WEST VIRGINIA CODE CHAPTER 44

WV Legislature

§44-1-1. Executor has no powers before qualifying.

A person appointed to be the executor of a will shall not have the powers of executor until he or she qualifies by taking an oath and giving bond, unless not required to post bond by §44-1-8 of this code, which shall then be admitted to the records of the clerk of the county in which the will, or an authenticated copy thereof, is admitted to record, except that he or she may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

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§44-1-1a. Online educational training for executors.

Beginning January 1, 2028, the West Virginia State Bar shall make available on its official website educational materials concerning the administration of wills and estates, covering the duties and responsibilities of executors and administrators, including acting as a fiduciary. The materials shall be available to the public without charge, displayed in a conspicuous and easily accessible location on the State Bar's website, and accessible to individuals with sight-impairment.

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§44-1-2. Administration with will annexed.

If there be no executor appointed by the will, or if all the executors therein named refuse the executorship, or fail when required to give such bond, which shall amount to such refusal, or have died, such court, or clerk thereof during the recess of the regular sessions of such court, may grant administration, with the will annexed, to the person who would have been entitled to administration if there had been no will, and he shall take such oath and give such bond.

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§44-1-3. Oath of executor or administrator with will annexed.

The oath of an executor, or of an administrator with the will annexed, shall be in substantially the following form: The writing admitted to record contains the true last will and testament of the deceased, as far as he or she knows or believes, and that he or she will faithfully perform the duties of his or her office to the best of his or her skill and judgment.

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§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.

(a) When a person dies intestate the jurisdiction to hear and determine the right of administration of his or her estate shall be in the county commission or clerk thereof during the recess of the regular sessions of the county commission which would have jurisdiction as to the probate of his or her will, if there were one. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the county commission or clerk shall see fit. If no distributee apply for administration within 30 days from the death of the intestate, the county commission or clerk may grant administration to one or more of the creditors of the decedent, or to any other person who shall be fit.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Any person having an interest in real estate situate in this state that was seized and possessed by a decedent who was a nonresident of this state and who has died intestate without any will, including a personal representative who has qualified in another state or jurisdiction, for which no appointment of an ancillary personal representative or administrator to administer the real estate within this state is necessary for any proper purpose may execute and tender for recording in the county an affidavit setting forth in substance:

(A) A description of the real estate owned by the nonresident decedent at the time of his or her death situate within the county where the affidavit is to be recorded together with its assessed value for tax purposes and its fair market value at the date of death of the decedent;

(B) That the nonresident decedent died intestate without any will presented or probated in this state or in any other state or jurisdiction;

(C) That more than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent’s estate has been otherwise appointed in this state for any proper purpose; and

(D) The names and last known addresses of the decedent’s heirs at law determined under the laws of this state entitled to the real estate situate in this state.

(2) The clerk of the county commission shall record and index the affidavit in the same manner and upon the same fees as affidavits of heirs are recorded and indexed in case of intestate administration with appointment of a personal representative. The clerk of the county commission may require a certified copy of the decedent’s death certificate or other proof of death and residence prior to fulfilling the clerk’s responsibilities under this chapter.

(3) A bond, security, or oath is not required when no appointment of an ancillary personal

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representative or administrator is made under the provisions of this section.

(c) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this section:

THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

IN RE: THE ESTATE OF _____

DOD: _____

AFFIDAVIT FOR ANCILLARY ADMINISTRATION

OF WEST VIRGINIA REAL ESTATE

WITHOUT APPOINTMENT

(INTESTATE)

STATE OF _____,

COUNTY OF _____, to-wit:

I, _____, whose address is _____

_____, being first duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

1. The decedent, _____, died on _____(date of death), a resident of _____ County, State of _____. The decedent has left no will so far as I know, and no will of the decedent has been presented or probated in this state or in any other state or jurisdiction.
2. More than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent's estate has been otherwise appointed in the State of West Virginia for any proper purpose.
3. A certified death certificate has been furnished herewith for filing in this County.
4. The Decedent died owning and possessing the following real estate situate in West Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				

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Total

5. The decedent, _____, left as his/her heirs at law in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

b. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

c. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

6. No appointment of an ancillary personal representative to administer the decedent's real estate within the State of West Virginia is necessary for any proper purpose.
7. I have personal knowledge of the above facts and am interested in the Estate of _____, the decedent, as the ( ) acting domiciliary personal representative,

( ) surviving spouse, ( ) beneficiary under the decedent's will, ( ) heir at law, or ( ) other _____ (describe relationship or interest). [Check one]

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_____

Signature of Affiant

Taken, subscribed, and sworn to before me the undersigned authority by _____, this day of_, 20___.

{seal}

My Commission expires: _____

_____

Notary Public

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§44-1-5. When curator may be appointed; his duties.

The county court, or clerk thereof during the recess of the regular sessions of such court, may appoint a curator of the estate of a decedent, during a contest about his will, or during the infancy or in the absence of an executor, or until administration of the estate be granted, taking from him a bond in a reasonable penalty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator, or before such estate shall lawfully come into possession of such executor or administrator. He may demand, sue for, recover, and receive all debts due to the decedent, and all his other personal estate, and when there is a will may, or if a will be in contest shall, with respect to any real estate whereof the decedent or testator may have died seized or possessed, exercise such rights as the executor or administrator with the will annexed could exercise, including the collection of any rents and profits of such real estate and the leasing of the same for a term not exceeding the period of the curator's incumbency. Upon the qualification of an executor or administrator, such curator shall account with the executor or administrator for, and pay over to him such estate as came into such curator's hands or for which he is liable.

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§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of any intestate, the person to whom it is granted shall, in the county commission or before the clerk granting it, give bond, unless not required to post bond by §44-1-8 of this code, and take an oath in substantially the following form: The deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

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§44-1-7. Penalty of bond.

(a) Every bond required to be given by an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of such personal estate and of such real estate, or of such personal estate and of such rents and profits, as the case may be.

(b) If on the filing of the appraisement of the estate it shall appear that the penalty of the bond does not comply as to amount with the foregoing requirements, the county commission in which, or the clerk before whom, such bond was given, shall immediately notify such executor or administrator of such fact and require of him or her a new or additional bond, and the failure of such executor or administrator to give the same within a reasonable time shall be sufficient cause for his or her removal.

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§44-1-8. When executor or administrator not to give bond; when surety not required.

(a) Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, and after a hearing, it is required by the county commission that bond ought to be given.

(b) No surety shall be required on the bond of the executor if he or she is also the sole beneficiary of the decedent, unless the will directs otherwise, and no surety shall be required on the bond of the administrator if he or she is the sole distributee of the decedent, unless at the time the will is admitted to probate or the administrator is appointed or at any time thereafter, on the application of any person interested, and after a hearing, it is required by the county commission that surety ought to be given.

(c) In all such cases where no surety is required of the executor or administrator, the executor or administrator shall nevertheless be liable upon his or her bond upon his or her own personal recognizance in the event of default, failure or misadministration by the executor or administrator.

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§44-1-9. Administration de bonis non upon death, resignation or removal of sole surviving executor or administrator; executor or administrator of executor or administrator not authorized to administer estate of first testator or intestate.

In any estate in which there is a will, on the death, resignation or removal of the sole surviving executor of any such will or of an administrator with the will annexed, administration of the estate of the testator, not already administered, may be granted with the will annexed; and in any estate in which there is no will, on the death, resignation or removal of the administrator of such estate, administration of the estate, not already administered, may be granted, to such person as the court shall find it proper to appoint; and no executor or administrator of an executor or administrator shall have authority as such to administer the estate of the first testator or the first intestate.

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§44-1-10. Marriage of female representative does not extinguish authority.

Where an unmarried woman who is personal representative, either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right, and such marriage shall not operate as an extinguishment of her authority.

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§44-1-11. When sheriff to administer estate.

If at any time two months elapse without there being an executor or administrator of the estate of a decedent (except during a contest about the decedent's will, or during the infancy or absence of the executor), the court or clerk before whom the will was admitted to probate, or having jurisdiction to grant administration, shall on motion of any person order the sheriff of the county to take into his or her possession the estate of such decedent and administer the same; whereupon such sheriff, without taking any other oath of office, or giving any other bond or security than he or she may have before taken or given, shall be the administrator or administrator de bonis non of the decedent, with his or her will annexed if there be a will, and shall be entitled to all the rights and bound to perform all the duties of the administrator. For his or her services as administrator of an estate, the sheriff shall receive from the estate a fee of five percent of the estate subject to administration, which fee shall be deposited to the treasury of the county. Every sheriff shall, in the month of January in each year, make a written report to the county commission of his or her county, and if the court is not in session, then he or she shall file the report with the clerk of the court, of the receipts and disbursements of each estate so committed to him or her, and at the end of his or her term of office make a complete report and settlement of each estate so committed to him or her, and shall turn over to his or her successor in office all moneys or property in his or her hands remaining unadministered. The court or clerk may, however, at any time afterward revoke such order and allow any other person to qualify as the executor or administrator; and the court, or the clerk thereof, shall, at the expiration of the term of office of any sheriff, commit to his or her successor in office any and all estates which may appear, by the final report above required to be made by the sheriff at the end of his or her term, not to have been fully administered. Every sheriff to whom any estate shall have been committed, as aforesaid, who shall fail to render any report as required herein, or who shall fail to make such settlement within two months after the end of his or her term of office shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than $500.

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§44-1-12. Letters of administration.

A copy of the order whereby certificate is granted to any personal representative for obtaining probate or letters of administration, shall be as effectual as the probate or letters made out in due form. Nevertheless, the clerk of the court, in which such order is made, shall, when required by any personal representative, make out such probate or letters in due form.

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§44-1-13. Affidavit showing heirs, distributees, devisees and legatees of decedent.

At the time of the qualification of an executor or administrator, the court or clerk before whom he qualifies shall require such executor or administrator to file his own affidavit, or the affidavit of some credible person, showing the names and, as far as possible, the addresses of the persons who would take any part of the estate of the decedent as heirs or distributees in cases of the intestacy of the decedent and of the persons who are devisees and legatees under the will, if any, of the decedent, and their relationship to decedent, and the clerk of the court shall record such affidavit in the fiduciary record, which affidavit and the record thereof shall be prima facie evidence of what is contained therein. The personal representative shall not receive any compensation for his services until such names and addresses be furnished by affidavit as aforesaid, unless he shows by affidavit that such heirs, distributees, devisees and legatees and their addresses are unknown to him and that after diligent inquiry he has been unable to ascertain their names and addresses.

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§44-1-13a.

Repealed.

Acts, 2002 Reg. Sess., Ch. 142.

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§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition; hiring of experts.

(a) The personal representative of an estate of a deceased person shall appraise the deceased's real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b) After having taken the appropriate oath, the personal representative shall, on the appraisement form prescribed by the Tax Commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent's death:

(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(2) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(c) Any real estate or interest in real estate so appraised must be identified with particularity and description. The personal representative shall identify the source of title in the decedent and the location of the realty for purposes of real property ad valorem taxation.

(d) For purposes of this section, the term "probate personal property" means all personal property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.

(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the Tax Commissioner for the purpose of reporting whether the decedent owned or had an interest in any nonprobate personal property: Provided, That the Tax Commissioner shall design a questionnaire that is as much as possible phrased in understandable English.

(f) The appraisement form shall be executed and signed by the personal representative. The original appraisement form and two of its copies, together with the completed and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is

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returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be maintained and preserved by the clerk of the county commission or the fiduciary supervisor, but shall not be recorded in the records of the clerk of the county commission. The nonprobate inventory form is confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees. Nothing in this section may be construed to hinder, abrogate or prevent disclosure of information as authorized in section thirty-five, article eleven, chapter eleven of this code.

(g) An executed and signed appraisement form is prima facie evidence:

(1) Of the value of the property listed;

(2) That the property is subject to administration; and

(3) That the property was received by the personal representative.

(h) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $500.

(i) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and its reasonableness is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

(j) Except as specifically provided in subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven, article eleven, chapter eleven of this code.

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§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisement of any estate or within one hundred twenty days of the date of qualification of the personal representative if an appraisement is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

(1) The name of the decedent;

(2) The name and address of the county commission before whom the proceedings are pending;

(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and

(10) If the appraisement of the assets of the estate shows the value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner”. If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The

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time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid or by personal service on the following persons:

(1) If the personal representative is not the decedent’s surviving spouse and not the sole beneficiary or sole heir, the decedent’s surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within sixty days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this

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subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of $20 for the publication of the notice required in this section.

(h) For purposes of this section, the term “beneficiary” means a person designated in a will to receive real or personal property.

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§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for filing of objections.

(a) Within 30 days of the filing of a foreign will of a nonresident of this state without appointment of an ancillary personal representative, executor, or administrator as provided in the provisions of §41-5-13(b) of this code or within 30 days of the filing of an affidavit concerning the intestacy of a nonresident of this estate without appointment of an ancillary intestate administrator as provided in the provisions of §44-1-4(b) of this code, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the filing of the foreign will or the affidavit, a notice which is to include:

(1) The name and last known address of the decedent;

(2) The name and address of the county commission before whom the foreign will or affidavit has been filed and a statement that no appointment or administration is being made pursuant to the provisions of law but that a foreign will or affidavit of heirs of the decedent has been filed with the county commission;

(3) The name and address of the party filing the foreign will or affidavit and his or her relationship to the decedent;

(4) The date of first publication of the notice;

(5) A statement that an interested person objecting to the filing of the foreign will or affidavit or objecting to the absence of appointment or administration being made in this state must be filed with the county commission within 60 days after the date of first publication or 30 days of service of the notice, whichever is later.

(b) This notice shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication of the notice is equivalent to personal service on creditors, devisees or beneficiaries under the will, and heirs at law of the decedent.

(c) The party filing the foreign will or affidavit shall, not later than 30 days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, at the last known address by first class mail, postage prepaid or by personal service on the following persons:

(1) The decedent’s surviving spouse, if any;

(2) If there is a will, the personal representative or personal representatives named therein;

(3) If there is a will, all devisees or beneficiaries named therein;

(4) The heirs at law of the decedent determined under the laws of this state; and

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(5) Any known creditors of the decedent residing or located in this state or who may claim a lien or interest against the real estate of the decedent situate in this state.

(d) Any person interested in the estate who objects to the filing of the foreign will or affidavit or objects to the absence of appointment or administration being made in this state shall file notice of an objection with the county commission within 60 days after the date of the first publication as required in subsection (a) of this section or within 30 days after service of the notice as required by subsection (c) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred. The county commission upon receiving any timely objection thereto shall schedule a hearing or hearings thereon and order relief, if any, it considers proper including, but not limited to, an order directing that full and complete ancillary administration of the estate of the nonresident decedent be made in this state.

(e) The clerk of the county commission shall collect a fee that is the amount of the publication of the notice required in this section.

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§44-1-15. Duty of personal representative; debt not extinguished by appointment of debtor as executor.

It shall be the duty of every personal representative to administer well and truly the whole personal estate of his decedent. The appointment of a debtor as executor shall not extinguish the debt.

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§44-1-16. When administrator de bonis non may administer assets for which former personal representative liable.

When the powers of a personal representative have ceased and an administrator de bonis non of the decedent's estate has been appointed and qualified, it shall be lawful for the personal representative whose powers have ceased, or his personal representative if he shall have died, to pay and deliver to such administrator de bonis non, or for him to demand, receive, and recover the assets of his decedent, whether converted or not, for which such former personal representative is responsible: Provided, however, That the administrator de bonis non shall have given, or shall give, a bond sufficient to cover the additional assets, so to be paid or delivered to him or so to be demanded and received by him The administrator de bonis non shall administer the same as assets received in due course of administration, and his receipt therefor shall be a voucher in the settlement of the accounts of the former personal representative, and shall exempt such former personal representative from all liability for any of such assets paid over and delivered to such administrator de bonis non. But this section shall not be construed as exempting such former personal representative and his sureties from liability for any breach of duty, with respect to such assets, committed by him before they were paid over and delivered by him as aforesaid.

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§44-1-17. Food and fuel for family.

The provisions and fuel (or so much thereof as may be necessary) which, at the death of any person, shall have been laid in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any livestock necessary for the food of the family may be killed for that use before the sale or distribution of the estate.

