner, having held such hearing, does not allow any such claim, the claimant shall pay the expenses 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. If such estate is referred to a fiduciary commissioner for the sole purpose of determining the allowance of a claim and for no other purpose, the order of reference to such commissioner shall be withdrawn upon receipt of the commissioner’s report with respect thereto. If such estate in its entirety be referred to such fiduciary commissioner then such commissioner shall retain general supervision of the matter until such time as he would otherwise be relieved of the same as provided in section four of this article.

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§44-3A-8. Claims may be presented before publication of notice.

Claims against any decedent’s estate may be filed with or presented to the fiduciary supervisor, 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.

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§44-3A-9. 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 supervisor 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 the fiduciary supervisor or fiduciary commissioner, as may be, completes his report, then evidence of the same may be filed with such clerk or commissioner in lieu of the contingent claim herein provided for, and such claim as fixed shall be a debt of the estate.

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§44-3A-10. Continuances until all claims and objections passed on.

The fiduciary supervisor may adjourn from time to time the hearing for the presentation of claims or the fiduciary commissioner may likewise adjourn from time to time the hearings for proof of disputed claims until all the presented claims and the objections to any claims, as the case may be, shall be fully heard and passed on.

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§44-3A-11. 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 fiduciary supervisor or fiduciary commissioner, as may be, shall ascertain and allow the balance against or in favor of the estate.

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§44-3A-12. 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

§44-3A-13. No claim barred by statute of limitations to be allowed.

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

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§44-3A-14. Effect of presenting claim as to statute of limitations.

The filing or presentation 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 action on such claim.

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§44-3A-15. Advance payment of certain claims.

The fiduciary supervisor or fiduciary commissioner to whom the matter has been generally referred 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.

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§44-3A-16. 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 against any person, or from prosecuting to final judgment any action commenced by the deceased in his lifetime, if the cause of such action survives, for the recovery of any debt or claim, or from having execution on any judgment. The defendant in any such action shall, notwithstanding he may have already filed his claim before the fiduciary supervisor, set off by way of counterclaim any claim he may have against the deceased, if proper to be allowed as a counterclaim; and if final judgment shall be rendered in favor of the defendant, the same shall be certified by the clerk of the court rendering it to the fiduciary supervisor or 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 such clerk or commissioner.

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§44-3A-17. Fiduciary commissioner to report on claims of creditors; report by fiduciary supervisor; assets and shares of distributees and legatees.

If an estate has been referred generally to a fiduciary commissioner, after the presentation of all claims and after the completion of the hearings for the proof for and against any disputed claims, but not later than ten months from the qualification of the personal representative, the commissioner shall prepare a report of all claims, disputed or otherwise, against the estate, showing in such report all such claims presented, disputed, exhibited in offset, or certified to the commissioner by the fiduciary supervisor or 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 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 equal to what is allowed to other creditors of the same class, when payment of such claims shall become proper. In the event the estate is not referred to any such fiduciary commissioner, then a report shall be prepared by the fiduciary supervisor which shall contain all such information as is herein required to be included in the report filed by such commissioner. In lieu of a formal report of claims, the fiduciary supervisor or fiduciary commissioner may prepare an abbreviated or condensed report which summarizes the status of claims and the entitlements of the legatees or beneficiaries and identifies other matters that require completion in the particular estate before the estate is closed. Any report or abbreviated report, whether by the fiduciary supervisor or fiduciary commissioner, shall 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.

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§44-3A-18. Apportionment of federal and state estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

(a) 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.

(b) Whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding, that an executor, administrator, curator, trustee 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.

(c) 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.

(d) 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.

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

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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.

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

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§44-3A-19. Long form settlement before fiduciary supervisor.

(a) At any time after the expiration of the period for filing claims, the fiduciary supervisor may proceed with a complete long form settlement under this section if the estate has not been referred to a fiduciary commissioner or if the estate, having been referred to a fiduciary commissioner generally or for a specific reason, has been withdrawn and placed before the fiduciary supervisor for settlement.

