



## **ENROLLED**

### **Senate Bill No. 445**

(BY MR. BOETTNER, MS. CHACE, MR. DAVIS,  
MR. JONES AND MR. WHITE)

[Passed March 13, 1982; in effect from passage.]

AN ACT to amend and reenact section seven, article seven, chapter seven; section thirty-three, article five, chapter twenty-eight; sections three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, all of article thirteen, chapter thirty-eight; sections fourteen and twenty-three, article one; sections one, two, three, four, five, seven, eight, thirteen, fourteen, fifteen, sixteen, sixteen-a, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-four-a, twenty-five, twenty-six and twenty-seven, article two; sections one, two, three, four, five, six and seven, article three; article four; article five; and sections two and three, article seven; section eight, article eight; sections one-a, five, six and seven, article nine; sections eight and fifteen, article ten; and sections eight and nine, article fifteen, all of chapter forty-four; and to further amend said chapter by adding thereto a new article, designated article three-a, and to amend and reenact section four, article ten, chapter fifty-six; and section nine, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to abolishing commissioners of accounts; creating fiduciary commissioners and providing for their powers and duties; changing references to commissioners of accounts to fiduciary commissioners; changing references to county courts to county commissions; allowing county clerk to designate one or more assistants as responsible for probate matters; requiring appraisements to be filed in quadruplicate;

providing for a system of unsupervised administrators upon the filing of an appraisal, affidavit, statement of receipts and disbursements and statement of proposed distribution; requiring supervision in certain cases; providing for actual notice to beneficiaries; and to the tax commissioner; requiring notice by publication; providing for filing fees; establishing a special revenue account for the purpose of reviewing appraisements; requiring the tax commissioner to act within sixty days of the date of notice to release his lien for taxes or request supervision; requiring confirmation by the county commission of the final distribution; allowing bona fide purchaser of real estate without notice of any claim to take clear title; providing for waiver of right to request supervision if not made within sixty days of the date of notice; eliminating certain references to trustees; reducing time periods for payment of creditors, claims and legacies; reducing time periods in which personal representative may be held responsible; reducing time periods for personal representative to report to fiduciary commissioner; deleting references to inventories; deleting references to record of fiduciaries in the office of the clerk of the county commission; and requiring county commissions to establish fee schedules or rates of compensation which fiduciary commissioners may charge; requiring county commissions to review all fees according to certain standards; and relating to the administration of estates and trusts generally; procedures relating to the estates of persons confined in penitentiaries and providing for the duties of fiduciary commissioners; procedures relating to the assignment by certain insolvents for the benefit of creditors; providing for the reference of such insolvents' estates to fiduciary commissioners; providing a short title by which the provisions of said chapter forty-four may be known and cited; providing generally for the persons to whom the provisions of said chapter shall apply; providing for certain rules of construction with respect to said chapter and certain rules with respect to the interpretation of references to the provisions of said chapter; requiring that all persons acting in a personal representative or fiduciary capacity qualify as such upon the showing of their need and entitlement to be so appointed; restricting the power of persons appointed as executor of a will to serve as such until the qualification and permitting such persons to perform such limited functions prior to such qualification; providing for administrators cum testamento

annexo and their qualification oath and bond; the appointment of administrator for the administration of the estates of intestate decedents; providing for certain preferences with respect to the person to be appointed as such and for the persons who may be appointed; the appointment of a curator during periods of contest or prior to the qualification and appointment of an executor or administrator and establishing the duties of such curator; requiring such curators to account for the estate coming into their hands upon the qualification of any such executor or administrator; requiring that person to whom letters of testamentary are granted as administrators give bond and take an oath and the content of such oath; providing for the termination of the appointment of a creditor or other person as administrator if a distributee requests appointment as such; the penal sum and form of the bond to be given by executors and administrators and for the removal of such person as personal representative for failure to post bond in sufficient penal sum; providing for certain exceptions with respect to persons required to post such bond; providing for administrator de bonis non in cases of the death, resignation or removal of any executor or administrator cum testamento annexo; providing that a marriage of a woman who is personal representative shall not extinguish her authority to act in such capacity; the authority of the sheriff to serve as administrator in certain cases; requiring such sheriff to make certain reports to the county commission with respect thereto; requiring the sheriff in such cases to account for all moneys and property which remain unadministered at the end of his term; providing for certain penalties against such sheriff with respect to his failure to report or make such settlements at the time prescribed; removal of personal representative for cause by petition to the county commission and providing for hearing with respect thereto; providing for the issuance of letters testamentary or letters of administration and the effect thereof; providing for the affidavit by the executor or administrator at the time of qualification of heirs, distributees, devisees and legatees; the appraisal of estates and its form and content and providing for certain rules with respect thereto; the duty of the personal representative to administer all personal property coming into his hands; providing for cases in which administrator de bonis non may administer assets for which his predecessor personal representative was liable and providing for the delivery of all assets remaining in the hands

of the predecessor personal representative to the administrator de bonis non and the accounting for such assets; the allowance of food and fuel for the family of any decedent and for the consumption thereof for such family; limiting the right of a personal representative to sell estate assets in certain cases and requiring the sale of such assets when the value thereof is likely to be impaired; permitting the sale of assets for the payment of certain funeral expenses, administration costs, debts, legacies in certain cases; requiring administration of assets subject to a life estate per autre vie; permitting a personal representative to sue or be sued with respect to certain claims against his decedent and in cases relating to the taking of any goods or assets of the estate or for the waste, damage or destruction thereof; permitting a personal representative to have execution or other process for the enforcement of a judgment either in his favor or in the favor of his decedent; permitting actions to be maintained against the surety of any personal representative or judgments against him are returned unsatisfied; providing that the personal representative and his surety shall not be liable for any amount beyond the assets coming into the hands of the personal representative in certain cases; providing for the payment of certain wages, pensions or other moneys due a deceased person in certain cases and the discharge of the employer for the payment thereof; creating the office of fiduciary supervisor in each county and the office of fiduciary commissioner and providing for the nature of their respective offices and the relationship of such offices to the county commission; the general powers and duties of the fiduciary supervisor; providing for the salary of such fiduciary supervisor; providing for the qualification of such fiduciary supervisor and providing for a test to be given under the authority of the state tax commissioner with respect thereto; providing that the fiduciary supervisor shall have general supervision of all fiduciary matters and of all fiduciary commissioners; limiting the right of the fiduciary supervisor or any of his deputies or employees to engage in the practice of law; providing for a penalty for persons who practice law in violation of such prohibition; providing for the proof and allowance of claims against the estate of the decedent; the notice to creditors for the filing of claims against such estates and the content of such notice; reference of disputed claims to fiduciary commissioners and the limitation upon such reference;

requiring that claims be proven by vouchers and affidavits and that when so proven such claims are taken as proved unless objected to in whole or in part by filing thereto; providing for hearings with respect to objected or disputed claims; providing for the payment of funeral expenses; permitting the presentation of claims prior to publication of the aforesaid notice; establishing procedures for the payment of contingent or unliquidated claims and the proof thereof; the continuance of hearings upon all claims by the fiduciary supervisor; providing for off-sets against any claim made against a decedent's estate; protection by heirs or devisees against liens on real property which has descended or has been devised to them; providing for the disallowance of claims barred by statute of limitations and the manner of tolling such statutes with respect to claims against decedents' estates; permitting the payment in advance of certain claims made against a decedent's estate; providing that personal representatives are not precluded from instituting actions for the collection and recovery of debts or claims and permitting off-sets and counterclaims in such actions; providing for the report of claims of creditors by fiduciary commissioners and fiduciary supervisors and upon the assets and shares of distributees and legatees; providing for the apportionment of federal estate taxes and the limitations and procedures relating thereto; establishing procedures for summary settlements before fiduciary supervisors and certain findings required to be made with respect thereto; requiring that certain notices be given with respect thereto and that certain hearings be had with respect to disputed matters relating to such summary settlements; the final settlement of estates through such summary procedure; providing for the payment of contingent and unliquidated claims and claims that have not matured; providing for the taking of exceptions to the report of the fiduciary supervisor or fiduciary commissioner and for hearings with respect to such exceptions and for certain findings upon such hearings; the confirmation of such findings by the county commission and the effect of such confirmation; appeals from such orders of confirmation to the circuit court; permitting the reference of matters subject to exception to fiduciary commissioners and the authority of the fiduciary commissioners with respect thereto; providing for a report of claims and for an abbreviated form thereof in certain cases; requiring the recordation of reports of claims in the office of

the clerk of the county commission; providing for an order of preference with respect to the payment of certain claims and the order of payment of claims within a certain classification and establishing procedures for the payment of claims on a ratable basis; establishing certain limitations upon the liability of personal representatives with respect to funds distributed by him; establishing times when claims and legacies may be paid and distributed; providing procedures for the accounting of moneys not disposed of and distributed at time of settlement and procedures for the subsequent payment and distribution of such moneys; providing that a personal representative may not be compelled to make distribution until one year from the date of his qualification and establishing certain limitations with respect thereto; limiting the right of claimants or creditors for payments from the personal representative when claims are not timely presented or proved; establishing procedures for the maintaining of actions against distributees and legatees; limiting the right of enforcement of liens with respect to secured claims which have become barred; establishing the number of fiduciary commissioners in each county and their general powers and duties; authorizing special fiduciary commissioners in certain cases and the appointment of successor fiduciary commissioners upon the resignation or removal of any existing commissioner; providing that matters heretofore referred to commissioners of accounts shall remain with such commissioners of accounts, who shall become special fiduciary commissioners and providing that matters heretofore referred to such persons shall remain with them until concluded or otherwise recalled for cause; requiring the inspection by fiduciary commissioners of all inventories, appraisements and accounts of sale returned to him and requiring such commissioners to distribute or deliver copies thereof to those persons required by law to receive them and providing a penalty for the failure of such fiduciary commissioners in the event of failure or refusal to do so; requiring that fiduciary commissioners periodically determine the existence and sufficiency of any bond required to be posted by any person with respect to matters referred to him in certain cases and procedures for requiring the posting of and requiring fiduciary supervisors to perform such duties in certain cases; the reference of matters to fiduciary commissioners by the county commission and establishing

rules of procedure before such fiduciary commissioners; establishing a method by which fees are to be charged by fiduciary commissioners and fiduciary supervisors and the disposition of such fees; establishing the amount of such fees in certain cases; requiring itemized vouchers for the payment of such fees and the approval thereof by the county commission; establishing a county fiduciary fund and providing for the payment of certain moneys into such fund and for its disposition; requiring county commissioners to give certain annual reports to the Legislature with respect to the costs of administering estates within the several counties; providing for certain general rules applicable to the reference of estates to fiduciary supervisors and fiduciary commissioners and providing separate rules for counties having tribunals for police and fiscal purposes; establishing procedures for the accounting by personal representative and the filing of inventories by such personal representatives; providing the appraisals filed in the case of decedents' estates are to be deemed to be such inventories; authorizing the fiduciary supervisor to compel compliance with section; requiring the account of the proceeds of sales by personal representatives; requiring the recordation of all inventories, appraisals and reports of sale and accounting thereon; requiring personal representatives to exhibit the account for final settlement and the time during which such settlements are to be made; procedures to compel compliance with respect to the exhibiting of inventories, appraisals, accounts and settlement are due and providing that personal representatives of certain estates need not account but once every three years; requiring the examination for sufficiency of bond required at time of examination; procedures for the annual settlement of account and objections thereto and providing that failure to so account may result in forfeiture of commission unless the same be allowed by county commission; procedures to compel accounting by personal representatives by any interested person; requiring the publication of monthly notices with respect to proposed settlement of every personal representative; the authority of the fiduciary supervisor or fiduciary commissioner to compel exhibiting of securities, moneys or other documents at the time of accounting and the authority of such supervisor or commissioner to petition the circuit court for order to compel compliance; the liability of personal representatives with respect to any loss to his estate

through his negligence or improper conduct; the compensation and expenses of personal representatives and the reimbursement of such expenses; requiring fiduciary supervisors, fiduciary commissioners or commissioners in chancery to delivery receipts for all vouchers filed with him; reports of fiduciary supervisor or fiduciary commissioners with respect to accountings and objections thereto and requiring the filing of such reports; the examination of such reports by the county commission or circuit court and providing for the collection or the recommittal of such report if found necessary; the confirmation of such reports and the effect thereof and the manner in which such reports are made conclusive; authorizing the county commission or circuit court to direct the investment of funds in cases where the same appears to be proper; the disbursement of the balance of accounts after settlement and actions to compel such disbursements; the final report of the personal representative following such disbursement and the content thereof; the duty of the clerk of the circuit court to report to the fiduciary supervisor as to any final orders entered in actions to compel settlement and the content of such report and the penalties for failure to make such report and to properly record the same; requiring the clerk of the county commission to maintain a record of fiduciaries and the matters required to be kept in such record; procedures relating to the appointment on nonresidents as personal representatives or guardians and when bond shall be required of such person; upon whom service of notice and process may be had in cases of appointment of nonresident personal representatives or guardians and the manner of obtaining such service; constituting the clerk of the county commission as attorney-in-fact for such nonresident personal representatives and guardians; prohibiting certain persons from serving as surety upon the bond of personal representatives; prescribing certain rules for the giving of additional bond and when a new or additional bond may be required; the revoking of the authority of a personal representative for failure to give such new or additional surety; the jurisdiction of the county commission to revoke the authority of any personal representative; the authority of personal representatives to compromise certain claims due from or owing to the estate for which they serve; procedures for the compelling of the transfer of securities from a personal representative to his successor;

requiring personal representatives to pay the necessary costs in proceedings to compel compliance with provisions of this chapter and the disposition of such cost; clarifying the authority of the clerk of the county commission in certain counties having tribunals for police or fiscal affairs in lieu of county commissions; authorizing the designation of testamentary trustees of beneficiaries of insurance policies and the disposition of such insurance proceeds in such cases; permitting the distribution of assets in satisfaction of pecuniary bequests and the authority of personal representatives to enter into certain agreements with respect thereto; the limitations with respect to such agreement; the authority of personal representatives to enter into agreement with a commissioner of internal revenue of the United States for approval of such agreements in order to maximize appropriate marital deductions, if any, available under the internal revenue law of the United States; permitting personal representatives to invest moneys and assets in their hands and certain procedures relating thereto; specifying the nature and types of securities in which personal representatives may invest estate assets and trust funds; permitting personal representatives to petition the circuit court for authority to invest such funds or assets; the authority of beneficiaries to petition courts for the purpose of instructing personal representatives with respect to investments; petitions to circuit court for the purpose of obtaining authority to retain funds of such trusts for certain contingencies and the notice required and procedures relating thereto; providing for authority of banks and trust companies to commingle trust funds and certain requirements and limitations relating thereto; requiring an accounting as to such funds held in common and extending authority to cite certain sections of the code as the "Uniform Common Trust Fund Act"; providing for the reenactment of the "Uniform Management of Institutional Funds Act" and providing a short title and the definition of certain terms with respect thereto; rules for the appreciation of assets with respect thereto; the investment authority and delegation of management with respect to such funds; providing certain standards and rules of conduct with respect to the management of such funds; the release of restrictions on the use of and investment of such funds; rules relating to the uniformity of application and to the construction of the provisions of such act; providing certain rules and procedures

with respect to the resignation of personal representatives and the petition to be filed with the county commission with respect thereto; the notice or notices to be given with respect to such resignation and to whom such notices are to be given; providing for a petition with respect thereto and its contents; the hearing to be had on such petition and procedures relating thereto; the real estate of decedents and certain procedure relating to the sale of such real estate when required by will; the disposition of the rents or proceeds received upon such real estate or the proceeds of the sale thereof; the disposition of real estate of such decedents when required for the payment of such decedent's debts; the liability of the heirs or devisees of such real estate and the limitation upon the liability of such real estate for such debts; providing for an action to subject real estate to the payments of the debts of the decedent and certain rules with respect thereto; the persons who are to be made parties to any such action; certain rules of evidence with respect to such actions; the jurisdiction of the court hearing such actions; requiring the appointment of a commissioner in chancery or other commissioner for the purpose of ascertaining the liens upon such real estate, the holders thereof and the amounts due as well as establishing the priorities of any such liens; the notice to be given with respect thereto and to whom such notice is required to be directed; providing for an order or decree of distribution with respect to the funds derived from the sale of such real estate pursuant to such action; providing for limiting the cost recoverable with respect to any other action brought later by creditors and the authority to enjoin the bringing thereof; establishing procedures relating to the presumption of death of certain persons and when such persons are to be presumed dead; establishing procedures with respect to the presumption of death of persons in the military service or certain other service of the United States with respect to certain hostilities in which the United States is engaged; when the spouse of such persons presumed dead may remarry; providing for petitions to the circuit court for a declaration that such supposed decedents are presumed dead and the jurisdiction of such courts with respect thereto; providing for the administration of the estates of persons presumed to be dead and the application for probate with respect thereto; the notice required to be given with respect to such application and the publication of such notice; providing for ancillary letters testamentary for nonresidents presumed to

be dead; the hearing to be had with respect to the application for probate of the estate of resident and nonresident persons presumed to be dead; the probate of the will of such persons and the power of the clerk with respect thereto; the institution of an action by the personal representative for the settlement of such supposed decedent's estate and requiring certain notice and publication with respect thereto; providing for the distribution of the estate of such supposed decedent; the vacation of proceedings upon the reappearance of such supposed decedent; providing certain rules with respect to the final accounting of the person representative of such supposed decedent and the effect of his acts with respect thereto; providing certain standards with respect to the title of certain purchasers and distributees of the estate of such supposed decedent; the substitution of a supposed decedent upon his reappearance in any actions pending upon such reappearance; the reopening and effect of judgments after such substitution; providing that provisions of chapter forty-four shall apply to the estate of supposed decedent insofar as the same relate to the administration of their estates; providing for the payment of certain costs with respect to administration; providing generally for the appointment of guardians for infants and extending the rights of the parents to such children to name such persons to have custody of the person of such child; providing for renunciation for refusal to serve as such guardian and the voiding of such appointment thereby; the authority of the county commission to appoint such guardian for resident infants and for nonresident infants in certain cases; establishing the rights of certain minors who have attained the age of fourteen years to nominate a guardian; requiring guardians to post bond and the appointment of a curator until such bond has been posted; providing certain procedures for the management of infant wards' estates and for the maintenance, education and custody of such infant wards; limiting the duration of the guardianship of such wards and procedures for the settlement of infants' estates; establishing certain rules and standards with respect to the disbursement and expenditure of the income of infants' estates and permitting the invasion of corpus in certain cases; the sale of the personal estate of the infant; providing for petition to the circuit court for permission so to do; requiring the guardian to pay interest to the estate of his infant ward for failure to properly invest the assets of the infant's estate and establishing

certain standards with respect to the compounding of interest with respect thereto; establishing certain time limitations for the investment of infants' estates by guardians; the powers of the circuit courts over the assets of infants' estates and of the guardians; establishing certain procedures with respect to the sale of real estate with respect thereto; extending authority of a guardian to settle claims for injuries to an infant ward or to the property of such infant ward and procedures with respect thereto; providing for the release of tort feisor and a permissible form for the release of such person causing injury to such infant or his property; the disbursement of funds of infant wards without authority of the circuit court where sums received in settlement is less than one thousand dollars; providing for the appointment of guardians for mentally retarded or mentally handicapped persons; defining certain terms with respect thereto; applications to the county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for the duration of guardianship until terminated by the county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions thereto; providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; providing for appeals to circuit courts from orders of county commissions appointing and qualifying guardians and fiduciaries; providing for the transfer of bonds or other securities issued by this state or any political subdivision thereof which are owned by nonresident decedents or standing in the name of such nonresident decedents; the transfer of certain other securities issued by corporations or banks created by this state or having their principal place of business therein standing in the name

of nonresident decedents; requiring the publication of notice with respect to such transfers; the transfer of property of nonresident infants or insane persons to foreign guardians or committees; procedure and notice relating thereto; procedure for the sale of real estate of nonresident infants, insane persons and beneficiaries of trusts; the disposition of the proceeds of such sale to foreign guardians, committees or trustees; providing for petitions to the circuit court for permission to transfer such property or proceeds; providing for the notice of the filing of such petition; providing for certain evidence to be required with respect to any orders directing such transfer; providing procedures for the transfer of assets in the hands of resident trusts belonging to nonresident beneficiaries; the petitions, notice and evidence required with respect to such transfers; the authority of the court to direct the sale of such property; the payment of the proceeds of such sale to nonresident fiduciaries and the discharge of resident trustees upon the completion of such transfer; the power of the circuit court to act in vacation of the term with respect to such transfers; provisions with respect to powers of the clerk of the county commission in the vacation of the county commission; providing for report by the county clerk to the county commission with respect to certain matters; the hearing required with respect to such reports; confirmation of certain actions of the circuit clerk or fiduciary supervisor taken during the vacation of the county commission and objections thereto; payment of certain costs with respect to hearings had on such objections; the powers and duties of the clerks of the county commissions in counties having separate tribunals for police and fiscal affairs or purposes in lieu of county commissions; the function of such clerk in such counties; granting authority to certain persons to act as clerk of the county commission in such counties in all matters in which the clerk of the county commission has personal interest; the authority of the clerk of the county commission in such counties to impanel juries to settle questions of fact; requiring such clerks to maintain certain records and order books as are currently required to be kept by county commissions; establishing a time when clerks of such counties are required to perform certain tasks as are required to be performed by the clerks of the county commissions of the other several counties; establishing procedures of the circuit court for the substitution of trustees and establishing the powers of such substitute trustees;

providing for the appointment of ancillary trustee under certain circumstances; procedures for the appointment of substitute trustee upon proper motion; providing that a remaining trustee or personal representative of such remaining trustee may execute a trust where more than one trustee was pendent upon the ward for whom such guardian was appointed; requiring that certain copies of public records are to be provided to the government of the United States or its agencies at no cost when required with respect to such ward; the commitment of certain person for treatment and care to the veteran's administration or any other agency of the United States government; the procedures with respect thereto; providing for the discharge of the guardian or committee when the ward has attained his majority or has been otherwise declared competent; providing for certain rules of construction with respect to the provisions of chapter forty-four; providing certain penalties with respect to noncompliance with various provisions of said chapter; establishing a time for the provisions of said chapter to become operative and for certain rules of construction prior to said provisions becoming operative; providing for certain rules of procedure with respect to the settlement of tort claims of infants and the duty of fiduciary commissioners with respect thereto; and the compensation of such commissioners.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article seven, chapter seven; section thirty-three, article five, chapter twenty-eight; sections three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, article thirteen, chapter thirty-eight; sections fourteen and twenty-three, article one; sections one, two, three, four, five, seven, eight, thirteen, fourteen, fifteen, sixteen, sixteen-a, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-four-a, twenty-five, twenty-six and twenty-seven, article two; sections one, two, three, four, five, six and seven, article three; article four; article five; sections two and three, article seven; section eight, article eight; sections one-a, five, six and seven, article nine; sections eight and fifteen, article ten; sections eight and nine, article fifteen, all of chapter forty-four; section four, article ten, chapter fifty-six; and section nine, article one, chapter fifty-nine, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted,

Insert line 4

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originally appointed; establishing the power and responsibility of a substituted or remaining trustee; provisions relating to the settlement of accounts of such guardians and for the removal of such persons for the failure to make such settlements; providing for maximum limits of compensation for such guardians; requiring the investment of the funds of the estate of any minor or mentally incapacitated person for whom a guardian was appointed; provisions relating to the support of persons who may be de-

and that chapter forty-four of said code by further amended by adding thereto a new article, designated article three-a, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.**

**§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.**

1 The county clerk, circuit clerk, joint clerk of the county  
2 commission and circuit court, if any, sheriff, county assessor  
3 and prosecuting attorney, by and with the advice and consent  
4 of the county commission, may appoint and employ, to assist  
5 them in the discharge of their official duties for and during  
6 their respective terms of office, assistants, deputies and  
7 employees. The county clerk may designate one or more of  
8 his assistants as responsible for all probate matters.

