WEST VIRGINIA CODE CHAPTER 44 ARTICLE 9

WV Legislature

§44-9-1. When person presumed to be dead.

In case any person has been or shall be absent for seven or more successive years from the place of his last domicile within this state; or, having been a resident of this state, has heretofore gone from and has not returned to this state for seven or more successive years; or, being a resident of this state, shall hereafter go from and not return to this state for seven or more successive years; or, being a nonresident of this state and being entitled to, or having an interest in, property in this state, has been or shall be absent for seven or more successive years from the place of his last-known domicile; and in any of the foregoing cases shall for such period of time have been, or shall be, unheard of by those who, had he been alive, would naturally have heard of him such person shall, in any case where his death shall come in question, be presumed in law to be dead, in the absence of proof to the contrary, or unless proof be made that he was alive within that time.

WV Legislature

§44-9-1a. When person in military service presumed to be dead; administration of estate; when spouse may remarry.

Presumptive findings of death of any person engaged in any service or activity of, or employment by the United States in connection with or with respect to any hostilities in which the United States is engaged, whether war be formally declared or otherwise by an official or officer of the United States, who is authorized to make such presumptive findings by any act of Congress, shall create a presumption of the death of such person in the State of West Virginia. Proceedings under section three of this article may be commenced at any time after such finding is made.

No administrator, executor or personal representative of any person who is presumed to be dead under this section shall make final distribution of the assets of any such person until the expiration of three years after the date of the making of such presumptive findings by persons authorized to do so by the provisions of this section: Provided, That assets in the estate of any such person, which are exempt from attachment by creditors, including moneys paid by the United States of such nature, and other assets of any such estate which would otherwise be available for support of the wife, children and other dependents of such person, if he were alive, after allowance for debts and costs of administration, may be paid by the personal representative for the support of the wife and children and the dependents of such person upon order of the circuit court of the county which has jurisdiction in probate proceedings until such time as distribution may be made or administration terminated, and such sums shall be treated for all purposes of law as expenditures legally chargeable against such person, as if he were living to the time a final presumption of death becomes effective in this state. In case any such person presumed to be dead as a result of a finding, as aforesaid, is not heard from as provided in section one of this article, for a period of three years after making of such presumption, the presumption provided in section one of this article shall become effective to permit final distribution of his estate.

No surviving spouse of any person who is presumed to be dead under this section shall marry another until after the expiration of two years following the finding aforesaid, unless proceedings for divorce were commenced by such spouse or the missing person prior to the date such presumptive finding was made by an official of the United States; and after such two-year period the surviving spouse shall be free to remarry, or at any time unless the other spouse be heard from prior to the actual date of remarriage.

WV Legislature

§44-9-1b. When person in area proclaimed to be in a state of emergency presumed dead.

A person last seen at any site within the area proclaimed by the Governor on November 5, 1985, to be in a state of emergency as a result of the flooding in this state on or about November 4, 1985, whose body has not been found or identified within six months of the date last seen at such site, and who is unheard of by those who, had he been alive, would naturally have heard of him and whose disappearance can reasonably be believed to have been caused by such flooding shall in any case where his death shall come in question be presumed in law to be dead, in the absence of proof to the contrary or unless proof be made that he was alive within that time.

WV Legislature

§44-9-2. Jurisdiction of estate of supposed decedent.

Whenever it is believed that facts giving rise to the presumption of death exist with reference to any person, the county court of the county of such person's last-known domicile in this state, or, if such person was a nonresident of this state, the county court of the county where the greater part of his property within this state may be situated, may be applied to by petition under oath, and shall have jurisdiction, to probate the will of such person, and to grant letters testamentary or of administration upon his estate to the same person, and upon the same procedure, except as otherwise provided in this article, as if such supposed decedent were in fact known to be dead.

WV Legislature

§44-9-3. Application for probate or administration, and publication of notice thereof.

Whenever letters testamentary or of administration are applied for on the estate of any person supposed to be dead on account of the existence of facts giving rise to the presumption of death, the county court or clerk thereof, if satisfied that the person applying therefor, or presenting a will or codicil of the supposed decedent for probate, would be entitled to such letters, or to such probate, if the supposed decedent were in fact dead, shall cause to be published, as hereinafter provided, a notice that such application has been made and that on a day certain, which shall not be less than two weeks after the last publication of such notice, the court will hear evidence concerning the alleged absence of the supposed decedent and the circumstances and duration thereof. 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.