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§44-1-18. What estate not to be sold.

Unless it be necessary for the payment of funeral expenses, charges of administration or debts, the personal representative shall not sell estate which the will directs not to be sold.

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§44-1-19. Sale of goods likely to be impaired in value.

Of the goods not mentioned in the preceding section, other than such as are exempt by any provision of law, the personal representative shall, as soon as convenient, sell at public auction such as are likely to be impaired in value by keeping, giving a reasonable credit (except for small sums), and taking bond with good security.

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§44-1-20. When to sell other goods.

If the goods so sold be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell so much of the other goods and chattels as may be necessary to pay the same, having regard to the privilege of specific legacies.

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§44-1-21. Estate for life of another is assets.

Any estate for the life of another shall go to the personal representative of the party entitled to the estate, and be assets in his hands, and be applied and distributed as the personal estate of such party.

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§44-1-22. Suits by and against.

A personal representative may sue or be sued upon any judgment for or against, or any contract of or with, his decedent.

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§44-1-23. Actions for goods carried away, waste or damage to estate of or by decedent.

A civil action may be maintained by or against a personal representative for the taking or carrying away of any goods, or for the waste or destruction of, or damage to, any estate of or by his decedent.

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§44-1-24. Action for waste by representative.

A suit may be maintained against the personal representative of an executor in his own wrong, or the personal representative of a rightful executor or administrator by whom any waste may have been committed.

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§44-1-25. Administrator de bonis non may have scire facias.

Where a suit is pending or a judgment or decree has been rendered in this state in favor of a personal representative, upon a contract made or for a cause of action which accrued in the lifetime of the decedent, the administrator de bonis non of such decedent may sue forth a scire facias to have execution upon such judgment or decree, or to revive and prosecute to judgment or decree the suit so pending, if the personal representative who brought it could have maintained the same.

WV Legislature

§44-1-26. Action on bond of personal representative.

Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the surety in any bond given by such personal representative for the faithful discharge of his or her duties.

WV Legislature

§44-1-27. Not chargeable beyond assets; pleas allowed.

No personal representative or any surety of his shall be chargeable beyond the assets of the decedent by reason of any omission or mistake in pleading or false pleading of such representative. And in the action allowed by the preceding section the defendants may plead any pleas and offer any evidence which would be admissible in an action against a personal representative suggesting a devastavit.

WV Legislature

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

(a) When the State of West Virginia, any of its political subdivisions, the United States, or any employer owes wages, salary, pension payments, or money allowed for burial expenses to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the amount owed does not exceed $5,000, the State of West Virginia, any of its political subdivisions, the United States, or the decedent's employer, after 120 days from the death of the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect.

(b) When the Treasurer holds property in accordance with §36-8-1 *et seq*. of this code on behalf of a decedent upon whose estate there has been no qualification, and the amount of the property is $5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the Treasurer holds property in accordance with §36-8-1 *et seq*. of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of intestate descent and distribution.

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed $5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, after 120 days from the death of the decedent, that person may pay the amount owed to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, "person" includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.

(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

WV Legislature

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

(a) Subject to the requirements and conditions of subsection (b) of this section, a personal representative, trustee, administrator, or executor of a decedent or a decedent's estate is hereby granted the authority to:

(1) Sell a conservation or preservation easement under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq.* of this code;

(2) Donate a conservation or preservation easement under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq.* of this code; or

(3) Amend a conservation or preservation easement created prior to the decedent's death under §8A-12-1 *et seq*. of this code or §20-20-1 *et seq*. of this code and recorded on the decedent's real property as may be permitted by applicable law and the conservation or preservation easement.

(b) The personal representative, trustee, administrator, or executor shall ensure that the sale, donation, amendment, or transfer, of a conservation or preservation easement complies with the following:

(1) The proposed sale, donation, transfer or amendment satisfies the requirements set forth in the provisions of §20-12-8a of this code, as applicable to the particular easement;

(2) The proposed sale, donation, transfer, or amendment is to a qualified conservation organization or holder and the organization or holder agrees to accept the conservation or preservation easement; and

(3) The sale, donation, transfer, or amendment must meet one of the following conditions:

(A) In the case of an administrator of a decedent's intestate estate, all heirs with interests in the real estate affected provide written consent which shall be recorded with the easement; or

(B) In the case of a personal representative or executor of a decedent's testate estate, or the trustee of a trust, the will, trust, or other governing instrument authorizes or directs the personal representative, executor, or trustee to sell or donate a conservation or preservation easement; or

(C) The sale, donation, transfer, or amendment of the conservation or preservation easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the property.

WV Legislature

§44-1-30. Death certificate or other proof of death and residence may be required.

The clerk of the county commission may require a certified copy of a decedents death certificate or other proof of death and residence prior to fulfilling the clerk's responsibilities under this chapter.

WV Legislature

§44-1-31. Administration of oath; execution of bond.

An oath required in this chapter may be taken before any person authorized to administer oaths under the laws of this state or any other state. A bond may be executed, if not in person before the county clerk, before any person authorized to administer oaths under the laws of this state or any other state.

WV Legislature

§44-1A-1. Short title; definitions.

(a) This article may be cited as the West Virginia Small Estate Act.

(b) For the purposes of this article, the following definitions apply:

(1) "Authorized successor" means the successor of a decedent who files an affidavit and is certified and authorized by the clerk of the county commission or the fiduciary supervisor thereof, pursuant to the provisions of this article.

(2) "Interested Person" means heirs, devisees, distributees, legatees, children, spouses, or creditors of the decedent and beneficiaries and any others having a property right in or a claim against the estate of a decedent or property in a small estate. Interested persons include persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. An interested person may also include a bank, financial institution, credit union, or person that is holding assets related to the estate.

(3) "Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(4) "Small asset" means any probate personal property or asset belonging or presently distributable to the decedent having a fair market value on the decedent's date of death of not more than $50,000. A small asset includes, but is not limited to, cash, a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle. A small asset does not include real estate or an interest in real property. A small asset does not include a nonprobate asset of the decedent which would not be subject to administration in the decedent's probate estate.

(5) "Small estate" means a probate estate of a decedent who died domiciled in this state in which: (A) The total aggregate fair market value, on the decedent's date of death, of all probate personal property and all probate personal assets does not exceed $50,000; and (B) the total aggregate fair market value on the decedent's date of death of all real estate or interests in real property situate in this state of which the decedent owned or was seized or possessed does not exceed $100,000, excluding any real estate of the decedent which was held in any nonprobate form. For the purposes of this article, the fair market value of real estate shall be presumed to be 167 percent of the current assessed value of the real estate on the land books as reported by the assessor of the county in which the real estate is situate. It is provided, however, that a probate estate of a testate decedent in which the decedent's will provides for real estate devised to be sold and not a mere power to sell the

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decedent's real estate shall not be considered to be a small estate.

(6) "Successor" means any person, other than a creditor, who is nominated as a personal representative or executor under the provisions of the will of the decedent, or who is entitled under the provisions of the decedent's will or the laws of intestate descent and distribution of this state to a part or all of a small asset of the decedent.

WV Legislature

§44-1A-2. Administration of a small estate upon affidavit and without appointment.

(a) Notwithstanding any provisions of this code to the contrary, the small estate of a decedent who dies domiciled in this state, without owning any probate real property or without owning any interest in probate real property, may be administered upon affidavit and without the appointment of a personal representative, and the small assets of the decedent may be paid or delivered to the authorized successor as provided in this article.

(b) Any successor of a decedent who dies domiciled in this state, without owning any probate real property or without owning any interest in probate real property, may execute and tender for recording to the clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, of the county in this state which would have jurisdiction over the probate concerning the estate and assets of the decedent an affidavit made upon oath and under penalty of perjury concerning the small estate setting forth in substance:

(1) The name and current address of the affiant;

(2) The name of the decedent, the date of death of the decedent, and the address and residence of the decedent at his or her death;

(3) Whether the decedent had any known will, with the original of the known will to be attached to the affidavit and tendered for recording in the county as long as the will is in due and proper form for probate as a will in this state, or whether the decedent died intestate with no known will;

(4) A listing of the names, current addresses, and relationship to the decedent of any person nominated as a personal representative under the known will, together with a listing of the names, current addresses, and relationship to the decedent of the beneficiaries under the known will entitled to the estate or assets of the decedent. If there is no known will of the decedent, a listing of the names, current addresses, and relationship to the decedent of all of the intestate heirs-at-law and distributees of the decedent determined under the laws of intestate descent and distribution of this state;

(5) That the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, consists only of small assets and the aggregate fair market value of all of the small assets does not exceed $50,000, together with a description or itemization of the small assets with an estimate of value, if known or ascertainable;

(6) That if the successor is nominated as a personal representative or executor under the provisions of the will of the decedent, at least 30 days have elapsed since the decedent’s date of death and no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction. If the successor is not nominated as a personal representative or executor under the provisions of the will of the decedent, at least 60 days have elapsed since the decedent’s date of death, no application for the appointment of a personal representative for the decedent is pending or has been

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granted in any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a personal representative or executor under the provisions of the will of the decedent; and

(7) That the affiant will faithfully administer the small assets of the decedent in accordance with the law and pay or deliver the small assets to the successor or successors so entitled, after paying any known or ascertainable creditors of the decedent.

(c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or fiduciary supervisor shall record and index the affidavit, together with the original of any will tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration with appointment of a personal representative. The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, may require a certified copy of the decedent's death certificate or other proof of death and residence prior to fulfilling the responsibilities under this article.

(d) A bond, security, or oath is not required when an appointment of a personal representative is not made for a small estate under the provisions of this article.

(e) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this article:

IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

RE: THE ESTATE OF _____

DOD: _____

AFFIDAVIT FOR SMALL ESTATE

STATE OF _____,

COUNTY OF _____, to-wit:

I, _____, being a Successor of the Decedent identified below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is _____, and my current address is _____ _____.

2. The Decedent, _____, died on _____

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(date of death), a resident of _____ County, State of West Virginia, with his/her usual residence being

_____

_____. A certified death certificate has been furnished herewith for filing in this County. I am a Successor of the decedent as _____ (state relationship).

3. TESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

At the date of death, the Decedent died with an original Last Will and Testament of the Decedent dated _____, without any codicil thereto ( ) or with codicil(s) thereto dated _____ ( ) [Check if applies]. The aforesaid original Last Will and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this County as permitted by West Virginia Code § 44-1A-2(b).

Under the Last Will and Testament of the Decedent, the following person(s) is/are nominated to be the personal representative(s) of the Estate:

a. Name:_____

Address: _____

_____

b. Name:_____

Address: _____

_____

Pursuant to the provisions of the above referenced Will of the Decedent, the following persons are the named beneficiaries of the estate of the Decedent:

a. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

b. Name: _____

Address: _____

WV Legislature

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

c. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

d. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

e. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

(If more space is needed, attach additional page(s) to affidavit)

4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

At the date of death, the Decedent died intestate with no known will. The Decedent left as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: _____

Address: _____

WV Legislature

Relationship to Decedent: _____

Share or percentage: _____

b. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

c. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

e. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

(If more space is needed, attach additional page(s) to affidavit)

5. The Decedent's entire personal probate estate, as of the date of the Decedent's death, wherever located, consists only of small assets and the aggregate fair market value of the small assets does not exceed $50,000. The small assets of the Decedent are described and itemized as follows:

	Description	Fair Market value
a.		
b.		
c.		

WV Legislature

d.
e.
f.
Total

(If more space is needed, attach additional page(s) to affidavit)

6. The Decedent did not ( ) die seized and possessed of any probate real estate or interests in probate real estate in the state of West Virginia.

7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above Will of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction;

or

( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was NOT nominated as a personal representative or executor under the provisions of the above Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed since the Decedent’s date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit of Small Estate has been filed by a Successor nominated as a personal representative or executor under the provisions of the Will of the Decedent.

8. The undersigned Affiant will faithfully administer the small assets of the Decedent in accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

Witness my hand and seal this ____ day of _____, 20___.

WV Legislature

_____

Signature of Affiant/Successor

Taken, subscribed, and sworn to before me the undersigned authority by _____, this ____ day of _____, 20___.

{seal}

My Commission expires: _____

_____

Notary Public

(f) Upon acceptance and recording of the affidavit provided in this section, the county clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is nominated in an attached will, and the beneficiaries under the will when the decedent dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized successor who completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor or successors of the decedent entitled pursuant to the provisions of this article and the other laws of the state of West Virginia and with authority to faithfully perform the duties of the office necessary to collect and administer the small assets of the decedent including, but not limited to, making application for and executing receipts, assignments, transfers, releases, waivers, applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent concerning the small assets, pursuing litigation for or against the decedent or the decedent's estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

(g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or fiduciary supervisor any interested person in the estate of the decedent files a written objection with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report, and recommendation which may, among other things, revoke the certificate and authorization of small estate and require full and complete probate administration of the estate of the decedent in accordance with the other applicable provisions of this article. Upon any revocation of the certificate and authorization of small estate, the authorized successor shall provide an accounting and report of all payments or deliveries made of the small assets of the decedent.

(h) The authorized successor may act under the certificate and authorization of small estate issued under the provisions of this article for a period of six months from the date of the original issuance of the certificate and authorization but may, upon a showing of good cause

WV Legislature

in an application made to the county clerk or fiduciary supervisor, be granted an extension of an additional time period not to exceed six months upon issuance of an extended certificate and authorization of small estate to be issued by the county clerk or fiduciary supervisor.

(i) If at any time after the original issuance of the certificate and authorization by the county clerk or fiduciary supervisor, the authorized successor or an interested person determines that the probate estate of the decedent does not qualify as a small estate because the aggregate values of all of the small assets of the decedent exceed the values provided in this article, upon application by an interested person the county clerk or fiduciary supervisor shall rescind the certificate and authorization of the small estate and shall mail a written order of rescission to the authorized successor and other interested persons, and a probate under the other provisions of this article shall be commenced by an interested person.

WV Legislature

§44-1A-3. Payment or delivery of small assets to authorized successor.

(a) Any person having possession of a small asset of the decedent shall pay or deliver the small asset to the authorized successor of the decedent upon being presented the certificate and authorization of a small estate of the county clerk or fiduciary supervisor.

(b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver the small asset or assets to the successor or successors of the decedent entitled to the small asset as required by the laws of the State of West Virginia.

(c) The authorized successor may discharge his or her fiduciary duty concerning the payment or delivery of the small asset or assets by:

(1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;

(2) Paying or delivering the small asset to a successor entitled to the small asset who is sui juris; or

(3) For any successor entitled to the small asset who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the small asset to the successor's conservator or, if no conservator exists, guardian; to any custodian of an account for the successor under §36-7-1 *et seq*. of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult relative or other person having legal or physical care or custody of the successor to be expended on the successor's behalf directly to the incapacitated or disabled successor or applying it for the successor's benefit. Any successor may be represented and bound under the provisions of virtual representation set forth in §44D-3-1 *et seq*. of this code with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.

(d) Upon the presentation of the certificate and authorization of a small estate, the authorized successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate.

(e) A transfer agent of any security, upon the surrender of any certificate evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the successor entitled to the small asset upon the presentation of the certificate and authorization of small estate.

(f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the small assets constituting the small estate of the decedent is subsequently found to

WV Legislature

exceed $50,000.

(g) The authorized successor is liable to the successors of the decedent, including any personal representative subsequently appointed for the decedent's estate, for any breach of fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a small asset and causing injury to the entitled successor for a period of three years after the date of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary supervisor.

WV Legislature

§44-1A-4. Discharge and release of payor; treatment of real estate in a small estate.

(a) Any person paying or delivering a small asset pursuant to the provisions of this article is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. That person is not required to see the application of the small asset or to inquire into the truth of any statement in the affidavit or the certificate and authorization of a small estate presented under this article.

(b) If any person to whom the certificate and authorization of small estate is presented refuses to pay or deliver any small asset to the authorized successor, the small asset may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to the small asset in the magistrate court or circuit court of this state having jurisdiction.

