
WEST VIRGINIA CODE CHAPTER 44
ARTICLE 8

WV Legislature

§44-8-1. Sale, conveyance and management of decedent's real estate; powers of executor and administrator with will annexed.

Real estate devised to be sold shall, if no person other than the executor be appointed for the purpose, be sold and conveyed by the executor and the proceeds of sale, or the rents and profits of any real estate which the executor is authorized by the will to receive, shall be received by the executor who qualifies, or by his or her successor. If none qualify, or the one qualifying shall die, resign or be removed before the trust is executed or completed, the administrator with the will annexed shall sell or convey the lands so devised to be sold, and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done: Provided, That title to real estate which is devised to be sold shall pass to the individuals entitled to receive the proceeds thereof in such proportions as they are entitled to receive said proceeds absent any contrary testamentary intent upon the closing of the testator's estate or, if the estate is not closed, five years after the death of the testator.

When any will heretofore or hereafter executed gives to the executor named therein the power to sell the testator's real estate, which has not been theretofore specifically devised therein, the executor may sell any such real estate unless otherwise provided in said will. If such will directs the sale of testator's real estate but names no executor, or names an executor and the executor dies, resigns or becomes incapable of acting, and an administrator with the will annexed is appointed, the administrator with the will annexed may sell such real estate as aforesaid.

Nothing in this section shall be deemed or construed so as to invalidate any conveyance made prior to the effective date of the amendments thereto adopted by the Legislature at its regular session held in the year 1987.

§44-8-2. Rents, profits or proceeds of sale to be paid to persons entitled.

It shall be one of the duties of an executor or administrator, by virtue of his office, and as such embraced by his official bond, faithfully to pay the rents and profits, or proceeds of sale, of real estate which may lawfully come to his hands or to the hands of any person for him to such persons as are entitled thereto.

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§44-8-3. Real estate to be assets for payment of debts.

All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which may remain after satisfying the debts with which it may be so charged, or subject to which it may be so devised, shall be assets for the payment of the decedent's debts and all lawful demands against his estate, in the order in which the personal estate of a decedent is directed to be applied.

§44-8-4. By what court assets administered.

Such assets, so far as they may be in the hands of the personal representative of the decedent, may be administered by the court in whose clerk's office there is or may be filed a report of the accounts of such representative, and of the debts and demands against the decedent's estate, or they may, in any case, be administered by a court of equity.

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§44-8-5. Liability of heir or devisee for real estate conveyed; when such real estate not liable.

Any heir or devisee who shall sell and convey any real estate, which by this article is made assets, shall be liable to those entitled to be paid out of such assets, for the value thereof, with interest; in such case the estate conveyed shall not be liable, if at the time of the conveyance the purchaser shall have no notice of any fraudulent intent on the part of the grantor, and no suit shall have been commenced for the administration of such assets, nor any report have been filed, as aforesaid, of the debts, and demands of those entitled. But no alienation of such estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within such year.

§44-8-6. Heir or devisee liable in equity; judgment against personal representative prima facie evidence.

An heir or devisee may be sued in equity by any creditor to whom a debt is due, for which the estate descended or devised is liable, or for which such heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be any redress by such suit in equity. And any judgment or decree, except one taken by default, for such debt hereafter rendered against the personal representative of the decedent, shall be prima facie evidence of such debt against the heir or devisee in such suit in equity.

§44-8-7. Suit to subject real estate to payment of debts; parties; evidence.

When the personal estate of a decedent is insufficient for the payment of his debts, his executor or administrator may commence and prosecute a suit in equity to subject his real estate to the payment thereof as provided in this article. The surviving wife or husband, heirs and devisees, if any, and all the known creditors of the decedent, shall be made defendants in such suit. If such suit be not brought within six months after the qualification of such executor or administrator, any creditor of such decedent, whether he has obtained a judgment at law for his claims or not, may institute and prosecute such suit on behalf of himself and the other creditors of such decedent, in which the personal representative, surviving wife or husband, heirs and devisees, if any, of the decedent shall be made defendants. If any creditors' suit shall have been brought against the decedent in his lifetime, and be undisposed of at the time of the death of the decedent, a separate suit shall not be instituted by any other creditor, nor by the executor or administrator, but the plaintiff shall, or, if he fails to do so within six months after the qualification of the executor or administrator, such executor or administrator or any general creditor, by intervening, may, in the suit already pending, by amended and supplemental bill, cause all proper and necessary parties to be brought into such suit; and thenceforth the same shall proceed as a suit instituted under this section. In every suit under this section anyone claiming to be a creditor of the decedent, whether he may have been made a party thereto or not, or whether he may have been served with process therein or not, may present his claim, and, upon such presentation, shall be deemed to have been made a party to the suit and to have been served with process therein. And evidence respecting such claim may be taken, and the same may be allowed and paid, in whole or in part, or rejected in the same manner and with the same effect, as if such claimant had been originally made a party and served with process.