WV Legislature

§44-9-4. Ancillary letters on estates of nonresidents supposed to be dead.

Whenever letters testamentary or of administration shall have been granted in any other state, territory or country, on the estate of a resident thereof presumed to be dead on account of absence for seven or more successive years from the place of his last domicile, the person to whom such letters have been granted, may present a petition to the county court of the county in this state in which all or the greater portion of the estate of such supposed decedent in this state may be found, accompanied by a complete exemplified copy of the record for the grant of such letters, praying for the grant of ancillary letters testamentary or of administration upon the estate of such supposed decedent situate, owing, or belonging to him within this state; and the court may grant to some fit person, resident of this state, such ancillary letters, after notice shall be given in the manner provided for in the preceding section.

WV Legislature

§44-9-5. Evidence on such application; record thereof.

At the hearing in either of the cases provided for in the preceding two sections, the county commission shall receive all legal evidence as may be offered, for the purpose of ascertaining whether the presumption of death is established; or it may refer the matter to a fiduciary commissioner to take such evidence, and report his findings thereon. No person shall be disqualified as a witness by reason of relationship to the supposed decedent or interests in his estate. All the evidence shall be reduced to writing and preserved in the files of the commission with the record of the case.

WV Legislature

§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect; death certificate issued upon order.

If the commission is satisfied, upon the hearing or from the report of the fiduciary commissioner, that the legal presumption of death is established, the commission shall so declare by order, shall then proceed to hear, and to grant, if proper, the application for probate of the will of such supposed decedent, if such there be, and to grant letters testamentary or of administration, as the case may require, to the party entitled thereto, who shall qualify and give bonds as in cases of persons known to be dead. The probate of any such will and such letters, until revoked, and all acts done in pursuance thereof and in reliance thereupon, shall be as valid as if the supposed decedent were in fact dead.

Immediately upon the entry of such order declaring that the legal presumption of death is established, the commission shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics the order and such personal data and other information from the records of the proceedings as may enable the state registrar of vital statistics to issue a death certificate. Upon receipt of the order, personal data and other information, the registrar of vital statistics shall forthwith issue and deliver by mail unto the clerk of the county commission wherein such order was entered, a death certificate in the form prescribed by law, except that no medical certification shall be required. The clerk shall record such death certificate in the manner set forth in section nineteen, article five, chapter sixteen of this code.

WV Legislature

§44-9-7. Powers of clerk of county commission.

The clerk of any county commission during the recess of the regular sessions of the county commission may exercise the same powers as are herein conferred upon such commission.

WV Legislature

§44-9-8. Personal representative to institute suit to settle such estate.

The personal representative of the estate of such supposed decedent shall, after qualifying, institute a suit in equity in the circuit court of the county in which such personal representative qualified, for the settlement of the estate of such supposed decedent. To such suit the surviving wife or husband, heirs, distributees, devisees, legatees, and all known creditors of the supposed decedent, shall be made parties defendant, and there shall be filed with the bill of complaint therein an attested copy of the complete record of the county court relating to the appointment and qualification of such personal representative, including a copy of the evidence taken to establish the presumption of death.

WV Legislature

§44-9-9. Publication in such suit.

Such personal representative, upon the institution of such suit, shall cause notice to the supposed decedent to be issued by the clerk of the circuit court, that such suit has been instituted and that such supposed decedent, if alive, is required to appear on a certain day of a regular or special term of said court not less than three nor more than six months from the date of the first publication of such notice as hereinafter required. 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 where the suit is brought. When practicable, such notice shall also be published once a week for two successive weeks in a newspaper published at or near the place where such supposed decedent was last known to reside beyond this state, or in this state, if the supposed decedent was not known to have left the same and such place is in a county other than the one where the suit is pending.

WV Legislature

§44-9-10. Procedure when supposed decedent fails to appear.

If such supposed decedent shall not appear, or satisfactory evidence that he is alive shall not be offered, on or before such date, the circuit court shall review the record from the county court filed in such suit, and, if satisfied that the county court improperly ruled on the facts before it with reference to the presumption of death, may call for and take further proof, and, when satisfied that the presumption of death is properly established, shall then refer the cause to a commissioner in chancery to convene the creditors of such supposed decedent, by publishing notice therefor in the manner provided in proceedings for subjection of a decedent's real estate to the payment of his debts, and to take proof of the claims of creditors, the amount and nature of the estate of such supposed decedent and the persons entitled thereto; and the cause shall thenceforth be proceeded with as other causes in chancery of a similar nature.