The fiduciary supervisor shall require that the personal representative, or the personal representative may on his or her own motion, timely file a proposed long form settlement which shall include:

(1) Proof of payment of all claims filed against the estate or proof that payment has been provided for;

(2) Verification under oath that the personal representative, after exercise of due diligence, knows of no other claims against the estate;

(3) Verification and accounting of any income received by the personal representative from the benefit of the estate;

(4) Provisions for the payment of all taxes due from the estate or proof that all such taxes have been paid;

(5) A proposed plan of distribution; and

(6) Any and all other information deemed appropriate by the fiduciary supervisor.

(b) The provisions of this section to the contrary notwithstanding, any claim paid by the personal representative to any creditor or beneficiary before the expiration of the period for filing claims shall not abrogate in any way the liability of the personal representative pursuant to §44-3A-26, §44-3A-27, or §44-3A-28 of this code.

(c) At the time the proposed settlement is filed, or prior thereto, the personal representative shall prepare and furnish to the fiduciary supervisor, and the supervisor shall review, a return of all inheritance taxes due the state, pursuant to §11-11-1 *et seq*. of this code, by reason of the death of the decedent, who shall approve any proper return filed with him or her.

The supervisor shall compare the proposed settlement with any proper inheritance tax return and with the appraisement and any and all other documents deemed appropriate by the supervisor in order to investigate the propriety of the proposed settlement.

(d) The supervisor may, if he or she considers it appropriate, reject the settlement and give notice in writing to the personal representative of the matters disapproved and the reasons therefor and fix a time, no later than 45 days after the date of the notice, for the personal

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representative to amend the proposed settlement. The personal representative may, within the time specified by the supervisor, amend the settlement, otherwise satisfy the supervisor of the propriety of all or part of such proposed settlement, or insist on the propriety thereof, with or without amendment thereof.

(e) The supervisor shall, after he or she is satisfied as to the propriety of the settlement or, after the period set by him or her for amendment thereof has expired, prepare a report of his or her recommendations to the county commission with respect thereto and his or her findings and determinations, which shall include his or her findings with respect to:

(1) A proper appraisement has been filed which conforms to the requirements of §44-1-14 of this code;

(2) The claims of creditors have been paid or have been properly provided for in proper order of preference and proportions;

(3) A proper inheritance tax return has been made and the taxes due thereon paid or that payment has been provided for;

(4) Any real property in this state owned by the decedent at the time of his or her death has been properly transferred upon the books of the assessor or that the assessor has been notified of the facts and circumstances sufficient to cause the transfer to be noted upon the books of the assessor;

(5) A proper distribution to the parties entitled thereto has been proposed by the personal representative of the estate;

(6) Minors and other persons under disability who own or are entitled to an interest in the estate are or have been protected; and

(7) Any other matter or matters deemed pertinent by the fiduciary supervisor.

(f) The fiduciary supervisor shall give notice of the proposed settlement and findings to the Tax Commissioner, all creditors whose claims have not been fully paid or otherwise satisfied, and all beneficiaries, which notice shall include a copy of the proposed settlement and shall advise that the subject estate shall be settled according thereto 30 days following the date of the notice. In addition, on the first Monday of the next month, the supervisor shall publish, as a Class I-0 legal advertisement, a notice that the accounts of the personal representative are before him or her for approval.

(g) The notice shall be divided into two sections: Settlements approved and settlements not approved and notice of the date and time that the names shall be presented to the county commission, which date shall not be more than 15 days after the publication. The advertisement shall be sufficient if substantially as follows:

NOTICE OF PROPOSED SETTLEMENT OF ESTATES

WV Legislature

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the proposed final settlements of the estates of the following deceased persons, which shall be presented to the county commission of ..... County, at the Courthouse thereof, in the City of ....., on the ..... day of ....., 20..., at ..... o'clock, ...M., which settlements have been presented to me by the fiduciary of the estates and which proposed settlements I have either approved or have not approved as indicated below:

APPROVED

Name(s) of Decedent: .....
.....