9 The county clerk, circuit clerk, joint clerk of the county  
10 commission and circuit court, if any, sheriff, county assessor  
11 and prosecuting attorney shall, prior to March second of each  
12 year, file with the county commission a detailed request for  
13 appropriations for anticipated or expected expenditures for  
14 their respective offices, including the compensation for their  
15 assistants, deputies and employees, for the ensuing fiscal  
16 year.

17 Any deputy sheriff who is required to work on a holiday as  
18 observed by county employees generally shall be  
19 compensated for such time by being given a substitute day  
20 off.

21 The county commission shall, prior to March twenty-ninth  
22 of each year by order fix the total amount of money to be  
23 expended by the county for the ensuing fiscal year, which  
24 amount shall include the compensation of county assistants,  
25 deputies and employees. Each county commission shall enter  
26 its order upon its county commission record.

27 The county clerk, circuit clerk, joint clerk of the county  
28 commission and circuit court, if any, sheriff, county assessor  
29 and prosecuting attorney shall then fix the compensation of  
30 their assistants, deputies and employees based on the total  
31 amount of money designated for expenditure by their

32 respective offices by the county commission and the amount  
33 so expended shall not exceed the total expenditure  
34 designated by the county commission for each office.

35 The county officials, in fixing the individual compensation  
36 of their assistants, deputies and employees and the county  
37 commission in fixing the total amount of money to be  
38 expended by the county, shall give due consideration to the  
39 duties, responsibilities and work required of the assistants,  
40 deputies and employees and their compensation shall be  
41 reasonable and proper.

42 After the county commission has fixed the total amount of  
43 money to be expended by the county for the ensuing fiscal  
44 year and after each county official has fixed the  
45 compensation of each of his assistants, deputies and  
46 employees, as provided in this section, each county official  
47 shall file prior to June thirtieth, with the clerk of the county  
48 commission, a budget statement for the ensuing fiscal year  
49 setting forth the name, or the position designation if then  
50 vacant, of each of his assistants, deputies and employees, the  
51 period of time for which each is employed, or to be employed  
52 if the position is then vacant, and his monthly or  
53 semimonthly compensation.

54 All budget statements required to be filed by this section  
55 shall be verified by an affidavit by the county official making  
56 them. Among other things contained in the affidavit shall be  
57 the statement that the amounts shown therein are the  
58 amounts actually paid or intended to be paid to the assistants,  
59 deputies and employees without rebate, and without any  
60 agreement, understanding or expectation that any part  
61 thereof shall be repaid to him, and that, prior to the time the  
62 affidavit is made, nothing has been paid or promised him on  
63 that account, and that if he shall thereafter receive any  
64 money, or thing of value, on account thereof, he will account  
65 for and pay the same to the county. Until the statements  
66 required by this section have been filed, no allowance or  
67 payments shall be made to any county official or their  
68 assistants, deputies and employees.

69 Each county official named in this section shall have the  
70 authority to discharge any of his assistants, deputies or  
71 employees by filing with the clerk of the county commission  
72 a discharge statement specifying the discharge action:  
73 *Provided*, That no deputy sheriff appointed pursuant to the

74 provisions of article fourteen, chapter seven of this code, shall  
75 be discharged contrary to the provisions of that article.

## **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

### **ARTICLE 5. THE PENITENTIARY.**

#### **§28-5-33. Appointment of committee of convict; bond.**

1 When a person is confined in the penitentiary of this or any  
2 other state, or of the United States, under sentence for one  
3 year or more, or to suffer death, the estate of such convict in  
4 this state, if he have any, both real and personal, shall, on the  
5 motion of any party interested, be committed by the county  
6 commission of the county in which his estate or some part  
7 thereof may be, to a person selected by such county  
8 commission, who, after giving bond before the county  
9 commission in such penalty as it may prescribe, shall have  
10 charge and management of such estate until the convict is  
11 discharged from confinement or dies; and upon such motion  
12 the county commission shall appoint said committee,  
13 although the convict has no estate, either real or personal,  
14 located in this state. In the event said convict has no such  
15 estate, or his estate does not exceed one thousand dollars,  
16 reference to a fiduciary commissioner shall not be necessary.  
17 All appointments of committees heretofore made and decrees  
18 or judgments heretofore awarded by any court of record in  
19 this state against or on behalf of any convict shall not be  
20 considered invalid for the reason that the convict had no such  
21 estate at the time of the appointment of such committee.

## **CHAPTER 38. LIENS.**

### **ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF ALL CREDITORS.**

#### **§38-13-3. Reference to fiduciary commissioner; appraisers.**

1 Upon the qualification of the trustee, the clerk shall refer  
2 the estate to a fiduciary commissioner of the county;  
3 provided, that in counties where there are two or more such  
4 commissioners, such estate shall be referred to such  
5 commissioners in rotation; and the clerk shall appoint three  
6 disinterested appraisers to appraise all the property  
7 belonging to the estate and, within seven days after their  
8 appointment, they shall make to the fiduciary commissioner  
9 a report thereof in writing duly sworn to.

**§38-13-4. Trustee to file schedule; substitute trustee.**

1 Within ten days after the recordation of an assignment,  
2 conveyance or transfer the trustee shall cause to be made and  
3 filed with the clerk of the county commission of the county  
4 where the same is recorded a schedule containing:

5 1. The name, occupation, place of residence and place of  
6 business of the debtor;

*the*

7 2. A full and true account of all creditors of the debtor,  
8 stating the last-known place of residence of each, if known, or  
9 if unknown, the fact to be stated; the sum owing to each, with  
10 the true cause and consideration thereof; and a full statement  
11 of any existing security for the payment of the same;

12 3. A full and true inventory of all the debtor's estate at the  
13 date of the assignment, both real and personal, in law and in  
14 equity, with the liens and encumbrances existing thereon.  
15 The trustee shall verify the schedule so made by him to the  
16 effect that the same is in all respects just and true to the best  
17 of his knowledge and belief, and shall state the sources of his  
18 information and the grounds of his belief. The trustee shall at  
19 the same time file a duplicate of the said schedule with the  
20 fiduciary commissioner to whom the estate has been referred.  
21 In case said trustee shall be unable to make and file such  
22 schedule, within ten days, the fiduciary commissioner may,  
23 upon application under oath, showing such inability, allow  
24 him such further time as shall be necessary, not exceeding  
25 thirty days. If the trustee fails to make and file such schedule  
26 within said ten days or such further time as may be allowed,  
27 the fiduciary commissioner shall require, by order, the  
28 trustee forthwith to appear before him, and show cause why  
29 he should not be removed, and, if good cause be not shown,  
30 such trustee shall be removed and a meeting of the creditors  
31 shall be called by the fiduciary commissioner, at which  
32 meeting a substitute trustee shall be elected. Any person  
33 interested in the trust estate may apply for such order and  
34 demand such removal.

**§38-13-5. Notice by trustee to creditors; publication and mailing.**

1 Within ten days after the filing of the schedule the trustee  
2 shall cause to be published a notice reading substantially as  
3 follows:

4 "To the Creditors of .....:  
5 Take notice that a general assignment for the benefit of

6 creditors was made by the above-named debtor to  
 7 ....., Trustee, on .....and that said assignment  
 8 has been duly recorded in the office of the Clerk of the  
 9 County Commission of .....County.

10 All persons having claims against the said debtor are  
 11 hereby notified that the same shall be presented to the  
 12 undersigned trustee on or before ..... The estate has  
 13 been referred to ....., fiduciary commissioner, and  
 14 the first meeting of the creditors will be held in his office at  
 15 ....., in .....County, West Virginia, on  
 16 ....., at .....o'clock .....M. Dated this  
 17 ..... day of .....

18 (Signed) ....., Trustee  
 19 (Address of Trustee) ....."

20 Said notice shall be published as a Class II legal  
 21 advertisement in compliance with the provisions of article  
 22 three, chapter fifty-nine of this code, and the publication area  
 23 for such publication shall be the county in which the  
 24 assignment, conveyance or transfer was recorded.

25 A copy of the said notice shall be mailed by the trustee on or  
 26 before the date of the first publication thereof to every  
 27 creditor whose name appears in the schedule or of whom the  
 28 trustee has notice, to the assignor and to the fiduciary  
 29 commissioner and an affidavit evidencing such mailing and  
 30 publication shall be filed by the trustee with the fiduciary  
 31 commissioner.

### §38-13-6. Filing and proof of claims.

1 The trustee shall specify in the notice a date on or before  
 2 which claims shall be presented to him which date shall not  
 3 be less than thirty days nor more than sixty days after the  
 4 date of the first publication of the notice, and no claim filed  
 5 with the trustee after the date specified in the notice shall be  
 6 recognized or allowed, except that if a surplus remain after  
 7 the payment of the claims presented on or before the date  
 8 specified such surplus shall be applied to the payment of the  
 9 claims presented after that date. Claims of creditors shall be  
 10 itemized, accompanied by proper vouchers, and verified by  
 11 the affidavit of the creditor or his duly authorized agent,  
 12 stating the character of the claim, whether open account,  
 13 note, bond, bill, writing obligatory, judgment, decree or other  
 14 evidence of debt, and the amount thereof, and from what date  
 15 and on what items interest runs and at what percent per

16 annum, and stating further that the claim is just and true, and  
17 that the creditor, or any prior owner of the claim, if such there  
18 was, has not received any part of the money stated to be due,  
19 or any security or satisfaction for the same, except what is  
20 credited. The vouchers for a judgment or decree shall be an  
21 abstract thereof; for a specialty, bond, note, bill of exchange,  
22 writing obligatory, or other instrument, shall be the  
23 instrument itself, or a true copy thereof, verified by the  
24 fiduciary commissioner, or proof of the same in case the  
25 instrument be lost; and for an open account, an itemized copy  
26 of the account. A surety may prove a claim of a creditor which  
27 he has secured when such creditor fails or refuses to do so.  
28 Every claim so itemized, so accompanied by proper vouchers,  
29 and so verified, shall be taken to be proved and shall be  
30 allowed unless, before the trustee shall make up his report of  
31 claims, the assignor or a creditor or any party in interest shall  
32 file before the trustee a counter-affidavit denying the claim in  
33 whole or in part; and when such counter-affidavit is so filed  
34 the trustee shall at once refer the claim to the fiduciary  
35 commissioner who shall at the request of the claimant fix a  
36 time and place for hearing evidence of and against such claim  
37 and give reasonable notice of such time and place to the  
38 claimant and the party objecting. All hearings on disputed  
39 claims shall be completed within seven days after the last day  
40 on which claims may be presented to the trustee, unless for  
41 good cause shown the fiduciary commissioner extends the  
42 time for such hearings.

**§38-13-8. First meeting of creditors; substitute trustee.**

1 The fiduciary commissioner shall preside over the first  
2 meeting of the creditors which shall be held not less than ten  
3 nor more than twenty days after the date of the first  
4 publication of the notice thereof by the trustee. The assignor  
5 and the trustee shall attend the meeting, and either or both of  
6 them may be publicly examined at the meeting at the  
7 instance of any creditor. The creditors shall at the meeting  
8 take such steps as may be pertinent and necessary for the  
9 promotion of the best interests of the estate, and the meeting  
10 may be adjourned from time to time if the creditors see fit. If a  
11 majority in number and amount of all the unsecured creditors  
12 of the assignor, including those absent as well as those  
13 present, desire that the trustee named in the assignment shall  
14 not serve, at the first meeting of the creditors such a majority  
15 may elect a substitute trustee who shall have all the rights,

16 powers and duties conferred upon the trustee named in the  
17 assignment. The substitute trustee shall qualify by taking the  
18 oath and giving a proper bond before the clerk, and a copy of  
19 the order appointing the substitute trustee shall be recorded  
20 in each county in which the assignment is recorded. Creditors  
21 may be represented at meetings by their agents, employees,  
22 or attorneys, duly authorized in writing.

**§38-13-9. Sales by trustee; creditors may prescribe manner and terms; powers of fiduciary commissioner; compromising claims; continuing operation of business.**

1 At the first meeting of creditors a majority in number and  
2 amount of the creditors present may prescribe in what  
3 manner and on what terms the property belonging to the  
4 estate shall be sold, and the trustee shall not sell, or otherwise  
5 dispose of, any property belonging to the estate prior to the  
6 first meeting of the creditors, unless expressly authorized to  
7 do so by the fiduciary commissioner after good cause therefor  
8 has been shown. The trustee shall not sell or otherwise  
9 dispose of, the property belonging to the estate for less than  
10 seventy-five percent of its appraised value without the  
11 approval of the fiduciary commissioner. The trustee may  
12 compromise or compound any claim or debt belonging to the  
13 estate with the approval of the fiduciary commissioner. All  
14 sales by the trustee shall be made at public auction, unless  
15 otherwise ordered by the fiduciary commissioner or  
16 authorized by the creditors. The trustees shall give at least ten  
17 days' notice by mail to all of the creditors of the time and  
18 place of sale of any property belonging to the estate of the  
19 value of five hundred dollars, or more, and shall advertise the  
20 sale as a Class II legal advertisement in compliance with the  
21 provisions of article three, chapter fifty-nine of this code, and  
22 the publication area for such publication shall be the county.  
23 Such notice and advertisement may be waived by the  
24 creditors at their first meeting. Upon application to the  
25 fiduciary commissioner, and for good cause shown, the  
26 trustee may be authorized to sell any portion of the estate at  
27 private sale, in which case he shall keep an accurate record of  
28 each article sold, the price received therefor and to whom  
29 sold, which account he shall file with the fiduciary  
30 commissioner. Upon application by the trustee or a creditor  
31 setting forth that a part or the whole of the estate is  
32 perishable, the nature and location of such perishable

33 property, and that there will be loss if the same is not sold  
34 immediately, the fiduciary commissioner, if satisfied, of the  
35 facts stated and that the sale is required in the interests of the  
36 estate, may order the same to be sold without notice or with  
37 such notice as he may direct. Upon application by the trustee  
38 or a creditor setting forth that it is for the best interest of the  
39 estate that the trustee continue to operate the business, the  
40 fiduciary commissioner may authorize the trustee to operate  
41 the business until the first meeting of the creditors, at which  
42 meeting a majority in number and amount of the creditors  
43 present shall determine whether such operation is to be  
44 continued thereafter.

**§38-13-10. Trustee's report to fiduciary commissioner; notice to creditors of filing and second meeting.**

1 Within ten days after the last day on which claims may be  
2 presented to him the trustee shall file with the fiduciary  
3 commissioner a report showing the names of the creditors  
4 whose claims have not been contested and who have filed  
5 proper proofs of claims, and the amounts thereof; the names  
6 of the creditors whose claims have been contested, and the  
7 amounts thereof; the disposition he has made of the property  
8 belonging to the estate; the costs and expenses he has  
9 incurred; the amount of money he has on hand and the name  
10 of the bank in which it is deposited; the property of the estate  
11 not disposed of and his plans for disposing of the same. The  
12 trustee shall attach to said report all proofs of claims,  
13 vouchers, exhibits, accounts, writings, affidavits and  
14 counter-affidavits which have been filed with him. The  
15 trustee shall at once notify each creditor who has presented a  
16 claim that the report has been filed, and that a meeting of the  
17 creditors will be held before the fiduciary commissioner on a  
18 date specified in the notice, which date shall not be less than  
19 five days after the notice is mailed nor more than ten days  
20 after the report is filed.

**§38-13-11. Report by fiduciary commissioner; appeal from decision; allowance of expenses and fees; directions to trustee; dividends; closing trusteeship.**

1 At the meeting of the creditors held following the filing of  
2 the trustee's report the fiduciary commissioner shall file a  
3 report showing how much, if anything, he has allowed on  
4 each of the disputed claims. Any party interested may, within  
5 ten days thereafter, appeal from the decision of the fiduciary

6 commissioner to the circuit court of the county without any  
7 formal bill of exceptions, and the appeal shall be tried and  
8 heard in the circuit court, or before the judge thereof in  
9 vacation, on the record made before the fiduciary  
10 commissioner. At the same meeting the fiduciary  
11 commissioner shall approve such expenditures, costs and  
12 expenses as he may find necessary and proper in the  
13 administration of the estate; shall direct the payment of  
14 proper fees and fiduciary commissions; shall direct the  
15 trustee to distribute the funds in his hands belonging to  
16 secured creditors; and shall direct the trustee to pay a  
17 dividend of an equal percent on all allowed claims, except  
18 such as have priority or are secured. A secured creditor whose  
19 claim is in excess of the security held may share in such  
20 dividend on such excess only. The trustee shall not pay such  
21 dividend until the time has expired within which an appeal  
22 may be taken from the decision of the fiduciary  
23 commissioner on a disputed claim, and if any such appeal is  
24 pending the trustee shall retain in his hands sufficient money  
25 to pay the same dividend thereon, should the claim be  
26 allowed on appeal, and shall distribute the remainder to the  
27 creditors entitled thereto. After paying any dividend the  
28 trustee shall file with the fiduciary commissioner a copy of a  
29 dividend sheet showing to whom the dividend was paid. If all  
30 of the property belonging to the estate has not been disposed  
31 of at the time of said meeting, the trustee shall from time to  
32 time make further reports to the fiduciary commissioner, and  
33 the fiduciary commissioner may direct the trustee to pay  
34 further costs, expenses, fees and dividends. Dividends which  
35 are unclaimed for six months shall be distributed among the  
36 remaining creditors whose claims have been allowed. After  
37 the trustee has disposed of all the property belonging to the  
38 estate, and has paid out all of the funds which have come into  
39 his hands, he shall without delay make a final report in  
40 duplicate to the fiduciary commissioner showing all his  
41 receipts and disbursements, and if the fiduciary  
42 commissioner finds the same correct and approves it, the  
43 fiduciary commissioner shall enter an order discharging the  
44 trustee, a copy of which order the fiduciary commissioner  
45 shall furnish to the surety on the bond of the trustee, and the  
46 fiduciary commissioner shall transmit a copy of said order  
47 and a copy of the final report of the trustee to the clerk of the  
48 county commission to be filed.