WV Legislature

§44-9-11. Distribution of estate; refunding bonds.

When the commissioner in chancery has rendered his report, and all exceptions thereto have been disposed of, the court may enter a decree authorizing the payment of creditors and assigning and transferring such estate to the persons entitled thereto, or directing sale thereof and distribution of the proceeds of sale among the creditors and persons entitled thereto. But before such assignment of the estate or distribution of the proceeds thereof the court shall require the persons, other than creditors, entitled to receive the same, to enter into a joint or separate bond before the clerk of the court, in a penalty to be fixed by the court, with sureties to be approved by the clerk, with condition that, if the supposed decedent shall at any time within fifteen years thereafter appear, they will refund the amounts received, on demand. If the persons entitled thereto are jointly or separately unable to give such security, then such estate may be sold and the proceeds thereof paid into the hands of the general receiver of the court until such security is given or until the further order of the court, but the interest arising therefrom shall be paid annually to the person or persons appearing to be entitled thereto, without the giving of any refunding bond.

WV Legislature

§44-9-12. Vacation of prior proceedings on reappearance of supposed decedent.

The circuit court may at any time, on satisfactory proof that the supposed decedent is in fact alive, set aside and vacate all proceedings theretofore had in such suit, including the decree of distribution, if such has been entered, and any order or decree entered by it or the county court establishing the presumption of death, and upon doing so shall certify that fact to the county court. The county court shall thereupon revoke the probate of any will of such supposed decedent and the grant of letters testamentary or of administration on his estate: Provided, That in no case shall the supposed decedent file his petition or suit to set aside and vacate such adjudication after the lapse of fifteen years from the date of such adjudication.

WV Legislature

§44-9-13. Final accounting of personal representative; effect of his acts; title of purchasers and distributees.

The circuit court shall, when the prior proceedings have been vacated as provided in the preceding section, require a final settlement of the personal representative, and direct the transfer of all assets in the hands of such personal representative, and, if any property or proceeds thereof have been distributed, the retransfer or refunding thereof to the supposed decedent, or his duly authorized agent, attorney or representative. All acts of such personal representative while his letters were in force, and the title of bona fide purchasers to property under sales made by him shall remain as valid as if such letters were unrevoked. But nothing in this section shall validate the title of any person to any money or property received as surviving wife or husband, next of kin, heir, legatee or devisee of such supposed decedent, but the same may be recovered from such person in like manner as if there had been no proceedings under the provisions of this article.

WV Legislature

§44-9-14. Substitution of supposed decedent in pending actions; opening judgments; effect of judgment after substitution.

After revocation of the letters and vacation of the order or orders declaring the presumption of death established, the person erroneously supposed to be dead may, on suggestion filed of record of the proper fact, be substituted as plaintiff in all actions, suits, or proceedings brought by the personal representative, whether prosecuted to judgment or decree, or otherwise. He may, in all actions, suits or proceedings previously brought against the personal representative, be substituted as defendant, on proper suggestion filed by himself or of the plaintiff therein, but shall not be compelled to go to trial in less than three months from the time of such suggestion filed. Judgments or decrees, recovered against the personal representative before revocation of the letters and vacation of such order or orders, may be opened on application by the supposed decedent, made within three months from such revocation of the letters and vacation of such order or orders, and supported by affidavit denying specifically, on the knowledge of the affiant, the cause of action, in whole or in part, or specifically alleging the existence of facts which would be a valid defense; but, if within such three months, such application shall not be made, or, being made, the facts exhibited shall be adjudged an insufficient defense, the judgment or decree shall be conclusive to all intents, saving the defendant's right to have it reviewed as in other cases in the manner provided by law. After the substitution of the supposed decedent as defendant in any judgment or decree, as aforesaid, it shall have the same force and effect as if taken against him originally, and shall so continue as other judgments or decrees, unless and until it shall be set aside by the court below or reversed in the Supreme Court of Appeals.

WV Legislature

§44-9-15. When laws relating to wills and estates generally to govern.

As to matters not specially provided for in this article, the provisions of law relating to the probate of wills and the administration of estates of actual decedents shall govern, so far as applicable.

WV Legislature

§44-9-16. Costs, by whom payable.

The costs attending the issuance of letters testamentary or of administration, or their revocation, and the probate of any will, and of the suit for the settlement of the estate, shall be paid out of the estate of the supposed decedent; and costs arising upon an application for letters which shall not be granted shall be paid by the applicant.

WV Legislature