(c) For any real estate or interest in real property of the decedent which is reported on the recorded affidavit provided in this article, the provisions of §44-8-5, §41-5-19 and §41-5-20 of this code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be duly admitted to probate. The authorized successor or a successor or creditor of a decedent in a small estate may within six months of the issuance of the certificate and authorization of small estate commence a proceeding in equity before the circuit court under the provisions of §44-8-7 of this code to subject real estate to the payment of debts when the small assets are insufficient for the payment thereof.

(d) Nothing in this article releases or discharges any claim which a creditor may have against the decedent, the decedent’s estate, or the assets of the decedent, and creditors of a small estate have the same rights provided under the provisions of §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

WV Legislature

§44-1A-5. Construction of article.

(a) The remedies provided by this article are in addition to, and not in exclusion of, any other remedies provided by the laws of this state.

(b) For any will attached to and tendered with the affidavit provided in this article, the provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an order of the county commission entered on the date of the issuance of the certificate and authorization of a small estate by the county clerk or fiduciary supervisor.

(c) Nothing in this article may be construed to affect or limit the right of a surviving spouse of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1 et seq. of this code.

WV Legislature

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributes, and any other matter necessary for the settlement of the estate: *Provided*, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than $300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in accordance with the provisions of §59-1-9 of this code.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisement. If an unpaid creditor files a claim against the estate, the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

(c) The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of §44-2-29 of this code; or (ii) make a report to the clerk of his or her receipts, disbursements, and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes, and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for 10 days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of $10 for recording and mailing the waiver of final settlement or report.

(d) If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: *Provided*, That the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner, and if all claims are approved as filed, then no reference may be made.

WV Legislature

(e) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

WV Legislature

§44-2-2.

Repealed.

Acts, 2015 Reg. Sess., Ch. 113.

WV Legislature

§44-2-3.

Repealed.

Acts, 2015 Reg. Sess., Ch. 113.

WV Legislature

§44-2-4. Mailing of notice to creditors, distributees and legatees.

When the fiduciary commissioner has fixed the time for presentation of claims, the personal representative shall file with such fiduciary commissioner a list of the names and post- office addresses of all known creditors of the estate and of all distributees and legatees, to each of whom the fiduciary commissioner shall cause a copy of such notice to be forwarded by United States mail, addressed according to such list. But failure to mail, or to receive, such notice shall not relieve any creditor, distributee or legatee of the duty to present and prove his claim as required by such notice, nor in any way affect the proceedings pursuant to such notice.

WV Legislature

§44-2-5. Claims to be proved by vouchers and affidavits in first instance.

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

WV Legislature

§44-2-6. Claims taken 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 commissioner 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 the commissioner a counter affidavit, denying the claim in whole or in part; and when said counter affidavit is so filed the commissioner shall 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 the commissioner, having held such hearing, does not allow any such claim, the claimant shall pay the expense 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.

WV Legislature

§44-2-7. Claims may be presented before publication of notice.

Claims against any decedent’s estate may be filed with or presented to the fiduciary commissioner to whom the estate has been referred, 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.

WV Legislature

§44-2-8. 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 commissioner or personal representative, as the case may be, 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 a fiduciary commissioner completes his report, then evidence of the same may be filed with the fiduciary commissioner in lieu of the contingent claim herein provided for, and such claim as fixed shall be a debt of the estate.

WV Legislature

§44-2-9. Continuances until all claims and objections passed on.

The commissioner may adjourn from time to time the hearing for the presentation of claims as well as the hearings for proof of disputed claims until all the presented claims and the objections to any claims be fully heard and passed on.

WV Legislature

§44-2-10. 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 commissioner shall ascertain and allow the balance against or in favor of the estate.

WV Legislature

§44-2-11. 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

§44-2-12. No claim barred by statute of limitations to be allowed.

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

WV Legislature

§44-2-13. Effect of presenting claim as to statute of limitations.

The filing with or presentation to the fiduciary commissioner or to the county clerk 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 a civil action or suit on such claim.

WV Legislature

§44-2-14. Advance payment of certain claims.

The fiduciary commissioner 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.

WV Legislature

§44-2-15. 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 or suit against any person, or from prosecuting to final judgment or decree any action or suit commenced by the deceased in his lifetime, if the cause of such action or suit survives, for the recovery of any debt or claim, or from having execution on any judgment or decree. The defendant in any such action or suit shall, notwithstanding he may have already filed his claim before a fiduciary commissioner, set off any claim he may have against the deceased, if proper to be allowed as a setoff; and if final judgment or decree shall be rendered in favor of the defendant, the same shall be certified by the clerk of the court rendering it to the 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 the fiduciary commissioner.

WV Legislature

§44-2-16. Fiduciary commissioner to report on claims of creditors, assets and shares of distributees and legatees.

After the completion of the hearings for the presentation of claims and for reception of proof for and against disputed claims, but not later than five months from the qualification of the personal representative, the fiduciary commissioner may, and upon motion of any interested person, shall prepare a report of claims against the estate, showing in such report all the claims presented, or exhibited in offset, or certified to the fiduciary commissioner 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 fiduciary 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 claim equal to what is allowed to other creditors of the same class, when payment of such claims shall become proper. Such report shall also 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.

WV Legislature

§44-2-16a. Apportionment of federal and state estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

(1) 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.

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

(3) 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.

(4) 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.

(5) 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.

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

WV Legislature

§44-2-17. How contingent and unliquidated claims and claims not matured may be provided for.

The fiduciary commissioner 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 to and proved before the fiduciary commissioner, 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 claims not matured mature, as the case may be, at which time such assets shall be disbursed or distributed as the 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 clerk thereof during the recess of the commission, 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 clerk's office 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.

WV Legislature

§44-2-18. Exceptions to fiduciary commissioner's report; return of report.

After preparing a report of claims as hereinafter provided, 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 and the evidence taken in connection therewith in his office for ten days for the examination of parties interested. Any party may inspect such report and evidence and file exceptions thereto before said fiduciary commissioner; and the fiduciary 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. After the expiration of such ten days the fiduciary commissioner shall return the report, evidence, exceptions and remarks to the county commission, and until the report is acted upon by the county commission it shall be subject to further exceptions by the same or other parties interested.

WV Legislature

§44-2-19. Hearing on report and exceptions; appeal; effect of confirmation.

The hearing on the report of claims returned by a 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 county 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 fiduciary commissioner and on order of the county commission. After the report of the fiduciary 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.

WV Legislature

§44-2-19a. Reports of delinquent filings and administrative closing of unprogressed estates.

(a) On the last day of December and June of each year every fiduciary commissioner shall file with the county clerk 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 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 same was due to be filed: Provided, That the commissioner shall omit from such 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 county clerk shall file with the county commission a like list of estates 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 such month by the various commissioners. In the report filed July 5 of each year the county clerk 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 shall, upon the presentation by the county clerk 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 county clerk to the personal representative at the last known address appearing in the records of the county clerk and a copy thereof 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 county clerk.

(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 such 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 county clerk upon review finds and determines does not present good cause, the county clerk shall give notice of such 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 such 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 county clerk shall publish as a Class I-0 legal advertisement, a notice thereof.

(4) The personal representative or any person interested may file objection thereto at or prior to the time set by such notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of such proposed removal or closing and findings and hear interested parties, if any appear, and may enter such appropriate order to approve, modify and approve, or refuse to approve such proposed removal or closing and the findings of the county clerk. An appeal from the decision of such 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 county clerk and the county commission.

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

WV Legislature

§44-2-20. 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 court, shall be recorded by the clerk of the county court in his office.

WV Legislature

§44-2-21. 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.

WV Legislature

§44-2-22. Creditors to be paid in order of classification; when classes paid ratably.

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 six 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 or presentation thereof to the fiduciary commissioner within the time allowed by law.

WV Legislature

§44-2-23. When personal representative not liable for funds distributed.

If any personal representative after six months from the qualification of the first executor or administrator of the estate, and after the report of claims, if any, has been made by the fiduciary commissioner and been confirmed by the county commission, and after withholding such funds as the 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 fiduciary commissioner's report as confirmed, if any, or according to law in case of intestacy or according to the will, if any, 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 or for suing thereon, such claim was duly presented or action or suit thereon commenced and process served on such personal representative.

WV Legislature

§44-2-24. When claims and legacies may be paid and estate distributed.

After the report of a fiduciary commissioner, if any, on the claims against the estate of any decedent has been confirmed as aforesaid, and after six months from the time of the qualification of the first executor or administrator shall have elapsed, the personal representative may pay the claims allowed by the fiduciary 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 the fiduciary commissioner's report, or as directed by the fiduciary commissioner, and pay legacies and distribute the surplus among the parties entitled thereto in the amounts and proportions determined by the fiduciary commissioner 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 one month 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 a civil action against such personal representative to compel payment and distribution as provided by section twenty-two, article four of this chapter.

WV Legislature

§44-2-24a. 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 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 said fiduciary 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.

WV Legislature

§44-2-25. 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 six months from the date of the order conferring authority on the first executor or administrator of such decedent, and not then unless the report of claims against the estate made by the fiduciary commissioner has been confirmed, and no appeal has been taken from the county commission's order of confirmation.

WV Legislature

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

Every person including the State Tax Commissioner, having a claim against a deceased person, whether due or not, who has not, after notice to creditors has been published as prescribed in this article, presented his claim on or before the time fixed in such notice, or before that time has not instituted a civil action or suit 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 against the personal representative in any action or suit whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action or suit 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 had no actual notice of the publication to creditors nor knowledge of any proceedings before the fiduciary commissioner, such creditor may prove his 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 commissioner shall reopen his report if the same has not been returned to the county commission, or if returned, shall make and return a supplemental report: Provided, That, as to real estate, the provisions of subsection (b), section one of this article shall apply.

WV Legislature

§44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.

(a) Every creditor who has not presented his claim to the fiduciary commissioner before distribution of the surplus by the personal representative, or before that time has not instituted a civil action or suit thereon against the personal representative, may, if not barred by limitation, bring a civil 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 civil action.

(b) Any creditor of a deceased person upon whose estate there is no administration pursuant to subsection (b), section one of this article, may, if not barred by limitation, bring a civil action against the sole beneficiary at any time within two years after recordation of the appraisement.

WV Legislature

§44-2-28. When enforcement of lien to secure claim barred.

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

WV Legislature

§44-2-29. Waiver of final settlement.

(a) In all estates of decedents subject to administration under this article where a release of lien, if required by the provisions of §11-11-1 *et seq*. of this code, has been filed with the clerk and more than 90 days have elapsed since the filing of any notice required by the provisions of this article, even though such estate may have been referred to a fiduciary commissioner, a final settlement may be waived by a waiver containing an affidavit made by the personal representative, that the time for filing of claims has expired, that no known and unpaid claims exist against the estate, and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate. Each beneficiary shall sign the waiver unless the beneficiary receives a bequest of tangible personal property or a bequest of cash.

(b) In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of the beneficiary may sign in lieu of the beneficiary. A fiduciary or agent signing the waiver shall be responsible to the beneficiary for any loss resulting from the waiver.

(c) The waiver shall be recorded as in the case of and in lieu of a settlement as provided in §44-2-1 *et seq*. of this code.

WV Legislature

§44-3-1. Fiduciary commissioners.

The office previously known as commissioner of accounts is hereby abolished. The office of fiduciary commissioner is hereby created and any reference in this code to a commissioner of accounts shall, after the effective date of this section, mean fiduciary commissioner. Fiduciary commissioners shall be attorneys admitted to the practice of law in this state or shall meet the qualifications of fiduciary supervisors as set forth in §44-3A-1 *et seq.* of this code.

The county commission of each county shall appoint not more than four fiduciary commissioners. In counties in which there exists a separate tribunal for police and fiscal purposes, that tribunal shall appoint the fiduciary commissioners.

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 are observed including, if necessary, the removal of fiduciary commissioners who consistently fail to meet the deadlines.

WV Legislature

§44-3-2. Fiduciary commissioners; powers and duties generally.

The fiduciary commissioners shall have general supervision 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. Fiduciary commissioners shall have power to summon and compel the attendance of witnesses, to swear and examine witnesses, take their depositions and certify their testimony, and the costs thereof may be charged as expenses of administration of the estate subject to administration.

WV Legislature

§44-3-3. Special fiduciary commissioners.

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, the county commission or tribunal referred to in section one of this article, may appoint some other person to act as to such matter or matters. That person shall have the power and compensation and perform the duties of a fiduciary commissioner. When any fiduciary commissioner resigns, or is removed, the county commission or tribunal may provide for the completion of the matters previously referred to that commissioner.

WV Legislature

§44-3-4. Matters that will disqualify fiduciary commissioner.

No person shall perform the duties of a 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 account 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. Upon conviction he shall also forfeit the office of fiduciary commissioner.

WV Legislature

§44-3-5. Disposition by fiduciary commissioner of inventories.

The clerk of the county commission shall inspect all appraisements of sales returned to him by fiduciaries, require the same to be executed in quadruplicate and in proper form, and, within ten days after they are respectively approved and recorded by him deliver one copy thereof to the fiduciary commissioner and mail one copy to the Tax Commissioner of West Virginia. Any fiduciary 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.

WV Legislature

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries.

Each fiduciary commissioner shall, at least once each month, ascertain from the records of the county commission of his county what estates and fiduciary matters have been referred to him by the county commission, or the clerk thereof since the fiduciary commissioner's last inspection of the records. He shall examine, as to each fiduciary, in any such estate or matter, whether the fiduciary has given bond as the law requires, and, if it appears that he has given no bond, or that his bond is defective, or that the surety thereon has removed from the state, died, or become insolvent, or is bound already in too many other bonds, the fiduciary commissioner shall make report thereof to his county commission at its next term. He shall also have the fiduciary summoned to appear at that term to show cause why he should not give such bond as is required by law. At that term the fiduciary shall be required forthwith to give such bond as is required by law, or shall have his authority revoked. Until a fiduciary has fully administered the estate under his charge, and made his final account, the fiduciary commissioner shall annually make inspections of the bonds of that fiduciary, and make reports thereof. He shall issue a summons whenever the circumstances require, and the commission shall make an order as may be warranted by the facts then determined. An appeal from the order of the county commission shall lie to the circuit court of the county. An appeal may be taken 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 the order was made. When an 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.

WV Legislature

§44-3-7. 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 qualification 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 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 the commissioner's finding of fact and law, and the commission shall hear the case on the 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 is applicable, governing commissioners in chancery.

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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

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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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

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.

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

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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.

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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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§44-5-12.

Repealed.

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

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§44-5-13.

Repealed.

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

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§44-5-14.

Repealed.

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

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§44-5-15.

Repealed.

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

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§44-5A-1. Definition.

As used in this article, the term “fiduciary” means the one or more executors of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, whichever in a particular case is appropriate.

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§44-5A-2. Incorporation by reference of enumerated powers by testator; restriction on exercise of powers.

(a) After June 30, 2011, by an intention of the testator expressed in a will, any or all of the powers or any portion of the powers enumerated in section three of this article, as they exist at the time of the signing of the will by the testator may be, by appropriate reference made thereto, incorporated in the will, with the same effect as though the language were set forth verbatim in the instrument. Incorporation of one or more of the powers contained in section three of this article by reference to that section is in addition to and not in limitation of the common law or statutory powers of the fiduciary.

(b) No power of authority conferred upon a fiduciary as provided in this article may be exercised by the fiduciary in a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, or operate to impose a tax upon a donor or testator or other person as owner of any portion of the trust or estate involved. “Tax” includes, but is not limited to, any federal, state, or local income, gift, estate or inheritance tax.

(c) Nothing in this section prevents the incorporation of the powers enumerated in section three of this article in any other kind of instrument or agreement.

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§44-5A-3. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference by a testator in the will as provided in section two of this article and the following powers apply without the need for incorporation by reference to trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code:

(a) Retain original property. -- To retain for the time the fiduciary considers advisable any property, real or personal, which the fiduciary may receive, even though the retention of the property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision.

(b) Sell and exchange property. -- To sell, exchange, give options upon, partition or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, with or without order of court, at public or private sale or otherwise, upon the terms and conditions, including credit, and for the consideration the fiduciary considers advisable, and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust; and the party dealing with the fiduciary is not under a duty to follow the proceeds or other consideration received by the fiduciary from the sale or exchange.