5 **§38-13-12. Power, duties and qualifications of trustee;  
substitute for unqualified, removed, deceased or  
disabled trustee.**

1 It shall be the duty of the trustee to collect and reduce to  
2 money the property belonging to the estate; to keep all funds  
3 belonging to the estate on deposit in a sound bank; to report  
4 promptly to the creditors any claims presented to him which  
5 are not provable or are incorrect or false so that  
6 counter-affidavits may be filed thereto; to file the reports and  
7 give the notices herein provided for; to close up the estate as  
8 expeditiously as possible; to furnish such information  
9 concerning the estate as may be requested by parties in  
10 interest; to keep regular accounts; to pay dividends as often  
11 as is compatible with the best interests of the estate. The  
12 trustee shall, as to all property transferred by the assignment,  
13 be deemed vested with all the rights, remedies and powers of  
14 a creditor holding a lien thereon by legal or equitable  
15 proceedings. The trustee shall be a resident of West Virginia,  
16 and shall not occupy the position of relative, creditor,  
17 attorney, agent or employee to the assignor, nor an officer of  
18 the assignor, if the assignor be a corporation, and if an  
19 assignment, conveyance or transfer be made to such a person  
20 it shall not for that reason be void, but shall be deemed to be  
21 for the benefit of all the creditors of the assignor, and the  
22 clerk, at the request of any party in interest, may refer the  
23 estate to a fiduciary commissioner who shall proceed to call a  
24 meeting of the creditors, at which meeting a majority in  
25 number and amount of the creditors present shall elect a  
26 substitute trustee. Upon the petition of one or more creditors  
27 showing misconduct or incompetency of the trustee, or on  
28 the petition of the trustee himself, showing sufficient reason  
29 therefor, and after due notice of not less than five days to the  
30 assignor, trustee, the surety on the bond of the trustee, and  
31 the creditors whose claims have been filed with the trustee,  
32 the fiduciary commissioner may, after hearing the parties in  
33 interest, remove or discharge the trustee; and in that event a  
34 majority in number and amount of the creditors present shall  
35 elect a substitute trustee. If the trustee shall die or become  
36 unable to act the fiduciary commissioner shall call a meeting  
37 of the creditors whose claims have been filed with the trustee,  
38 after notice of not less than five days, and a majority in  
39 number and amount of the creditors present at the hearing  
40 shall elect a substitute trustee.

**§38-13-13. Powers and duties of fiduciary commissioner.**

1 Fiduciary commissioners shall have power to preside over  
2 all meetings of creditors; to preside over all examinations of  
3 the assignor or trustee; to allow and disallow all claims  
4 presented to them for determination; to administer oaths to  
5 witnesses; to issue subpoenas for the attendance of any  
6 person for examination; to examine accounts filed by trustees  
7 hereunder, to hear and determine any objections thereto, and  
8 to surcharge any trustee for any moneys improperly  
9 expended or for which the trustee shall have failed to  
10 account; to authorize the business of the assignor to be  
11 conducted for limited periods by the trustee if necessary in  
12 the best interests of the estate; to reopen estates whenever it  
13 appears that they have been closed before being fully  
14 administered; to authorize a trustee to bring an action, which  
15 he is hereby empowered to maintain, against any person who  
16 has received, taken, or in any manner interfered with the  
17 estate, property or effects of the debtor, in fraud of his  
18 creditors, and which might have been avoided by a creditor of  
19 the assignor, and the trustee may recover the property so  
20 transferred or its value; to require or allow any inventory or  
21 schedule filed to be corrected or amended, and require and  
22 compel from time to time supplemental inventories or  
23 schedules to be made and filed; to determine the excess of the  
24 claims of secured creditors over and above the value of the  
25 securities held by them; to require the trustee to render and  
26 file the accounts and reports herein provided for; to authorize  
27 and approve the payment of costs, expenses, fees and  
28 commissions; to declare dividends; to discharge the trustee  
29 and his surety after the trustee has properly completed the  
30 performance of his duties; to authorize the appointment of an  
31 attorney for the trustee if necessary in the best interests of the  
32 estate.

**§38-13-14. Duties of assignor.**

1 The assignor shall comply with all lawful orders of the  
2 fiduciary commissioner, examining the correctness of all claims  
3 presented against the estate if ordered by the fiduciary  
4 commissioner so to do, and if any are incorrect or false notify  
5 the trustee thereof immediately; deliver to the trustee all his  
6 books, papers and records; execute and deliver such papers  
7 relating to the estate as shall be ordered by the fiduciary  
8 commissioner; execute and deliver to the trustee proper  
9 transfers of all his property outside the state of West Virginia;

10 attend the first meeting of the creditors; and submit to an  
11 examination under oath concerning the conduct of his  
12 business, the cause of his inability to pay his debts, his  
13 dealings with his creditors and other persons, the amount,  
14 kind and whereabouts of his property, and all matters which  
15 may affect the administration and settlement of his estate, but  
16 no testimony given by him shall be offered in evidence  
17 against him in any criminal proceedings. The books and  
18 papers of the assignor shall at all times be subject to the  
19 inspection and examination of any creditor.

**§38-13-15. Fiduciary commissioner to certify to circuit court  
disobedience of order, etc.; punishment for  
contempt by court.**

1 The fiduciary commissioner shall certify the facts to the  
2 circuit court of the county if any person shall disobey or resist  
3 any order, process, or writ which may be issued, or  
4 misbehave during any hearing, or neglect to produce, having  
5 been ordered to do so, any pertinent documents, or refuse to  
6 appear, take the oath, or be examined according to law, after  
7 having been subpoenaed. Upon the filing of such certificate  
8 by any fiduciary commissioner the judge shall in a summary  
9 manner hear the evidence of the acts complained of, and, if it  
10 is such as to warrant him in so doing, he may punish such  
11 person in the same manner and to the same extent as for a  
12 contempt committed before the court.

**§38-13-16. Expenses and fees of trustee, fiduciary commissioner,  
appraisers and attorneys for trustee.**

1 Trustees shall be allowed their reasonable and necessary  
2 disbursements for the costs and expenses and shall receive  
3 for their services commissions of all moneys disbursed or  
4 turned over by them to any person, including lienholders and  
5 secured creditors, which commissions shall be ten percent on  
6 the first fifteen hundred dollars or less, five percent on  
7 moneys in excess of fifteen hundred dollars and less than ten  
8 thousand dollars, three percent on moneys in excess of ten  
9 thousand dollars and less than twenty-five thousand dollars,  
10 and two percent on moneys in excess of twenty-five thousand  
11 dollars, or such additional compensation as a majority in  
12 number and amount of the creditors present at the meeting  
13 provided for in section ten of this article, or at a subsequent  
14 meeting held for the purpose of fixing compensations, shall  
15 allow, but the compensation shall in no case be less than fifty

16 dollars. Fiduciary commissioners shall be allowed their  
 17 reasonable and necessary disbursements for costs and  
 18 expenses and shall receive for their services such  
 19 compensation as the court shall from time to time prescribe.  
 20 The fiduciary commissioner shall indicate, in writing, the  
 21 compensation he believes he is entitled to receive for services  
 22 performed. Appraisers shall receive for their services a fair  
 23 and reasonable allowance which shall be fixed by the  
 24 fiduciary commissioner upon a petition therefor showing the  
 25 amount of time spent by the appraisers in the performance of  
 26 their duties. Attorneys for the trustee shall receive for their  
 27 service a fair and reasonable allowance which shall be fixed  
 28 by the fiduciary commissioner upon petition showing the  
 29 service rendered by them.

#### CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

##### ARTICLE 1. PERSONAL REPRESENTATIVES.

##### **§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.**

1 The real and personal estate of every deceased person, or in  
 2 which such deceased person had an interest at the time of his  
 3 death shall be appraised as follows: The commission by  
 4 whose order any person is authorized to act as personal  
 5 representative, or the fiduciary supervisor thereof, shall,  
 6 upon the qualification of such personal representative and at  
 7 the time thereof appoint not less than three nor more than  
 8 five appraisers, any three of whom may act, in the county in  
 9 which the will of the deceased is probated or administration  
 10 is granted upon his estate, and a like number in every other  
 11 county in which there may be any real or personal estate of  
 12 the deceased: *Provided*, That at the request of the personal  
 13 representative the appraisers appointed in the county in  
 14 which the will of the deceased is probated or administration  
 15 is granted upon his estate shall have the authority to act in  
 16 any county in the state in which there may be any real or  
 17 personal estate of the deceased and the commission or  
 18 fiduciary supervisor shall so designate in the order of  
 19 appointment, and, in such event, it shall be unnecessary to  
 20 appoint appraisers in every other county in which there may  
 21 be any real or personal estate of the deceased. Such

22 appraisers, after first taking an oath for the purpose, shall list  
23 and appraise at its real and actual value all the real estate and  
24 all the tangible property of every description owned by the  
25 deceased at the time of his death including, but not limited to,  
26 all real estate and tangible property in which the decedent  
27 had an interest as joint tenant or otherwise or in which any  
28 beneficial interest passes to another person by reason of the  
29 death of such decedent whose estate is being so appraised  
30 and irrespective of whether such real estate or tangible  
31 property is subject to administration and located in each  
32 county or the counties, as the case may be, and they shall also  
33 list and appraise at its real and actual value all his intangible  
34 property of every description, including moneys, credits,  
35 investments, annuities (other than those annuities which are  
36 exempt from taxation under the provisions of subsection (g),  
37 section one, article eleven, chapter eleven of this code), life  
38 insurance policies (irrespective of whether such policies are  
39 payable to named beneficiaries or in trust or otherwise),  
40 judgments and decrees for moneys, notes, bonds, accounts  
41 and all other evidences of debt, whether owing to him by  
42 persons or corporations in or out of the state, and the number  
43 and value, including both the par value, if any, and the actual  
44 value, of any shares of capital stock owned by him in any  
45 corporation, and every other item of intangible property of  
46 whatsoever nature or kind, including all intangible property  
47 in which the decedent had an interest as joint tenant or  
48 otherwise or in which any beneficial interest passes to  
49 another by reason of the death of such decedent, and  
50 irrespective of whether such intangible property is subject to  
51 administration and whether located in this state or elsewhere.  
52 Any real estate or interest therein so appraised shall be  
53 identified with particularity and description, shall identify  
54 the source of title in the decedent and the location of such  
55 realty for purposes of real property ad valorem taxation. Such  
56 appraisers shall designate such intangible property as good,  
57 bad or doubtful as to them may appear to be correct, and by  
58 whom owing and when payable, and from what time such of  
59 them as are interest-bearing bear interest. Every note, bond or  
60 evidence of debt shall have endorsed thereon the word  
61 "appraised," under which each acting appraiser shall sign his  
62 name. No judgment shall be rendered by any of the courts of  
63 the state upon such note, bond or evidence of debt unless and  
64 until the same shall be first shown to have been listed by the

65 appraisers. Any note, bond or evidence of debt which bears  
66 the endorsement by the appraisers, as above required, shall  
67 need no further proof that the same was listed. In addition to  
68 all other information required by law, the appraisal shall  
69 contain and include a questionnaire designed and formulated  
70 by the tax commissioner which is designed for the purpose of  
71 examining the personal representative to determine that he  
72 has made a thorough and proper search and investigation as  
73 to the existence and value of each and every kind and specie  
74 of property required to be included within, and subject to  
75 appraisal by, the provisions of this or any other section of  
76 this code, which said questionnaire shall be completed and  
77 answered upon the oath or adjuration of each such appraiser  
78 and the personal representative or fiduciary.

79 The several appraisements, lists and questionnaire  
80 aforesaid shall be executed in triplicate and shall be signed by  
81 the appraisers who made the same, and be approved by the  
82 personal representative, and be forthwith returned to the  
83 fiduciary supervisor. Such supervisor shall inspect such  
84 appraisements, lists and questionnaire, see that the same are  
85 in proper form, and that all property, if any, suggested by the  
86 questionnaire is included within the appraisal, and,  
87 within ten days after they are received and approved by him,  
88 deliver two copies of the same to the clerk of the county  
89 commission, who shall record the same, with the certificate of  
90 approval of the supervisor, and mail one copy of the same to  
91 the tax commissioner of West Virginia. The date of return of  
92 an appraisal shall be entered by the clerk of the county  
93 commission in his record of fiduciaries. Every such  
94 appraisal and list shall be prima facie evidence of the  
95 value of the property embraced therein, and that the personal  
96 estate embraced therein which is subject to administration  
97 came to the hands of the personal representative. Such  
98 appraisers shall each receive a fee of not less than one dollar  
99 nor more than one hundred dollars per day, to be fixed by  
100 such supervisor in accordance with the amount of the estate  
101 and the work involved in making the appraisal, and their  
102 actual expenses necessarily incurred in making such  
103 appraisal, and such fees and expenses and the  
104 supervisor's approval thereof shall be noted in the fiduciary  
105 supervisor's certificate. No person shall be permitted by any  
106 means whatsoever to avoid the appraisal and listing of  
107 his estate and of all property, real, tangible, and intangible, of

108 whatsoever nature and kind, in which a beneficial interest  
109 passes to another by reason of the death of the decedent and  
110 irrespective of whether such property is subject to  
111 administration as herein provided, nor shall his personal  
112 representative be permitted to do so. Any personal  
113 representative who fails, refuses or declines to comply with  
114 the provisions of this section shall be guilty of a  
115 misdemeanor, and, upon conviction thereof, shall be fined  
116 not less than twenty-five dollars nor more than five hundred  
117 dollars.

118 Every personal representative shall have authority to retain  
119 or hire the services of such expert or experts as may be  
120 deemed appropriate to assist and advise the appraisers in and  
# 121 about their duties inappropriately and accurately appraising  
122 all or any part of the assets or property to be appraised  
123 according to the provisions of this section. Such expert or  
124 experts so retained or hired shall be compensated a  
125 reasonable sum by the personal representative from the  
126 assets coming into his hands or of which he is embraced,  
127 which compensation and the reasonableness thereof shall be  
128 subject to review and approval by the county commission,  
129 upon the recommendation of the fiduciary supervisor.

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

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

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.**

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

1 (a) Upon the return of the appraisalment by the personal  
2 representative, to the county clerk, the estate of his  
3 decedent shall, by order of the county commission to be  
4 then made, be referred to a fiduciary commissioner for proof  
5 and determination of debts and claims, establishment of their  
6 priority, determination of the amount of the respective shares  
7 of the legatees and distributees, and any other matter  
8 necessary and proper for the settlement of the estate:  
9 *Provided*, That in counties where there are two or more such  
10 commissioners, the estates of decedents shall be referred to

11 such commissioners in rotation, in order that, so far as  
 12 possible, there may be an equal division of the work:  
 13 *Provided, however,* That if the personal representative shall  
 14 deliver to the clerk an appraisalment of the assets of the estate  
 15 showing their value to be twenty-five thousand dollars or less,  
 16 exclusive of property held by the decedent and another  
 17 person or other persons as joint tenants with rights of  
 18 survivorship, the clerk shall record said appraisalment and  
 19 publish a notice as set forth herein. The personal  
 20 representative shall, within two months from the date of  
 21 recordation of the appraisalment in such case, make report to  
 22 the clerk of his receipts, disbursements, and distribution, and  
 23 shall make affidavit that all claims against the estate, for  
 24 expenses of administration, taxes, and debts of the decedent,  
 25 have been paid in full; the clerk shall be entitled to collect and  
 26 receive a fee of ten dollars for recording such report and  
 27 affidavit, and for publication of the notice hereinafter  
 28 provided, said fee to be in lieu of any other fee provided by  
 29 law for recording a report of settlement of the accounts of a  
 30 decedent's personal representative. It shall be the duty of the  
 31 clerk, at least once a month, to cause to be published once a  
 32 week for two successive weeks in a newspaper of general  
 33 circulation within the county of the administration of the  
 34 estate, a notice substantially as follows:

35 NOTICE OF FILING OF ESTATE ACCOUNTS

36 I have before me the accounts of the executor(s) or  
 37 administrator(s) of the estates of the following deceased  
 38 persons:

- 39 .....
- 40 .....
- 41 .....

42 Any person having a claim against the estate of any such  
 43 deceased person, or who has any beneficial interest therein,  
 44 may appear before me or the county commission at any time  
 45 within thirty days after first publication of this notice, and  
 46 request reference of said estate to a commissioner or object to  
 47 confirmation of said accounting. In the absence of such  
 48 request or objection, the accounting may be approved by the  
 49 county commission.

50 .....

51 Clerk of the County Commission

52 of ..... County, W. Va.

53 If no such request or objection be made to the clerk or to  
 54 the county commission, the county commission may confirm  
 55 the report of the personal representative, and thereupon the  
 56 personal representative and his surety shall be discharged;  
 57 but if such objection or request be made, the county  
 58 commission may confirm the accounting or may refer the  
 59 estate to one of its fiduciary commissioners.

60 (b) If upon the return and recordation of the  
 61 appraisalment, it shall appear to the clerk that there is only  
 62 one beneficiary of the estate and that said beneficiary is  
 63 competent at law, there shall be no further administration  
 64 upon the estate, and no reference to a fiduciary  
 65 commissioner, unless, for due cause, the county commission  
 66 shall order further administration and a reference to a  
 67 fiduciary commissioner. The bond of the personal  
 68 representative and his surety shall be discharged one year  
 69 after the date of qualification of the personal representative if  
 70 no claim shall have been filed with the county clerk and no  
 71 suit shall have been instituted against the personal  
 72 representative. The clerk shall publish a notice once a week  
 73 for two successive weeks in a newspaper of general  
 74 circulation within the county of administration of the estate,  
 75 substantially as follows:

76 NOTICE OF UNADMINISTERED ESTATE

77 Notice is hereby given that, there being only one  
 78 beneficiary of the estate of the deceased, there will be no  
 79 subdivision of said estate unless within ninety days demand  
 80 for administration be made by a party in interest or an unpaid  
 81 creditor.

82 Dated this .....day of ....., .....

83 .....  
 84 Clerk of the County Commission  
 85 of .....County, W. Va.

86 The clerk shall charge to the personal representative, and  
 87 receive, the reasonable cost of publication of said notice.

88 If no person demands administration and no creditor  
 89 appears in response to the notice hereinabove provided,  
 90 alienation of the decedent's real estate more than six months  
 91 after the date of the notice to a bona fide purchaser for value  
 92 without notice of any claim against the estate shall be free of  
 93 any lien for taxes or debts of the decedent, and

94 notwithstanding the provisions of section five, article eight,  
95 chapter forty-four of this code.

**§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.**

1 Each month the fiduciary commissioner shall publish a  
2 notice designating a convenient time and place when and  
3 where claims against the estate or estates referred to him  
4 during the previous calendar month may be presented,  
5 examined and allowed. The time so designated by the  
6 fiduciary commissioner shall not be less than two months nor  
7 more than three months from the date of the first publication  
8 of the notice hereinafter set forth. The notice shall be to the  
9 following effect:

10 To the Creditors and Beneficiaries of the Estate(s) of  
11 .....

12 (Naming the decedent or decedents, as the case may be)

13 All persons having claims against the estate(s) of the said  
14 .....

15 (Naming the decedent or decedents, as the case may be)  
16 deceased, whether due, or not, are notified to exhibit same,  
17 with the voucher thereof, legally verified, to the undersigned,  
18 at (designating the place) on or before the .....day of  
19 ....., ...; otherwise they may by law be excluded  
20 from all benefit of said estate(s). All beneficiaries of said  
21 estate(s) may appear on or before said day to examine said  
22 claims and otherwise protect their interests.

23 Given under my hand this .....day of .....,  
24 .....

25 .....

26 Fiduciary Commissioner,

27 County of .....

28 Such notice shall be published as a Class II legal  
29 advertisement in compliance with the provisions of article  
30 three, chapter fifty-nine of this code, and the publication area  
31 for such publication shall be the county. The publication of  
32 such notice shall be equivalent to personal service on the  
33 creditors, distributees and legatees, or any of them.

**§44-2-3. Fiduciary commissioner to certify to publication of notice.**

1 In his report of settlement of the accounts of the personal  
2 representative, to be made as hereafter provided, the  
3 fiduciary commissioner shall certify that the notice required

4 by section two of this article was published and shall state the  
5 name of the newspaper in which the notice was published  
6 and the dates of publishing.

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

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

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

1 Every claim against the estate of a decedent shall be  
2 itemized, accompanied by proper vouchers, and shall state  
3 the character of the claim, whether open account, note, bond,  
4 bill, writing obligatory, judgment, decree, or other evidence  
5 of debt, and the amount thereof, and from what date and on  
6 what items interest runs and at what percent per annum, and  
7 stating further that the claim is just and true, and that the  
8 creditor, or any prior owner of the claim, if such there was,  
9 hath not received any part of the money stated to be due, or  
10 any security or satisfaction for the same, except what is  
11 credited. The voucher for a judgment or decree shall be an  
12 abstract thereof; for a specialty, bond, note, bill of exchange,  
13 writing obligatory, or other instrument, shall be the  
14 instrument itself, or a true copy thereof, or proof of the same  
15 in case the instrument be lost; and for an open account, an  
16 itemized copy of the account. This section shall not apply to  
17 taxes.

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

1 Claims against any decedent's estate may be filed with or  
2 presented to the fiduciary commissioner to whom the estate  
3 has been referred, at any time following the qualification of  
4 the personal representative, notwithstanding the notice to  
5 creditors, shall not have been published previously to such  
6 filing or presentation.

**§44-2-8. Proof of contingent or unliquidated claims.**

1 Whenever at the death of any person there shall be a  
2 contingent or unliquidated claim against his estate, or an  
3 outstanding bond, recognizance or undertaking upon which  
4 the deceased shall have been principal or surety or  
5 indemnitor, and on which at the time of his death the liability  
6 is still contingent or unliquidated, the claimant or the surety  
7 shall have the right to file with the fiduciary commissioner or  
8 personal representative, as the case may be, at the time  
9 provided for in the notice, proof of his claim in the same  
10 manner as other claims, stating in his affidavit the facts upon  
11 which such contingent or unliquidated liability is based and  
12 the probable amount thereof. When so filed there shall be no  
13 distribution of the assets of the estate, except as otherwise  
14 provided in this article, without the reservation of sufficient  
15 moneys to pay, when the amount is finally determined, such  
16 contingent or unliquidated claim, or a proportion thereof  
17 equal to what is paid to other creditors of the same class. If  
18 such liability becomes fixed before a fiduciary commissioner  
19 completes his report, then evidence of the same may be filed  
20 with the fiduciary commissioner in lieu of the contingent  
21 claim herein provided for, and such claim as fixed shall be a  
22 debt of the estate.

