WEST VIRGINIA CODE CHAPTER 44 ARTICLE 5

WV Legislature

§44-5-1. List of fiduciaries.

(a) The clerk of the county commission of each county shall keep a record, to be known as the "Record of Fiduciaries", in which he or she shall enter, in separate columns, first, the name of every fiduciary authorized to act as such by the county commission or clerk of the county commission; secondly, the name of the decedent for whose estate he or she is personal representative or curator; thirdly, the names of the distributees of the estate, showing their relation to the decedent; fourthly, the name of the living person or persons for whom he or she is minor guardian, curator, committee or trustee; fifthly, the penalty of his or her bond; sixthly, the names of his or her sureties; seventhly, the date of the order conferring his or her authority, and a reference to the book and page where entered; eighthly, the date of any order revoking his or her authority, and a reference to the book and page where entered; ninthly, the date of the return of every inventory and appraisement of the estate; tenthly, the date of the confirmation of each report of settlement of the accounts of the fiduciary; and the clerk shall index the record in the name of the decedent, estate, ward or person represented by the fiduciary. Any clerk failing to make entry, as to any fiduciary, within ten days after the order conferring or revoking the authority, or the date of the return of the inventory and/or appraisement, or the date of the confirmation of any report of settlement, shall, for every failure, forfeit $20.

(b) This section does not apply to a trustee.

WV Legislature

§44-5-2. Fiduciary records of circuit court to be deposited in county clerk's office.

The circuit court of each county shall, as soon as may be after this code becomes effective, direct its clerk to transfer to the office of the clerk of the county commission of its county any wills, records of wills, records of the appointment and qualification of personal representatives, guardians, curators or committees, and records of their oaths, bonds, inventories, appraisements and settlements, heretofore kept in their said courts, and the clerk of the county court shall keep and preserve the same among the other similar records of his office. If the same are not properly and completely indexed when deposited in his office, the county clerk shall make a full and complete index to the same.

WV Legislature

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant's assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent's assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and

(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: Provided, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such

WV Legislature

nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of sections seven or eight, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his or her true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him or her as executor, administrator, testamentary guardian, guardian or conservator or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual's agreement that any notice or process, which is served in the manner hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process together with a fee of $5 with the clerk of such county commission. The fee of $5 shall be deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his or her office and such service shall constitute personal service upon such nonresident: Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk or to such nonresident at the address last furnished by him or her to said clerk and either: (1) Such nonresident's return receipt signed by him or her; or (2) the registered or certified mail bearing thereon the stamp of the post office department showing that delivery therefore was refused by such nonresident is appended to the original notice or process filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him or her less than thirty days before the return date thereof.

WV Legislature

The clerk of such county commission shall keep a record in his or her office of all such notices and processes and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as bar to service by publication where proper or the service of notice or process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant or incompetent may not be removed from this state until the inventory or appraisement of that resident decedent's, infant's or incompetent's assets have been filed and any new or additional bond required to satisfy the penalty specified in subsection (b) of this section has been furnished. The liability of a nonresident executor, administrator, testamentary guardian, guardian or conservator and of any such surety shall be joint and several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or, in the discretion of the court, by both such fine and confinement.

(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he or she may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his or her failure or refusal to account continues for six months, he or she shall be removed by the county commission.

WV Legislature

§44-5-4. Who not to be accepted as surety on fiduciary's bond.

A judge of the circuit court, member of the county commission, clerk or deputy clerk of the circuit court or county sheriff or deputy sheriff, fiduciary commissioner or an attorney-at-law, shall not be taken as surety in any bond required to be given by any fiduciary. When, for any reason, the provisions of this section are violated in the taking of any bond, the bond so given shall not be void, but upon the discovery of such fact a new bond shall be required of the fiduciary.

WV Legislature

§44-5-5. When additional or new bond may be required of a fiduciary, or his authority be revoked.

The county commission under whose order, or under the order of whose clerk, any such fiduciary derives his authority, when it appears proper on any report of the clerk or a fiduciary commissioner or a commissioner in chancery, or on evidence adduced before it by any party interested, may, at any time, whether such fiduciary shall or shall not have before given any bond, or whether he shall have given one with or without sureties, order him to give before the commission an additional bond within a prescribed reasonable time, in such penalty, and with or without sureties, as may appear proper; or when any surety on the bond of a fiduciary, or the personal representative of any surety, shall apply therefor, the commission shall order the fiduciary to give before it a new bond within a prescribed reasonable time, in such penalty, and with such sureties, as may appear proper, it may, in either case, if the order be not complied with, or whenever from any cause it appears proper, revoke and annul the powers of such fiduciary. No such order shall be made unless reasonable notice is given to the fiduciary by the clerk or the fiduciary commissioner who made the report, or by the surety or the personal representative of the surety making the application aforesaid, or by the service of a rule or otherwise. No such order of revocation shall invalidate any previous acts of the fiduciary.

WV Legislature

§44-5-6. Jurisdiction of court on revocation of fiduciary's authority.

After the date of any order revoking and annulling the powers of any fiduciary, the county commission in which he qualified shall exercise such jurisdiction, either by appointing an administrator de bonis non, or a new guardian, or otherwise, as it could have exercised if such fiduciary had died at that date.

WV Legislature

§44-5-7. Authority of personal representatives to compound and compromise liabilities due to or from them.

It is lawful for any guardian, committee or trustee, to compound and compromise any liability due to or from him or her, unless the compounding and compromise is ratified and approved by a court of competent jurisdiction, all parties in interest being before the court by proper process. When the compounding and compromise has been ratified and approved, it is binding on all parties in interest before the court. It is lawful for any personal representative to compound and compromise any liability due to or from him or her, as long as the compounding and compromise is ratified and approved by the fiduciary commissioner to whom the estate or trust has been referred, or by a commissioner appointed by the circuit court when the estate of the decedent is being settled in a chancery suit, and is reported by the fiduciary commissioner to his or her court. When the report is confirmed, the compounding and compromise shall be binding on all parties to the proceedings.

WV Legislature

§44-5-8. How transfer of securities to successor compelled.

When any securities for money loaned or invested, or any money, or property of any kind or nature, shall be standing in the name of any fiduciary who shall have died or resigned, or whose powers shall have been revoked, and such fiduciary or his personal representative shall not have transferred such securities, money or property to his successor, the circuit court of the county, or the judge thereof in vacation, in which such fiduciary shall have qualified, upon the petition of such successor, or of any other person interested, may direct such securities, money or property to be transferred to such successor, and may direct the dividends, interest, income, or proceeds of such securities, money or property to be received or paid in such manner as such court shall think proper.

WV Legislature

§44-5-9. Costs in proceedings to compel fiduciaries to comply with law.

The costs of any proceedings, authorized or directed to be brought against any fiduciary to enforce or compel his compliance with the requirements of the law, shall include a reasonable fee to the fiduciary commissioner at whose instance the same are had, and shall be charged and paid as the court may direct. In every case where the fiduciary is in default, without reasonable excuse therefor, the costs shall be adjudged against and paid by the fiduciary personally. In no case shall the costs be adjudged against the fiduciary commissioner unless he instituted the proceedings in bad faith.

WV Legislature

§44-5-10. Powers of clerk of county commission in certain counties.

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 and seventy-two, the clerk of the county commission shall have the powers and discharge the duties which by this chapter are vested in and imposed upon the county commission.

WV Legislature

§44-5-11. Application only to personal representatives, curators, and minor guardians.

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

WV Legislature

§44-5-12.

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

§44-5-13.

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

§44-5-14.

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

§44-5-15.

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature