WEST VIRGINIA CODE CHAPTER 44 ARTICLE 4

WV Legislature

§44-4-1. Record of appraisements.

Every appraisement returned under this article shall be recorded by the clerk of the county commission in appropriate books and indexed in the same manner as the record of fiduciaries.

WV Legislature

§44-4-2. Fiduciaries to exhibit accounts for settlement.

A statement of all the money, and an inventory of all securities, stocks, bonds and all other property, including the value thereof, which any personal representative, guardian, curator or committee, has received, become chargeable with or disbursed, within one year from the date of the fiduciary's qualification, or within any succeeding year, together with the vouchers for such disbursements, shall, within two months after the end of every such period, be exhibited by the fiduciary to the fiduciary commissioner to whom the estate or trust has been referred. If any fiduciary fails to make an exhibit, the fiduciary commissioner to whom the fiduciary should make the exhibit shall proceed against the fiduciary in the appropriate circuit court, and the court shall impose the same penalties, unless the fiduciary is excused for sufficient reason, as are provided in cases where fiduciaries fail to return appraisements.

WV Legislature

§44-4-3. Fiduciaries from whom inventories, appraisals or accounts are due when this article effective may be proceeded against.

Any fiduciary who has been appointed or qualified before this article takes effect and has not given sufficient bond, nor returned any appraisement as required by law, nor has had any appraisal made of the estate under his control and management, nor has fully and finally accounted, may be summoned, by the fiduciary commissioner as the county commission may designate, to appear before him to return the appraisal or account as may be due from him or to appear before the county commission or clerk and give a sufficient bond, if one has not been given. Any fiduciary who fails to comply with the summons shall be proceeded against in the same manner, and be subject to the same penalties, as this article provides for fiduciaries who fail to return appraisements.

WV Legislature

§44-4-4. Fiduciaries of small estates may account once in three years.

A fiduciary who is in charge of a trust fund, the principal of which is not distributable until some future time, shall not be compellable by a fiduciary commissioner to make statement of his account, before the time for distribution of principal, oftener than once in every three years, if he shows to the satisfaction of such fiduciary commissioner that the income of the trust fund in his hands does not average annually more than $800; nor shall the fiduciary, in such case, lose his commissions, or suffer any penalties, for failure to account oftener than herein provided for: Provided, That upon proper application by an interested party to the county commission or circuit court which appointed the fiduciary, and upon a sufficient and proper showing being made, such county commission or circuit court may order such fiduciary to account at any time.

WV Legislature

§44-4-5. Examination of bonds at time of accounting, and when requested by interested party.

When any fiduciary, except a sheriff, presents the statement required of him by law before a fiduciary commissioner or before a commissioner in chancery having before him the account of the fiduciary for settlement, the fiduciary commissioner or commissioner in chancery, as the case may be, shall examine whether the fiduciary has given bond as the law requires, and whether the penalty thereof and the sureties thereon are sufficient. The fiduciary commissioner to whom the estate or trust was referred shall, upon the application of any interested person at any time before the statement is presented, and after reasonable notice to the fiduciary, examine any matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct or removal of any fiduciary from this state, or for any other cause, it is improper to permit the estate of the decedent, ward, beneficiary, or other person, to remain under his control. The result of every examination and inquiry shall be reported by the fiduciary commissioner to the county commission then having jurisdiction over the fiduciary and his account.

WV Legislature

§44-4-6. Settlements for previous years; objections to account.

When a fiduciary commissioner has before him for settlement the account of a fiduciary for any year, if there be any time prior to such year for which the fiduciary has not settled, the settlement shall be also for such time; and also if there be any errors or omissions in accounts for any previous years or periods the same shall be corrected in such settlement. Any person who is interested or appears as next friend for another interested in any such account may, before the fiduciary commissioner, insist upon or object to anything which could be insisted upon or objected to by him or for such other, before a fiduciary commissioner acting under an order of a circuit court for the settlement thereof made in a suit to which he or such other was a party.