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

1 The filing with or presentation to the fiduciary  
2 commissioner or to the county clerk of any claim against the  
3 estate of a decedent shall, so far as the running of any statute  
4 of limitations is involved, have the same effect as the  
5 institution of a civil action or suit on such claim.

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

1 The fiduciary commissioner may authorize, and the  
2 personal representative may make, payment of funeral  
3 expenses, claims of physicians and nurses for services  
4 rendered during the last illness of the decedent, and accounts  
5 of druggists, hospitals and sanitariums for articles furnished  
6 and services rendered during the same period, to the extent  
7 that any of the same are preferred; also of debts due the  
8 United States, debts due the state of West Virginia, and taxes,  
9 in advance of the determination of other claims.

**§44-2-15. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.**

1 Nothing in this article contained shall be construed to  
2 prevent any personal representative, when he shall think it  
3 necessary, from commencing any action or suit against any  
4 person, or from prosecuting to final judgment or decree any  
5 action or suit commenced by the deceased in his lifetime, if  
6 the cause of such action or suit survives, for the recovery of  
7 any debt or claim, or from having execution on any judgment  
8 or decree. The defendant in any such action or suit shall,  
9 notwithstanding he may have already filed his claim before a  
10 fiduciary commissioner, set off any claim he may have  
11 against the deceased, if proper to be allowed as a setoff; and if  
12 final judgment or decree shall be rendered in favor of the  
13 defendant, the same shall be certified by the clerk of the court  
14 rendering it to the fiduciary commissioner before whom the  
15 estate of the deceased is pending, and the amount thereof  
16 shall be allowed in the same manner as other claims against  
17 such estate filed and proved before the fiduciary  
18 commissioner.

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

1 After the completion of the hearings for the presentation of  
2 claims and for reception of proof for and against disputed  
3 claims, but not later than five months from the qualification  
4 of the personal representative, the fiduciary commissioner  
5 may, and upon motion of any interested person shall, prepare  
6 a report of claims against the estate, showing in such report  
7 all the claims presented, or exhibited in offset, or certified to  
8 the fiduciary commissioner by any court, and stating as to  
9 each claim how much was allowed and how much disallowed,  
10 together with the final balance, whether in favor of the  
11 creditor or the estate. The fiduciary commissioner shall also  
12 show in such report what assets are in the hands of the  
13 personal representative, and shall designate how the same  
14 shall be applied to the payment of debts and claims; also in  
15 what order of priority the claims shall be paid and also what  
16 sum shall be reserved to pay contingent or unliquidated  
17 claims and claims not matured, or a proportion of any such  
18 claim equal to what is allowed to other creditors of the same

19 class, when payment of such claims shall become proper.  
20 Such report shall also show what persons are entitled to share  
21 in the estate as legatees, and as such in what property or  
22 amounts; or as distributees, and as such in what proportions.

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

1 (1) For the purposes of this section the term "persons  
2 interested in the estate" shall include all persons, firms and  
3 corporations who may be entitled to receive or who have  
4 received any property or interest which is required to be  
5 included in the gross estate of a decedent, or any benefit  
6 whatsoever with respect to any such property or interest,  
7 whether under a will or intestacy, or by reason of any transfer,  
8 trust, estate, interest, right, power or relinquishment of  
9 power, taxable under any estate tax law of the United States  
10 heretofore or hereafter enacted.

11 (2) Whenever it appears upon any settlement of accounts  
12 or in any other appropriate action or proceeding, that an  
13 executor, administrator, curator or other person acting in a  
14 fiduciary capacity, has paid an estate tax levied or assessed  
15 under the provisions of any estate tax law of the United States  
16 heretofore or hereafter enacted, upon or with respect to any  
17 property required to be included in the gross estate of a  
18 decedent under the provisions of any such law, the amount of  
19 the tax so paid shall be prorated among the persons  
20 interested in the estate to whom such property is or may be  
21 transferred or to whom any benefit accrues. Such  
22 apportionment shall be made in the proportion that the value  
23 of the property, interest or benefit of each such person bears  
24 to the total value of the property, interests and benefits  
25 received by all such persons interested in the estate, except  
26 that in making such proration each such person shall have the  
27 benefit of any exemptions, deductions and exclusions  
28 allowed by such law in respect of such person or the property  
29 passing to him; and except that notwithstanding the  
30 preceding provisions of this sentence in cases where a trust is  
31 created, or other provision made whereby any person is given  
32 an interest in income, or an estate for years, or for life, or other  
33 temporary interest in any property or fund, the tax on both  
34 such temporary interest and on the remainder thereafter shall  
35 be charged against and paid out of the corpus of such

36 property or fund without apportionment between remainders  
37 and temporary estates.

38 (3) In all cases in which any property required to be  
39 included in the gross estate does not come into the possession  
40 of the executor, administrator or other fiduciary as such, he  
41 shall be entitled, and it shall be his duty, to recover from  
42 whomever is in possession, or from the persons interested in  
43 the estate, the proportionate amount of such tax payable by  
44 the persons interested in the estate with which such persons  
45 interested in the estate are chargeable under the provisions of  
46 this section.

47 (4) No executor, administrator or other person acting in a  
48 fiduciary capacity shall be required to transfer, pay over or  
49 distribute any fund or property with respect to which a  
50 federal estate tax is imposed until the amount of such tax or  
51 taxes due from the devisee, legatee, distributee, or other  
52 person to whom such property is transferred, is paid to such  
53 fiduciary, or, if the apportionment of tax has not been  
54 determined, adequate security is furnished by the transferee  
55 for such payment.

56 (5) But it is expressly provided that the foregoing  
57 provisions of this section are subject to the following  
58 qualification, that none of such provisions shall in any way  
59 impair the right or power of any person by will or by written  
60 instrument executed inter vivos to make direction for the  
61 payment of such estate taxes, and to designate the fund or  
62 funds or property out of which such payment shall be made,  
63 and in every such case the provisions of the will or of such  
64 written instrument executed inter vivos shall be given effect  
65 to the same extent as if this section had not been enacted.

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

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

1 The fiduciary commissioner in his report on claims shall  
2 direct the personal representative to withhold from  
3 distribution to beneficiaries sufficient assets to take care of  
4 such contingent and unliquidated claims and claims not  
5 matured as shall be presented to and proved before the  
6 fiduciary commissioner, or a proportion thereof equal to what  
7 is paid to other creditors of the same class, and such assets  
8 shall be so withheld until such contingent liability becomes  
9 fixed, or such unliquidated liability becomes liquidated, or

10 until such claims not matured mature, as the case may be, at  
11 which time such assets shall be disbursed or distributed as  
12 the fiduciary commissioner in his report may have designated  
13 and the circumstances may require. But in any case where  
14 there are sufficient assets to pay all liquidated claims against  
15 any estate, any legatee or distributee of the estate shall be  
16 entitled to be paid his or her share of the full surplus of the  
17 estate, after payment of, or provision for, all liquidated  
18 claims, both those matured and those not matured has been  
19 made, upon such legatee's or distributee's giving to the  
20 personal representative a bond, executed by himself or some  
21 other person, with sufficient security, to be approved by the  
22 county commission, or the clerk thereof during the recess of  
23 the commission, conditioned to refund a due proportion of  
24 any unliquidated or contingent debts or demands which may  
25 afterwards appear against the decedent or become liquidated  
26 or have their liability fixed, and of the costs attending their  
27 recovery. Such bond shall be filed in the clerk's office where  
28 probate of the will or administration of the estate was had,  
29 and recorded by such clerk in the record of bonds. After the  
30 giving of any such bond or bonds, creditors holding  
31 unliquidated or contingent debts and demands shall, as to the  
32 estate distributed by virtue of the giving of such bond or  
33 bonds, look only to such bond or bonds for the payment of  
34 such debts and demands.

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

1 After preparing a report of claims as hereinafter provided,  
2 the fiduciary commissioner shall give notice thereof, either  
3 verbally or in writing, delivered personally or by mail, to all  
4 parties interested or their attorneys, and hold the report and  
5 the evidence taken in connection therewith in his office for  
6 ten days for the examination of parties interested. Any party  
7 may inspect such report and evidence and file exceptions  
8 thereto before said fiduciary commissioner; and the fiduciary  
9 commissioner, in all cases, shall return with his report all the  
10 evidence taken in connection with any claim listed in such  
11 report, and the exceptions, if any, taken to the report, and  
12 shall submit such remarks upon the exceptions as he may  
13 deem pertinent. After the expiration of such ten days the  
14 fiduciary commissioner shall return the report, evidence,  
15 exceptions and remarks to the county commission, and until

16 the report is acted upon by the county commission it shall be  
17 subject to further exceptions by the same or other parties  
18 interested.

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

1 The hearing on the report of claims returned by a fiduciary  
2 commissioner shall be had at the first term of the county  
3 commission occurring not earlier than ten days after its  
4 return. If there be no exceptions to such report it shall be  
5 confirmed, but if excepted to the county commission shall  
6 pass upon the exceptions and make its order thereon, without  
7 hearing or receiving any new evidence; but if good cause be  
8 shown for the introduction of further proof regarding any  
9 matter contained in such report, the report shall be referred  
10 back to the fiduciary commissioner for the taking of further  
11 proof and the making of a supplemental report. An appeal  
12 from the decision of such county commission on such report  
13 and exceptions and on the supplemental report and  
14 exceptions, if there be such supplemental report, may,  
15 without any formal bill of exceptions, be taken to the circuit  
16 court of the county. The appeal shall be tried and heard in the  
17 circuit court, or before the judge thereof in vacation, on the  
18 record made before the fiduciary commissioner and on order  
19 of the county commission. After the report of the fiduciary  
20 commissioner on the claims against the estate of any  
21 decedent has been confirmed by the county commission, or  
22 the circuit court on appeal, or corrected and confirmed after  
23 appeal, the same shall be forever binding and final.

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

1 No payment shall be made to creditors of any one class  
2 until all those of the preceding class or classes shall be fully  
3 paid; and when the assets are not sufficient to pay all the  
4 creditors of any one class, the creditors of such class shall be  
5 paid ratably; but a personal representative who, after six  
6 months from his qualification, pays a debt of his decedent,  
7 shall not thereby be personally liable for any debt or demand  
8 against the decedent of equal or superior dignity, whether it  
9 be of record or not, unless before such payment he shall have  
10 notice of such debt or demand by action, suit or presentation  
11 thereof to the fiduciary commissioner within the time  
12 allowed by law.

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

1 If any personal representative after six months from the  
2 qualification of the first executor or administrator of the  
3 estate, and after the report of claims, if any, has been made by  
4 the fiduciary commissioner and been confirmed by the  
5 county commission, and after withholding such funds as the  
6 fiduciary commissioner shall direct to meet any contingent  
7 and unmatured claims and claims in action or suit, shall pay  
8 any legacy given by the will, or distribute any of the estate of  
9 his decedent in accordance with the fiduciary commissioner's  
10 report as confirmed, if any, or according to law in case of  
11 intestacy or according to the will, if any, such personal  
12 representative shall not, on account of what is so paid or  
13 distributed, be personally liable for any debt or demand  
14 against the decedent, whether it be of record or not, unless,  
15 within the time fixed for presentation of claims or for suing  
16 thereon, such claim was duly presented or action or suit  
17 thereon commenced and process served on such personal  
18 representative.

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

1 After the report of a fiduciary commissioner, if any, on the  
2 claims against the estate of any decedent has been confirmed  
3 as aforesaid, or after six months from the time of the  
4 qualification of the first executor or administrator shall have  
5 elapsed, the personal representative may pay the claims  
6 allowed by the fiduciary commissioner against the decedent's  
7 estate or certified to him by courts wherein judgments or  
8 decrees against the estate have been rendered, according to  
9 the order of payment set forth in the fiduciary  
10 commissioner's report, or as directed by the fiduciary  
11 commissioner, and pay legacies and distribute the surplus  
12 among the parties entitled thereto in the amounts and  
13 proportions determined by the fiduciary commissioner  
14 withholding such sum as such report as confirmed states to  
15 be necessary for the payment of any contingent,  
16 unliquidated, or disputed claims, or claims not matured, or  
17 the proportions of any such equal to what is allowed to other  
18 creditors of the same class, and upon the determination from  
19 time to time of any such claims further payments and  
20 distributions may be made as the circumstances require. If

21 the personal representative shall fail or refuse to pay claims  
22 and make distribution within one month following the time  
23 when he may legally do so, and no appeal has been taken  
24 from the order of confirmation of the report on claims, any  
25 party interested may institute a civil action against such  
26 personal representative to compel payment and distribution  
27 as provided by section twenty-two, article four of this  
28 chapter.

**§44-2-24a. Accounting for money not disposable at time of  
settlement; subsequent distribution of such  
money.**

1 Notwithstanding any other provision of law, if an estate is  
2 otherwise ready for final settlement and the personal  
3 representative holds any sum or sums of money necessary for  
4 the payment or distribution of any contingent, unliquidated,  
5 unmatured or disputed bequest or claim, which cannot be  
6 paid or distributed because the whereabouts of the claimant  
7 or distributee are unknown, or cannot be paid or distributed  
8 for any other reason, he may, with the consent of the fiduciary  
9 commissioner to whom the estate has been referred, pay such  
10 sum or sums to the general receiver of the circuit court in the  
11 county in which the estate is being administered. Any such  
12 payment, together with a receipt therefor, shall be reflected  
13 and shown in said fiduciary commissioner's final report.  
14 After said report is confirmed by the county commission,  
15 such personal representative shall not be personally liable for  
16 any such aforesaid bequest or claim.

17 Any person entitled to any funds paid to a general receiver  
18 of a circuit court pursuant to the provisions of this section  
19 may petition the circuit court in a summary proceeding for an  
20 order directing the distribution of such funds. Any person  
21 believed to have any claim to or interest in said funds shall be  
22 made a party defendant to such petition and shall be given  
23 such notice of any hearing thereon as the circuit court may  
24 direct. The circuit court shall enter an order directing the  
25 distribution of said funds to the person or persons entitled  
26 thereto. The costs of said proceedings shall be paid from the  
27 funds.

**§44-2-25. When personal representative not compelled to make  
distribution.**

1 A personal representative shall not be compelled to pay any  
2 legacy given by the will, or make distribution of the estate of

3 his decedent, until after six months from the date of the order  
4 conferring authority on the first executor or administrator of  
5 such decedent, and not then unless the report of claims  
6 against the estate made by the fiduciary commissioner has  
7 been confirmed, and no appeal has been taken from the  
8 county commission's order of confirmation.

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

1 Every person including the state tax commissioner, having  
2 a claim against a deceased person, whether due or not, who  
3 has not, after notice to creditors has been published as  
4 prescribed in this article, presented his claim on or before the  
5 time fixed in such notice, or before that time has not  
6 instituted a civil action or suit thereon, shall, notwithstanding  
7 the same be not barred by some other statute of limitations  
8 that is applicable thereto, be barred from recovering such  
9 claim of or from the personal representative, or from  
10 thereafter setting off the same against the personal  
11 representative in any action or suit whatever; except that if a  
12 surplus remain after providing for all claims presented in due  
13 time, or on which action or suit shall have been commenced  
14 in due time, and such surplus shall not have been distributed  
15 by the personal representative to the beneficiaries of the  
16 estate, and the claimant prove that he had no actual notice of  
17 the publication to creditors nor knowledge of any  
18 proceedings before the fiduciary commissioner, such creditor  
19 may prove his claim either before the fiduciary commissioner  
20 or by action or suit and have the same allowed out of such  
21 surplus; and, in order that such late claims if proved may be  
22 provided for, the fiduciary commissioner shall reopen his  
23 report if the same has not been returned to the county  
24 commission, or if returned shall make and return a  
25 supplemental report: *Provided*, That, as to real estate, the  
26 provisions of subsection (d), section one of this article shall  
27 apply.

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

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

6 action against the distributees and legatees, jointly or  
7 severally, at any time within two years after such distribution.  
8 But no distributee or legatee shall be required to pay to  
9 creditors suing by virtue of this section a greater sum than the  
10 value of what was received by him out of the decedent's  
11 estate, nor shall any distributee or legatee be required to pay  
12 to any one creditor a greater proportion of such creditor's  
13 debt than the value of what was received by such distributee  
14 or legatee bears to the total estate distributed. A creditor  
15 suing by virtue of this section shall not recover against such  
16 distributees and legatees the costs of his civil action.

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

### **ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.**

#### **§44-3-1. Fiduciary commissioners.**

1 The office previously known as commissioner of accounts  
2 is hereby abolished. The office of fiduciary commissioner is  
3 hereby created and any reference in this code to a  
4 commissioner of accounts shall, after the effective date of this  
5 section, mean fiduciary commissioner. Fiduciary  
6 commissioners shall be attorneys admitted to the practice of  
7 law in this state, or shall meet the qualifications of fiduciary  
8 supervisors as set forth in article three-a of this chapter:  
9 *Provided, however,* That persons who are serving as  
10 commissioners of accounts upon the effective date of this  
11 article shall be continued in office as fiduciary commissioners  
12 for not more than one year from the effective date of this  
13 article for the purpose of settling estates not settled on the  
14 effective date of this article.

15 The county commission of each county shall appoint not  
16 more than four fiduciary commissioners. In counties in which  
17 there exists a separate tribunal for police and fiscal purposes,  
18 that tribunal shall appoint the fiduciary commissioners. In  
19 either case, not more than two of the fiduciary commissioners  
20 may be from the same political party.

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

1 The fiduciary commissioners shall have general  
2 supervision of all fiduciary matters that are referred to them,

3 and of the fiduciaries in charge thereof, and shall make all ex  
4 parte settlements of the accounts of such fiduciaries.  
5 Fiduciary commissioners shall have power to summon and  
6 compel the attendance of witnesses, to swear and examine  
7 witnesses, take their depositions and certify their testimony,  
8 and the costs thereof may be charged or expenses of  
9 administration of the estate subject to administration.

**§44-3-3. Special fiduciary commissioners.**

1 When, from any cause, none of the fiduciary commissioners  
2 can act as to any matter or matters which may be passed on  
3 under the provisions of this chapter, the county commission  
4 or tribunal referred to in section one of this article, may  
5 appoint some other person to act as to such matter or matters.  
6 That person shall have the power and compensation and  
7 perform the duties of a fiduciary commissioner. When any  
8 fiduciary commissioner resigns, or is removed, the county  
9 commission or tribunal may provide for the completion of the  
10 matters previously referred to that commissioner.

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

1 No person shall perform the duties of a fiduciary  
2 commissioner in any matter wherein he will be passing upon  
3 his own account or acts; nor, where he will be called to pass  
4 upon any account or acts with reference to which he served as  
5 attorney or counselor; nor shall he be in any manner  
6 interested in the fees or emoluments of any fiduciary whose  
7 account or acts are before him for any action required by this  
8 chapter; nor shall he be surety on the bond of the fiduciary  
9 whose accounts are before him, or agent of, or pecuniarily  
10 associated with, another who may be such surety; nor shall he  
11 be qualified to act in or pass upon any matter before him in  
12 which, were he a judge of the circuit court, and the matter  
13 were therein pending, he would for any reason be disqualified  
14 to serve. Any person who violates this section shall be guilty  
15 of a misdemeanor, and, upon conviction thereof shall, for  
16 each and every violation, be fined not less than fifty nor more  
17 than five hundred dollars or imprisoned in the county jail for  
18 not more than six months, or punished by both fine and  
19 imprisonment at the discretion of the court. Upon conviction  
20 he shall also forfeit the office of fiduciary commissioner.

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

1 The clerk of the county commission shall inspect all  
2 appraisements returned to him by fiduciaries, require the

3 same to be executed in quadruplicate and in proper form,  
4 and, within ten days after they are respectively approved and  
5 recorded by him, deliver one copy thereof to the fiduciary  
6 commissioner and mail one copy to the tax commissioner of  
7 West Virginia. Any fiduciary commissioner who fails, refuses  
8 or declines to comply with the provisions of this section shall  
9 be guilty of a misdemeanor and shall be punished for each  
10 offense by a fine of not less than twenty-five dollars nor more  
11 than five hundred dollars.

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

1 Each fiduciary commissioner shall, at least once each  
2 month, ascertain from the records of the county commission  
3 of his county what estates and fiduciary matters have been  
4 referred to him by the county commission, or the clerk  
5 thereof since the fiduciary commissioner's last inspection of  
6 the records. He shall examine, as to each fiduciary, in any  
7 such estate or matter, whether the fiduciary has given bond as  
8 the law requires, and, if it appears that he has given no bond,  
9 or that his bond is defective, or that the surety thereon has  
10 removed from the state, died, or become insolvent, or is  
11 bound already in too many other bonds, the fiduciary  
12 commissioner shall make report thereof to his county  
13 commission at its next term. He shall also have the fiduciary  
14 summoned to appear at that term to show cause why he  
15 should not give such bond as is required by law. At that term  
16 the fiduciary shall be required forthwith to give such bond as  
17 is required by law, or shall have his authority revoked. Until a  
18 fiduciary has fully administered the estate under his charge,  
19 and made his final account, the fiduciary commissioner shall  
20 annually make inspections of the bonds of that fiduciary, and  
21 make reports thereof. He shall issue a summons whenever the  
22 circumstances require, and the commission shall make an  
23 order as may be warranted by the facts then determined. An  
24 appeal from the order of the county commission shall lie to  
25 the circuit court of the county. An appeal may be taken on  
26 request of the fiduciary or of the fiduciary commissioner if  
27 applied for before the end of the term of the county  
28 commission at which the order was made. When an appeal is  
29 taken, the clerk of the county commission shall certify all  
30 papers in the matter, including a copy of the bond, to the  
31 clerk of the circuit court, where the same shall be docketed  
32 and proceeded with as other appeals from the county  
33 commission.