.....

NOT APPROVED

Name(s) of Decedent: .....

.....

Any person having any interest in the estate of any deceased person may appear before the county commission at the time and place hereinabove specified and thereupon protect his or her interests as they may appear or else may be forever thereafter barred from asserting such interests.

Given under my hand this ..... day of ....., 20...,

.....

Fiduciary Supervisor

.....County, W. Va.

(h) Any person may examine the proposed settlement in the office of the fiduciary supervisor and file objection thereto at or prior to the time set by the notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of the proposed settlement and findings and hear interested parties, if any appear, and approve, modify and approve, or refuse to approve the proposed settlement and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter.

(i) If no dispute or objection to the proposed settlement has arisen, the fiduciary supervisor shall direct the personal representative to conclude the affairs of the estate as outlined in

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the proposed settlement or amended proposed settlement. Upon receipt by the supervisor of evidence to his or her satisfaction that all claims including claims of beneficiaries have been satisfied and that all taxes have been paid, he or she shall submit his or her report of the proposed or amended proposed settlement to the county commission for ratification, confirmation, and approval as otherwise provided by law.

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§44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.

The fiduciary supervisor or fiduciary commissioner, as may be, 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 and proved 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 claim not matured matures, as the case may be, at which time such assets shall be disbursed or distributed as the fiduciary supervisor or 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 fiduciary supervisor thereof during any recess thereof, 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 office of the clerk of the county commission 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.

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§44-3A-21. Exceptions to fiduciary supervisor's or fiduciary commissioner's report; return of report.

After preparing his report of claims the fiduciary supervisor or the fiduciary commissioner, as may be, shall give notice thereof, 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 or by all parties interested. Any party may inspect such report and evidence and file exceptions thereto before said supervisor or commissioner; and such supervisor or 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. Such report shall include the same findings as are required to be made by the provisions of section nineteen of this article. After the expiration of such ten days such supervisor or commissioner shall return the report, evidence, exceptions and remarks to the county commission, and until the report is acted upon by the commission it shall be subject to further exceptions by the same or other parties interested.

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§44-3A-22. Hearing on report and exceptions; appeal; effect of confirmation.

A hearing on the report of claims returned by the fiduciary supervisor or 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 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 commissioner and the county commission. After the report of the 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.

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§44-3A-23. Exceptions to report of fiduciary supervisor or fiduciary commissioner where no previous hearing was had; reference.

In all cases wherein exception has been taken to the report of claims returned by the fiduciary supervisor, the commission at the time of the hearing provided for in section twenty-two of this article shall refer the matter to a fiduciary commissioner for the taking of evidence upon the matter or matters excepted to. Such commissioner shall within ten days of the receipt of the reference fix a time and place for the hearing and taking of evidence upon the matter or matters excepted to and shall give reasonable notice of the time and place of such hearing to all persons interested therein. Such commissioner shall make his report as in other cases and if exception be taken to such commissioner's report the commission may proceed as provided in section twenty of this article to pass upon such exceptions and make its order thereon without hearing or receiving any new evidence unless good cause be shown with the introduction of further proof in which case the matter shall be referred back to the commissioner for the taking of further evidence and the making of a supplemental report and appeal from the decision of the commission shall be in the manner provided for in said section twenty-two.

If an exception be taken to a report of a fiduciary commissioner wherein no evidence had been previously taken, the matter shall be rereferred to such commissioner who shall proceed thereon as provided for in section twenty-two of this article. It shall be the duty of the fiduciary supervisor to compel timely compliance with the provision of this chapter, including any continuances granted with respect to any matter. Any such continuance which would extend any time limitation imposed by law beyond its lawful limit shall not be granted. The fiduciary supervisor or fiduciary commissioner may petition the circuit court to compel compliance with any of the provisions of this chapter.