(c) Invest and reinvest. -- To invest and reinvest, as the fiduciary considers advisable, in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or in annuity contracts for any beneficiary, in any real or personal property, in investment trusts; in participations in common trust funds, and generally in property the fiduciary considers advisable, even though the investment is not of the character approved by applicable law but for this provision.

(d) Invest without diversification. -- To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one type or of one company than would be considered appropriate for the fiduciary apart from this provision.

(e) Continue business. -- To the extent and upon terms and conditions and for the periods as the fiduciary considers necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form of organization, including, but not limited to, the power:

(1) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(2) To dispose of any interest therein or acquire the interest of others therein;

(3) To contribute thereto or invest therein additional capital or to lend money thereto, in any

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case upon terms and conditions the fiduciary approves from time to time;

(4) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole; and

(5) In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it is not necessary to itemize receipts and disbursements and distributions of property but it is sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary is permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(f) Form corporation or other entity. -- To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of the corporation or entity, and to continue to hold the stock and securities and obligations.

(g) Operate farm. -- To continue any farming operation received by the fiduciary pursuant to the will or other instrument and to do any and all things considered advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including, but not limited to, the following powers:

(1) To operate the farm with hired labor, tenants or sharecroppers;

(2) To lease or rent the farm for cash or for a share of the crops;

(3) To purchase or otherwise acquire farm machinery and equipment and livestock;

(4) To construct, repair and improve farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;

(5) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting or marketing, or for the construction, repair or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;

(6) To employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil;

(7) To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;

(8) To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

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(9) To engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant pastures and crops necessary to carry on the operations;

(10) To market the products of the farm; and

(11) In general, to employ good husbandry in the farming operation.

(h) Manage real property. -- (1) To improve, manage, protect and subdivide any real property;

(2) To dedicate or withdraw from dedication parks, streets, highways or alleys;

(3) To terminate any subdivision or part thereof;

(4) To borrow money for the purposes authorized by this subdivision for periods and upon terms and conditions as to rates, maturities and renewals the fiduciary considers advisable and to mortgage or otherwise encumber any property or part thereof, whether in possession or reversion;

(5) To lease any property or part thereof to commence at the present or in the future, upon terms and conditions, including options to renew or purchase, and for such period or periods the fiduciary considers advisable although the period or periods may extend beyond the duration of the trust or the administration of the estate involved;

(6) To make coal, gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(7) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(8) To modify, renew or extend leases;

(9) To employ agents to rent and collect rents;

(10) To create easements and release, convey or assign any right, title or interest with respect to any easement on the property or part of the property;

(11) To erect, repair or renovate any building or other improvement on the property, and to remove or demolish any building or other improvement, in whole or in part; and

(12) To deal with the property and every part of the property in all other ways and for other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this subdivision.

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(i) Pay taxes and expenses. -- To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.

(j) Receive additional property. -- To receive additional property from any source and administer the additional property as a portion of the appropriate trust or estate under the management of the fiduciary but the fiduciary is not required to receive the property without his or her consent.

(k) Deal with other trusts. -- In dealing with one or more fiduciaries:

(1) To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his or her spouse or any child of his or her has created, for estates and upon terms and conditions as to sale price, terms of payment, and security as the fiduciary considers advisable; and the fiduciary is under no duty to follow the proceeds of any such sale; and

(2) To borrow money for periods and upon terms and conditions as to rates, maturities, renewals and securities the fiduciary considers advisable from any trust created by the decedent, his or her spouse, or any child of his or her, for the purpose of paying debts of the decedent, taxes, the costs of the administration of the estate, and like charges against the estate, or any part thereof, or discharging the liability of any fiduciary thereof and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans and to renew the loans.

(l) Borrow money. -- To borrow money for periods and upon terms and conditions as to rates, maturities, renewals, and security the fiduciary considers advisable, including the power of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser.

(m) Make advances. -- To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary has a lien on the assets of the trust or estate as against a beneficiary.

(n) Vote shares. -- To vote shares of stock owned by the estate or any trust at stockholders meetings in person or by special, limited or general proxy, with or without power of substitution.

(o) Register in name of nominee. -- To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship so that title to the security may pass by

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delivery, but the fiduciary is liable for any act of the nominee in connection with the stock so held.

(p) Exercise options, rights and privileges. -- To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages or other property into other stocks, bonds, debentures, notes, mortgages or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages or other property; and to hold the stocks, bonds, debentures, notes, mortgages or other property so acquired as investments of the estate or trust so long as the fiduciary considers advisable.

(q) Participate in reorganizations. -- To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders or bondholders protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to the plan; and to receive as investments of an estate or any trust any securities issued as a result of the execution of the plan.

(r) Reduce interest rates. -- To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(s) Renew and extend obligations. -- To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon terms the fiduciary considers advisable, without regard to the value of the security, if any, at the time of the continuance.

(t) Foreclose and bid in. -- To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust or other lien securing the bond, note or other obligation, and to bid in the property at the foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(u) Insure. -- To carry insurance coverage, including public liability, for hazards and in amounts, either in stock companies or in mutual companies, as the fiduciary considers advisable.

(v) Collect. -- To collect, receive and receipt for rents, issues, profits, and income of an estate or trust.

(w) Litigate, compromise or abandon. -- To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust as

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the fiduciary considers advisable, and the fiduciary's decision is conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by those persons; and in the absence of fraud, bad faith or gross negligence of the fiduciary, is conclusive between the fiduciary and the beneficiaries of the estate or trust.

(x) Employ and compensate agents, etc. -- To employ and compensate, out of income or principal or both and in proportion as the fiduciary considers advisable, persons considered by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct or default of the agent or representative as long as he or she was selected and retained with due care on the part of the fiduciary.

(y) Acquire and hold property of two or more trusts undivided. -- To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses: Provided, That the provisions of this subdivision do not defer the vesting in possession of any share or part of share of the estate or trust.

(z) Establish and maintain reserves. -- To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements and general maintenance of buildings or other property out of rents, profits or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries: Provided, That the provisions of this subdivision do not affect the ultimate interests of beneficiaries in the reserves.

(aa) Distribute in cash or kind. -- To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there is more than one distributee thereof, which determination is binding upon the distributees unless clearly capricious, erroneous and inequitable: Provided, That the fiduciary may not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

(bb) Pay to or for minors or incompetents. -- To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

(1) Directly to the minor or incompetent;

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(2) To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital or other institutional care of the minor or incompetent;

(3) To the legal or natural guardian of the minor or incompetent;

(4) To any other person, whether or not appointed guardian of the person by any court, who does, in fact, have the care and custody of the person of the minor or incompetent.

The fiduciary is not under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made; and the receipt of the person is full acquittance to the fiduciary.

(cc) Apportion and allocate receipts and expenses. -- Where not otherwise provided by statute to determine:

(1) What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary’s discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

(2) Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary considers advisable; and

(3) What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions.

(dd) Make contracts and execute instruments. -- To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this section.

(ee) The foregoing powers are limited as follows for any trust which is classified as a "private foundation" as that term is defined by section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation) or nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (but only to the extent that section 508(e) of the code is applicable to the nonexempt split-interest trust under section 4947(a)(2)):

(1) The fiduciary shall make distributions of amounts, for each taxable year, at times and in a manner as not to become subject to the tax imposed by section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

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(2) No fiduciary may engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(3) No fiduciary may retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(4) No fiduciary may make any investments in a manner as to subject the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(5) No fiduciary may make any taxable expenditures as defined in section 4945(e) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

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§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

A policy of life insurance may contain a designation of a beneficiary, a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of the insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within the one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to any other named beneficiary other than the estate of the insured, and are not considered as payable to the estate of the insured for any purpose. The insurance proceeds so held in trust may be commingled with any other assets which may properly come into the trust as provided in the will. Enactment of this section does not invalidate previous life insurance policy designations naming trustees of trusts established by will.

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§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and if any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator's or grantor's death, the fiduciary shall allocate to the bequest or trust a prorata share of the income earned by the estate of the testator or grantor or other fund from which the bequest or trust is to be funded between the date of death of the testator or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will, trust or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust and is authorized to satisfy the bequest or transfer by selection and distribution of assets in kind, and the will, trust or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will, trust or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer. This section does not apply to prevent a fiduciary from carrying into effect the provisions of the will, trust or other governing instrument that the fiduciary, in order to implement the bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) (1) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust is authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of the bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of the bequest or transfer in trust and any such agreement heretofore entered into after April 1, 1964, is hereby validated. The fiduciary is authorized to enter into any other agreement not in conflict with the express terms of the will, trust or other governing instrument that may be necessary or advisable in order to secure for federal estate tax

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purposes the appropriate marital deduction or other deduction or exemption available under the Internal Revenue laws of the United States of America, and to do and perform all acts incident to that purpose.

(2) Unless ordered by a court of competent jurisdiction, the bank or trust company operating a common trust fund, as provided in section six of this article, is not required to render an accounting with regard to the fund, before any fiduciary commissioner but it may, by application to the circuit court of the county in which is located the principal place of business of the bank or trust company, secure the approval of an accounting in the condition the court may fix: Provided, That nothing in this section relieves a fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of the interest.

(d) The fiduciary of any trust created by will, trust or other governing instrument may from time to time without need of court approval to divide the trust or trusts for purposes of the generation skipping transfer tax ("GST") of section 2601 of the Internal Revenue Code of 1986, as in effect on January 1, 2010, or any similar or successor law of like import, or for any other tax, administrative or other purposes. In exercising this authority for inclusion ratio, marital deduction election, reverse qualified terminal interest property election or other GST or other tax purposes, the power shall be exercised in a manner that complies with applicable Internal Revenue Code Treasury Regulations or other requirements for accomplishing the intended purposes. If that division is made for purposes of separating assets with respect to which the federal estate tax marital deduction election is to be made from those as to which the election is not to be made, the division shall be done on a fractional or percentage basis and the assets of the trust or other fund to be divided shall be valued for purposes of the division on the date or dates of division.

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§44-5A-6. Restrictions on exercise of power for fiduciary' benefit.

(a) A power conferred upon a person in his or her capacity as fiduciary to make discretionary distributions of principal or income to himself or herself or to make discretionary allocations in his or her favor of receipts or expenses between income and principal cannot be exercised by him or her. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c) of this section this section applies to all trusts now in existence and to all trusts which are created later.

(b) Unless either: (1) Mandatory; (2) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary; or (3) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.

(c) This section does not apply to trusts that come into existence or are amended after the effective date of this section which show a clear intent that this section does not apply.

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§44-5A-7. Powers of fiduciaries regarding environmental laws.

(a) For purposes of this section:

(1) "Environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;

(2) "Hazardous substance" means any substance defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as amended and in effect on January 1, 2010, and regulations promulgated thereunder;

(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] as in effect on January 1, 2010, and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting the property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary: Provided, That the refusal does not limit the liability of the trust or estate or its income or principal, for any liability the trust or estate may otherwise have in connection

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with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law.

(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

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§44-5B-1. Short title.

This article may be cited as the West Virginia Uniform Fiduciary Access to Digital Assets Act.

WV Legislature

§44-5B-2. Definitions.

In this article:

“Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;

“Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney;

“Carries” means engages in the transmission of an electronic communication;

“Catalogue of electronic communications” means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

“Conservator” means a person appointed by a court to manage the estate and financial affairs of a protected person. The term includes a limited conservator and temporary conservator;

“Content of an electronic communication” means information concerning the substance or meaning of the communication which:

(1) Has been sent or received by a user;

(2) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(3) Is not readily accessible to the public;

“Court” means the circuit court of the county having jurisdiction over the fiduciary or designated recipient;

“Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user;

“Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user;

“Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability, unless the asset or liability is itself an electronic record;

“Electronic” means relating to technology having electrical, digital, magnetic, wireless,

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optical, electromagnetic, or similar capabilities;

“Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12);

“Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication;

“Fiduciary” means an original, additional or successor personal representative, conservator, agent, or trustee;

“Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like;

“Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

“Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity;

“Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this article;

“Power of attorney” means a record that grants an agent authority to act in the place of a principal;

“Principal” means an individual who grants authority to an agent in a power of attorney;

“Protected person” means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending;

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

“Remote computing service” means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. § 2510(14);

“Terms of service agreement” means an agreement that controls the relationship between a user and a custodian;

“Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee;

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"User" means a person that has an account with a custodian; and

"Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

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§44-5B-3. Applicability.

(a) This article applies to:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this article;

(2) A personal representative acting for a decedent who died before, on, or after the effective date of this article;

(3) A conservatorship proceeding commenced before, on, or after the effective date of this article; and

(4) A trustee acting under a trust created before, on, or after the effective date of this article.

(b) This article applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(c) This article does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

WV Legislature

§44-5B-4. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under §44B-5B-3(a) of this code or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under §44-5B-4(a) or §44-5B-4(b) of this code overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

WV Legislature

§44-5B-5. Terms of service agreement.

(a) This article does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This article does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or a designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under §44-5B-4 of this code.

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§44-5B-6. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this article, the custodian may at its sole discretion:

(1) Grant a fiduciary or designated recipient full access to the user's account;

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this article.

(c) A custodian need not disclose under this article a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this article some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) A subset limited by date of the user's digital assets;

(2) All of the user's digital assets to the fiduciary or designated recipient;

(3) None of the user's digital assets; or

(4) All of the user's digital assets to the court for review in camera.

WV Legislature

§44-5B-7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative;

(d) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(e) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) Evidence linking the account to the user; or

(3) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-7(e)(1) of this code;

(B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 et seq., 47 U.S.C. § 222, or other applicable law;

(C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

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§44-5B-8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications of the user, if the personal representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) Evidence linking the account to the user;

(3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-8(d)(1) of this code; or

(B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

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§44-5B-9. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) Evidence linking the account to the principal.

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§44-5B-10. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal’s account; or

(2) Evidence linking the account to the principal.

WV Legislature

§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust instrument, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

WV Legislature

§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust instrument, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013 of this code that includes consent to disclose the content of electronic communications to the trustee;

(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) Evidence linking the account to the trust.

WV Legislature

§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013 of this code;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

WV Legislature

§44-5B-14. Disclosure of digital assets to conservator of protected person.

(a) After an opportunity for a hearing under §44A-1-1 et seq. of this code, the court may grant a conservator access to the digital assets of a protected person.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(B) Evidence linking the account to the protected person.

(c) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

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§44-5B-15. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) The duty of care;

(2) The duty of loyalty; and

(3) The duty of confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in §44-5B-4 of this code, is subject to the applicable terms of service;

(2) Is subject to other applicable law, including copyright law;

(3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) May not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

(e) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) Has the right to access the property and any digital asset stored in it; and

(2) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied

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by:

(1) If the user is deceased, a certified copy of the death certificate of the user;

(2) A certified copy of the letter of appointment of the representative, court order, power of attorney, or trust instrument giving the fiduciary authority over the account; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in §44-5B-15(g)(1) of this code.

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§44-5B-16. Custodian compliance and immunity.

(a) Not later than 60 days after receipt of the information required under §44-5B-7 through §44-5B-15 of this code, a custodian shall comply with a request under this article from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under §44-5B-16(a) of this code directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this article.

(d) A custodian may deny a request under §44-5B-1 et seq. of this code from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) This article does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under §44-5B-1 et seq. of this code to obtain a court order which:

(1) Specifies that an account belongs to the protected person or principal;

(2) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) Contains a finding required by law other than this article.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this article.

WV Legislature

§44-5B-17. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§44-5B-18. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

WV Legislature

§44-5B-19. Severability.

If any provision of §44-5B-1 et seq. of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

WV Legislature

§44-6-1. Fiduciaries to put money out at interest.