**§44-3-7. When county commission to refer controversies to fiduciary commissioner; rules of procedure.**

1 The county commission, whenever any controversy arises  
 2 in connection with the probate of any will, or with the  
 3 appointment and qualification of personal representatives,  
 4 guardians, committees, or curators, or with the settlement of  
 5 the accounts of any fiduciary, may, of its own motion, or on  
 6 the motion of any party thereto, and shall, on the joint  
 7 demand of the parties then appearing of record to the  
 8 proceeding, refer the matter to a fiduciary commissioner to  
 9 hear proof on the same, to make findings thereon, and to  
 10 advise the commission on the law governing the decision of  
 11 the matter. Any party may except to the commissioner's  
 12 finding of fact and law, and the commission shall hear the  
 13 case on the commissioner's report and the exceptions thereto,  
 14 without taking any additional evidence. In hearing and  
 15 reporting on any such matter the fiduciary commissioner  
 16 shall be governed as to procedure by the law and practice, so  
 17 far as is applicable, governing commissioners in chancery.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES AND DECEDENTS; COUNTY OPTION.**

**§44-3A-1. County commission to order type of system; findings required; certain counties required to adopt system herein.**

- 1 (a) If the county commission shall fail to act as required in  
 2 subsection (b) of this section, this article shall take effect in  
 3 that county sixty days after the effective date of this article.  
 4 (b) If within the sixty-day period, the county commission  
 5 makes a preliminary determination, by order entered of  
 6 record, to proceed without the provisions of this article, the  
 7 commission shall hold a public hearing as described in this  
 8 section.  
 9 (c) The preliminary determination by the county  
 10 commission shall include a finding, that shall include, but not  
 11 be limited to, the following considerations:  
 12 (1) The relatively expeditious and efficient administration  
 13 and settlement of estates;  
 14 (2) The relative cost and convenience to the public and to  
 15 the estates;  
 16 (3) Whether the fees provided under article three-a would

17 be insufficient to fund the salary and expenses of a fiduciary  
18 supervisor as described in article three-a of this chapter;

19 (4) Whether the county commission and the public  
20 interest is served by the availability of the unsupervised  
21 administration of estates having sole beneficiaries based  
22 upon the local needs of the county;

23 (5) The availability of physical facilities necessary for the  
24 administration of this article.

25 (d) The public hearing shall be held by the county  
26 commission within thirty days of the preliminary  
27 determination. The commission or tribunal shall cause to be  
28 published at least two weeks in advance of this hearing a  
29 Class II-0 legal advertisement, as provided in section two,  
30 article three, chapter fifty-nine of this code, setting forth the  
31 reason for the hearing and the time, place and date thereof;  
32 and the fact that the county commission has determined to  
33 proceed without the provision of article three-a, and that the  
34 preliminary determination, and the findings therein, can be  
35 reviewed and inspected at the office of the county  
36 commission.

37 (e) Within ten days of the hearing, the county commission  
38 shall make a final order either confirming or vacating its  
39 preliminary determination, which final order shall be based  
40 upon information and facts, the comments of the public, and  
41 all other available information.

42 (f) The findings and orders of the county commission  
43 made hereunder shall be reviewable by the circuit court of  
44 that county in accordance with the writ of certiorari provided  
45 for in article three, chapter fifty-three of the code.

46 (g) *Provided, however,* That, notwithstanding the  
47 provisions of this section, a county commission in any county  
48 in this state in which the number of estates settled within the  
49 calendar year immediately preceding the effective date of this  
50 article exceeds one thousand, shall proceed under this article.

**§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.**

1 Except as may be provided in article thirteen of this  
2 chapter, the office of fiduciary supervisor and of fiduciary  
3 commissioner shall not be construed to vest judicial power in  
4 the holder or holders thereof. Such offices are created to aid  
5 and assist the county commission in the proper and

6 expeditious performance of the duties of such commissions  
7 with respect to the administration of estates and trusts and  
8 every order or finding of any fiduciary supervisor or fiduciary  
9 commissioner shall be subject to confirmation and approval  
10 of the county commission, and be considered for  
11 confirmation at the next regular or special session of the  
12 commission and be promptly confirmed or, if not confirmed,  
13 a date set for hearing thereon. Every order of the fiduciary  
14 supervisor or fiduciary commissioner shall remain in effect  
15 while awaiting confirmation by the county commission  
16 unless the commission provides an alternative means of  
17 effectuating the purpose or purposes of the order by  
18 providing a lawful alternative thereto. Every fiduciary  
19 supervisor and fiduciary commissioner shall have the power  
20 to sign and issue process directed to the various parties in any  
21 proceeding before them and may summon witnesses,  
22 administer oaths and take testimony with respect thereto as  
23 may be required to carry out the purposes of this chapter, but  
24 they shall apply to the county commission or to the circuit  
25 court, as may be appropriate and lawful for any order to  
26 compel obedience to any such process or order issued by any  
27 such fiduciary supervisor or fiduciary commissioner or to  
28 compel the obedience with any of the provisions of this  
29 chapter.

**§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualification; training program; salary.**

1 (a) There is hereby created within the county commission  
2 an office, designated the fiduciary supervisor, who shall be  
3 appointed by order of the commission and whose office, with  
4 the consent of the clerk of the county commission, shall be  
5 housed within the office of such clerk or shall be housed in  
6 such other office as the commission may designate. Such  
7 fiduciary supervisor shall at the local option of each such  
8 commission, be either a part-time or a full-time employee as  
9 may be required by the county commission and shall receive  
10 such salary as may be fixed by order of the county  
11 commission.

12 (b) The fiduciary supervisor shall have general  
13 supervision of all fiduciary matters and of the fiduciaries or  
14 personal representatives thereof and of all fiduciary  
15 commissioners and of all matters referred to such

16 commissioners and shall make all ex parte settlements of the  
17 accounts of such fiduciaries except as to those matters  
18 referred to fiduciary commissioners for settlement.

19 (c) The county commission shall determine that the  
20 person to be appointed as fiduciary supervisor is fully  
21 qualified by education or experience, or both, to perform the  
22 duties assigned to such office by this chapter or other  
23 provisions of this code. Such person shall have the requisite  
24 knowledge of the legal issues raised and problems presented  
25 by any of the proceedings had and documents filed pursuant  
26 to the chapter, the procedures required with respect thereto,  
27 the rights of all parties and interested persons with respect to  
28 such procedures and the duties to be performed in examining  
29 and approving the several and various papers and documents  
30 presented to the fiduciary supervisor. The state tax  
31 commissioner shall design and supervise a test to be given to  
32 all persons selected or appointed as fiduciary supervisor who  
33 are not licensed to practice law in this state, which test shall  
34 include such matters as the tax commissioner deems  
35 appropriate to determine the proficiency, experience,  
36 knowledge and skill to perform all of the duties imposed  
37 upon or to be imposed upon fiduciary supervisors generally.  
38 Such test shall be administered under the authority of the  
39 state tax commissioner by such person or persons as he may  
40 designate either at the county wherein the fiduciary  
41 supervisor is to serve or at such other place as the tax  
42 commissioner may designate. The results of the test given to  
43 any person or persons shall be kept confidential except as to  
44 those persons who have completed the same to the  
45 satisfaction of the tax commissioner and except as to those  
46 persons who may desire their individual test results to be  
47 made public. Each county commission shall be notified as to  
48 the names of those persons who have satisfactorily completed  
49 such test. The tax commissioner shall provide for the  
50 uniformity of the test to be given and for grading and  
51 evaluating the results thereof.

52 The tax commissioner shall at least annually conduct a  
53 training program for fiduciary supervisors who are not  
54 licensed to practice law in this state. The training program  
55 shall be conducted at such times and places and consist of  
56 such subjects as the tax commissioner may determine. All  
57 fiduciary supervisors who are not licensed to practice law

58 shall be required to attend such training programs and those  
59 supervisors as are so licensed may attend.

60 (d) The fiduciary supervisor shall give bond with good  
61 security to be approved by the county commission in an  
62 amount equal to the amount posted by the clerk of the county  
63 commission in the county wherein such fiduciary supervisor  
64 is to serve.

65 (e) Neither the fiduciary supervisor nor any person to  
66 whom the duties of fiduciary supervisor have been delegated,  
67 in whole or in part (excluding fiduciary commissioners) shall  
68 engage in the practice of law, for compensation or otherwise,  
69 with respect to the administration of any estate or trust  
70 wherein the fiduciary thereof has qualified in his county or  
71 with respect to any proceedings before him or which are or  
72 may be referred to a fiduciary commissioner in his county.  
73 Nor shall a fiduciary commissioner or special fiduciary  
74 commissioner engage in the practice of law with respect to  
75 matters referred to him as such commissioner. Any fiduciary  
76 supervisor or person to whom any of the functions or duties  
77 of the fiduciary supervisor have been delegated or fiduciary  
78 commissioner or special fiduciary commissioner who so  
79 engages in the practice of law contrary to the limited  
80 prohibitions of this section, shall be removed from his office  
81 or employment and, in addition thereto, shall be guilty of a  
82 misdemeanor, and upon conviction thereof, shall be fined one  
83 thousand dollars.

**§44-3A-4. Notice of claim; settlement in certain cases.**

1 The fiduciary supervisor shall at least once a month as a  
2 Class II legal advertisement in compliance with the  
3 provisions of article three, chapter fifty-nine of this code,  
4 cause to be published in a newspaper of general circulation  
5 within the county wherein letters of administration have been  
6 granted, a notice substantially as follows:

7 NOTICE OF FILING OF ESTATE ACCOUNTS

8 To the Creditors and Beneficiaries of the within named  
9 deceased persons:

10 I have before me the estates of the following deceased  
11 persons and the accounts of the fiduciaries of their respective  
12 estates:

13 Name of Decedent: .....

14 Name of Fiduciary: .....

15 Address: .....  
 16 Name of Decedent: .....  
 17 Name of Fiduciary: .....  
 18 Address: .....  
 19 Name of Decedent: .....  
 20 Name of Fiduciary: .....  
 21 Address: .....

22 All persons having claims against the estate(s) of any of the  
 23 above-named deceased persons whether due or not, are  
 24 notified to exhibit the same with vouchers thereof, legally  
 25 verified, to the fiduciary of such deceased person as shown  
 26 herein within seventy-five days of the first publication hereof  
 27 or not later than .....day of ....., .....; or if  
 28 not so exhibited to such fiduciary by that date to exhibit the  
 29 same at the office of the undersigned fiduciary supervisor at  
 30 the address shown below within one hundred twenty days of  
 31 the first publication of this notice or not later than the  
 32 ..... day of ....., .....; otherwise any  
 33 or all such claims may by law be excluded from all benefits of  
 34 said estate(s). All beneficiaries of said estate(s) may appear  
 35 either before the above-named fiduciary by the date first  
 36 above shown or thereafter before the undersigned fiduciary  
 37 supervisor by the date last above shown to examine said  
 38 claims and otherwise protect their respective interests.

39 Given under my hand this .....day of .....,  
 40 .....

41 .....  
 42 .....  
 43 .....County, W. Va.

44 All such claims are to be filed with the appropriate  
 45 fiduciary at the address shown in such notice within  
 46 seventy-five days of the date of the first publication of such  
 47 notice or with the fiduciary supervisor within one hundred  
 48 twenty days of such date.

49 Subject to the provisions of section five of this article, at the  
 50 end of the one hundred twenty-day period set forth in such  
 51 notice, the fiduciary supervisor may proceed with  
 52 supervision of all estates referred to him for proof and  
 53 determination of debts and claims, establishment of their  
 54 priority, determination of the amount of the respective shares  
 55 of the legatees and distributees and any and all other matter  
 56 or matters necessary and proper for the settlement of the  
 57 estate, including, but not limited to, his recommendations

58 concerning the approval of the fees of any fiduciary  
59 commissioner to whom the estate may have been referred,  
60 determination that inheritance taxes, if any, occasioned by  
61 the death of the decedent or returnable by reason thereof  
62 have been returned upon such estate and such taxes have  
63 been paid or such payment provided for and whether a  
64 release therefor has been issued by the proper authority, all  
65 matters required by section nineteen of this article and all  
66 other matters deemed proper by him.

**§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.**

1 When the personal representative shall deliver to the  
2 fiduciary supervisor, the appraisal required by section  
3 fourteen, article one of this chapter, and is notified as to the  
4 completeness thereof, the fiduciary supervisor shall, unless  
5 otherwise ordered by the county commission, proceed to  
6 receive claims and proceed to supervise settlement of the  
7 estate.

8 The county commission shall not remove the estate from  
9 supervision by the fiduciary supervisor and no reference to a  
10 fiduciary commissioner shall be made if the appraisal,  
11 properly completed, shows the total value of all assets  
12 included in the estate which are subject to administration  
13 (exclusive of real property, unless the will, if any, requires  
14 administration thereof) to be twenty-five thousand dollars or  
15 less: *Provided*, That if a dispute arises as to a matter of law or  
16 fact, then the matter may be referred to a fiduciary  
17 commissioner for the sole purpose of taking evidence as to  
18 making a recommendation as to the disputed facts and  
19 applicable law in such dispute.

20 The county commission shall not refer any estate to a  
21 fiduciary commissioner:

22 (a) If the personal representative is also the sole  
23 beneficiary of the estate; nor

24 (b) If the surviving spouse is the sole beneficiary of the  
25 estate unless the spouse requests such reference; nor

26 (c) (1) If all the beneficiaries of the estate advise the  
27 fiduciary supervisor by verified writing that no dispute is  
28 likely to arise with respect to the administration of the estate;  
29 and (2) It appears to the county commission or to the  
30 fiduciary supervisor thereof that there are ample assets in the  
31 estate to satisfy all claims of creditors and others against the

32 estate and that proper distribution thereof will be made,  
33 including the payment of all taxes due thereon; and (3) If the  
34 personal representative agrees thereto or; nor

35 (d) If the county commission or fiduciary supervisor,  
36 subject to the approval of the county commission, find that  
37 there are ample assets in the estate to satisfy all claims of  
38 creditors and others against the estate and that proper  
39 distribution thereof will be made including, but not limited  
40 to, the payment of all taxes due thereon and that no disputed  
41 questions of law or fact has arisen or is likely to arise.

42 The commission shall, before making any reference to a  
43 fiduciary commissioner, find by its order that none of the  
44 prohibitions contained in this section obtains: *Provided*, That  
45 in any case in which a reference would otherwise be  
46 prohibited, the commission may refer a matter for the sole  
47 purpose of resolving a disputed question of law or fact or  
48 may, if the matter can be resolved expeditiously, permit the  
49 fiduciary supervisor to conduct the necessary proceedings  
50 and to prepare a recommendation on such disputed question.

51 In the event reference is made because of the failure to meet  
52 any of the conditions in the preceding paragraph which  
53 preclude reference to a fiduciary commissioner, such  
54 reference may be made generally or for the sole purpose of  
55 determining those matters in dispute, and, in any event, such  
56 reference shall be withdrawn at any time upon the settlement  
57 or determination or resolution of the reason or reasons giving  
58 rise to such reference or at any other time deemed  
59 appropriate by the county commission or by the fiduciary  
60 supervisor, subject to the approval of the county commission.  
61 If no such reference is made and it is later found that a  
62 dispute or other condition has arisen which make reference to  
63 a fiduciary commissioner necessary, then reference to a  
64 fiduciary commissioner may be made, either generally or for  
65 the settlement, determination or resolution of the dispute or  
66 condition and shall, in any event, be later withdrawn at any  
67 time required by this section or deemed appropriate by the  
68 fiduciary supervisor with the approval of the county  
69 commission.

70 In counties where there are two or more such fiduciary  
71 commissioners, the estates of decedents shall be referred to  
72 such commissioners in rotation, in order that, so far as  
73 possible, there may be an equal division of the work.

**§44-3A-6. Claims to be proved by vouchers and affidavits in first instance.**

1 Every claim against the estate of a decedent shall be  
2 itemized, accompanied by proper vouchers, and verified by  
3 the affidavit of the creditor stating the character of the claim,  
4 whether open account, note, bond, bill, writing obligatory,  
5 judgment, decree, or other evidence of debt, and the amount  
6 thereof, and from what date and on what items interest runs  
7 and at what percent per annum, and stating further that the  
8 claim is just and true, and that the creditor, or any prior owner  
9 of the claim, if such there was, hath not received any part of  
10 the money stated to be due, or any security or satisfaction for  
11 the same, except what is credited. The vouchers for a  
12 judgment or decree shall be an abstract thereof; for a  
13 specialty, bond, note, bill of exchange, writing obligatory, or  
14 other instrument, shall be the instrument itself, or a true copy  
15 thereof, or proof of the same in case the instrument be lost;  
16 and for an open account, an itemized copy of the account.  
17 This section shall not apply to taxes.

**§44-3A-7. Claims to be proved; objections to claims; hearings; funeral expenses.**

1 Every claim so itemized, so accompanied by proper  
2 vouchers, and so verified, shall be taken to be proved, and  
3 shall be allowed, unless before the fiduciary supervisor shall  
4 make up his report of claims, the personal representative or a  
5 distributee, or a legatee, or, in the case of estates that appear  
6 to be insolvent, a creditor, shall file before such clerk a  
7 counter affidavit, denying the claim in whole or in part. When  
8 said counter affidavit is so filed the fiduciary supervisor shall  
9 forthwith refer the matter to a fiduciary commissioner, the  
10 provisions of section five of this article notwithstanding, who  
11 shall within ten days of the receipt of the reference fix a time  
12 and place for hearing evidence for and against such claim and  
13 give reasonable notice of such time and place to the claimant,  
14 the party objecting, and the personal representative. If such  
15 fiduciary commissioner, having held such hearing, does not  
16 allow any such claim, the claimant shall pay the expenses of  
17 having the testimony adduced at such hearing recorded  
18 and/or transcribed. The commissioner, in the exercise of his  
19 sound discretion, may require that the claimant post a bond  
20 or other security sufficient to pay the estimated cost of having  
21 such testimony recorded and transcribed as a condition

22 precedent to holding such hearing. If such claim, having been  
23 disallowed by the commissioner, subsequently shall be  
24 allowed as a claim against the estate, the claimant shall be  
25 entitled to recover from the estate the expenses so paid.  
26 Claims for funeral expenses shall be made and determined in  
27 the same manner as any other claims. If such estate is referred  
28 to a fiduciary commissioner for the sole purpose of  
29 determining the allowance of a claim and for no other  
30 purpose, the order of reference to such commissioner shall be  
31 withdrawn upon receipt of the commissioner's report with  
32 respect thereto. If such estate in its entirety be referred to  
33 such fiduciary commissioner then such commissioner shall  
34 retain general supervision of the matter until such time as he  
35 would otherwise be relieved of the same as provided in  
36 section four of this article.

**§44-3A-8. Claims may be presented before publication of notice.**

1 Claims against any decedent's estate may be filed with or  
2 presented to the fiduciary supervisor, at any time following  
3 the qualification of the personal representative,  
4 notwithstanding the notice to creditors shall not have been  
5 published previously to such filing or presentation.

**§44-3A-9. Proof of contingent or unliquidated claims.**

1 Whenever at the death of any person there shall be a  
2 contingent or unliquidated claim against his estate, or an  
3 outstanding bond, recognizance or undertaking upon which  
4 the deceased shall have been principal or surety or  
5 indemnitor, and on which at the time of his death the liability  
6 is still contingent or unliquidated, the claimant or the surety  
7 shall have the right to file with the fiduciary supervisor at the  
8 time provided for in the notice, proof of his claim in the same  
9 manner as other claims, stating in his affidavit the facts upon  
10 which such contingent or unliquidated liability is based and  
11 the probable amount thereof. When so filed there shall be no  
12 distribution of the assets of the estate, except as otherwise  
13 provided in this article, without the reservation of sufficient  
14 moneys to pay, when the amount is finally determined, such  
15 contingent or unliquidated claim, or a proportion thereof  
16 equal to what is paid to other creditors of the same class. If  
17 such liability becomes fixed before the fiduciary supervisor  
18 or fiduciary commissioner, as may be, completes his report,  
19 then evidence of the same may be filed with such clerk or  
20 commissioner in lieu of the contingent claim herein provided  
21 for, and such claim as fixed shall be a debt of the estate.

**§44-3A-10. Continuances until all claims and objections passed on.**

1 The fiduciary supervisor may adjourn from time to time the  
2 hearing for the presentation of claims or the fiduciary  
3 commissioner may likewise adjourn from time to time the  
4 hearings for proof of disputed claims until all the presented  
5 claims and the objections to any claims, as the case may be,  
6 shall be fully heard and passed on.

**§44-3A-11. Personal representative to exhibit offsets to claims.**

1 When a creditor against whom the deceased had any claim  
2 or claims shall present a claim the personal representative  
3 may exhibit any offset, if the same be such as has survived,  
4 that he may have to such claim, and the fiduciary supervisor  
5 or fiduciary commissioner, as may be, shall ascertain and  
6 allow the balance against or in favor of the estate.

**§44-3A-12. How heir or devisee may protect himself against lien on property.**

1 Any heir or devisee entitled to have any lien on the real  
2 estate that descended or was devised to him discharged out of  
3 the personal estate, or any legatee entitled to have a lien on  
4 specific personalty discharged out of the other personalty,  
5 may, if the creditor holding any such lien fails to present and  
6 prove his claim, present and prove such claim, and have the  
7 same allowed or provided for, within the same time, to the  
8 same extent, and by the same means as such creditor.