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§44-3A-24. Reports of delinquent filings.

(a) On the last day of December and June of each year every fiduciary commissioner and special fiduciary commissioner shall file with the fiduciary supervisor 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 appraisement or other 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 document was due to be filed: *Provided*, That the commissioner shall omit from the 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 fiduciary supervisor shall file with the county commission a like list of estates referred to him or her 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 the month by the various commissioners. In the report filed July 5 of each year the fiduciary supervisor 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, after consultation with the fiduciary supervisor shall take care to require prompt disposition 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 fiduciary supervisor to the personal representative at the last known address appearing in the records of the fiduciary supervisor. A copy of the order 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 fiduciary supervisor.

(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 the 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

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the fiduciary supervisor upon review finds and determines does not present good cause, the fiduciary supervisor shall give notice of the 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 the 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 fiduciary supervisor shall publish a notice of this action as a Class I-0 legal advertisement.

(4) The personal representative or any person interested may file an objection at, or prior to, the time set by the notice for presentation to the county commission. The commission shall proceed to hear the presentation of the proposed removal or closing and findings and hear interested parties, if any appear, and may enter an appropriate order to approve, modify and approve, or refuse to approve, the proposed removal or closing and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter. An appeal from the decision of the 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 fiduciary supervisor and the county commission.

(d) In addition, the fiduciary supervisor and the fiduciary commissioners, shall be empowered, and where appropriate, shall 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.

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§44-3A-25. 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 commission, shall be recorded by the clerk of the county commission in his office.

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§44-3A-26. 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.

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§44-3A-27. Creditors to be paid in order of classification; when classes paid ratably.

Notwithstanding the provisions of section nineteen of this article, 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 twelve 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 of presentation thereof to the commissioner of accounts within the time allowed by law.

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§44-3A-28. When personal representative not liable for funds distributed.

If any personal representative after one year from the qualification of the first executor or administrator of the estate, and after the report of claims has been made by the probate clerk or probate commissioner, as may be, and been confirmed by the county commission, and after withholding such funds as the fiduciary supervisor or 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 probate clerk's or probate commissioner's report as confirmed, 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 under the provisions of sections four and nineteen of this article for suing thereon, such claim was duly and timely presented or action or suit thereon commenced and process served on such personal representative.

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§44-3A-29. When claims and legacies may be paid and estate distributed.

After the report of the fiduciary supervisor or the fiduciary commissioner on the claims against the estate of any decedent has been confirmed as aforesaid, and after one year from the time of the qualification of the first executor or administrator shall have elapsed, or four months in the case of settlements made pursuant to section nineteen of this article, the personal representative may pay the claims allowed by the 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 such supervisor's or commissioner's report, and pay legacies and distribute the surplus among the parties entitled thereto in the amounts and proportions determined by such supervisor or commissioner in his report as confirmed, 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 three months 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 an action against such personal representative to compel payment and distribution as provided by section twenty, article four of this chapter.

Any other provisions of this chapter to the contrary notwithstanding, including the provisions of this section, neither a personal representative nor his surety shall be liable for the amount of any claim or distributive share made within the period of a year from the time of qualification if the estate has been finally settled pursuant to the provisions of section nineteen of this article and, notwithstanding any other provision of this chapter, every estate may be settled prior to the expiration of one year if such settlement complies in all respects with the provisions of said section nineteen of this article.

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§44-3A-30. 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 supervisor or 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 such supervisor's or 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.

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§44-3A-31. 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 a year from the date of the order conferring authority on the first executor or administrator of such decedent, or until four months following such order in the case of settlements made pursuant to section nineteen of this article and not then in either event unless the report of claims against the estate made by the fiduciary supervisor or fiduciary commissioner has been confirmed and no appeal has been taken from the order of confirmation.