WV Legislature

§44-4-7. Failure to account forfeits commissions unless allowed by circuit court or county commission.

If any fiduciary fails to present to the fiduciary commissioner, to whom the estate or trust has been referred, a statement of receipts for any year, within two months after its expiration, in accordance with the provisions of section two of this article, or if a fiduciary is found chargeable for that year with any money or other property not included in such statement, the fiduciary may have no compensation for fiduciary services during such year, nor commission on such money or other property, unless otherwise allowed by the county commission or circuit court. This section shall not apply to a case in which, within two months after the end of any one year, the fiduciary gives to the parties entitled to the money or any other property received in such year, a statement of such money or other property, and actually settled therefor with them; nor to a case in which, within such two months after the end of any one year, a fiduciary presents a statement of receipts for the year to a fiduciary commissioner and who may, in a pending suit, have been ordered to settle the account.

WV Legislature

§44-4-8. How accounting compellable by person interested.

If any fiduciary fails to present to a fiduciary commissioner a statement of his receipts for any year, the county commission shall, upon request made to it, within ten years from the commencement of that year, by any person who is interested as creditor, legatee, distributee, surety of such fiduciary, or otherwise, or who appears as next friend of a person under disability who is so interested, refer the matter to one of the fiduciary commissioners, who shall issue a summons directed to the sheriff or other officer of any county, requiring him to summon the fiduciary to present to the fiduciary commissioner a statement of his receipts and disbursements, accompanied by his vouchers, for that year, and for the time which may have since elapsed. If the same is not, within one month after the service of the summons, presented to the fiduciary commissioner, he shall report the fact to the circuit court of his county, or to the judge thereof in vacation, and the fiduciary shall be proceeded against in like manner, and be subject to the same penalty, as is provided in cases where fiduciaries fail to return inventories of their respective estates.

WV Legislature

§44-4-9. Publication of list of fiduciaries prior to settlements.

Every fiduciary commissioner shall, on the first Monday of every month, prepare a list of the fiduciaries whose accounts are at the date of such list before the fiduciary commissioner for settlement, except those that may have been mentioned in some previous list and except those for whom a short form settlement has been filed in accordance with the provisions of §44-2-1, §44-2-29, and §44-3A-4a of this code. The fiduciary commissioner shall state the names of the fiduciaries, the nature of their accounts, whether as they act as personal representative, guardian, curator, or committee and the names of their decedents, or of the persons for whom they are guardians, curators, or committees. The fiduciary commissioner shall also publish the list each month as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for the publication shall be the county. The publication of the list shall be made on the first Monday of the month, or on some following day of the same week. No account of any fiduciary shall be completed by any fiduciary commissioner until it has been mentioned in a list, nor until the completion of the publication. Any fiduciary commissioner who fails to publish this list shall be fined $20. The cost of the publication of the list shall be borne by the fiduciary commissioner, but the fiduciary commissioner may charge to, and collect from, each of the fiduciaries in the list the proportionate part of the cost thereof as and when the fiduciary commissioner collects the fees for settling the accounts of the fiduciary.

WV Legislature

§44-4-10. Securities and moneys to be exhibited to fiduciary commissioner.