**§44-3A-13. No claim barred by statute of limitations to be allowed.**

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

**§44-3A-14. Effect of presenting claim as to statute of limitations.**

1 The filing or presentation of any claim against the estate of  
2 a decedent shall, so far as the running of any statute of  
3 limitations is involved, have the same effect as the institution  
4 of action on such claim.

**§44-3A-15. Advance payment of certain claims.**

1 The fiduciary supervisor or fiduciary commissioner to  
2 whom the matter has been generally referred may authorize,  
3 and the personal representative may make, payment of  
4 funeral expenses, claims of physicians and nurses for services  
5 rendered during the last illness of the decedent, and accounts

6 of druggists, hospitals and sanitariums for articles furnished  
7 and services rendered during the same period, to the extent  
8 that any of the same are preferred; also of debts due the  
9 United States, debts due the state of West Virginia, and taxes,  
10 in advance of the determination of other claims.

**§44-3A-16. Personal representative not precluded from  
commencing action or suit; setoff in such actions  
or suits.**

1 Nothing in this article contained shall be construed to  
2 prevent any personal representative, when he shall think it  
3 necessary, from commencing any action against any person,  
4 or from prosecuting to final judgment any action commenced  
5 by the deceased in his lifetime, if the cause of such action  
6 survives, for the recovery of any debt or claim, or from having  
7 execution on any judgment. The defendant in any such action  
8 shall, notwithstanding he may have already filed his claim  
9 before the fiduciary supervisor, set off by way of  
10 counterclaim any claim he may have against the deceased, if  
11 proper to be allowed as a counterclaim; and if final judgment  
12 shall be rendered in favor of the defendant, the same shall be  
13 certified by the clerk of the court rendering it to the fiduciary  
14 supervisor or fiduciary commissioner before whom the estate  
15 of the deceased is pending, and the amount thereof shall be  
16 allowed in the same manner as other claims against such  
17 estate filed and proved before such clerk or commissioner.

**§44-3A-17. Fiduciary commissioner to report on claims of  
creditors; report by fiduciary supervisor; assets  
and shares of distributees and legatees.**

1 If an estate has been referred generally to a fiduciary  
2 commissioner, after the presentation of all claims and after  
3 the completion of the hearings for the proof for and against  
4 any disputed claims, but not later than ten months from the  
5 qualification of the personal representative, the  
6 commissioner shall prepare a report of all claims, disputed or  
7 otherwise, against the estate, showing in such report all such  
8 claims presented, disputed, exhibited in offset, or certified to  
9 the commissioner by the fiduciary supervisor or by any court,  
10 and stating as to each claim how much was allowed and how  
11 much disallowed, together with the final balance, whether in  
12 favor of the creditor or the estate. The commissioner shall  
13 also show in such report what assets are in the hands of the

14 personal representative, and shall designate how the same  
15 shall be applied to the payment of debts and claims; also in  
16 what order of priority the claims shall be paid and also what  
17 sum shall be reserved to pay contingent or unliquidated  
18 claims and claims not matured, or a proportion of any such  
19 equal to what is allowed to other creditors of the same class,  
20 when payment of such claims shall become proper. In the  
21 event the estate is not referred to any such fiduciary  
22 commissioner, then a report shall be prepared by the  
23 fiduciary supervisor which shall contain all such information  
24 as is herein required to be included in the report filed by such  
25 commissioner. In lieu of a formal report of claims, the  
26 fiduciary supervisor or fiduciary commissioner may prepare  
27 an abbreviated or condensed report which summarizes the  
28 status of claims and the entitlements of the legatees or  
29 beneficiaries and identifies other matters that require  
30 completion in the particular estate before the estate is closed.  
31 Any report or abbreviated report, whether by the fiduciary  
32 supervisor or fiduciary commissioner, shall show what  
33 persons are entitled to share in the estate as legatees, and as  
34 such in what property or amounts; or as distributees, and as  
35 such in what proportions.

**§44-3A-18. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.**

1 (a) For the purposes of this section the term "persons  
2 interested in the estate" shall include all persons, firms and  
3 corporations who may be entitled to receive or who have  
4 received any property or interest which is required to be  
5 included in the gross estate of a decedent, or any benefit  
6 whatsoever with respect to any such property or interest,  
7 whether under a will or intestacy, or by reason of any transfer,  
8 trust, estate, interest, right, power or relinquishment of  
9 power, taxable under any estate tax law of the United States  
10 heretofore or hereafter enacted.

11 (b) Whenever it appears upon any settlement of accounts  
12 or in any other appropriate action or proceeding, that an  
13 executor, administrator, curator, trustee or other person  
14 acting in a fiduciary capacity, has paid an estate tax levied or  
15 assessed under the provisions of any estate tax law of the  
16 United States heretofore or hereafter enacted, upon or with  
17 respect to any property required to be included in the gross  
18 estate of a decedent under the provisions of any such law, the

19 amount of the tax so paid shall be prorated among the  
20 persons interested in the estate to whom such property is or  
21 may be transferred or to whom any benefit accrues. Such  
22 apportionment shall be made in the proportion that the value  
23 of the property, interest or benefit of each such person bears  
24 to the total value of the property, interests and benefits  
25 received by all such persons interested in the estate, except  
26 that in making such proration each such person shall have the  
27 benefit of any exemptions, deductions and exclusions  
28 allowed by such law in respect of such person or the property  
29 passing to him; and except that notwithstanding the  
30 preceding provisions of this sentence in cases where a trust is  
31 created, or other provision made whereby any person is given  
32 an interest in income, or an estate for years, or for life, or other  
33 temporary interest in any property or fund, the tax on both  
34 such temporary interest and on the remainder thereafter shall  
35 be charged against and paid out of the corpus of such  
36 property or fund without apportionment between remainders  
37 and temporary estates.

38 (c) In all cases in which any property required to be  
39 included in the gross estate does not come into the possession  
40 of the executor, administrator or other fiduciary as such, he  
41 shall be entitled, and it shall be his duty, to recover from  
42 whomever is in possession, or from the persons interested in  
43 the estate, the proportionate amount of such tax payable by  
44 the persons interested in the estate with which such persons  
45 interested in the estate are chargeable under the provisions of  
46 this section.

47 (d) No executor, administrator or other person acting in a  
48 fiduciary capacity shall be required to transfer, pay over or  
49 distribute any fund or property with respect to which a  
50 federal estate tax is imposed until the amount of such tax or  
51 taxes due from the devisee, legatee, distributee, or other  
52 person to whom such property is transferred is paid to such  
53 fiduciary, or, if the apportionment of tax has not been  
54 determined, adequate security is furnished by the transferee  
55 for such payment.

56 (e) But it is expressly provided that the foregoing  
57 provisions of this section are subject to the following  
58 qualification, that none of such provisions shall in any way  
59 impair the right or power of any person by will or by written  
60 instrument executed inter vivos to make direction for the  
61 payment of such estate taxes, and to designate the fund or

62 funds or property out of which such payment shall be made,  
63 and in every such case the provisions of the will or of such  
64 written instrument executed inter vivos shall be given effect  
65 to the same extent as if this section had not been enacted.  
66 (f) The provisions of this section shall be applicable to  
67 estates of decedents dying after the enactment of this section.

**§44-3A-19. Summary settlement before fiduciary supervisor.**

1 (a) At any time after the expiration of the period for filing  
2 claims, the fiduciary supervisor may proceed with summary  
3 settlement under this section if the estate has not been  
4 referred to a fiduciary commissioner or if the estate, having  
5 been referred to a fiduciary commissioner generally or for a  
6 specific reason, has been withdrawn and placed before the  
7 fiduciary supervisor for settlement.

8 The fiduciary supervisor shall require that the personal  
9 representative, or the personal representative may on his own  
10 motion, timely file a proposed settlement which shall include:

11 (1) Proof of payment of all claims filed against the estate or  
12 proof of such payment has been provided for;

13 (2) Verification under oath that the personal  
14 representative, after exercise of due diligence, knows of no  
15 other claims against the estate;

16 (3) Verification and accounting of any income received by  
17 the personal representative from the benefit of the estate;

18 (4) Provisions for the payment of all taxes due from the  
19 estate or proof that all such taxes have been paid;

20 (5) A proposed plan of distribution; and

21 (6) Any and all other information deemed appropriate by  
22 the fiduciary supervisor.

23 (b) The provisions of this section to the contrary  
24 notwithstanding, any claim paid by the personal  
25 representative to any creditor or beneficiary within such one  
26 hundred twenty days, shall not abrogate in any way, the  
27 liability of the personal representative under the provisions of  
28 sections twenty-six, twenty-seven, or twenty-eight of this  
29 article.

30 (c) At the time such proposed settlement is filed, or prior  
31 thereto, the personal representative shall prepare and furnish  
32 to the fiduciary supervisor, and such supervisor shall review,  
33 a return of all inheritance taxes due the state, pursuant to  
34 article eleven, chapter eleven of this code, by reason of the  
35 death of the decedent, who shall approve any proper return  
36 filed with him.

37 Such supervisor shall compare the proposed settlement  
38 with any proper inheritance tax return and with the  
39 appraisement and any and all other documents deemed  
40 appropriate by the supervisor in order to investigate the  
41 propriety of such proposed settlement.

42 (d) The supervisor may, if he deems it appropriate, reject  
43 such settlement and give notice in writing to the personal  
44 representative of the matters disapproved and the reasons  
45 therefor and fix a time, no later than forty-five days after the  
46 date of such notice, for the personal representative to amend  
47 the proposed settlement. The personal representative may,  
48 within the time specified by the supervisor, amend the  
49 settlement, otherwise satisfy the supervisor of the propriety  
50 of all or part of such proposed settlement, or insist on the  
51 propriety thereof, with or without amendment thereof.

52 (e) The supervisor shall, after he is satisfied as to the  
53 propriety of the settlement or, after the period set by him for  
54 amendment thereof has expired, prepare a report of his  
55 recommendations to the county commission with respect  
56 thereto, and his findings and determinations, which shall  
57 include his findings with respect to:

58 (1) A proper appraisement has been filed which conforms  
59 to the requirements of section ~~sixteen~~, article ~~two~~ of this  
60 chapter; *sixteen one*

61 (2) The claims of creditors have been paid or have been  
62 properly provided for in proper order of preference and  
63 proportions;

64 (3) A proper inheritance tax return has been made and the  
65 taxes due thereon paid or that payment has been provided  
66 for;

67 (4) Any real property in this state owned by the decedent  
68 at the time of his death has been properly transferred upon  
69 the books of the assessor or that the assessor has been  
70 notified of the facts and circumstances sufficient to cause the  
71 transfer to be noted upon the books of the assessor;

72 (5) A proper distribution to the parties entitled thereto has  
73 been proposed by the personal representative of the estate;

74 (6) Minors and other persons under disability who own or  
75 are entitled to an interest in the estate are or have been  
76 protected; and

77 (7) Any other matter or matters deemed pertinent by the  
78 fiduciary supervisor.

79 (f) The fiduciary supervisor shall give notice of such  
 80 proposed settlement and findings to the state tax  
 81 commissioner, all creditors whose claims have not been fully  
 82 paid or otherwise satisfied and all beneficiaries which notice  
 83 shall include a copy of the proposed settlement and shall  
 84 advise that the subject estate shall be settled according  
 85 thereto thirty days following the date of such notice. In  
 86 addition, on the first Monday of the next month, the  
 87 supervisor shall publish as a Class I-0 legal advertisement, a  
 88 notice that the accounts of the personal representative are  
 89 before him for approval.

90 Such notice shall be divided into two section: Settlements  
 91 approved and settlements not approved and notice of the date  
 92 and time that the names shall be presented to the county  
 93 commission, which date shall not be more than fifteen days  
 94 after such publication. Such advertisement shall be sufficient  
 95 if substantially as follows:

96 NOTICE OF PROPOSED SETTLEMENT OF ESTATES

97 To the Creditors and Beneficiaries of the within named  
 98 deceased persons:

99 I have before me the proposed final settlements of the  
 100 estates of the following deceased persons, which shall be  
 101 presented to the county commission of .....  
 102 County, at the Courthouse thereof, in the City of  
 103 ....., on the ..... day of ....., ....  
 104 at ...o'clock, ....M., which settlements have been  
 105 presented to me by the fiduciary of such estates and which  
 106 proposed settlements I have either approved or have not  
 107 approved as indicated below:

108 APPROVED  
 109  
 110 Name(s) of Decedent: .....  
 111 .....  
 112 .....

113 NOT APPROVED  
 114 Name(s) of Decedent: .....  
 115 .....  
 116 .....

117 Any person having any interest in the estate of any such  
 118 deceased person, may appear before the county commission  
 119 at the time and place hereinabove specified and thereupon  
 120 protect his interests as they may appear or else may be

121 forever thereafter barred from asserting such interests. ....  
 122 Given under my hand this .....day of .....,  
 123 .....  
 124 .....Fiduciary Supervisor  
 125 .....County, W. Va.

126 (g) Any person may examine such proposed settlement in  
 127 the office of the fiduciary supervisor and file objection  
 128 thereto at or prior to the time set by such notice for  
 129 presentation thereof to the county commission. The  
 130 commission shall proceed to hear the presentation of such  
 131 proposed settlement and findings and hear interested parties,  
 132 if any appear, and approve, modify and approve, or refuse to  
 133 approve such proposed settlement and the findings of the  
 134 fiduciary supervisor. Alternatively, the commission may refer  
 135 the cause to a fiduciary commissioner generally for  
 136 supervision or for the purpose of the resolution of any  
 137 disputed matter.

138 (h) If no dispute or objection to the proposed settlement  
 139 has arisen, the fiduciary supervisor shall direct the personal  
 140 representative to conclude the affairs of the estate as outlined  
 141 in the proposed settlement or amended proposed settlement.  
 142 Upon receipt by such supervisor of evidence to his  
 143 satisfaction that all claims, including claims of beneficiaries  
 144 have been satisfied and that all taxes have been paid, he shall  
 145 submit his report to the proposed or amended proposed  
 146 settlement to the county commission for ratification,  
 147 confirmation and approval as otherwise provided by law.

**§44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.**

1 The fiduciary supervisor or fiduciary commissioner, as may  
 2 be, in his report on claims shall direct the personal  
 3 representative to withhold from distribution to beneficiaries  
 4 sufficient assets to take care of such contingent and  
 5 unliquidated claims and claims not matured as shall be  
 6 presented and proved or a proportion thereof equal to what is  
 7 paid to other creditors of the same class, and such assets shall  
 8 be so withheld until such contingent liability becomes fixed,  
 9 or such unliquidated liability becomes liquidated, or until  
 10 such claim not matured mature, as the case may be, at which  
 11 time such assets shall be disbursed or distributed as the  
 12 fiduciary supervisor or fiduciary commissioner in his report  
 13 may have designated and the circumstances may require. But  
 14 in any case where there are sufficient assets to pay all

5

15 liquidated claims against any estate, any legatee or  
16 distributee of the estate shall be entitled to be paid his or her  
17 share of the full surplus of the estate, after payment of, or  
18 provision for, all liquidated claims, both those matured and  
19 those not matured has been made, upon such legatee's or  
20 distributee's giving to the personal representative a bond,  
21 executed by himself or some other person, with sufficient  
22 security, to be approved by the county commission, or the  
23 fiduciary supervisor thereof during any recess thereof,  
24 conditioned to refund a due proportion of any unliquidated or  
25 contingent debts or demands which may afterwards appear  
26 against the decedent or become liquidated or have their  
27 liability fixed, and of the costs attending their recovery. Such  
28 bond shall be filed in the office of the clerk of the county  
29 commission where probate of the will or administration of the  
30 estate was had, and recorded by such clerk in the record of  
31 bonds. After the giving of any such bond or bonds, creditors  
32 holding unliquidated or contingent debts and demands shall,  
33 as to the estate distributed by virtue of the giving of such  
34 bond or bonds, look only to such bond or bonds for the  
35 payment of such debts and demands.

**§44-3A-21. Exceptions to fiduciary supervisor's or fiduciary  
commissioner's report; return of report.**

1 After preparing his report of claims the fiduciary supervisor  
2 or the fiduciary commissioner, as may be, shall give notice  
3 thereof, in writing, delivered personally or by mail, to all  
4 parties interested or their attorneys, and hold the report and  
5 the evidence taken in connection therewith in his office for  
6 ten days for the examination of or by all parties interested.  
7 Any party may inspect such report and evidence and file  
8 exceptions thereto before said supervisor or commissioner;  
9 and such supervisor or commissioner, in all cases, shall  
10 return with his report all the evidence taken in connection  
11 with any claim listed in such report, and the exceptions, if  
12 any, taken to the report, and shall submit such remarks upon  
13 the exceptions as he may deem pertinent. Such report shall  
14 include the same findings as are required to be made by the  
15 provisions of section nineteen of this article. After the  
16 expiration of such ten days such supervisor or commissioner  
17 shall return the report, evidence, exceptions and remarks to  
18 the county commission, and until the report is acted upon by  
19 the commission it shall be subject to further exceptions by  
20 the same or other parties interested.

**§44-3A-22. Hearing on report and exceptions; appeal; effect of confirmation.**

1 A hearing on the report of claims returned by the fiduciary  
2 supervisor or fiduciary commissioner shall be had at the first  
3 term of the county commission occurring not earlier than ten  
4 days after its return. If there be no exceptions to such report it  
5 shall be confirmed, but if excepted to the commission shall  
6 pass upon the exceptions and make its order thereon, without  
7 hearing or receiving any new evidence, but if good cause be  
8 shown for the introduction of further proof regarding any  
9 matter contained in such report, the report shall be referred  
10 back to the fiduciary commissioner for the taking of further  
11 proof and the making of a supplemental report. An appeal  
12 from the decision of such county commission on such report  
13 and exceptions and on the supplemental report and  
14 exceptions, if there be such supplemental report, may,  
15 without any formal bill of exceptions, be taken to the circuit  
16 court of the county. The appeal shall be tried and heard in the  
17 circuit court, or before the judge thereof in vacation, on the  
18 record made before the commissioner and the county  
19 commission. After the report of the commissioner on the  
20 claims against the estate of any decedent has been confirmed  
21 by the county commission, or the circuit court on appeal, or  
22 corrected and confirmed after appeal, the same shall be  
23 forever binding and final.

**§44-3A-23. Exceptions to report of fiduciary supervisor or  
fiduciary commissioner where no previous  
hearing was had; reference.**

1 In all cases wherein exception has been taken to the report  
2 of claims returned by the fiduciary supervisor, the  
3 commission at the time of the hearing provided for in section  
4 twenty-two of this article shall refer the matter to a fiduciary  
5 commissioner for the taking of evidence upon the matter or  
6 matters excepted to. Such commissioner shall within ten  
7 days of the receipt of the reference fix a time and place for the  
8 hearing and taking of evidence upon the matter or matters  
9 excepted to and shall give reasonable notice of the time and  
10 place of such hearing to all persons interested therein. Such  
11 commissioner shall make his report as in other cases and if  
12 exception be taken to such commissioner's report the  
13 commission may proceed as provided in section twenty of  
14 this article to pass upon such exceptions and make its order

15 thereon without hearing or receiving any new evidence  
16 unless good cause be shown with the introduction of further  
17 proof in which case the matter shall be referred back to the  
18 commissioner for the taking of further evidence and the  
19 making of a supplemental report and appeal from the  
20 decision of the commission shall be in the manner provided  
21 for in said section twenty-two.

22 If an exception be taken to a report of a fiduciary  
23 commissioner wherein no evidence had been previously  
24 taken, the matter shall be rereferred to such commissioner  
25 who shall proceed thereon as provided for in section  
26 twenty-two of this article. It shall be the duty of the fiduciary  
27 supervisor to compel timely compliance with the provision of  
28 this chapter, including any continuances granted with  
29 respect to any matter. Any such continuance which would  
30 extend any time limitation imposed by law beyond its lawful  
31 limit shall not be granted. The fiduciary supervisor or  
32 fiduciary commissioner may petition the circuit court to  
33 compel compliance with any of the provisions of this chapter.

**§44-3A-24. Reports of delinquent filings.**

1 On the last day of January and July of each year every  
2 fiduciary commissioner and special fiduciary commissioner  
3 shall file with the fiduciary supervisor a list of all estates  
4 referred to him since the effective date of this section, either  
5 generally or for a limited purpose in which any appraisalment  
6 or other document required to be filed with him in a specified  
7 time has not been timely filed, stating the document whose  
8 filing is delinquent and the date the same was due to be filed:  
9 *Provided*, That the commissioner shall omit from such list  
10 any estate and any document for whose filing a proper  
11 continuance has been granted.

12 On the fifth day of January and July of each year the  
13 fiduciary supervisor shall file with the county commission a  
14 like list of estates referred to him since the effective date of  
15 this section in which the filing of any paper is delinquent, and  
16 embrace therein the lists required to be filed with him on the  
17 first day of such month by the various commissioners. In the  
18 report filed the fifth day of July of each year the fiduciary  
19 supervisor shall further include in the report a list of all  
20 estates referred to him since the effective date of this section  
21 which have not been duly closed and in which no progress, or  
22 in his opinion, unsatisfactory progress, has been made toward  
23 settlement, for any cause, within the preceding twelve  
24 months.

25 The county commission, after consultation with the  
26 fiduciary supervisor shall take care to require prompt  
27 disposition of all matters and causes reported to it by the  
28 semiannual reports required herein.