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§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

Every person having a claim against a deceased person, whether due or not, who shall not, when notice to creditors has been published as prescribed in this article, have presented his or her claim on or before the sixty-day time period fixed in such notice, or before that time have instituted an action 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 by way of counterclaim or otherwise against the personal representative in any action whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action 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 or she had no actual notice of the publication to creditors nor knowledge of the proceedings before the fiduciary supervisor or fiduciary commissioner, such creditor may prove his or her 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 supervisor or fiduciary commissioner shall reopen his or her report if the same has not been returned to the county commission, or if returned shall make and return a supplemental report.

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§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.

Every creditor who shall not have presented his claim to the fiduciary or the fiduciary supervisor before distribution of the surplus by the personal representative, or before that time shall not have instituted an action thereon against the personal representative may, if not barred by limitation, bring his 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 action.

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§44-3A-34. When enforcement of lien to secure claim barred.

When the right to bring an action 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 the decedent. The provisions of this section shall not apply to liens upon real property acquired or created in the lifetime of the decedent, made or created to secure claims due and payable in future installments or at a future date.

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§44-3A-35. Fiduciary commissioners.

The county commission of each county shall appoint not more than four fiduciary commissioners, except that in counties in which there exists a separate tribunal for police and fiscal purposes, such tribunal shall appoint such commissioners: Provided, That the county commission or such separate tribunal shall avoid reference of estates to such commissioners, unless such reference is necessary.

The fiduciary commissioner shall report to and settle accounts with the county clerk. On or before the last day of March, June, September and December, the fiduciary commissioner shall file with the county clerk a report on the status and disposition of every active case referred to the fiduciary commissioner. In the next succeeding term of the county commission, the county clerk shall provide a copy of the report to the county commission, and shall inform the county commission of any cases referred to a fiduciary commissioner in which the fiduciary commissioner has not fulfilled duties relating to the case in accordance with deadlines established by law. The county commission shall take appropriate action to ensure that all deadlines established by law will be observed, including, if necessary, the removal of fiduciary commissioners who consistently fail to meet such deadlines.

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§44-3A-36. Fiduciary commissioners; powers and duties generally.

The fiduciary commissioners shall have general or limited supervision, as may be, of all fiduciary matters that are referred to them, and of the fiduciaries in charge thereof, and shall make all ex parte settlements of the accounts of such fiduciaries. Such commissioners shall have power to summon and compel the attendance of witnesses, to swear and examine witnesses, take their depositions and certify their testimony.

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§44-3A-37. Special fiduciary commissioners; continuance of present references; compensation.

(a) When, from any cause, none of the fiduciary commissioners can act as to any matter or matters which may be passed on under the provisions of this chapter, such commission or tribunal in lieu thereof, may appoint some other person to act as to such matter or matters, and such person shall have the power and compensation and perform the duties of a fiduciary commissioner. And when any fiduciary commissioner resigns, or is removed, such commission or tribunal may provide for the completion of the matters previously referred to such commissioner.

(b) Any matters or estates heretofore referred to a commissioner of accounts or special commissioner of accounts shall not be recalled solely by reason of the amendment and reenactment of this chapter. Commissioners of accounts or special commissioners of accounts shall be continued in office as special fiduciary commissioners until all such matters heretofore referred to them shall, in the ordinary course of events, be concluded or until otherwise recalled for cause.

(c) All special fiduciary commissioners, whether appointed pursuant to subsection (a) of this section or continued in office pursuant to subsection (b) hereof, shall be subject in all respects to the provisions of this chapter, including, but without limiting the generality hereof, the provisions of section forty-two of this article with respect to fees to be charged.

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§44-3A-38. Matters that will disqualify fiduciary commissioners.