In settling the account of any fiduciary, the fiduciary commissioner may require him or any of them, if there are more than one, to produce, before the completion of the account, any securities or moneys comprised in the account or any documents relating to the investments of the estate, and the fiduciary commissioner shall check the same with the items with which the fiduciary has charged himself and with the appraisement of the estate or trust. The commissioner in his report shall show what money and securities were so produced before him. In case the fiduciary commissioner finds a shortage of money or securities, he shall cause a rule to be issued against the fiduciary to show cause before the circuit court, or judge thereof in vacation, of the county wherein such fiduciary qualified, why such fiduciary should not be required to replace any moneys or securities that have been improperly applied or disposed of, or the value thereof. The proceedings upon every such rule shall be considered for all purposes to be proceedings in equity, and the orders and decrees therein shall be enforceable accordingly. The court or judge thereof shall have full power to require the fiduciary to replace any moneys, securities or property that have been improperly applied or disposed of, or the value thereof, or to pay or transfer the same or any moneys, securities or property, with which the fiduciary may be charged, into a proper account or otherwise, as the court or judge thereof may order. If the order or decree is not complied with within a time to be fixed by the court, the powers of the fiduciary shall be revoked and annulled, and the court shall so order. The failure of the fiduciary to comply with the order or decree shall also be a breach of the fiduciary's bond.

WV Legislature

§44-4-11. Liability for losses or failure to make defense.

If any personal representative, guardian, curator or committee shall, by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost and interest thereon in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, or lapse of time, or otherwise, when he knows, or by the exercise of due diligence could ascertain, the facts by which the same could be so prevented, no credit shall be allowed him therefor.

WV Legislature

§44-4-12. Compensation and expenses of fiduciaries.

The fiduciary commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Any executor, administrator, guardian, committee, assignee, receiver, special fiduciary commissioner, or other fiduciary, required by law or by the order of any court or judge to give a bond or obligation as such, may include, as a part of the lawful expense of executing his duties, such reasonable sum paid a company, authorized under the laws of this state so to do, for becoming his surety on such bond or obligation, as may be allowed by the court in which, or the fiduciary commissioner before whom, he is required to account, or a judge of such court, not exceeding, however, the amount authorized by the Insurance Commissioner pursuant to the provisions of article twenty, chapter thirty-three of this code and the legislative rules promulgated thereunder.

WV Legislature

§44-4-12a. Compensation and expenses of personal representatives.

(a) Personal representatives, as defined in section one, article one, chapter forty-two of this code, shall be allowed any reasonable expenses incurred by the personal representative as such and commissions upon the amount of all the personal estate which is subject to administration, including the income from the personal estate, that is received and accounted for by them and upon the proceeds of real estate that is sold, as follows:

(1) For the first $100,000, at the rate of five percent;

(2) All above $100,000 and not exceeding $400,000, at the rate of four percent;

(3) All above $400,000 and not exceeding $800,000, at the rate of three percent; and

(4) All above $800,000, at the rate of two percent.

(b) Personal representatives also shall be allowed a commission of one percent on the value of real estate that is not sold. Personal representatives also shall be allowed a commission of one percent on all property that is not subject to administration and that is includable for purposes of computing the federal estate tax. Notwithstanding the foregoing, no commission shall be allowed on joint and survivorship property, whether real or personal.

(c) The basis of valuation for the allowance of such commissions on real estate sold shall be the gross proceeds of sale, and for all other property the fair market value of the other property as of the date of death of the decedent. The commissions allowed to personal representatives in this section shall be received in full compensation for all of their ordinary services. If more that one personal representative serves, the total compensation as set forth herein shall be apportioned between them as agreed upon by the personal representatives, or in the absence of an agreement between the personal representatives, or in proportion to the services performed by them.

(d) The commission set forth herein may be denied or reduced by the county commission upon a determination that the personal representative has not faithfully discharged the personal representative’s duties. The commission set forth herein may be increased by the county commission upon a determination that the personal representative has performed extraordinary services in discharging the personal representative’s duties.

(e) Where the personal representative of an estate is a lawyer who renders professional services, compensation for such professional services in addition to a commission shall not be allowed.

(f) Notwithstanding the foregoing, a testator may deviate from the commissions allowed herein by express language in the testator’s last will and testament.

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§44-4-13. Receipt to be given fiduciaries for vouchers.