§44-8-7a. Jurisdiction of court in suits to subject real estate of decedents to payment of their debts.

In every suit under the preceding section, whether brought by the personal representative or by any creditor, or whether a general creditors' suit is pending at the time of the death of the decedent, the court shall have general jurisdiction with all the powers of a court of equity, and shall have authority to construe any deed, will or other writing, or dispose of any other matter pertaining to the real estate, or any part thereof, of the said decedent, the same as though a separate suit had been brought for that purpose.

§44-8-8. Reference to special commissioner and publication of notice to creditors in such suit.

No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until a reference is made to a commissioner in chancery to ascertain and report all the liens on the real estate or any part thereof, the holders of such liens, the amount due to each, and the priorities thereof, and report made of all general claims and the priorities of the same, and until a notice to all creditors to present and prove their claims is published as hereafter provided. The notice shall be in the following form or to the following effect:

To all creditors of A B, deceased, including those holding liens by judgment or otherwise on his real estate, or any part thereof.

In pursuance of a decree of the court, of the county of, made in a cause therein pending, to subject the real estate of the said A B to the payment of his debts, including those which are liens on such real estate, or any part of it, you are hereby required to present your claims to the undersigned for adjudication, at (designating place) on or before the day of; otherwise you may by law be excluded from all benefit of such real estate.

Given under my hand this day of, 19.....

C.....D.....,

Commissioner in Chancery.

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the action is pending. The court shall designate the newspaper in which such notice shall be published. The court may direct such other notice to be given as it may deem proper. Such publication of such notice shall be equivalent to personal service thereof on all creditors, including those holding liens on such real estate, unless the court shall in the order directing publication otherwise order. Any creditor who may have filed his claim before a fiduciary commissioner may withdraw the same and the proof thereof made before such commissioner, and may file such claim and proof before the commissioner in chancery, and the commissioner in chancery shall, unless there be objection by any party to the suit, accept such proof for what the same may legally show. No other publication to creditors than the one provided by this section shall be necessary, and when any notice of the reference is required by law or by the court to be published, the notice of the reference shall be included in the above notice, so that there may be but one publication.

§44-8-9. Decree of distribution; claims barred when.

When such suit shall be fully matured for hearing and the report of any such commissioner shall have been confirmed, and the provisions of the preceding section shall have been fully complied with, the court may decree a distribution of the proceeds of such real estate among such of the creditors of the deceased as shall have shown themselves entitled thereto according to their several priorities, if any; which decree, so made, shall be a bar to the claim of any creditor of the deceased, or lienholder on real estate of the deceased, who has failed to present his claim to the commissioner as required by such notice, except that if a surplus remain after such distribution, the creditor or lienholder so failing may share in the same upon proving his claim at any time before a final decree is made in such suit. But if he fail to present his claim for adjudication before such final decree, he shall be forever barred of all right to participate in the proceeds of such real estate, so far as the other creditors of the said deceased, who have not so failed, are concerned.

§44-8-10. No costs recoverable in, and injunction against, second suit.

After the commencement of any such suit as aforesaid, if any creditor of the deceased commence another suit, action or proceeding, upon a claim against him or his estate, no costs shall be recovered in such last-mentioned suit, action, or proceeding; and the court, or judge thereof in vacation, may enjoin the plaintiff therein from the prosecution of any such suit, action or proceeding, and require him to assert his claim or lien in the suit provided for by this article, or make any other order or decree that may seem right and proper to protect the interests of all parties having claims or liens.