29 In addition, the fiduciary supervisor and the fiduciary  
30 commissioners, shall be empowered, and where appropriate,  
31 shall on their own motion, petition the circuit court to compel  
32 compliance with the provisions of this chapter, in the same  
33 manner and to the same extent heretofore provided in the  
34 case of commissioners of accounts, or by any other proper  
35 proceeding.

**§44-3A-25. Report of claims to be recorded.**

1 The report of claims, and the supplemental report of claims,  
2 if there be one, when confirmed by the county commission,  
3 shall be recorded by the clerk of the county commission in his  
4 office.

**§44-3A-26. Order in which debts of decedent to be paid.**

1 When the assets of the decedent in the hands of his personal  
2 representative, after the payment of charges of  
3 administration, are not sufficient for the satisfaction of all  
4 demands against him, they shall be applied in the following  
5 order:

6 (a) To the payment of funeral expenses, to an amount not  
7 exceeding six hundred dollars;

8 (b) To the claims of physicians, not exceeding one  
9 hundred dollars, for services rendered during the last illness  
10 of the decedent; and accounts of druggists, not exceeding the  
11 same amount, for articles furnished during the same period;  
12 and claims of professional nurses or other person rendering  
13 service as nurse to the decedent, at his request or the request  
14 of some member of his immediate family, not exceeding the  
15 same amount, for services rendered during the same period;  
16 and accounts of hospitals and sanitariums, not exceeding the  
17 same amount, for articles furnished and services rendered  
18 during the same period;

19 (c) To debts due the United States;

20 (d) To debts due this state;

21 (e) To taxes and levies assessed upon the decedent  
22 previous to his death;

23 (f) To debts due as trustee for persons under disabilities,  
24 as receiver or commissioner under order of any court of this

25 state, as personal representative, guardian, committee or  
26 other fiduciary, where the qualification was in this state;

27 (g) To the balances on any items listed in subdivisions (a)  
28 and (b) hereof but only to the extent that they are determined  
29 by the fiduciary supervisor or fiduciary commissioner, as  
30 may be, to be reasonable in amount and to have been  
31 necessarily incurred, and to all other demands except those in  
32 the next class;

33 (h) To voluntary obligations.

**§44-3A-27. Creditors to be paid in order of classifications; when  
classes paid ratably.**

1 Notwithstanding the provisions of section nineteen of this  
2 article, no payment shall be made to creditors of any one class  
3 until all those of the preceding class or classes shall be fully  
4 paid; and when the assets are not sufficient to pay all the  
5 creditors of any one class, the creditors of such class shall be  
6 paid ratably; but a personal representative who, after twelve  
7 months from his qualification, pays a debt of his decedent,  
8 shall not thereby be personally liable for any debt or demand  
9 against the decedent of equal or superior dignity, whether it  
10 be of record or not, unless before such payment he shall have  
11 notice of such debt or demand by action, suit or presentation  
12 thereof to the commissioner of accounts within the time  
13 allowed by law.

**§44-3A-28. When personal representative not liable for funds  
distributed.**

1 If any personal representative after one year from the  
2 qualification of the first executor or administrator of the  
3 estate, and after the report of claims has been made by the  
4 probate clerk or probate commissioner, as may be, and been  
5 confirmed by the county commission, and after withholding  
6 such funds as the fiduciary supervisor or fiduciary  
7 commissioner shall direct to meet any contingent and  
8 unmatured claims and claims in action or suit, shall pay any  
9 legacy given by the will, or distribute any of the estate of his  
10 decedent in accordance with the probate clerk's or probate  
11 commissioner's report as confirmed, such personal  
12 representative shall not, on account of what is so paid or  
13 distributed, be personally liable for any debt or demand  
14 against the decedent, whether it be of record or not, unless,  
15 within the time fixed for presentation of claims under the  
16 provisions of sections four and nineteen of this article (for *or*)

17 suing thereon, such claim was duly and timely presented or  
18 action or suit thereon commenced and process served on  
19 such personal representative.

**§44-3A-29. When claims and legacies may be paid and estate distributed.**

1 After the report of the fiduciary supervisor or the fiduciary  
2 commissioner on the claims against the estate of any  
3 decedent has been confirmed as aforesaid, and after one year  
4 from the time of the qualification of the first executor or  
5 administrator shall have elapsed, or four months in the case  
6 of settlements made pursuant to section nineteen of this  
7 article, the personal representative may pay the claims  
8 allowed by the commissioner against the decedent's estate or  
9 certified to him by courts wherein judgments or decrees  
10 against the estate have been rendered, according to the order  
11 of payment set forth in such supervisor's or commissioner's  
12 report, and pay legacies and distribute the surplus among the  
13 parties entitled thereto in the amounts and proportions  
14 determined by such supervisor or commissioner in his report  
15 as confirmed, withholding such sum as such report as  
16 confirmed states to be necessary for the payment of any  
17 contingent, unliquidated, or disputed claims, or claims not  
18 matured, or the proportions of any such equal to what is  
19 allowed to other creditors of the same class, and upon the  
20 determination from time to time of any such claims further  
21 payments and distributions may be made as the  
22 circumstances require. If the personal representative shall  
23 fail or refuse to pay claims and make distribution within three  
24 months following the time when he may legally do so, and no  
25 appeal has been taken from the order of confirmation of the  
26 report on claims, any party interested may institute an action  
27 against such personal representative to compel payment and  
28 distribution as provided by section twenty, article four of this  
29 chapter.

30 Any other provisions of this chapter to the contrary  
31 notwithstanding, including the provisions of this section,  
32 neither a personal representative nor his surety shall be liable  
33 for the amount of any claim or distributive share made within  
34 the period of a year from the time of qualification if the estate  
35 has been finally settled pursuant to the provisions of section  
36 nineteen) of this article and, notwithstanding any other  
37 provision of this chapter, every estate may be settled prior to

38 the expiration of one year if such settlement complies in all  
39 respects with the provisions of said section nineteen of this  
40 article.

**§44-3A-30. Accounting for money not disposable at time of  
settlement; subsequent distribution of such  
money.**

1 Notwithstanding any other provision of law, if an estate is  
2 otherwise ready for final settlement and the personal  
3 representative holds any sum or sums of money necessary for  
4 the payment or distribution of any contingent, unliquidated,  
5 unmatured or disputed bequest or claim, which cannot be  
6 paid or distributed because the whereabouts of the claimant  
7 or distributee are unknown, or cannot be paid or distributed  
8 for any other reason, he may, with the consent of the fiduciary  
9 supervisor or fiduciary commissioner to whom the estate has  
10 been referred, pay such sum or sums to the general receiver of  
11 the circuit court in the county in which the estate is being  
12 administered. Any such payment, together with a receipt  
13 therefor, shall be reflected and shown in such supervisor's or  
14 commissioner's final report. After said report is confirmed by  
15 the county commission, such personal representative shall  
16 not be personally liable for any such aforesaid bequest or  
17 claim.

18 Any person entitled to any funds paid to a general receiver  
19 of a circuit court pursuant to the provisions of this section  
20 may petition the circuit court in a summary proceeding for an  
21 order directing the distribution of such funds. Any person  
22 believed to have any claim to or interest in said funds shall be  
23 made a party defendant to such petition and shall be given  
24 such notice of any hearing thereon as the circuit court may  
25 direct. The circuit court shall enter an order directing the  
26 distribution of said funds to the person or persons entitled  
27 thereto. The costs of said proceedings shall be paid from the  
28 funds.

**§44-3A-31. When personal representative not compelled to make  
distribution.**

1 A personal representative shall not be compelled to pay any  
2 legacy given by the will, or make distribution of the estate of  
3 his decedent, until after a year from the date of the order  
4 conferring authority on the first executor or administrator of  
5 such decedent, or until four months following such order in

6 the case of settlements made pursuant to section nineteen of  
7 this article and not then in either event unless the report of  
8 claims against the estate made by the fiduciary supervisor or  
9 fiduciary commissioner has been confirmed and no appeal  
10 has been taken from the order of confirmation.

**§44-3A-32. When claims not presented and proved barred of recovery from personal representative.**

1 Every person having a claim against a deceased person,  
2 whether due or not, who shall not, when notice to creditors  
3 has been published as prescribed in this article, have  
4 presented his claim on or before the one hundred twenty-day  
5 time period fixed in such notice, or before that time have  
6 instituted an action thereon, shall, notwithstanding the same  
7 be not barred by some other statute of limitations that is  
8 applicable thereto, be barred from recovering such claim of or  
9 from the personal representative, or from thereafter setting  
10 off the same by way of counterclaim or otherwise against the  
11 personal representative in any action whatever; except that if  
12 a surplus remain after providing for all claims presented in  
13 due time, or on which action shall have been commenced in  
14 due time, and such surplus shall not have been distributed by  
15 the personal representative to the beneficiaries of the estate,  
16 and the claimant prove that he had no actual notice of the  
17 publication to creditors nor knowledge of the proceedings  
18 before the fiduciary supervisor or fiduciary commissioner,  
19 such creditor may prove his claim either before such  
20 supervisor or commissioner or by action and have the same  
21 allowed out of such surplus; and, in order that such late  
22 claims if proved may be provided for, the fiduciary supervisor  
23 or fiduciary commissioner shall reopen his report if the same  
24 has not been returned to the county commission, or if  
25 returned shall make and return a supplemental report.

**§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.**

1 Every creditor who shall not have presented his claim to the  
2 fiduciary or the fiduciary supervisor before distribution of the  
3 surplus by the personal representative, or before that time  
4 shall not have instituted an action thereon against the  
5 personal representative, may, if not barred by limitation,  
6 bring his action against the distributees and legatees, jointly  
7 or severally, at any time within two years after such  
8 distribution. But no distributee or legatee shall be required to

9 pay to creditors suing by virtue of this section a greater sum  
10 than the value of what was received by him out of the  
11 decedent's estate, nor shall any distributee or legatee be  
12 required to pay to any one creditor a greater proportion of  
13 such creditor's debt than the value of what was received by  
14 such distributee or legatee bears to the total estate  
15 distributed. A creditor suing by virtue of this section shall not  
16 recover against such distributees and legatees the costs of his  
17 action.

**§44-3A-34. When enforcement of lien to secure claim barred.**

1 When the right to bring an action against distributees and  
2 legatees on any claim against the decedent shall become  
3 barred, the right to enforce such claim against real estate shall  
4 also become barred to the extent that such claim could have  
5 been collected out of the personal assets of the decedent. The  
6 provisions of this section shall not apply to liens upon real  
7 property acquired or created in the lifetime of the decedent,  
8 made or created to secure claims due and payable in future  
9 installments or at a future date.

**§44-3A-35. Fiduciary commissioners.**

1 The county commission of each county shall appoint not  
2 more than four fiduciary commissioners, except that in  
3 counties in which there exists a separate tribunal for police  
4 and fiscal purposes, such tribunal shall appoint such  
5 commissioners: *Provided*, That the county commission or  
6 such separate tribunal, shall avoid reference of estates to such  
7 commissioners, unless such reference is necessary.

**§44-3A-36. Fiduciary commissioner; powers and duties generally.**

1 The fiduciary commissioners shall have general or limited  
2 supervision, as may be, of all fiduciary matters that are  
3 referred to them, and of the fiduciaries in charge thereof, and  
4 shall make all ex parte settlements of the accounts of such  
5 fiduciaries. Such commissioners shall have the power to  
6 summon and compel the attendance of witnesses, to swear  
7 and examine witnesses, take their depositions and certify  
8 their testimony.

**§44-3A-37. Special fiduciary commissioners; continuance of present references; compensation.**

1 (a) When, from any cause, none of the fiduciary  
2 commissioners can act as to any matters or matters which

3 may be passed on under the provisions of this chapter, such  
4 commission or tribunal in lieu thereof, may appoint some  
5 other person to act as to such matter or matters, and such  
6 person shall have the power and compensation and perform  
7 the duties of a fiduciary commissioner. And when any  
8 fiduciary commissioner resigns, or is removed, such  
9 commission or tribunal may provide for the completion of the  
10 matters previously referred to such commissioner.

11 (b) Any matters or estates heretofore referred to a  
12 commissioner of accounts or special commissioner of  
13 accounts shall not be recalled solely by reason of the  
14 amendment and reenactment of this chapter. Commissioners  
15 of accounts or special commissioners of accounts shall be  
16 continued in office as special fiduciary commissioners until  
17 all such matters heretofore referred to them shall, in the  
18 ordinary course of events, be concluded or until otherwise  
19 recalled for cause.

20 (c) All special fiduciary commissioners, whether  
21 appointed pursuant to subsection (a) of this section or  
22 continued in office pursuant to subsection (b) hereof, shall be  
23 subject in all respects to the provisions of this chapter,  
24 including, but without limiting the generality hereof, the  
25 provisions of section forty-two of this article with respect to  
26 fees to be charged.

**§44-3A-38. Matters that will disqualify fiduciary commissioners.**

1 No person shall perform the duties of a fiduciary  
2 commissioner or special fiduciary commissioner in any  
3 matter wherein he will be passing upon his own account or  
4 acts; nor, where he will be called to pass upon any account or  
5 acts with reference to which he served as attorney or  
6 counselor; nor shall he be in any manner interested in the fees  
7 or emoluments of any fiduciary whose accounts or acts are  
8 before him for any action required by this chapter; nor shall  
9 he be surety on the bond of the fiduciary whose accounts are  
10 before him, or agent of, or pecuniarily associated with,  
11 another who may be such surety; nor shall he be qualified to  
12 act in or pass upon any matter before him in which, were he a  
13 judge of the circuit court and the matter were therein  
14 pending, he would for any reason be disqualified to serve.  
15 Any person who violates this section shall be guilty of a  
16 misdemeanor, and, upon conviction thereof shall, for each

17 and every violation, be fined not less than fifty nor more than  
18 five hundred dollars or imprisoned in the county jail for not  
19 more than six months, or punished by both fine and  
20 imprisonment at the discretion of the court; and upon such  
21 conviction his office shall ipso facto become vacant.

**§44-3A-39. Disposition by fiduciary commissioner of inventories and accounts of sales.**

1 The fiduciary commissioner shall inspect all inventories  
2 and accounts of sales returned to him by the fiduciary  
3 supervisor or by fiduciaries, require the same to be executed  
4 in triplicate and in proper form, and, within ten days after  
5 they are respectively received and approved by him, deliver  
6 three copies thereof to the fiduciary supervisor of the county  
7 for delivery or to be mailed to those persons or agencies  
8 required to have the same by law. Any such commissioner  
9 who fails, refuses or declines to comply with the provisions of  
10 this section shall be guilty of a misdemeanor and shall be  
11 punished for each offense by a fine of not less than  
12 twenty-five dollars nor more than five hundred dollars.

**§44-3A-40. Fiduciary commissioners to inspect bonds of fiduciaries.**

1 Each fiduciary commissioner shall, at least once each  
2 month, ascertain from the records of the county commission  
3 of his county what estates and fiduciary matters have been  
4 referred to him generally by the county commission or the  
5 fiduciary supervisor, since such commissioner's last  
6 inspection of the records, and examine as to each fiduciary, in  
7 any such estate or matter, whether he has given such bond as  
8 the law requires. If the matter has been referred to such  
9 fiduciary commissioner solely for the purpose of settling a  
10 limited dispute as opposed to a general reference, no such  
11 examination of the record for the purposes set forth herein  
12 need be made by such commissioner. If it appears that the  
13 fiduciary has given no bond, or that his bond is defective, or  
14 that the surety therein has removed from the state, died, or  
15 become insolvent, or is bound already in too many other  
16 bonds, the commissioner shall make report thereof to his  
17 commission at its next term and at the same time shall have  
18 such fiduciary summoned to appear at such term to show  
19 cause why he should not give such bond as is required by law.  
20 At such term such fiduciary shall be required forthwith to  
21 give such bond as is required by law, or shall have his

22 authority revoked. And until a fiduciary has fully  
23 administered the estate or trust under his charge, and made  
24 his final account, the commissioner shall annually make like  
25 inspections of the bonds of such fiduciary, and make like  
26 reports thereof and issue like summons whenever facts exist  
27 requiring same, and the commission shall make such order as  
28 may be warranted by the facts then determined. An appeal  
29 from the order of the county commission on any such order  
30 shall lie to the circuit court of the county, on request of the  
31 fiduciary or of the fiduciary commissioner if applied for  
32 before the end of the term of the county commission at which  
33 such order was made. When such appeal is taken, the clerk of  
34 the county commission shall certify all papers in the matter,  
35 including a copy of the bond, to the clerk of the circuit court,  
36 where the same shall be docketed and proceeded with as  
37 other appeals from the county commission.

38 With respect to estates or matters which have not been  
39 referred generally to a fiduciary commissioner, the fiduciary  
40 supervisor shall perform all duties required by this section to  
41 be performed by the fiduciary commissioner.

**§44-3A-41. When county commission to refer controversies to  
fiduciary commissioner; rules of procedure.**

1 The county commission, whenever any controversy arises  
2 in connection with the probate of any will, or with the  
3 appointment and qualifications of personal representatives,  
4 guardians, committees, or curators, or with the settlement of  
5 the accounts of any fiduciary, may, of its own motion, or on  
6 the motion of any party thereto, and shall, on the joint  
7 demand of the parties then appearing of record to the  
8 proceeding, refer the matter to a fiduciary commissioner, or  
9 to a person specifically appointed to act as such  
10 commissioner, to hear proof on the same, to make findings  
11 thereon, and to advise the commission on the law governing  
12 the decision of the matter. Any party may except to such  
13 commissioner's findings of fact or law, and the commission  
14 shall hear the case on the fiduciary commissioner's report and  
15 the exceptions thereto, without taking any additional  
16 evidence. In hearing and reporting on any such matter the  
17 fiduciary commissioner shall be governed as to procedure by  
18 the law and practice, so far as applicable, controlling  
19 commissioners in chancery.

**§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.**

1 (a) The fiduciary supervisor shall charge and collect at the  
2 time of qualification of the fiduciary of a decedent's estate, a  
3 fee of forty dollars of which sum, five dollars shall be  
4 forwarded to the state tax commissioner. The moneys so  
5 forwarded to the state tax commissioner shall be deposited in  
6 the office of the treasurer of the state in a special fund,  
7 designated "The Inheritance Tax Administration Fund", to  
8 be used to defray, in whole or in part, the costs of  
9 administration of the taxes imposed by article eleven, chapter  
10 eleven of this code in order to facilitate the prompt  
11 administration of the provisions imposed by said article. The  
12 remaining thirty-five dollars shall be deposited in the county  
13 fiduciary fund as provided in section forty-three of this  
14 article. Such fee shall be paid to include all services of the  
15 fiduciary supervisor for the settlement of every such  
16 decedent's estate which is settled pursuant to the provisions  
17 of section nineteen, article three-a of this chapter. All such  
18 fees shall also include the cost of publication of the notice  
19 required by section four, article three-a of this chapter and the  
20 notice required by section nineteen, article three-a of this  
21 chapter, but shall not include the cost of any mailings or of  
22 the cost of recording any documents required to be recorded  
23 in the office of the clerk of the county commission by the  
24 provisions of this chapter.

25 In the event the fiduciary supervisor is required to examine  
26 and prepare a statement of deficiencies, including reasons for  
27 disapproving any of the documents required to be filed by the  
28 personal representative of any decedent's estate, he shall  
29 charge and collect from such personal representative a fee of  
30 ten dollars.

31 (b) In addition to the fees set forth in subsection (a) of this  
32 section, the fiduciary supervisor shall charge a fee, to be fixed  
33 by the county commission in the manner provided in  
34 subsection (c) of this section for conducting hearings,  
35 granting continuances of hearings, considering evidence, for  
36 drafting recommendations with respect to such hearings and  
37 for appearing before the county commission with respect  
38 thereto and any other matters of an extraordinary nature not  
39 normally included within a summary settlement as  
40 contemplated by section nineteen, article three-a of this  
41 chapter. Such fee shall be used to defray the costs imposed by

42 or incidental to any extraordinary demands by or conditions  
43 imposed by a fiduciary or imposed by the circumstances of  
44 the estate.

45 (c) The fiduciary supervisor or fiduciary commissioner  
46 shall prepare a voucher for the county commission, which  
47 voucher shall be itemized and shall set forth in detail all of the  
48 services performed and the amount charged for such service  
49 or services. Such voucher shall also indicate in each instance  
50 if the service was actually performed by the fiduciary  
51 supervisor or fiduciary commissioner or whether such  
52 service was performed by an employee or deputy of such  
53 supervisor or commissioner. All vouchers shall reflect the  
54 services rendered pursuant to the initial fee charged and  
55 collected as provided in subsection (a) of this section and, in  
56 addition thereto, shall indicate those services for which  
57 charges are to be made over and above that amount. In the  
58 case of any service for which a fee is not fixed by this section,  
59 or the fee fixed is based on time expended, the voucher shall  
60 show the actual time personally expended by the supervisor  
61 or commissioner, to the nearest tenth of an hour. All such  
62 vouchers shall be verified prior to submission to the county  
63 commission for approval. Upon approval of any such  
64 voucher, the same shall be charged against the estate to  
65 which the same applies. In reviewing any fee charged by  
66 either the fiduciary supervisor or a fiduciary commissioner  
67 the county commission shall consider the following:

- 68 (1) The time and effort expended;
- 69 (2) The difficulty of the questions raised;
- 70 (3) The skill required to perform properly the services  
71 rendered;
- 72 (4) The reasonableness of the fee;
- 73 (5) Any time limitations imposed by the personal  
74 representative, any beneficiary or claimant, or by the  
75 attendant circumstances; and
- 76 (6) Any unusual or extraordinary circumstances or  
77 demands or conditions imposed by the personal  
78 representative, any beneficiary or claimant or by the  
79 attendant circumstances. The county commission may  
80 approve any such voucher or may reduce the same, as it  
81 deems proper, after considering those matters set forth in this  
82 subsection. Any such approval shall be by order of the  
83 commission and be entered of record by the clerk of the  
84 county commission in the fiduciary record book and the

85 general order books of the commission. In no event shall any  
86 fee for any service, whether performed by the fiduciary  
87 supervisor or the fiduciary commissioner, be fixed, charged  
88 or approved which is based upon or with reference to the  
89 monetary value of the estate or of the amount in controversy  
90 upon any disputed issue or fact of law.