Any fiduciary commissioner or commissioner in chancery, having before him the accounts of a fiduciary for settlement, shall, on request, execute and deliver to such fiduciary a receipt for all vouchers filed with him that receipt, if such vouchers be afterwards lost or destroyed, shall, in any suit or proceeding against such fiduciary, be evidence of the delivery to the fiduciary commissioner of the vouchers therein mentioned.

WV Legislature

§44-4-14. Reports of fiduciary commissioner.

Every account stated under this article shall be reported with any matters specially stated, deemed pertinent by the fiduciary commissioner, or which may be required by any person interested to be so stated.

WV Legislature

§44-4-14a. Final settlement by fiduciaries for decedent's estates; penalty.

(a) The provisions of this chapter notwithstanding, every fiduciary for the estate of a resident decedent shall, within five years of appointment as fiduciary make a full and final settlement, report and accounting for the decedent's estate in the manner provided for in this code for accountings by fiduciaries, and further shall, at the time of making the final settlement, notify in writing the clerk of the county commission of the county where the fiduciary was appointed that the final settlement has been made.

(b) If the fiduciary is unable to make a full and final settlement, report and accounting of the decedent's estate within the above time period because there have been unusual or extraordinary circumstances, demands or conditions imposed upon the fiduciary which have caused a delay in the final settlement, he or she may request an extension of time in which to make the settlement. Such request must be in writing to the county commission and include a date by which the fiduciary reasonably expects to make the full and final settlement.

(c) Any fiduciary failing to comply with this section, in whole or in part, is personally liable to the beneficiaries or creditors of the decedent's estate for any loss or waste caused by the failure to make the final settlement. The fiduciary shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $1,000 for failure to comply with this section, except for good and sufficient cause shown.

(d) In the event the fiduciary has not made the final settlement of the estate within five years of appointment, the fiduciary shall notify the county commission that the final settlement has not been made. If the fiduciary does not establish good cause for not making the final settlement within the five-year period, as determined by the county commission, the fiduciary is discharged of his or her duties as fiduciary. The sheriff of the county shall then take charge of the estate and proceed to make a final settlement of the estate in an expeditious manner.

(e) A fiduciary who fails to notify the county commission in accordance with subsection (d) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

WV Legislature

§44-4-15. Exceptions to report.

Upon completion of such report of settlement of account 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, vouchers, and any evidence taken in connection with the report, in his office for ten days, during which time any person interested may inspect the same and file exceptions thereto.

WV Legislature

§44-4-16. Filing of report and vouchers.

The fiduciary commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after the expiration of such ten days; and with his report he shall return all evidence taken before him and such exceptions, with such remarks as he may see fit to make, and such of the vouchers as any person interested may desire him to return, or as he may deem proper.

WV Legislature

§44-4-17. Examination and correction or recommittal of report.

The county commission, at its first regular term occurring not less than ten days after the report has been filed in the office of its clerk, shall examine the same, with the evidence and such exceptions to the report as may be filed at any time before such examination. It shall correct any errors which shall appear from the exceptions, and any appearing on the face of the account, whether excepted to or not; and to this end may commit the report to the same, or to another fiduciary commissioner, as often as the county commission sees cause; or it may confirm the report in whole or in a qualified manner. The county commission, and the circuit court, if there be appeal from the county commission in any such matter, shall hear no new evidence, but, if good cause therefor be shown, the commission may recommit the report for the taking of further evidence and further report. The clerk shall, in a book kept for the purpose, record every report which may be confirmed, and at the foot of it the order of confirmation. The evidence and any exceptions shall remain on file in the clerk's office, but any voucher returned with the report or remaining with the fiduciary commissioner at the time of such confirmation, and not wanted for any further matter of inquiry before him shall be returned by him to the party who filed the same.

WV Legislature

§44-4-18. Effect of confirmation of report; how made conclusive.