No person shall perform the duties of a fiduciary commissioner or special fiduciary commissioner in any matter wherein he will be passing upon his own account or acts; nor, where he will be called to pass upon any account or acts with reference to which he served as attorney or counselor; nor shall he be in any manner interested in the fees or emoluments of any fiduciary whose accounts or acts are before him for any action required by this chapter; nor shall he be surety on the bond of the fiduciary whose accounts are before him or agent of, or pecuniarily associated with another who may be such surety; nor shall he be qualified to act in or pass upon any matter before him in which, were he a judge of the circuit court and the matter were therein pending, he would for any reason be disqualified to serve. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall for each and every violation, be fined not less than fifty nor more than $500 or imprisoned in the county jail for not more than six months, or punished by both fine and imprisonment at the discretion of the court; and upon such conviction his office shall in so facto become vacant.

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§44-3A-39. Disposition by fiduciary commissioner of inventories and accounts of sales.

The fiduciary commissioner shall inspect all inventories and accounts of sales returned to him by the fiduciary supervisor or by fiduciaries, require the same to be executed in triplicate and in proper form, and, within ten days after they are respectively received and approved by him deliver three copies thereof to the fiduciary supervisor of the county for delivery or to be mailed to those persons or agencies required to have the same by law. Any such commissioner who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor and, shall be punished for each offense by a fine of not less than $25 nor more than $500.

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§44-3A-40. Fiduciary commissioners to inspect bonds of fiduciaries.

Each fiduciary commissioner shall, at least once each month, ascertain from the records of the county commission of his country what estates and fiduciary matters have been referred to him generally by the county commission or the fiduciary supervisor, since such commissioner's last inspection of the records, and examine as to each fiduciary, in any such estate or matter, whether he has given such bond as the law requires. If the matter has been referred to such fiduciary commissioner solely for the purpose of settling a limited dispute as opposed to a general reference, no such examination of the record for the purposes set forth herein need be made by such commissioner. If it appears that the fiduciary has given no bond, or that his bond is defective, or that the surety therein has removed from the state, died, or become insolvent, or is bound already in too many other bonds, the commissioner shall make report thereof to his commission at its next term and at the same time shall have such fiduciary summoned to appear at such term to show cause why he should not give such bond as is required by law. At such term such fiduciary shall be required forthwith to give such bond as is required by law, or shall have his authority revoked. And until a fiduciary has fully administered the estate or trust under his charge, and made his final account, the commissioner shall annually make like inspections of the bonds of such fiduciary, and make like reports thereof and issue like summons whenever facts exist requiring same, and the commission shall make such order as may be warranted by the facts then determined. An appeal from the order of the county commission on any such order shall lie to the circuit court of the county, on request of the fiduciary or of the fiduciary commissioner if applied for before the end of the term of the county commission at which such order was made. When such appeal is taken, the clerk of the county commission shall certify all papers in the matter, including a copy of the bond, to the clerk of the circuit court, where the same shall be docketed and proceeded with as other appeals from the county commission.

With respect to estates or matters which have not been referred generally to a fiduciary commissioner, the fiduciary supervisor shall perform all duties required by this section to be performed by the fiduciary commissioner.

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§44-3A-41. When county commission to refer controversies to fiduciary commissioner; rules of procedure.

The county commission, whenever any controversy arises in connection with the probate of any will, or with the appointment and qualifications of personal representatives, guardians, committees or curators, or with the settlement of the accounts of any fiduciary, may, of its own motion, or on the motion of any party thereto, and shall, on the joint demand of the parties then appearing of record to the proceeding, refer the matter to a fiduciary commissioner, or to a person specifically appointed to act as such commissioner, to hear proof on the same, to make findings thereon, and to advise the commission on the law governing the decision of the matter. Any party may except to such commissioner's findings of fact of law, and the commission shall hear the case on the fiduciary commissioner's report and the exceptions thereto, without taking any additional evidence. In hearing and reporting on any such matter the fiduciary commissioner shall be governed as to procedure by the law and practice, so far as applicable, controlling commissioners in chancery.

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§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary supervisor; disposition of fees.

(a) When necessary solely for the purpose of financing the cost of settling estates, the county commission may authorize the fiduciary supervisor to charge and collect at the time of qualification of the fiduciary of a decedent's estate a fee not to exceed: (1) $25 for all estates in which the gross assets do not exceed $10,000; (2) $100 for all estates in which the gross assets are more than $10,000 and do not exceed $50,000; and (3) $175 for all estates in which the gross assets exceed $50,000. Of the sums collected by the fiduciary supervisor, $5 shall be forwarded to the State Auditor. The moneys so forwarded to the State Auditor shall be deposited in the Office of the Treasurer of the state in the special fund, designated The Inheritance Tax Administration Fund, to be used to defray, in whole or in part, costs incurred by the State Auditor in order to facilitate the prompt administration of the provisions imposed by this article. The remaining amounts shall be deposited in the county fiduciary fund as provided in §44-3A-43 of this code. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of §44-3A-19 of this code. All such fees shall also include the cost of publication of the notice required by §44-3A-4 of this code, and the notice required by §44-3A-19 of this code, but shall not include the cost of any mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge and collect from such personal representative a fee of $10.

(b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of this section for conducting hearings, granting continuances of hearings, considering evidence, for drafting recommendations with respect to such hearings and for appearing before the county commission with respect thereto and any other matters of an extraordinary nature not normally included within a summary settlement as contemplated by §44-3A-19 of this code. Such fee shall be used to defray the costs imposed by or incidental to any extraordinary demands by or conditions imposed by a fiduciary or imposed by the circumstances of the estate.

(c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the county commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the fiduciary supervisor or fiduciary commissioner or whether such service was performed by an employee or deputy of such supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected as provided in subsection (a) of this section and, in addition thereto, shall indicate those services for which charges are to be made over and

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above that amount. In the case of any service for which a fee is not fixed by this section, or the fee fixed is based on time expended, the voucher shall show the actual time personally expended by the supervisor or commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the county commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies. In reviewing any fee charged by either the fiduciary supervisor or a fiduciary commissioner, the county commission shall consider the following:

(1) The time and effort expended;

(2) The difficulty of the questions raised;

(3) The skill required to perform properly the services rendered;

(4) The reasonableness of the fee;

(5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and

(6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The county commission may approve any such voucher or may reduce the same, as it deems proper, after considering those matters set forth in this subsection. Any such approval shall be by order of the commission and be entered of record by the clerk of the county commission in the fiduciary record book and the general order books of the commission. In no event shall any fee for any service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

(d) For every estate other than a decedent’s estate, there shall be charged by the fiduciary supervisor at the time of qualification a fee of $25, which fee shall include all services performed by the fiduciary supervisor with respect to such estate from the time of qualification of the personal representative thereof until and including the filing of the first annual settlement. For each additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and collect a fee of $10.

(e) The county commission or other tribunal in lieu thereof shall, by order, establish or fix a schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor and any fiduciary commissioner in preparing their respective vouchers for fees other than those fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.

(f) The amendments to this section enacted in the year 2023 shall be effective on July 1, 2023.

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§44-3A-43. County fiduciary fund.

(a) The county commission, or tribunal in lieu thereof, shall create a special county fund pursuant to the provisions of section nine, article one, chapter seven of this code called the "County Fiduciary Fund". All moneys received by the fiduciary supervisor shall be deposited in said fund and the county commission or tribunal shall pay from said fund all salaries and expenses of the fiduciary supervisor and all other expenses associated with the probate system, exclusive of the fees of fiduciary commissioners or special fiduciary commissioners and exclusive of recording fees which shall be collected by the fiduciary supervisor and paid to the clerk of the county commission. The said commission or tribunal is authorized to transfer any other county funds as may be available to said "County Fiduciary Fund".