(a) Executors, administrators, guardians, curators, committees or trustees may, by direction of the circuit court of the county, where they were appointed or qualified, put out at interest all moneys in their hands which they are or may be lawfully required to retain, whether it belongs to minors, legatees or other person or persons, upon security, and for the length of time, as the court will allow, and if the security so taken, bona fide and without fraud, proves insufficient, it is the loss of the beneficiaries entitled thereto; and it is the duty of the executors, administrators, guardians, curators, committees or trustees, in cases where the estates in their hands may be materially benefited thereby, to make application to the circuit court for direction, and in case they neglect so to do they are accountable for the interest that might have been made thereby; but if no person who may be willing to take the money at interest, giving the security, can be found by the executors, administrators, guardians, curators, committees or trustees, then the executors, administrators, guardians, curators, committees or trustees, in those cases, are accountable for the principal money only, until it can be put out at interest as aforesaid; but in any case where executors, administrators, guardians, curators, committees or trustees use the money of the estates which come to their hands, they are accountable not only for the principal, but also for the interest thereon.

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

WV Legislature

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee or other fiduciary whose duty it may be to loan or invest money entrusted to him or her as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein: Provided, That except as otherwise provided in article six-c of this chapter, the fiduciary shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Farm Credit Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the Federal National Mortgage Association, securities issued by the Federal Home Loan Bank System; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the "International Bank for Reconstruction and Development" or by the "Inter-American Development Bank" or by the "Asian Development Bank" or by the "African Development Bank";

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of the investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of the state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since May 9, 1917;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by the mortgage or trust deed does not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value is the higher, of the real estate covered by the mortgage or trust deed, and when the mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgagor when making the mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his or her interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision, in which the investments may be made, may not be less than three and one-half percent per annum nor greater than the maximum rate of interest which the bonds or

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negotiable notes may bear under applicable law: Provided, however, That the provisions herein establishing a minimum rate of interest do not apply to investments in force as of the effective date of this section;

(f) In savings accounts and time deposits of bank or trust companies to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created, if there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon the savings accounts or time deposits may not be less than the rate paid other depositors in the bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that the shares are insured by the Federal Savings and Loan Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon the shares may not be less than the rate paid to other shareholders in the associations; and

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States, including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness and shares of common and preferred stocks of the corporations and securities of any open end or closed end management type investment company or investment trust registered under the "Federal Investment Company Act" of 1940, as from time to time amended, which persons of prudence, discretion and intelligence acquire or retain for their own account, as long as:

(1) An investment may not be made pursuant to the provisions of this subdivision which, at the time the investment is made, will cause the aggregate market value thereof to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by the fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision may be reinvested in any securities of the type described in this subdivision;

(2) Bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of the corporations may not be purchased under authority of this subdivision unless the obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the "Interstate Commerce Act", as amended, are obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the Securities and Exchange Commission; and

(3) Common or preferred stocks, other than bank and insurance company stocks, may not be purchased under authority of this subdivision unless currently fully listed and registered upon an exchange registered with the Securities and Exchange Commission as a national securities exchange. A sale or other liquidation of any investment may not be required solely

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because of any change in the relative market value of those investments made eligible by this subdivision and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subdivision, a fiduciary may rely upon published market quotations as to those investments for which the quotations are available, and upon such valuations of other investments as in the fiduciary's best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, or if the trust funds originally received were stock or securities of a bank, in shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of the bank; unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created directs that a change of investment be made, and any such fiduciary is not liable for any loss that may occur by depreciation of the securities.

This section does not apply where the instrument creating the trust, or the last will and testament of any testator or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every the court has power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with the special direction is legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary may be held for any loss resulting in any such case.

This section does not apply to trusts or trustees.

WV Legislature

§44-6-2a.

Repealed.

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

WV Legislature

§44-6-3. Authority for investment.

When any fiduciary desires the authority or direction of the circuit court with respect to the investment of any funds in his hands, he shall file his petition in the circuit court of the county in which he qualified, setting out fully the facts, and verifying such petition by his affidavit. Ten days' notice of the time fixed for the hearing on the petition shall be served on the beneficiaries of such trust funds, who shall be made defendants thereto, and, for any who may be under disability, a guardian ad litem shall be appointed. Such guardian ad litem shall answer the petition under oath, and be present at the hearing and represent the interests of the person or persons for whom he shall have been appointed guardian ad litem. The matters arising on such petition may be heard upon affidavits, or depositions duly taken and returned, or upon oral testimony. The court upon the hearing may make such order in relation to the investment of the trust funds as may be to the best interests of the beneficiaries thereof. Such petition may be filed, and the hearing thereon had, by the judge of the court in vacation, as well as by the court in term time.

WV Legislature

§44-6-4. Beneficiaries may have fiduciary instructed by court as to investments.

The circuit court of the county where any fiduciary qualified, or the judge of such court in vacation, may, on the application of any person interested in the estate or trust in charge of such fiduciary, after ten days' notice to such fiduciary and all other persons interested therein, authorize or require the fiduciary to sell and transfer any securities, or any other personal estate or effects, held by him in his fiduciary capacity, and to invest the proceeds of such sale, and also any other moneys in his hands, in other securities, or in any other manner that shall to the court be deemed best for the interests of all concerned therein; and such circuit court or judge may make such further orders, and give such directions, as the case may require, for managing, investing and disposing of the estate and effects in the hands of the fiduciary.

WV Legislature

§44-6-5. Application to circuit court for directions regarding estate held to meet a contingency.

Whenever, under the provisions of a will, it shall be necessary for the personal representative to retain in his hands the personal estate, or any part thereof, after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period, or upon a contingency, the circuit court of the county in which such personal representative qualified, or the judge of such court in vacation, shall have the power, on the application of such personal representative, or of a party interested, after ten days' notice to all parties interested in the retained funds or estate, to decree and give directions thereto; and in any such case it shall be the duty of such personal representative to make such application to such court, or judge thereof in vacation; and such court, or judge thereof in vacation, shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose, in what manner it shall be disposed of, how the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from being unproductive, and how it shall be applied, agreeably to the intent of the will or the construction of law, in case the contingency shall not take place.

WV Legislature

§44-6-6. Establishment of common trust funds; investments.

(a) Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing, or making available, investments to itself as fiduciary, or to itself and others, as cofiduciaries, and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating its fiduciary status or relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment: Provided, That unless such fiduciary acquiring or holding any interest in any common trust fund is specifically permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship to invest in securities other than those described in section two of this article, or any amendments or reenactments thereof, such common trust funds shall be invested only in those securities described in said section two and subject to the limitations and conditions of said section, and any amendments or reenactments thereof, except that a common trust fund or funds may be established for the purchase of securities of the type described in said section two without regard to the percentage limitation specified in subparagraph (1), subdivision (h) of said section two, in which event the funds invested by a fiduciary in interests in such last mentioned common trust fund or funds shall not exceed the percentage limitation specified in said subparagraph (1), subdivision (h) unless a larger investment is permitted by the instrument, judgment, decree or order creating the fiduciary status or relationship.

(b) Any bank or trust company qualified to act as a fiduciary in this state may establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by any bank or trust company qualified to act as fiduciary in this state which is owned or controlled by a bank holding company which owns or controls such establishing bank or trust company. Any such commonly owned or controlled bank or trust company may, as fiduciary or cofiduciary with others, invest funds which it holds in common trust funds so established and maintained. The restrictions contained in subsection (a) of this section shall apply to the establishment, maintenance and investment of common trust funds under this subsection.

WV Legislature

§44-6-7. Accounting required of fiduciaries as to common trust funds.

Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust fund, as provided for in section six of this article, shall not be required to render an accounting with regard to such fund, before any commissioner of accounts, but it may, by application to the circuit court of the county in which is located the principal place of business of said bank or trust company, secure the approval of an accounting in such condition as the court may fix: Provided, however, That nothing herein shall be interpreted as relieving any fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of such interest.

WV Legislature

§44-6-8. How §§44-6-6 to 44-6-8 cited; purpose; provisions severable.

This act, being said sections six, seven and eight of this article, may be cited as the "Uniform Common Trust Fund Act". It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which have or may hereafter enact it, or similar legislation. It shall apply to fiduciary relationship, or status, now in existence or hereafter established. If any of its provisions or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect the other provisions or applications which can be given effect without the invalid provision or application, and to this end its provisions are declared to be severable.

WV Legislature

§44-6-9. Investment of trust assets in mutual funds; investments in mutual fund companies otherwise served by the bank; investment of trust assets in time deposits.

(a) A bank or trust company qualified and acting in a fiduciary capacity in this state may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest trust assets in mutual funds which are the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), as amended: Provided, That the portfolio of such investment company or investment trust does not consist of investments prohibited by the governing fiduciary instrument.

(b) The fact that a bank or trust company or an affiliate of the same provides services to an investment company or investment trust, including, but not limited to, services as an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise, and is receiving reasonable compensation for those services, does not preclude such bank or trust company from investing or reinvesting in mutual funds which are the securities of the open-end or closed-end management investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), as amended. Such bank or trust company or affiliate thereof is entitled to receive fiduciary fees with respect to such assets. For such services the bank or trust company or affiliate thereof shall also be entitled to the normal fiduciary fee.

(c) A bank or trust company qualified and acting in a fiduciary capacity in this state may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest trust assets in time deposits, including certificates of deposit, of the bank or trust company in accordance with the provisions of subdivision (f), section two of this article: Provided, That such investments are authorized by the governing fiduciary instrument.

WV Legislature

§44-6-10. Purchase of service or product through or directly from bank or trust company or affiliate.

(a) A bank or trust company acting in any fiduciary capacity, including, but not limited to, the capacities described in this article, may purchase any service or product, including, but not limited to, insurance or securities: underwritten or otherwise distributed by the bank, the trust company or by an affiliate; through or directly from the bank, the trust company or an affiliate; or from a syndicate or selling group that includes the bank, the trust company or an affiliate: Provided, That the purchase is otherwise prudent under article six-c of this chapter; the compensation for the service or product is reasonable; and the transaction is not prohibited by the instrument governing the fiduciary relationship. The compensation charged for the service or product may be in addition to the compensation that the bank or trust company is otherwise entitled to receive from the fiduciary account.

(b) A bank or trust company shall disclose at least annually any purchase authorized by this section that was made by the bank or trust company during that reporting period. The disclosure shall be given, in writing or electronically, to all persons entitled to receive statements of account activity. The disclosure shall include a description of any capacities in which the bank or trust company or an affiliate acts for the issuer of the securities or the provider of the products or services and a declaration of the fact that the bank or trust company or an affiliate may have an interest in the products or services.

(c) This section applies to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.

WV Legislature

§44-6-11. Application only to executors, administrators, guardians, curators or committees.

The provisions of this article apply only to executors, administrators, 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 Prudent Investor Act in article six-c of this chapter and the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

WV Legislature

§44-6A-1. Short title.

This article may be cited as the "Uniform Prudent Management of Institutional Funds Act".

WV Legislature

§44-6A-2. Definitions.

In this article:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by or on behalf of an institution as an institutional fund.

(4) "Institution" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose;

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated; and

(D) A community foundation or community trust.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution, unless the fund is held exclusively for the benefit of either a community foundation or community trust by a bank, a trust company or other similar fiduciary; or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Community foundation" or "community trust" means an institution that has been established to attract contributions for the benefit of a particular community or area whose contributions are often received and maintained in the form of separate trusts or funds which are subject to varying degrees of control by the governing body of the community foundation or community trust and which the governing body in good faith believes meets the requirements of the regulations issued by the Internal Revenue Service, United States Department of Treasury, presently codified as 26 CFR 1.170A-9(e)(10) and (11), to qualify as a "publicly supported" organization and to be treated as a "single entity" rather than as an aggregation of separate funds.

WV Legislature

§44-6A-3. Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this article, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in

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isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this article, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this article.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

WV Legislature

§44-6A-4. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. This section does not limit the authority of the institution to expend funds as permitted under other law, the terms of the gift instrument, or the charter of the institution. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets (regardless of their treatment for accounting purposes) until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a).

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§44-6A-5. Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this article, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this article.

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§44-6A-6. Release or modification of restrictions on management, investment, or purpose.

Without limiting the options otherwise available to an institution under applicable law, a restriction on the management, investment, purpose or other provision of a gift to an institutional fund may be released or modified in any one or more of the following ways:

(1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or in part, if:

(A) The institutional fund subject to the restriction has a total value of less than $25,000;

(B) More than twenty years have elapsed since the fund was established; and

(C) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(5) If the terms of a gift instrument, either specifically or by being subject to the charter of the institution, confer a power on the institution to release or modify a restriction on the management or investment of an institutional fund or the particular charitable purpose or restriction on the use of the institutional fund, the institution shall have the power to so modify or terminate that restriction and the other provisions of this section shall not apply to

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that release or modification. A release or modification under this subsection may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

WV Legislature

§44-6A-7. Reviewing compliance.

Compliance with this article is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

WV Legislature

§44-6A-8. Application to existing institutional funds.

This article applies to institutional funds existing on or established after the effective date of this article. As applied to institutional funds existing on the effective date of this article, this article governs only decisions made or actions taken on or after that date.

WV Legislature

§44-6A-9. Relation to electronic signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U. S. C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U. S. C. Section 7003(b).

WV Legislature

§44-6A-10. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§44-6B-1.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-2.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-3.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-4.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-5.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-6.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-7.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-8.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-9.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-10.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-11.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6B-12.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

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§44-6C-1. Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust instrument. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust instrument.

WV Legislature

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) (1) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of

WV Legislature

insurance upon the life of the grantor, or the lives of the grantor and the grantor's spouse, do not include a duty:

(A) To determine whether the contract is or remains a proper investment;

(B) To exercise policy options available under the contract in the event the policy lapses or is terminated due to failure to pay premiums; or

(C) To diversify the contract.

(2) A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

WV Legislature

§44-6C-3. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

WV Legislature

§44-6C-4. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this article.

WV Legislature

§44-6C-5. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

WV Legislature

§44-6C-6. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

WV Legislature

§44-6C-7. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

WV Legislature

§44-6C-8. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

WV Legislature

§44-6C-9. Delegation of investment and management functions.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee's compliance with the scope and specific terms of the delegation.

WV Legislature

§44-6C-10. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: “investments permissible by law for investment of trust funds”, “legal investments”, “authorized investments”, “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital”, “prudent man rule”, “prudent trustee rule”, “prudent person rule” and “prudent investor rule”.

WV Legislature

§44-6C-11. Application to existing trusts.

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

WV Legislature

§44-6C-12. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

WV Legislature

§44-6C-13. Short title.

This article may be cited as the “West Virginia Uniform Prudent Investor Act”.

WV Legislature

§44-6C-14. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

WV Legislature

§44-6C-15. Effective date.

This article takes effect on July 1, 1996.

WV Legislature

§44-7-1. Fiduciary desiring to resign to file petition; summons thereon.

A personal representative or curator desiring to resign his or her trust, may file his or her petition for that purpose in the county commission of the county in which he or she was appointed, stating the names of all persons, so far as known by him or her, interested in the estate in his or her hands or under his or her control, and to which his or her duties as fiduciary relate, and if any of them are under disability, or nonresidents of the state; or if there are persons interested in the estate whose names are unknown, all of these facts, and the names of the guardians and committees of the persons under disability, if there are guardians or committees, shall be stated in the petition. Upon the filing of the petition the clerk of the court shall issue a summons against all the persons so named and the guardians and the committees of those under disability, if they have any, and against "the unknown parties in interest", if any there are, mentioned in the petition, to appear before the court on a day to be named in the summons, which day may be not less than thirty days from the filing of the petition, and answer the petition, and state to the court the reasons, if any they have, why the petition should not be granted. If any of the persons interested reside in another county in this state, the summons as to them shall be directed and sent by mail by the clerk to the sheriff of that county to be served and returned by him or her; and as to the persons named in the petition who reside out of this state, or who cannot by the use of due diligence be found, and as to the unknown parties, an order of publication shall be awarded against them, which shall be published or posted and published, as in cases of appointment and qualification of personal representatives.

WV Legislature

§44-7-2. Copy of petition and summons to be served on fiduciary commissioner.

Such fiduciary as is mentioned in the preceding section shall cause to be served, on the fiduciary commissioner whom the county commissioner shall designate, a copy of his petition and a copy of the summons issued thereon, at least ten days before the return day of the summons. The fiduciary commissioner shall investigate the records of the county commission to see if such fiduciary has rendered such inventories, appraisements and accounts as the law requires, and whether any further accounts should be required of him and on or before the return day certify the facts relating to such matters to the county commission. For making such investigation and certificate the fiduciary commissioner shall be allowed a fee of not less than $1, nor more than $10, as the commission may direct, to be charged and collected as other costs on such petition.

WV Legislature

§44-7-3. Hearing on petition.

When the summons has been served upon all the parties named and referred to in the petition, and any necessary order of publication has been duly completed, the commission shall, on the day named in the summons, or on some later day to which a continuance may have been taken, proceed to hear the matter. If no objection is made to the resignation of the fiduciary by any person interested in the estate mentioned in the petition, and if the commissioner's certificate shows he has fully and properly rendered all inventories, appraisements and accounts due from him his resignation may be accepted and entered of record by the commission. But if objection be made by any such person on the ground that the fiduciary has not fully settled and accounted for the estate committed to his care, at the time of filing his petition, or for any other valid reason, or it appears from the commissioner's certificate that an inventory, an appraisement, or an account is due from the fiduciary, the petition and objections or commissioner's certificate shall be referred to the fiduciary commissioner or to some other fiduciary commissioner or to a special commissioner appointed for the purpose, to do and perform such duties, and report upon such matters and things as are stated in the order of reference, and report the same to the commission. The same proceedings shall be had on such order of reference and the report when made as are had in the circuit court in a suit in chancery in that court. If it shall appear to the commission in any such case that the fiduciary has not fully settled and accounted for the estate committed to his charge, or that there is money or other property in his hands, or under his control, not yet paid over or disposed of, such orders as may be necessary and proper for the disposition and safekeeping thereof shall be made by the commission, and when such orders are complied with by the fiduciary, his resignation may be accepted. His resignation when accepted shall not affect or impair the liability of the sureties on his official bond in force at the time of his resignation and the acceptance thereof, for any default by him in the discharge of his duties as such fiduciary, remaining unsettled or unsatisfied. The costs in such cases shall be paid as the court may order.

WV Legislature

§44-7-4. Application only to personal representatives, curators or 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 an adult protected person 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

§44-8-1. 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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WVLegislature

§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.

WV Legislature

§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.

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

§44-10-1. Testamentary guardians.

Every father or mother, may, by last will and testament, appoint a guardian for his or her child, born or to be born, and for such time during its infancy as he or she may direct. Where both father and mother have so appointed guardians, only that guardian who is the appointee of the parent last living shall be entitled to the custody of the person of such child.

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§44-10-2. Appointment void for renunciation or failure to qualify.

If any person so appointed shall renounce the trust, or fail to appear before the county court before whom such will shall be proved, within six months after the probate thereof, and declare his acceptance of the trust, and give bond as provided in this article, such appointment shall be void.

WV Legislature

§44-10-3. Appointment and termination of guardian for a minor.

(a) The circuit court and family court have concurrent jurisdiction to appoint a guardian for a minor.

(b) Venue for a petition for appointment of guardianship is in the county in which the minor has resided for the past six months unless the court finds extraordinary circumstances for a sooner filing. If the child is a nonresident of this state and only the guardianship of the estate is sought the petition may be filed in the county in which the child has an estate.

(c) All proceedings shall be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings.

(d) Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent.

(e) Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hold a hearing upon the petition for the appointment of a guardian within ten days after the petition is filed. If all persons entitled to service in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings have not been served at least five days prior to the hearing or have not waived service the court shall continue the hearing but may appoint a temporary guardian pursuant to subsection (g) below.

(f) The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor’s best interest and:

(1) The parents consent;

(2) The parents' rights have been previously terminated;

(3) The parents are unwilling or unable to exercise their parental rights;

(4) The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or

(5) There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied.

(g) Whether or not one or more of the conditions of subsection (f) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists or that a period of transition into the custody of a parent is needed so long as the

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appointment is in the best interest of the minor. The temporary guardian has the authority of a guardian appointed pursuant to subsection (f) but the duration of the temporary guardianship may not exceed six months. A temporary guardianship may be extended beyond six months upon further order of the court finding continued need in the best interest of the minor.

(h) Any suitable person may be appointed as the minor's guardian. A parent shall receive priority subject only to the provisions of subsections (d) and (f) above. However, in every case the competency and fitness of the proposed guardian must be established and a determination made that the appointment is in the best interest of the child.

(i) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian's estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor's best interest.

(j) For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest.

(k) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor. Another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(l) Other than court orders and case indexes, all other records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding, the court presiding over the proceeding or other family or circuit court presiding over another proceeding involving the minor absent a court order permitting examination of such records.

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§44-10-4. Right of minor to nominate guardian.

(a) If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly.

(b) If the minor is below the age of fourteen years and, if the court determines it is in the best interests of the minor, the court may consider the firm and reasonable preferences of a minor who, in the discretion of the court, is sufficiently matured that he or she can intelligently express a preference. He or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, after giving that preference the weight warranted by the circumstances, shall be appointed accordingly.

(c) If the guardian nominated by the minor is not appointed by the court, or if the minor resides outside the state, or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

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§44-10-5. Bond of guardian.

(a) Every guardian, except in the case of a testamentary guardian where the will otherwise directs and the court in which the will is recorded deems it unnecessary for the safety of the ward, shall give bond with security to be approved by the court by whom he or she is appointed, or before whom he or she accepts the trust, in such penalty as shall be prescribed by the court.

(b) The bond shall be given before the clerk of the court in which the petition is filed.

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§44-10-6. Curator; bond; powers and duties.

Until a guardian gives bond, or while there is no guardian, the circuit or family court, may, from time to time, appoint a curator, who shall give bond, and during the continuance of his or her trust, have all the powers and perform all the duties of a guardian, and be responsible in the same way.

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§44-10-7. Management of ward's estate; maintenance, education and custody; duration of guardianship; settlement.

Every guardian who is appointed as aforesaid, and gives bond when it is required, shall have the possession, care and management of his ward's estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education; and shall have also, except as otherwise provided in this article, the custody of his ward. Unless the guardian shall die, be removed or resign his trust (and the court before which he qualified may allow him to resign), he shall continue in office until his ward shall attain the age of eighteen years notwithstanding the ward may marry before that time, or, in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to the person or persons entitled thereto. But the father or mother of any minor child or children shall be entitled to the custody of the person of such child or children, and to the care of his or their education. If living together, the father and mother shall be the joint guardians of the person of their minor child or children, with equal powers, rights and duties in respect to the custody, control, services, earnings, and care of the education of such minor child or children; and neither the father nor the mother shall have any right paramount to that of the other in respect to such custody, control, services or earnings, and care of the education of such minor child or children. If the father and mother be living apart, the court to which application is made from the appointment of a guardian, or before which any such matter comes in question, shall appoint, as guardian of the person of the minor child or children of such father and mother, that parent who is, in the court's opinion, best suited for the trust, considering the welfare and best interests of such minor child or children. No corporation or trust company shall be guardian of any minor child or children be entitled to the custody, control, services, earnings and care of the education of such minor child or children, and when any corporation or trust company is guardian of the estate of any minor child or children and neither of the parents of such child or children is living, or is a suitable person to act as guardian of the person of such child or children, then the court shall appoint a guardian of the person of such child or children who shall be entitled to the custody, control, services, earnings and care of the education of such minor child or children. Any corporation or trust company appointed as guardian of the estate of any minor child or children shall, unless for such minor child or children a nonresident of this state may be appointed guardian, be a corporation organized under the laws of this state and doing business in this state, or an authorized banking institution, defined as one authorized to exercise trust and fiduciary powers within this state under section fourteen, article four, chapter thirty-one-a of this code.

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§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

No disbursements, beyond the annual income of the ward's estate, shall be allowed to any guardian where the deed or will, under which the estate is derived, does not authorize it, unless the same shall have been authorized by the circuit court of the county in which the guardian was appointed or qualified. Any guardian, who may desire to spend more than the annual income of his ward's estate for any purpose, shall file in such circuit court a petition, verified by his oath, setting forth the reasons why it is necessary to make such expenditures, to which petition the ward shall be made defendant. The court shall appoint a guardian ad litem for the ward, who shall answer such petition, be present at the hearing, and represent the infant. Five days' notice shall be given to the defendant before such petition can be heard. At the hearing the evidence may be taken orally, and the court, if satisfied that such expenditure would be judicious and proper, may grant the prayer of the petition. Such petition may be filed and heard before the judge of such court in vacation as well as in term time. In the settlement of the guardian's accounts no credit shall be allowed him by the fiduciary commissioner or the court for expenditures for his ward, except for expenditures of the annual income of his ward's estate and for expenditures of such amounts of the principal of the ward's personal estate as are authorized by the court as provided by this section: Provided, That if the personal estate in the hands of the guardian does not exceed in amount the sum of $3,000, disbursement may be made by the guardian from the corpus of such personal estate for the ward's maintenance and education, after first securing the written approval so to do of and from the fiduciary commissioner to whom the settlement of the ward's estate was referred.

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§44-10-9. Sale of personal estate to pay excess beyond income.

When any such disbursements shall be so allowed, the court shall, if necessary, order the sale of such portions of the personal estate of the ward as may be necessary to pay the balance of such expenditures over and above the income of his estate.

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§44-10-10. When guardian to pay interest.

If any balance, whether of profits received or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time for the benefit of the ward, and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which such balance arose, and so on, as often as such shall be the fact, during the continuance of the trust.

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§44-10-11. Compound interest recoverable.

Any person acting as guardian shall have the right to demand and recover of any obligor in any bond or the maker of any other instrument in writing, payable to him as guardian, and held by him for the benefit of his ward, not only the principal sum due, with interest thereon after the rate prescribed by law; but also, when the interest on the principal sum is not paid punctually at the time stipulated in such bond or writing, to demand and recover interest upon the interest so due and unpaid.

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§44-10-12. Time allowed guardian for investment of funds.

Whenever a guardian shall collect any principal or interest belonging to his ward, he shall have sixty days to invest or loan the same, and shall not be charged with interest thereon until the expiration of such time, unless he shall have made the investment previous thereto, in which case he shall be charged with interest from the time the investment or loan was made: Provided, That if by due diligence any guardian is unable to loan any principal or interest belonging to his ward within the time aforesaid, and it becomes necessary for him to apply to the circuit court for authority or direction concerning such funds, such guardian shall not, pending a hearing of the matter, be chargeable with interest on the funds in his hands uninvested, unless the court or judge otherwise order.

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§44-10-13. Powers of chancery courts over guardians; when and how real estate may be sold for maintenance and education of wards.

The circuit court, in chancery, may hear and determine all matters between guardians and their wards, require settlement of the guardianship accounts, remove any guardian for neglect or breach of trust, and appoint another, or order another to be appointed, in his stead, and make any orders for the custody and tuition of an infant, and the management, preservation and investment of his estate; and when it shall be made to appear to the satisfaction of a circuit court on a bill in chancery, or by petition in a summary way, filed for the purpose by the guardian, that the proper maintenance and education, or other interests of an infant, require that the proceeds of his real estate, beyond the annual income thereof, should be applied to the use of such infant, it shall be lawful for the court to order the sale of, or to authorize a loan upon, his real estate, or such part thereof as may be necessary for the purpose, and, from time to time, make such decrees and orders as may be proper to secure the due application of the proceeds of such sale or loan; and to the extent that such proceeds may be so applied they shall be deemed personal estate, but no further. Every bill or petition filed under this section, and the proceedings thereon, shall conform to the procedure provided by law for authority to sell the real estate of an infant.

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§44-10-14. Minor settlement proceedings.

This section shall be known as the "Minor Settlement Proceedings Reform Act".

(a) If a minor suffers injury to his or her person or property, the parent, guardian or next friend of the minor may negotiate a settlement of the minor's claim for damages prior to or subsequent to the filing of an action for damages.

(b) Filing of petition or motion. -- In order to secure a release of the party or parties allegedly responsible for the injury or loss, the parent, next friend or guardian of the minor shall file a verified petition in the circuit court of the county in which the minor resides or in which an action for damages may be filed in accordance with the provisions of section one, article one, chapter fifty-six of this code: Provided, That if an action for damages of the minor is pending in circuit court, the petition shall be filed, verified and served as a motion in the pending action and may be filed by a parent, guardian or next friend.

(c) Contents of petition or motion. -- The petition or motion shall request approval by the court of the terms of the proposed settlement, the release of liability and the manner of distribution of settlement proceeds. The petition or motion shall also state the following:

(1) The name, gender and age of the minor;

(2) The facts of the injury and damages of the minor relied upon in requesting the court to consider and approve the proposed settlement and release;

(3) The circumstances and events leading to the injury or loss at issue and the identities of the persons or entities alleged to be responsible for the injury or loss;

(4) The identities of the persons or entities to be released;

(5) The circumstances of the minor at the time of the petition or motion;

(6) The relationship of the petitioner or moving party to the minor;

(7) The nature and effect of the injury;

(8) The sum of expenses expended for the treatment and care of the minor for the injuries at issue;

(9) An estimate of future expenses for the treatment and care of the minor related to the injury and how such expenses would be satisfied from the settlement proceeds;

(10) A proposal as to how the costs and expenses of processing the settlement and release are to be satisfied;

(11) A proposal for distribution of other settlement proceeds; and

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(12) A request for such other relief as the court may determine is appropriate in the best interests of the child.

(d) Guardian ad litem. -- Upon the filing of a petition or motion, the court shall appoint a guardian ad litem to:

(1) Review and confirm the facts set forth in the petition and the facts and circumstances of the minor, including the injuries and losses of the minor alleged to have been caused by the party or parties to be released as alleged in the petition or motion; the treatment and conditions past, present and in the foreseeable future of the minor as a result of the injuries and losses at issue; the proposed amounts and procedures for distribution of settlement proceeds; and other relevant information appearing in the petition or motion or otherwise; and

(2) File an answer to the petition or motion on behalf of the minor, stating the opinion of the guardian ad litem as to whether or not the proposed settlement and release and the proposed distribution of proceeds are in the best interest of the minor.

(e) Hearing. -- A hearing shall be conducted on the petition or motion, at which time the court shall take testimony and consider arguments regarding the alleged injuries or losses and the proposals for the settlement, release, initial payment of expenses and the distribution of settlement proceeds: Provided, That the court may order that the minor appear and testify if the court finds that his or her appearance or testimony is appropriate for consideration by the court of the proposed settlement.

(f) Release form. -- If the court grants the requested relief, a release of the claim of the minor against the persons or entities alleged to be responsible for the injuries or losses and who are identified in the petition or motion to be released from liability, any other persons or entities making payment on behalf of those persons or entities and any subsidiaries or successor persons or entities shall be executed by a party authorized by the court to execute the release. The release shall be in form or effect as follows:

I, ..., the [guardian or other person authorized to execute the release] of ....., a minor, in consideration of the sum of $....., and under authority of an order of the circuit court of ..... County, entered on the ..... day of ....., 20....., pursuant to West Virginia Code 44-10-14, do hereby release ..... from all claims and demands on account of injuries allegedly inflicted upon the minor and any property of the minor on the ..... day of ....., ..., at .....

_____

[Guardian or other person authorized by the court to execute the release] of .....

(g) Order approving or rejecting settlement. -- The court shall enter an order with findings of fact and granting or rejecting the proposed settlement, release and distribution of

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settlement proceeds. If the requested relief is granted, the court shall provide by order that an attorney appearing in the proceeding or other responsible person shall negotiate, satisfy and pay initial expense payments from settlement proceeds, the costs and fees incurred for the settlement and any bond required therefor, expenses for treatment of the minor related to the injury at issue, payments to satisfy any liens on settlement proceeds, if any, and such other directives as the court finds appropriate to complete the settlement and secure the proceeds for the minor.

(1) In allowing the payment of settlement proceeds for attorney fees, legal expenses, court costs and other costs of securing the settlement in such reasonable amounts as the court finds in its discretion to be appropriate, the court shall consider the amount to be paid as damages, the age and necessities of the minor, the nature of the injury, the difficulties involved in effecting the settlement, legal expenses and fees paid to attorneys in similar cases and any other matters which the court determines should be considered in achieving a proper and equitable distribution of settlement proceeds.

(2) In allowing any sums to be paid to the minor or to another person to be used for the immediate personal benefit of the minor, the court shall state further the terms under which such payments shall be made, including the use for which such sums may be expended and the times on which such payments shall be made: Provided, That such payments shall be made no later than twenty-four months after entry of the order.

(3) The order shall provide that settlement proceeds remaining after the initial payment of expenses shall be deemed net settlement trust proceeds.

(4) If the net settlement proceeds are less than $25,000, the court may order that the person authorized to pay the initial expenses deposit net settlement trust proceeds into a regulated financial institution or institutions with a principal place of business in this state, in interest bearing certificates of deposit or accounts or securities that are fully insured by federal deposit insurance, in the name of the minor and payable by the financial institution only to the minor upon presentation of proper identification after the minor attains the age of majority: Provided, That such person may be authorized by the court to transfer funds to a substitute qualified institution or institutions from the financial institution or institutions initially selected: Provided, however, That any substitution shall be reported to any fiduciary commissioner or supervisor of the county that the court has designated to review of the status of the investment and security of net settlement trust proceeds: Provided further, That whenever net settlement trust proceeds are deposited into a bank pursuant to the provisions of this paragraph, such bank shall, within ten days of receipt of such funds, file with the clerk of the court an acknowledgment that the funds have been received and that such funds may be withdrawn only by the minor upon his or her reaching the age of majority or upon order of the court.

(5) The order shall provide that within sixty days of the entry of the order, a statement of initial expense payments and an inventory of net settlement trust proceeds and any income earned thereon shall be filed by the person authorized to pay initial expenses with the

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fiduciary commissioner or supervisor of the county commission designated by the court to review the status of settlement proceeds for the minor.

(6) The order shall direct that a certified copy of the order of the court approving the settlement be provided by the clerk of the circuit court to the fiduciary commissioner or supervisor designated by the court to review the status of settlement proceeds.

(h) Appointment of conservator and reports to fiduciary officers. -- The court may appoint a conservator to serve as the person responsible for investment and control of net settlement trust proceeds until the minor attains the age of majority or at such later time as the court may order upon terms the court finds to be in the best interest of the minor, taking into consideration any special needs of the minor at any age. The conservator may be a guardian appointed pursuant to section three of this article or other responsible person.

(1) Neither the corpus nor income accumulated on net settlement trust proceeds shall be used for the maintenance or care of the minor during his or her minority, absent unusual circumstances or special needs of the minor specified in the order approving the settlement. The corpus or income earned thereon may not be invaded, revised or subjected to assignment, levy, garnishment or other order, except as shall be first approved by order of the court approving the settlement.

(2) The court shall determine the amount and necessity for bond of the conservator and for any surety of the bond of the conservator, payable on behalf of the minor in an amount sufficient to protect the principal of net settlement trust proceeds, unless the court finds the conservator is already under bond and surety of bond sufficient for the purpose. The bond of the conservator and surety for the bond of the conservator shall be in form and type acceptable to the fiduciary commissioner or supervisor of the county commission designated by the court to review the reports of the conservator and shall be conditioned to account for and pay over the amount of net settlement trust proceeds as provided for by the order of the court. The clerk of the circuit court shall provide to the office of such fiduciary commissioner or supervisor a certified copy of the court's order approving the settlement and distribution of proceeds and such fiduciary commissioner or supervisor shall file and record the order with any bond of the conservator that may be required by the court approving the settlement and distribution of proceeds.

(3) A report of net settlement trust proceeds and income earned thereon for each calendar year shall be filed by the conservator by February 1 next following the end of the calendar year in the order approving the settlement is entered and every year thereafter in accordance with the terms of the court order.

(4) If the amount of net settlement trust proceeds is less than $25,000, the court may include in the order approving the settlement a waiver of any or all of the requirements regarding reference to a fiduciary officer, the filing of the order or of any other reports or statements of accounts with a fiduciary commissioner or supervisor of the county commission designated by the court, the posting of bond and corporate or other surety of bond of the

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conservator and any listing and publication of accounts.

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§44-10-15.

Repealed.

Acts, 2002 Reg. Sess., Ch. 80.

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§44-10-16. Settlement of derivative claims.

(a) Nothing contained in this article may limit the derivative rights of a parent or guardian to compromise and settle any claim they may personally have for damages arising out of injury to their minor child or ward for whom they are responsible. This authority to compromise and settle derivative claims includes, without limitation, the authority to compromise and settle claims for the costs of medical or other care for the child or ward attributable to the bodily injury.

(b) The separate settlement of a derivative claim by a parent or guardian does not limit any person, including the parent or guardian, from seeking damages for the minor child or ward.

(c) Any release or waiver of a right to bring a legal action to assert a derivative claim, made and executed prior to the commencement of a civil action, shall be in writing and shall be binding against the person who accepts valuable consideration in exchange for the release or waiver of right to bring the legal action: Provided, That in the event a parent or guardian fully repays the consideration received in exchange for a release or waiver of a right to bring a derivative claim or action to the appropriate entity within ninety days after the commencement of a civil action brought on behalf of the child or ward who was injured, the parent or guardian may fully assert the derivative claim in conjunction with the child or ward's claim: Provided, however, That if more than a year has elapsed since the payment of the consideration, full repayment shall include, in addition to the principal sum paid, legal interest on the principal sum calculated in accordance with section thirty-one, article six, chapter fifty-six of this code.

(d) Nothing contained in this section may be construed to reduce the limitation period for filing any civil action for damages arising out of the bodily injury of a minor child.

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§44-10A-1.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-10A-2.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-10A-3.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-10A-4.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-10A-5.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-10A-6.

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

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§44-11-1. Transfer of securities of nonresident decedent.

Any bonds or other securities issued by this state or any political subdivision or municipality thereof, or any stocks, bonds or other securities issued by any corporation created by this state, or by any national banking association having its principal office in this state, standing in the name of a decedent, domiciled at the time of his death out of this state, and who is not known, by the officer or agent charged with the duty of transferring such stocks, bonds, or other securities, to have a personal representative qualified as such within this state, may be transferred by the executor or administrator of such decedent qualified according to the laws of the domicile, when affidavit shall have been filed as prescribed in the next section.

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§44-11-2. Affidavit as to publication of notice.

There shall be filed, with such officer or agent as is mentioned in the preceding section, the affidavit of some credible person that notice of the proposed transfer has been 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 are kept the books upon which the transfer is proposed to be made. But if, before such transfer be actually made, a notice in writing forbidding the same be served on such officer or agent, such transfer only shall be made as would have been lawful if this and the preceding section had not been enacted.

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§44-11-3. Transfer of property of nonresident infant or insane person to foreign guardian or committee.

When any infant or insane person, entitled to property or money in this state, resides out of it, a petition to remove such property or money to the domicile of such infant or insane person may be filed by his guardian or his committee lawfully appointed or qualified in the state or country of his domicile, in the circuit court of the county wherein the guardian or committee in this state was appointed or qualified, or if there be none, in which the property or money, or some part thereof, is. To such petition the guardian of such infant or the committee of such insane person appointed or qualified in this state, if there be one, shall be made a party defendant. Upon a hearing of the case on its merits, the court may order the guardian or committee in this state, if there be one, to pay and deliver to such foreign guardian or committee, or his agent or attorney, all personal property and money in his hands belonging to such infant or insane person, and authorize such foreign guardian or committee to sue for, recover and receive all money or personal property which belongs to the infant or insane person, including the accruing rents of his real estate, in like manner as if he were appointed a guardian or committee of such infant or insane person in this state, and to remove the same to the state or country in which such foreign guardian or committee was appointed or qualified.

WV Legislature

§44-11-4. How proceeds of sale of real estate of nonresident infant, insane person, or cestui que trust transferred to foreign guardian, committee or trustee.

When the proceeds of sale of real estate of an infant, insane person or cestui que trust, under the laws now in force, are invested, or required to be invested, under the direction of a court, and such infant, insane person or cestui que trust resides out of this state, on the petition of a guardian, committee or trustee, lawfully appointed or qualified in the state or country of the domicile of such infant, insane person or cestui que trust, the court under whose directions such proceeds are so invested, or required to be invested, may, with the consent of the persons residing in this state who would be the heirs of such infant, insane person or cestui que trust, if he were dead, order such proceeds to be paid and delivered to such foreign guardian, committee or trustee, or his agent or attorney, and the same may be removed by him to the state or country in which he was appointed or qualified: Provided, That whenever, in the judgment of the court, the removal of the trust subject will defeat or conflict with the provisions of the deed, will or other instrument creating the trust, the court may refuse to grant the prayer of the petition.

WV Legislature

§44-11-5. Notice of application and evidence required before order of transfer made.

No such order as is mentioned in the two preceding sections shall be made until notice of the application shall have been 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 petition is filed; nor until it shall be shown by authentic documentary evidence that such foreign guardian, committee or trustee has, where he qualified, given bond, with surety sufficient to insure his accountability for the whole amount of the estate of such infant, insane person, or cestui que trust in his hands, or which will probably be received by him as such guardian, committee or trustee; nor until the court shall be satisfied that the removal of such money or property from this state will not impair the rights or be prejudicial to the interests of such infant, insane person or cestui que trust or of any other person.

WV Legislature

§44-11-6. How personal estate in hands of resident trustee, belonging to nonresident beneficiaries, transferred.

When any personal estate in this state is vested in a trustee resident therein, or who acts by virtue of a deed, will, or other instrument, recorded or probated therein, or when any administrator or executor in this state has assets in his hands of a decedent who at the time of his death was domiciled in another state, and those having the beneficial interests in such estate or assets are nonresidents of this state, the circuit court of the county in which such trustee, administrator, or executor may reside, or in which such estate may be, may, upon petition or bill in equity filed for that purpose, order such trustee or his personal representative, or such administrator or executor, to pay, transfer and deliver such estate or assets, or any part thereof to a nonresident trustee, administrator or executor, appointed by some court of record in the state in which such beneficiaries reside.

WV Legislature

§44-11-7. What notice and evidence required before such transfer made.

No such order as is mentioned in the preceding section shall, when applied for by petition, be made until notice of the application shall have been given to all persons interested in such trust estate, either by personal service or by publication of such notice 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 wherein the petition is filed. Whether the application be by petition or bill in equity, such order shall not be made until the court shall be satisfied by authentic documentary evidence that the nonresident trustee, administrator, or executor, appointed as aforesaid, has given bond with sufficient security for the faithful execution of the trust, nor until it is satisfied that the payment and removal of such estate out of the state will not prejudice the right of any person interested or to become interested therein.

WV Legislature

§44-11-8. Court may order sale of property.

If, in any proceeding or suit under the third or sixth sections of this article, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold and the proceeds to be paid to the nonresident guardian, committee, trustee, administrator or executor.

WV Legislature

§44-11-8a. Removal of property of resident infant, incompetent or insane person from this state by nonresident testamentary guardian or nonresident committee.

(a) No property or money in this state belonging to a resident infant, incompetent or insane person may be removed from this state by a nonresident testamentary guardian or nonresident committee appointed or qualified in this state unless:

(1) Such nonresident testamentary guardian or nonresident committee files a petition to remove such property or money in the circuit court of the county wherein such guardian or committee was appointed or qualified, or in which the property or money, or some part thereof, is located;

(2) The infant, incompetent or insane person is made a party defendant to such petition;

(3) Notice of the petition is filed 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 is the county in which the petition is filed; and

(4) The court determines, after a hearing, that the removal of such property or money will not impair the rights of or be prejudicial to the interests of such infant, incompetent or insane person, or of any other person.

(b) If any nonresident testamentary guardian or nonresident committee removes from this state property or money belonging to a resident infant, incompetent or insane person without obtaining an order entered pursuant to the provisions of subsection (a) of this section, the same shall work a forfeiture of his bond, and the liability of such nonresident guardian or committee and of his 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 the nonresident testamentary guardian or nonresident committee.

(c) Notwithstanding any provision of section nine of this article to the contrary, any nonresident testamentary guardian or nonresident committee who obtains an order described in subsection (a) of this section shall remain accountable to the county commission of the county in which he was appointed or qualified.

WV Legislature

§44-11-9. Discharge of guardian, committee, or trustee making transfer.

When any guardian, committee, trustee, or other person in this state shall pay over, transfer or deliver any estate in his hands or vested in him as directed by any order or decree made in pursuance of this article, he shall be discharged from all responsibility therefor.

WV Legislature

§44-11-10. Judge of circuit court may act in vacation.

The judge of the circuit court in vacation, on such proof and notice as is required of the circuit court, may make any order that is authorized by this article to be made by the circuit court.

WV Legislature

§44-12-1. What clerk may do in vacation of county court.

The clerk of any county court in the vacation of such court, may appoint appraisers of estates of decedents, admit wills to record, appoint and qualify executors, administrators, guardians, curators and committees, and require and take from them the necessary bonds, upon the same procedure and proof, and in the same manner and with like effect for the time being, as such county court could do if in session; but no contest as to such probate or appointment shall be heard or determined by such clerk, and when notice of contests is given the matter shall stand continued until the next regular session of the county court.

WV Legislature

§44-12-2. Report by clerk to county court; hearing on same.

The probate of every will and the appointment of every appraiser of the estate of a decedent, executor, administrator, guardian, curator and committee so made by such clerk, shall be reported by him to the next regular session of the county court, when, if no objection be made thereto and none appears to the court, the court shall confirm the same. But if objection be made by any person interested, the county court shall hear and determine the same, and shall proceed in relation thereto in the same manner as if the application for the probate of such will, or for the appointment of such appraiser of the estate of a decedent, executor, administrator, guardian, curator or committee had been made to such court in the first instance. And the court may make from time to time, pending such proceedings, such orders as it may deem necessary for the protection and safekeeping of the estate of the testator, intestate or ward.

WV Legislature

§44-12-3. Confirmation of action of clerk.

When the probate of such will, or the appointment of such appraisers of estate of decedents, or the appointment of such executor, administrator, guardian, curator or committee is confirmed by the court, with or without contest, the same shall be held and treated in all respects as if the will had been probated and admitted to record, or the appointment had been made, by the county court in the first instance.

WV Legislature

§44-12-4. Costs.

When objection is made to the action of the clerk, as mentioned in the second section of this article, the party prevailing in the trial of such objection shall recover from the opposite party his costs.

WV Legislature

§44-13-1. Powers of clerk of county court where separate tribunal for police and fiscal purposes.

In every county in which now exists a tribunal for police and fiscal purposes heretofore established under section 34 of article VIII of the Constitution of eighteen hundred and seventy- two, the clerk mentioned in the twenty-sixth section of the amendment of eighteen hundred and eighty to the Constitution shall exercise any powers and discharge any duties conferred on or required of the court or tribunal heretofore established for judicial purposes in such county, or the clerk thereof, before the adoption of such amendment, and also any powers and duties now or hereafter conferred on or required of county courts in other counties, or the clerks thereof, except as it may be otherwise provided, respecting the recording and preservation of deeds and other papers presented for record, respecting matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and respecting all matters relating to apprentices.

WV Legislature

§44-13-2. Who shall act when such clerk interested.

In any matter with respect to which such clerk shall have power to act but in which he shall be interested, so that it will be improper for him to act therein, such powers and duties other than such as are judicial in their nature, may be exercised and discharged, in the office of the last-mentioned clerk, by the clerk of the circuit court of the same county, and such powers and duties, so far as the same are judicial in their nature, may be exercised and discharged by any judge of the circuit court of the same county, in the office of the clerk of the county court.

WV Legislature

§44-13-3. Such clerk not to impanel a jury for settlement of questions of fact.

No jury shall be impaneled before such clerk to settle questions of fact.

WV Legislature

§44-13-4. Record and order books to be kept by such clerk.

Such clerk shall, respecting the matters of which he is given jurisdiction by this article, keep such record and order books as a county court is required by law to keep, and shall enter therein all proceedings before him

WV Legislature

§44-13-4a. Reporting of foreclosure statistics.

Beginning with the third quarter of 2010, the clerk of each county commission shall file quarterly with the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code the disclosure forms of deed of trust foreclosure sales that were recorded in that county for the preceding calendar year quarter. Up until that time, through the second quarter of 2010, such quarterly reports shall be filed with the Division of Banking. The reports shall be filed within fifteen days of the last day of September, December, March and June of each year. The reports shall be filed in electronic format, where possible.

WV Legislature

§44-13-5. Duties of such clerk as to acts to be performed at stated times.

When any act is required to be done by clerks of county courts of other counties on the first day of the term of the county courts, such clerk of the county court in every county in which such special tribunal for police and fiscal purposes was established as aforesaid, shall perform such act, under the same regulations and penalties, on the first Monday of the month.

WV Legislature

§44-13-6. How decisions and orders of such clerk reviewed.

Appeals from the decision rendered and orders made by such clerk may be had to the circuit court of his county at the instance of the same persons, in the same manner, by the same procedure, and within the same time, as from decisions and final orders of a county court; and when carried into the circuit court such cases shall be heard and proceeded with there in the same manner as is provided by law for similar cases appealed from a county court.

WV Legislature

§44-14-1.

Repealed.

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

WV Legislature

§44-14-2.

Repealed.

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

WV Legislature

§44-14-3.

Repealed.

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

WV Legislature

§44-14-4.

Repealed.

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

WV Legislature

§44-14-5.

Repealed.

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

WV Legislature

§44-15-1. Scope of article.

Whenever, pursuant to any law of the United States or regulation of any bureau or agency thereof, the appointment of a guardian or committee to act in a fiduciary capacity for any person is required prior to payment of benefits, pensions, compensation for service or for any other reason for which payments are due to such person from the government of the United States or any bureau or agency thereof, the United States, or the chief officer of any such bureau or agency of the government, shall be a party in interest in any proceeding for the appointment or removal of a committee or of a guardian or for the removal of the disability of minority or mental incapacity of a ward, or in any suit or other proceeding affecting in any manner the administration by the committee or the guardian of the estate of any ward whose estate includes assets derived, in whole or in part, from benefits heretofore or hereafter paid by the United States, or any bureau or agency thereof. Not less than fifteen days prior to the hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the United States, or any bureau or agency thereof having jurisdiction in such matters over the area in which any such suit or proceeding is pending.

Whenever, pursuant to any law of the United States or regulation of any bureau or agency thereof, it is necessary, prior to the payment of benefits, that a committee or guardian be appointed, the appointment may be made in the manner hereinafter provided.

WV Legislature

§44-15-2. When unlawful for person to accept appointment as guardian; removal.

Except as hereinafter provided, it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. In any case, upon presentation of a petition alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in such case, upon his delivering to a successor, properly qualified, the property with which he was chargeable: Provided, That the limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only: Provided further, That an individual may be guardian of more than five wards if they are all members of the same family.

WV Legislature

§44-15-3. Petition for appointment.

A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled, or if the person so entitled, shall neglect or refuse to file such petition within thirty days after mailing of notice by the bureau or other agency of the government of the United States directly interested in the payment of the sums due the person or persons to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

The petition for appointment shall set forth the name, age and place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable from the government of the United States, and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by an examining board employed or convened by the government of the United States in accordance with the laws and regulations governing the bureau or agency of the government from which payments are to be made.

WV Legislature

§44-15-4. Evidence of necessity for appointment of guardian of minor ward.

Where a petition is filed for the appointment of a guardian of a minor ward, a certificate setting forth the age of such minor as shown by the records and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the government of the United States shall be prima facie evidence of the necessity for such appointment.

WV Legislature

§44-15-5. Evidence of necessity for appointment of guardian or committee of mentally incompetent ward.

Where a petition is filed for the appointment of a guardian or committee of a mentally incompetent ward, a certificate setting forth the fact that such person has been rated incompetent by an examining board employed or convened by the government of the United States, on examination in accordance with the laws and regulations governing such bureau or agency of government from which payments are to be made, and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person, shall be prima facie evidence of the necessity for such appointment.

WV Legislature

§44-15-6. Notice.

Upon the filing of a petition for the appointment of a guardian or committee under the provisions of this article, the court shall cause such notice to be given as provided by law.

WV Legislature

§44-15-7. Qualifications and bond of guardian.

Before making an appointment under the provisions of this article the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. Such bond shall be in the form and be conditioned as required of a guardian appointed under the guardianship laws of this state. The court shall have power from time to time to require additional bond. No such bond tendered by a guardian or committee appointed under the provisions of this article shall be valid unless the surety thereon shall be a solvent surety or bonding company authorized to and legally doing business in this state. The premiums on such bond shall be properly payable out of the estate in the hands of such guardian or committee: Provided, however, That where the total estate coming into the hands of such guardian or committee shall at no time exceed the sum of $500, then a bond with at least three personal sureties thereon may be accepted if such personal sureties are solvent and are worth, respectively, the amount named as the penalty of the bond.

WV Legislature

§44-15-8. Settlement of accounts.

Every guardian, who shall receive on account of his ward any moneys from the government of the United States or any agency thereof, shall file with a fiduciary commissioner annually, on the anniversary date of the appointment, or within thirty days thereafter, in addition to such other accounts as may be required, a full, true and accurate account under oath of all moneys so received by him of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested: Provided, That in cases where the income received by the committee or guardian does not average annually more than $800, the committee or guardian may make his report of account to the commissioner once in every three years. The fiduciary commissioner shall send a true copy of each such account to the office of the bureau or other agency of the government having jurisdiction over the area in which the court is located and from which payments are made. The fiduciary commissioner shall fix a time and place for the hearing on such account not less than fifteen nor more than thirty days from the date of filing the same, and notice thereof shall be given by the fiduciary commissioner to the aforesaid bureau or other agency of the government not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

WV Legislature

§44-15-9. Failure to make settlement.

If any guardian shall fail to file any account of the money received by him from the bureau or other agency of the government on account of his ward within thirty days after such account is required by either the fiduciary commissioner or the bureau or other agency of the government, or shall fail to furnish the bureau or other agency of the government a copy of his accounts as required by this article, such failure shall be grounds for a removal.

WV Legislature

§44-15-10. Compensation.

Compensation payable to the guardian shall not exceed five percent of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the circuit court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau or other agency of the government in the manner provided in section eight. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

WV Legislature

§44-15-11. Investment of funds.

Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law or approved by the court.

WV Legislature

§44-15-12. Disbursements for support of persons other than ward.

A committee shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, and a guardian of an infant shall not apply any portion of the income of the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of such petition shall be furnished the proper office of the United States or any bureau or agency thereof and notice of hearing thereon shall be given such office, bureau, or agency, as provided in the case of a hearing on a committee's account or other pleading: Provided, however, That all periodic payments which have been heretofore or shall be hereafter made pursuant to any law of the United States or regulation of any bureau or agency thereof shall constitute income and may be expended in accordance with the provisions of this section without authority of the court.

WV Legislature

§44-15-13. Certified copies of necessary public records furnished without cost.

Whenever a copy of any public record is required by the bureau or other agency of the government to be used in determining the eligibility of any person to participate in benefits made available to such agency, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the representative of such agency, with a certified copy of such record.

WV Legislature

§44-15-14. Commitment to veterans administration or other agency of United States government.

Whenever it appears that a veteran of any war, military occupation or expedition is eligible for care or treatment by the veterans administration or other agency of the United States government, and commitment thereto is necessary for the proper treatment and care of such veteran, the county court, the county mental hygiene commission, or other tribunal or commission in lieu of either thereof, of the county in which such person is found, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the veterans administration or other agency of the United States government for care or treatment. Thereafter, such person, upon admission to any such facility, shall be subject to the rules and regulations of the veterans administration or other agency of the United States government. The chief officer of any such facility or institution to which such person is committed under the provisions of this section shall be vested with the same powers now exercised by officials of state hospitals for mental diseases within this state with respect to the retention, transfer, parole or discharge of persons so committed. Notice of such pending commitment proceedings shall be furnished the person whose commitment is sought, and his right to appear and defend shall not be denied. The judgment or order of commitment by a court of competent jurisdiction of another state committing a person to the veterans administration or other agency of the United States government for care or treatment, shall have the same force and effect as to such person while in this state as in the state in which is situated the court entering such judgment or making such order.

Upon receipt of a certificate of the veterans administration or other agency of the United States government that facilities are available for the care or treatment of any person heretofore or hereafter committed to any hospital for the insane or other institution in this state for the care of persons similarly afflicted; and that such person is eligible for care or treatment by the veterans administration or other agency of the United States, the superintendent of any such hospital or institution in this state is hereby authorized to cause the transfer of any such person to the veterans administration or other agency of the United States government for care or treatment. Upon effecting any such transfer, the committing court, commission or tribunal shall be notified thereof by the transferring agency: Provided, however, That no person shall be transferred if he be confined pursuant to conviction of any crime or misdemeanor, or if he shall have been acquitted of any such charge solely on the ground of insanity, unless prior to such transfer the court originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States government pursuant to the original commitment the same as if he had been originally so committed.

WV Legislature

§44-15-15. Discharge of guardian.

When a ward for whom a guardian has been appointed under the provisions of this article or other laws of this state shall have attained his or her majority, and, if incompetent, shall be declared competent by the examining board employed or convened by the bureau or other agency of the government of the United States and the court, and when any incompetent ward, not a minor, shall be declared competent by such examining board employed or convened by the bureau or other agency of the government of the United States and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

WV Legislature

§44-15-16. Construction of article.

This article shall be construed liberally to secure the beneficial intents and purposes thereof, and shall apply only to beneficiaries of the government of the United States. It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enacted it.

WV Legislature

§44-15-17. How cited.

This article may be cited as the “Uniform Veterans’ Guardianship Act”.

WV Legislature

§44-15-18. Invalidity of part of article.

The invalidity of any portion of this article shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

WV Legislature

§44-16-1. Definitions.

For purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Autism" means a complex developmental disability and spectrum disorder, whose diagnosis must be clinically confirmed by qualified physicians and psychiatrists after extensive examination and testing, defined by a certain set of behaviors and symptoms which affects a person's ability to communicate and interact with others.

(b) "Board" means the West Virginia Children with Autism Trust Board created in section three of this article.

(c) "Child with autism" means a child, under the age of eighteen, who has been clinically diagnosed as having autism to a degree to which it results in a moderate or severe impairment in two or more areas of daily living, as the terms "moderate impairment", "severe impairment" and "daily living" are defined under Title II or Title XVI of the Social Security Disability Act, or a child who has been clinically diagnosed with autism and has been determined to be disabled under either Title II or Title XVI of the Social Security Disability Act for any reason.

(d) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self-control is considered incapable of administering his or her own affairs.

(e) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(f) "Qualified trust for a child with autism" means a trust account for a child with autism that: (1) Is established at a national bank, a state bank of a state of the United States or a trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws of a state of the United States or is a member of the Federal Reserve System; and (2) has been approved by the West Virginia Children with Autism Trust Board in accordance with this article.

(g) “Qualified trustee” means any person authorized by the laws of this state or of the United States to act as a trustee who has been approved by the board to serve as the trustee of a qualified trust for a child with autism.

(h) “Tax Commissioner” means the same as that term is used in section one, article one, chapter eleven of this code.

WV Legislature

§44-16-2. Creation of a qualified trust for a child with autism.

(a) Any parent or guardian of a child with autism may establish a qualified trust for a child with autism. No account shall qualify as a qualified trust for a child with autism until it has been approved as such by the West Virginia Children with Autism Trust Board established in section three of this article. The board shall certify the establishment of each qualified trust to the Tax Commissioner.

(b) To qualify for the tax deduction established in section twelve-i, article twenty-one, chapter eleven of this code, the parent or guardian seeking the tax deduction shall provide to the Tax Commissioner certification that the qualified trust has been authorized by the board and any other documentation required by the Tax Commissioner.

(c) The following types of expenses incurred to support the designated beneficiary after the named beneficiary has reached the age of eighteen or after the death of the parent or guardian who established the trust account shall be allowable if made for the benefit of the beneficiary of the trust.

(1) Education. -- Expenses for education, including tuition for preschool through post-secondary education, books, supplies and educational materials related to such education, tutors and special education services.

(2) Housing. -- Expenses for housing maintained for the beneficiary, separate and apart from the housing used by the parent or guardian who established the trust account while the parent or guardian is still alive, including rent, mortgage payments, home improvements and modifications, maintenance and repairs, real property taxes and utility charges.

(3) Transportation. -- Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles and moving expenses.

(4) Employment support. -- Expenses related to obtaining and maintaining employment, including job-related training, assistive technology and personal assistance supports.

(5) Health, prevention and wellness. -- Expenses for the health and wellness, including premiums for health insurance, medical, vision and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long-term services and supports, and nutritional management.

(6) Life necessities. -- Expenses for life necessities, including clothing, activities which are religious, cultural or recreational, supplies and equipment for personal care, community-based supports, communication services and devices, adaptive equipment, assistive technology, personal assistance supports, financial management and administrative services, life and health insurance premiums, expenses for oversight, monitoring or advocacy, and funeral and burial expenses.

(7) Assistive technology and personal support services. -- Expenses for assistive technology

WV Legislature

and personal support with respect to any item described in subparts (1) through (6) above.

WV Legislature

§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

(a) The West Virginia Children with Autism Trust Board is created to qualify and oversee trust accounts created pursuant to this article and held by approved banks or trust companies for administration by qualified trustees.

(b) The West Virginia Children with Autism Trust Board shall consist of the following governmental officials: The Tax Commissioner or his or her designee, who shall serve as the chair, the Secretary of the Department of Human Services, or his or her designee, and the Commissioner of Banking as set forth in article one, chapter thirty-one-a of this code, or his or her designee. The board shall also consist of the following six public members who shall be appointed by the Governor with advice and consent of the Senate:

(1) An attorney at law, licensed to practice law in this state pursuant to article two, chapter thirty of this code. The attorney should have extensive knowledge and experience in the creation, management and administration of trusts;

(2) A counselor licensed in this state pursuant to the provisions of article thirty-one, chapter thirty of this code. The counselor should have experience in the delivery of vocational, rehabilitative or support services to persons with disabilities;

(3) A physician or psychiatrist licensed in this state pursuant to the provisions of article three, chapter thirty of this code. Such physician or psychiatrist must have extensive knowledge and experience in diagnosis and treatment of persons with autism;

(4) One public member with a background in advocacy on behalf of persons with disabilities; and

(5) Two citizen members.

(c) Each of the appointments shall be for a period of five years and appointees are eligible for reappointment at the expiration of their terms. Of the public members of the board first appointed, one shall be appointed for a term ending June 30, 2012, and a second for a four-year term. The remainder shall be appointed for the full five-year terms as provided in this section. In the event of a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(d) Members of the board may not be compensated in their capacity as members, but shall be reimbursed for reasonable expenses incurred in the performance of their duties by the Department of Administration. Expense payments are to be made at the same rate paid to state employees.

(e) The board shall meet at least once per month to review and recommend to the Tax Department approval of proposed qualified trust funds or to conduct other business as

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required by this article or section twelve-i, article twenty-one, chapter eleven of this code. Board meetings shall be held in person, by video conference or by teleconference, or a combination thereof. Five members of the board shall constitute a quorum.

(f) Notwithstanding the provision of section four, article six, chapter six of this code, the Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The Department of Administration shall provide support staff and office space for the board.

(h) Nothing in this section creates an obligation of State General Revenue Funds: *Provided*, That funding for expenses and offices of the West Virginia Children with Autism Trust Board shall be paid, subject to appropriation.

(i) The board may propose rules for legislative approval and may adopt procedural and interpretive rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

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§44-16-4. Reports and account.

In addition to any other requirements of this article, the board shall:

(a) Receive annual summary information on the financial condition of qualified trust funds and statements on the qualified trust funds and savings plan accounts from qualified trustees; and

(b) Prepare, or have prepared, by January 1, each year, an annual report on the status of the program, including a summary of the qualified trust funds, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Health and Human Resources Accountability.

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§44-16-5. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of the Freedom of Information Act, located in chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.

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§44-16-6. Effective date.

This article is effective for years beginning on or after January 1, 2011.

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§44-16-7. Repeal of article.

The provisions of this section shall sunset, expire, and be of no force and effect on or after January 1, 2027: *Provided*, That qualifying trusts established and having received qualifying contributions on or prior to December 31, 2026, by fulfillment of the requirements of this article, shall continue to qualify for the benefits established in §11-21-12i of this code.

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