The report, to the extent to which it may be so confirmed by the county commission, or confirmed on appeal by the circuit court, shall be taken to be correct, and shall be binding and conclusive upon creditors of a decedent's estate, and binding and conclusive upon every beneficiary of the estate who has had notice that the report has been laid before the fiduciary commissioner for settlement, or upon completion of the report was notified by the fiduciary commissioner of its completion and that the same would remain in his office ten days subject to inspection and exception. Such notices to any creditor or beneficiary who is under disability shall be given by personal service on the guardian or committee of such person. Where the report is that of a guardian, committee or curator, the notice shall be served personally on the infant, ward or beneficiary and on the person or persons having his custody, or upon the guardian ad litem of such infant, ward or beneficiary that may be appointed for the purpose by the county commission.

WV Legislature

§44-4-19. Investment of funds may be ordered.

When it appears by a report made as aforesaid or a special report of the fiduciary commissioner that money is in the hands of such fiduciary, the county commission, before which the report comes, may order the same to be invested or loaned as provided in article six of this chapter.

WV Legislature

§44-4-20. Disbursement of balance after settlement; suit to compel disbursement; final report of fiduciary following disbursement.

When a county commission has confirmed, either in whole or in a qualified manner, a report of the accounts of any personal representative guardian, curator, committee as aforesaid, the county commission may order payment of what appears due on the accounts to such persons as would be entitled to recover the same by a suit in equity. If the order is not complied with, any person interested may bring a suit in chancery in the circuit court of the county wherein such order was made, to compel compliance therewith. In such suit the commission's order shall be taken as prima facie correct, and there shall be a decree according to the order except so far as it may appear upon proper pleadings and proof to be erroneous. If any fiduciary makes any payment in accordance with the order of the county commission more than three months after the order was made, and before suit has been commenced under this section, the payment shall not be disturbed nor shall the fiduciary be in anywise liable with respect thereto. And when the personal representative, guardian, curator or committee or other fiduciary has fully paid out all the funds in his hands he shall within ninety days thereafter, or at the first term of the commission thereafter, make a final, full and detailed report to the commission of such payments, and file therewith the vouchers for such disbursements; and when the commission, upon examination of such report and vouchers, ascertains the same to be correct, it shall approve and confirm such report and order the same to be recorded. The clerk of the commission shall record every such report which may be so confirmed, and at the foot of it the order of confirmation. It shall be the duty of the fiduciary commissioner who made the report in this section first mentioned, to require that the fiduciary renders, in proper form, the final report herein required, and, in case of the failure of the fiduciary to render a final report, he shall be proceeded against in the same manner, and be subject to the same penalties, as a fiduciary who fails to return an inventory or to lay his accounts before a fiduciary commissioner for settlement.

WV Legislature

§44-4-21. How fiduciary accounts settled in suits to be recorded.

When the account of any fiduciary is settled in a suit, it shall be the duty of the clerk of the court in which such suit is, within ten days after the close of the term of court at which the final decree in such suit is entered, to certify, to the clerk of the county commission wherein such fiduciary qualified, such account so far as the same has been confirmed, with a memorandum at the foot thereof stating the style of the suit and the date of the final decree, rendered in such suit. The clerk receiving such account and memorandum so certified shall record the same in the same book in which the accounts settled before a fiduciary commissioner are recorded, and after recordation the original account and memorandum shall be returned to the clerk from whom the same were certified and transmitted. If in any proceedings subsequent to such final decree, by appeal or otherwise, the account is reformed or altered, the reformed or altered account shall in like manner be certified and recorded, together with a memorandum stating the style of the suit and the date of the decree of confirmation. The fees for making the certification and for recording shall be paid as the court in which the suit is, or the judge thereof, shall direct. Any clerk failing to comply with this section shall be subject to the same penalties as clerks of the county commission who fail to keep a list of fiduciaries.

WV Legislature

§44-4-22. Application only to personal representatives, guardians, curators or committees.

The provisions of this article apply only to personal representatives, guardians, curators or committees, as the case may be, and do not apply to or affect trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

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