(b) Whenever the fiduciary supervisor finds that the funds appropriated and personnel, facilities or equipment allotted to his or her office are insufficient to permit the full and timely performance of the duties of the office, the supervisor shall make application to the commission for additional appropriation from the fund: Provided, That if any such application has been made within the prior six months then the fiduciary supervisor need not make such additional application until at least six months shall have elapsed. The commission may, and if no such application has been previously made for a least six months shall carefully review such application and subject to all other provisions of law for revisions of appropriations during a fiscal year, and may make available such additional funds, personnel, facilities and equipment as it deems appropriate for all or any of the purposes claimed to be needed by the fiduciary supervisor upon such application. If it refuses to appropriate additional and unexpended funds in the fiduciary fund for use in the full and timely compliance by the fiduciary supervisor with the provisions of this article, then it shall by order state its reasons for refusing so to do. The fiduciary supervisor may apply to the circuit court of the county by application for writ of mandamus for a review of the order of the commission and the circuit court shall have jurisdiction to order the commission to appropriate such unexpended funds as may be suitable to assist the fiduciary supervisor in achieving full and timely compliance with the provisions of this article.

(c) Every county commission or tribunal in lieu thereof, which shall adopt and use the procedure set forth in this article, shall report to the Legislature on or before the first day of the regular session thereof held in the following year, and on the first day of every regular session held in the next succeeding three years thereafter, as to the moneys received into or spent from the county fiduciary fund of the county to the date of such report, and of all moneys transferred into said fund and spent from it or by such county commission for probate matters or other matters relating to the administration of estates and any applications made to it for additional funds pursuant to subsection (b) of this section. The Tax Commissioner shall prescribe by procedural rule the form and content of such report which shall be in sufficient detail so as to permit the identification of the activity or activities generating the income of such fund and to identify by function and purpose all expenditures with sufficient detail to enable the Legislature to determine the extent to which the probate system and other estate matters are functioning in an efficient and economical manner and the fiscal implications thereof. Such reports shall be filed by each such county commission or

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tribunal in lieu thereof with the Tax Commissioner no later than ten days prior to the first day of each said session of the Legislature and the Tax Commissioner shall thereafter properly collate and file such reports with the clerk of each house of the Legislature on or before the first day of each such regular session.

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§44-3A-44. Rules applicable to fiduciary supervisors and fiduciary commissioners; exceptions as to certain counties.

(a) Subject to the provisions of subsection (c) of this section and to the provisions of article thirteen of this chapter, any power, authority or duty conferred upon the clerk of the county commission with respect to the settlement, regulation and supervision of estates in any provision of this article or in any provision of this code is hereby transferred to the fiduciary supervisor created under the provisions of section three, article three-a of this chapter.

Whenever by any provision of this article any paper, document or record is required or permitted to be recorded, the fiduciary supervisor shall tender the same to the clerk of the county commission and such clerk of the county commission shall admit the same to record and shall record the same at the expense of the personal representative and the fiduciary supervisor shall collect such fees as are required by law for the recordation of such documents and all such fees so collected and paid to the clerk of the county commission shall be disposed of and accounted for in the same manner as if such fees had been collected as for the recordation of deeds.

(b) Any reference of this code to commissioner of accounts or to fiduciary commissioner or to any power, authority or duty conferred upon a commissioner of accounts is hereby intended to mean and in all respects is conferred upon the fiduciary commissioner created by section thirty- five of this article, and, as to matters permitted by law to be done by the fiduciary supervisor, upon such fiduciary supervisor.

(c) Any provision of this article or of article one of this chapter to the contrary notwithstanding, in each county in which there exists a separate tribunal for police and fiscal purposes created under section thirty-four, article VIII of the Constitution of one thousand eight hundred seventy-two, the clerk of the county commission shall have the power and discharge the duties which are by any provision of this chapter conferred upon the fiduciary supervisor or the clerk of the county commission.

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