91 (d) For every estate other than a decedent's estate, there  
92 shall be charged by the fiduciary supervisor at the time of  
93 qualification, a fee of twenty-five dollars, which fee shall  
94 include all services performed by the fiduciary supervisor  
95 with respect to such estate from the time of qualification of  
96 the personal representative thereof until and including the  
97 filing of the first annual settlement. For each additional or  
98 subsequent annual or triennial settlement, the fiduciary  
99 supervisor shall charge and collect a fee of ten dollars.

100 (e) The county commission or other tribunal in lieu  
101 thereof, shall, by order, establish or fix a schedule of  
102 suggested fees or rates of compensation for the guidance of  
103 the fiduciary supervisor and any fiduciary commissioner in  
104 preparing their respective vouchers for fees other than those  
105 fees fixed by any provision of this section or of this chapter. A  
106 copy of these fees or rates shall be posted in a conspicuous  
107 place in the county courthouse.

**§44-3A-43. County fiduciary fund.**

1 (a) The county commission, or tribunal in lieu thereof,  
2 shall create a special county fund pursuant to the provisions  
3 of section nine, article one, chapter seven of this code called  
4 the "County Fiduciary Fund". All moneys received by the  
5 fiduciary supervisor shall be deposited in said fund and the  
6 county commission or tribunal shall pay from said fund all  
7 salaries and expenses of the fiduciary supervisor and all other  
8 expenses associated with the probate system, exclusive of the  
9 fees of fiduciary commissioners or special fiduciary  
10 commissioners and exclusive of recording fees which shall be  
11 collected by the fiduciary supervisor and paid to the clerk of  
12 the county commission. The said commission or tribunal is  
13 authorized to transfer any other county funds as may be  
14 available to said "County Fiduciary Fund".

15 (b) Every county commission or tribunal in lieu thereof,  
16 which shall adopt and use the procedure set forth in this  
17 article, shall report to the Legislature on or before the first  
18 day of the regular session thereof held in the year one

19 thousand nine hundred eighty-three, and on the first day of  
20 every regular session held in the next succeeding three years  
21 thereafter, as to the moneys received into or spent from the  
22 county fiduciary fund of the county to the date of such report,  
23 and of all moneys transferred into said fund and spent from it  
24 or by such county commission for probate matters or other  
25 matters relating to the administration of estates. The tax  
26 commissioner shall prescribe by procedural rule the form and  
27 content of such report which shall be in sufficient detail so as  
28 to permit the identification of the activity or activities  
29 generating the income of such fund and to identify by  
30 function and purpose all expenditures with sufficient detail  
31 to enable the Legislature to determine the extent to which the  
32 probate system and other estate matters are functioning in an  
33 efficient and economical manner and the fiscal implications  
34 thereof. Such reports shall be filed by each such county  
35 commission or tribunal in lieu thereof with the tax  
36 commissioner no later than ten days prior to the first day of  
37 each said session of the Legislature and the tax commissioner  
38 shall thereafter properly collate and file such reports with the  
39 clerk of each house of the Legislature on or before the first  
40 day of each such regular session.

**§44-3A-44. Rules applicable to fiduciary supervisors and  
fiduciary commissioners; exceptions as to  
certain counties.**

1 (a) Subject to the provisions of subsection (c) of this  
2 section and to the provisions of article thirteen of this  
3 chapter, any power, authority or duty conferred upon the  
4 clerk of the county commission with respect to the  
5 settlement, regulation and supervision of estates in any  
6 provision of this article or in any provision of this code is  
7 hereby transferred to the fiduciary supervisor created under  
8 the provisions of section three, article three-a of this chapter.

9 Whenever by any provision of this article any paper,  
10 document or record is required or permitted to be recorded,  
11 the fiduciary supervisor shall tender the same to the clerk of  
12 the county commission and such clerk of the county  
13 commission shall admit the same to record and shall record  
14 the same at the expense of the personal representative and  
15 the fiduciary supervisor shall collect such fees as are required  
16 by law for the recordation of such documents and all such  
17 fees so collected and paid to the clerk of the county

18 commission shall be disposed of and accounted for in the  
19 same manner as if such fees had been collected as for the  
20 recordation of deeds.

21 (b) Any reference of this code to commissioner of  
22 accounts or to fiduciary commissioner or to any power,  
23 authority or duty conferred upon a commissioner of accounts  
24 is hereby intended to mean and in all respects is conferred  
25 upon the fiduciary commissioner created by section  
26 thirty-five of this article, and, as to matters permitted by law  
27 to be done by the fiduciary supervisor, upon such fiduciary  
28 supervisor.

29 (c) Any provision of this article or of article one of this  
30 chapter to the contrary notwithstanding, in each county in  
31 which there exists a separate tribunal for police and fiscal  
32 purposes created under article eight, section thirty-four of the  
33 Constitution of one thousand eight hundred seventy-two, the  
34 clerk of the county commission shall have the power and  
35 discharge the duties which are by any provision of this  
36 chapter conferred upon the fiduciary supervisor or the clerk  
37 of the county commission.

#### **ARTICLE 4. ACCOUNTING BY FIDUCIARIES.**

##### **§44-4-1. Record of appraisements.**

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

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

1 A statement of all the money which any personal  
2 representative, guardian, curator, or committee, has received,  
3 become chargeable with, or disbursed, within six months  
4 from the date of his qualification, or within any succeeding  
5 six-month period, together with the vouchers for such  
6 disbursements, shall, within two months after the end of  
7 every such period be exhibited by him before the fiduciary  
8 commissioner to whom the estate or trust has been referred.  
9 If any fiduciary fails to make an exhibit, the fiduciary  
10 commissioner before whom he should make the exhibit shall  
11 proceed against him in the appropriate circuit court, and the  
12 court shall impose the same penalties, unless the fiduciary is  
13 excused for sufficient reason, as are provided in cases where  
14 fiduciaries fail to return appraisements.

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

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

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

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

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

1 When any fiduciary, except a sheriff, presents the statement  
2 required of him by law before a fiduciary commissioner or  
3 before a commissioner in chancery having before him the  
4 account of the fiduciary for settlement, the fiduciary  
5 commissioner or commissioner in chancery, as the case may  
6 be, shall examine whether the fiduciary has given bond as the

7 law requires, and whether the penalty thereof and the sureties  
8 thereon are sufficient. The fiduciary commissioner to whom  
9 the estate or trust was referred shall, upon the application of  
10 any interested person at any time before the statement is  
11 presented, and after reasonable notice to the fiduciary,  
12 examine any matters, or inquire whether security ought to be  
13 required of a fiduciary who may have been allowed to qualify  
14 without giving it, or whether, by reason of the incapacity,  
15 misconduct or removal of any fiduciary from this state, or for  
16 any other cause, it is improper to permit the estate of the  
17 decedent, ward, beneficiary, or other person, to remain under  
18 his control. The result of every examination and inquiry shall  
19 be reported by the fiduciary commissioner to the county  
20 commission then having jurisdiction over the fiduciary and  
21 his account.

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

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

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

1 If any such fiduciary fails to present to the fiduciary  
2 commissioner, to whom the estate or trust has been referred,  
3 a statement of receipts for any year, within two months after  
4 its expiration, and though a statement be laid before such  
5 fiduciary commissioner, yet if such fiduciary be found  
6 chargeable for that year with any money not embraced in  
7 such statement, he shall have no compensation for his  
8 services during such year, nor commission on such money,  
9 unless allowed by the county commission or circuit court.  
10 This section shall not apply to a case in which, within two  
11 months after the end of any one year, the fiduciary gives to

12 the parties entitled to the money received in such year, a  
13 statement of such money, and actually settled therefor with  
14 them; nor to a case in which, within such two months after  
15 the end of any one year, a fiduciary presents a statement of his  
16 receipts within the year before a fiduciary commissioner who  
17 may, in a pending suit, have been ordered to settle his  
18 account.

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

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

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

1 Every fiduciary commissioner shall, on the first Monday of  
2 every month, prepare a list of the fiduciaries whose accounts  
3 are at the date of such list before him for settlement, except  
4 those that may have been mentioned in some previous list. He  
5 shall state the names of the fiduciaries, the nature of their  
6 accounts, whether as they act as personal representative,  
7 guardian, curator, or committee and the names of their  
8 decedents, or of the persons for whom they are guardians,  
9 curators, or committees. He shall also publish such list each  
10 month as a Class II legal advertisement in compliance with  
11 the provisions of article three, chapter fifty-nine of this code,  
12 and the publication area for such publication shall be the  
13 county. The first publication of the list shall be made on said

14 first Monday of the month, or on some following day of the  
15 same week. No account of any fiduciary shall be completed  
16 by any fiduciary commissioner until it has been mentioned in  
17 such a list, nor until the completion of the publication. Any  
18 fiduciary commissioner who fails to publish this list shall be  
19 fined twenty dollars. The cost of the publication of the list  
20 shall be borne by the fiduciary commissioner, but he may  
21 charge to, and collect from, each of the fiduciaries in the list  
22 his proportionate part of the cost thereof as and when the  
23 fiduciary commissioner collects his fees for settling the  
24 accounts of the fiduciary.

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

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

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

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

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

1 The fiduciary commissioner in stating and settling the  
2 account shall allow the fiduciary any reasonable expenses  
3 incurred by him as such; and also, except in cases in which it  
4 is otherwise provided, a reasonable compensation in the form  
5 of a commission on receipts or otherwise. Any executor,  
6 administrator, guardian, committee, assignee, receiver,  
7 special fiduciary commissioner, or other fiduciary, required  
8 by law, or by the order of any court or judge, to give a bond or  
9 obligation as such, may include, as a part of the lawful  
10 expense of executing his duties, such reasonable sum paid a  
11 company, authorized under the laws of this state so to do, for  
12 becoming his surety on such bond or obligation, as may be  
13 allowed by the court in which, or the fiduciary commissioner  
14 before whom, he is required to account, or a judge of such  
15 court, not exceeding, however, one third of one percent per  
16 annum on the amount of such bond or obligation.

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

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

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

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

**§44-4-15. Exceptions to report.**

1 Upon completion of such report of settlement of account  
2 the fiduciary commissioner shall give notice thereof, either  
3 verbally or in writing, delivered personally or by mail, to all  
4 parties interested or their attorneys, and hold the report,  
5 vouchers, and any evidence taken in connection with the  
6 report, in his office for ten days, during which time any  
7 person interested may inspect the same and file exceptions  
8 thereto.

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

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

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

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

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

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

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

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

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

1 When a county commission has confirmed, either in whole  
2 or in a qualified manner, a report of the accounts of any  
3 personal representative, guardian, curator, committee as  
4 aforesaid, the county commission may order payment of what  
5 appears due on the accounts to such persons as would be  
6 entitled to recover the same by a suit in equity. If the order is  
7 not complied with, any person interested may bring a suit in  
8 chancery in the circuit court of the county wherein such order  
9 was made, to compel compliance therewith. In such suit the  
10 commission's order shall be taken as prima facie correct, and  
11 there shall be a decree according to the order except so far as  
12 it may appear upon proper pleadings and proof to be  
13 erroneous. If any fiduciary makes any payment in accordance  
14 with the order of the county commission more than three

15 months after the order was made, and before suit has been  
16 commenced under this section, the payment shall not be  
17 disturbed nor shall the fiduciary be in anywise liable with  
18 respect thereto. And when the personal representative,  
19 guardian, curator, or committee or other fiduciary has fully  
20 paid out all the funds in his hands he shall within ninety days  
21 thereafter, or at the first term of the commission thereafter,  
22 make a final, full and detailed report to the commission of  
23 such payments, and file therewith the vouchers for such  
24 disbursements; and when the commission, upon examination  
25 of such report and vouchers, ascertains the same to be  
26 correct, it shall approve and confirm such report and order  
27 the same to be recorded. ~~And the~~ clerk of the commission  
28 shall record every such report which may be so confirmed,  
29 and at the foot of it the order of confirmation. It shall be the  
30 duty of the fiduciary commissioner who made the report in  
31 this section first mentioned, to require that the fiduciary  
32 renders, in proper form, the final report herein required, and,  
33 in case of the failure of the fiduciary to render a final report,  
34 he shall be proceeded against in the same manner, and be  
35 subject to the same penalties, as a fiduciary who fails to  
36 return an inventory or to lay his accounts before a fiduciary  
37 commissioner for settlement.

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

1 When the account of any fiduciary is settled in a suit, it shall  
2 be the duty of the clerk of the court in which such suit is,  
3 within ten days after the close of the term of court at which  
4 the final decree in such suit is entered, to certify, to the clerk  
5 of the county commission wherein such fiduciary qualified,  
6 such account so far as the same has been confirmed, with a  
7 memorandum at the foot thereof stating the style of the suit  
8 and the date of the final decree, rendered in such suit. The  
9 clerk receiving such account and memorandum so certified  
10 shall record the same in the same book in which the accounts  
11 settled before a fiduciary commissioner are recorded, and  
12 after recordation the original account and memorandum shall  
13 be returned to the clerk from whom the same were certified  
14 and transmitted. If in any proceedings subsequent to such  
15 final decree, by appeal or otherwise, the account is reformed  
16 or altered, the reformed or altered account shall in like  
17 manner be certified and recorded, together with a  
18 memorandum stating the style of the suit and the date of the

19 decree of confirmation. The fees for making the certification  
20 and for recording shall be paid as the court in which the suit  
21 is, or the judge thereof, shall direct. Any clerk failing to  
22 comply with this section shall be subject to the same  
23 penalties as clerks of the county commission who fail to keep  
24 a list of fiduciaries.

#### **ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.**

##### **§44-5-1. List of fiduciaries.**

1 The clerk of the county commission of each county shall  
2 keep a record, to be known as the "Record of Fiduciaries," in  
3 which he shall enter, in separate columns, first, the name of  
4 every fiduciary authorized to act as such by such county  
5 commission or clerk thereof; secondly, the name of the  
6 decedent for whose estate he is personal representative or  
7 curator; thirdly, the names of the distributees of such estate,  
8 showing their relation to the decedent; fourthly, the name of  
9 the living person or persons for whom he is guardian, curator,  
10 committee or trustee; fifthly, the penalty of his bond; sixthly,  
11 the names of his sureties; seventhly, the date of the order  
12 conferring his authority, and a reference to the book and page  
13 where entered; eighthly, the date of any order revoking his  
14 authority, and a reference to the book and page where  
15 entered; ninthly, the date of the return of every inventory and  
16 appraisalment of the estate; tenthly, the date of the  
17 confirmation of each report of settlement of the accounts of  
18 such fiduciary; and the clerk shall index such record in the  
19 name of the decedent, estate, ward, or person represented by  
20 such fiduciary. Any clerk failing to make such entry, as to any  
21 fiduciary, within ten days after the order conferring or  
22 revoking the authority, or the date of the return of such  
23 inventory and/or appraisalment, or the date of the  
24 confirmation of any report of settlement, shall, for every such  
25 failure, forfeit twenty dollars.

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

1 The circuit court of each county shall, as soon as may be  
2 after this code becomes effective, direct its clerk to transfer to  
3 the office of the clerk of the county commission of its county  
4 any wills, records of wills, records of the appointment and  
5 qualification of personal representatives, guardians, curators  
6 or committees, and records of their oaths, bonds, inventories,  
7 appraisements and settlements, heretofore kept in their said

8 courts, and the clerk of the county court shall keep and  
9 preserve the same among the other similar records of his  
10 office. If the same are not properly and completely indexed  
11 when deposited in his office, the county clerk shall make a  
12 full and complete index to the same.

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

1 Notwithstanding any other provision of law, no person not  
2 a resident of this state nor any nonresident banking  
3 institution nor any corporation having its principal office or  
4 place of business outside this state may be appointed or act as  
5 executor, administrator, curator, guardian or committee,  
6 except that a testator who is a nonresident of this state at the  
7 time of his death may name, and there may be appointed and  
8 act, a nonresident as his executor, and except that for the  
9 guardian of an infant who is a nonresident of this state there  
10 may be appointed and act the same person who is appointed  
11 guardian at the domicile of the infant: *Provided*, That  
12 whenever the will of a decedent who was a resident of this  
13 state at the time of his death, hereinafter in this section  
14 referred to as "resident decedent," designates an individual,  
15 who is the husband, wife, father, mother, brother, sister,  
16 child, grandchild or sole beneficiary of such resident  
17 decedent as executor, then such designated individual may  
18 qualify and act as executor notwithstanding the fact that he is  
19 a nonresident: *Provided, however*, That a nonresident  
20 individual or individuals may be appointed as the  
21 testamentary guardian of a resident infant if appointed in  
22 accordance with the provisions of section one, article twelve  
23 of this chapter: *Provided further*, That a nonresident  
24 individual may be appointed as administrator of an estate in  
25 accordance with the provisions of section four, article one of  
26 this chapter and act as such administrator if such individual  
27 be the husband, wife, father, mother, brother, sister, child,  
28 grandchild or the sole beneficiary of a decedent who was a  
29 resident of this state at the time of his death, hereinafter in  
30 this section also referred to as a "resident decedent," and if  
31 such individual may otherwise qualify as such administrator.  
32 Nonresident executors and administrators of resident  
33 decedents, and nonresident testamentary guardians shall  
34 give bond with corporate surety thereon, qualified to do  
35 business in this state, in such penalty as may be fixed

36 pursuant to the provisions of section seven, article one of this  
37 chapter, except that such penalty in the case of a nonresident  
38 executor shall not be less than (1) double the value of the  
39 personal estate and (2) double the value of any real property  
40 authorized to be sold under the will or the value of any rents  
41 and profits from any real property which the will authorizes  
42 the nonresident executor to receive, and except that such  
43 penalty in the case of a nonresident administrator shall not be  
44 less than double the value of the personal estate. The personal  
45 estate of a resident decedent may not be removed from this  
46 state until the inventory or appraisement of the resident  
47 decedent's estate has been filed and any new or additional  
48 bond required to satisfy the penalty specified above in this  
49 section has been furnished. The liability of a nonresident  
50 executor or administrator and such surety shall be several  
51 and a civil action on any such bond may be instituted and  
52 maintained against the surety, notwithstanding any other  
53 provision of this code to the contrary, even though no civil  
54 action has been instituted against the nonresident executor or  
55 administrator.

56 When a nonresident qualifies as an executor, administrator  
57 or guardian of an infant pursuant to the provisions of this  
58 section, he thereby constitutes the clerk of the county  
59 commission wherein the will was admitted to probate or  
60 wherein he was appointed as administrator, or such clerk's  
61 successor in office, his true and lawful attorney-in-fact upon  
62 whom may be served all notices and process in any action or  
63 proceeding against him as executor, administrator or  
64 guardian or with respect to such estate, and such  
65 qualification shall be a signification of the executor's,  
66 administrator's or guardian's agreement that any notice or  
67 process, which is served in the manner hereinafter in this  
68 section provided, shall be of the same legal force and validity  
69 as though the executor, administrator or guardian were  
70 personally served with notice and process within this state.  
71 Service shall be made by leaving the original and two copies  
72 of any notice or process, together with a fee of five dollars,  
73 with the clerk of such county commission. Such clerk shall  
74 thereupon endorse upon one copy thereof the day and hour of  
75 service and shall file such copy in his office and said service  
76 shall constitute personal service upon such nonresident  
77 executor, administrator or guardian: *Provided*, That the other  
78 copy of such notice or process shall be forthwith sent by

79 registered or certified mail, return receipt requested, deliver  
80 to addressee only, by said clerk to the nonresident executor,  
81 administrator or guardian at the address last furnished by  
82 him to said clerk and either (a) such nonresident executor's,  
83 administrator's or guardian's return receipt signed by him or  
84 (b) the registered or certified mail bearing thereon the stamp  
85 of the post-office department showing that delivery therefor  
86 was refused by such nonresident executor, or administrator  
87 or guardian is appended to the original notice or process and  
88 filed therewith in the office of the clerk of the county  
89 commission from which such notice or process was issued.  
90 No notice or process may be served on such clerk of the  
91 county commission or accepted by him less than twenty days  
92 before the return day thereof. The clerk of such county  
93 commission shall keep a record in his office of all such  
94 notices and process and the day and hour of service thereof.  
95 The provision for service of notice or process herein provided  
96 is cumulative and nothing herein contained shall be  
97 construed as a bar to service by publication where proper or  
98 to the service of notice or process in any other lawful mode or  
99 manner. The fee of five dollars shall be deposited in the  
100 county treasury.

101 If a nonresident testamentary guardian appointed pursuant  
102 to this section fails or refuses to file an accounting by this  
103 chapter while his ward remains a resident of this state, and  
104 the failure continues for two months after the due date, he  
105 may, upon notice and hearing, be removed or subjected to  
106 any other appropriate order by the county commission, and if  
107 his failure or refusal to account continues for six months, he  
108 shall be removed as testamentary guardian by the county  
109 commission.

110 Any nonresident executor, administrator or guardian who  
111 removes from this state the personal estate of a resident  
112 decedent or of the infant of a resident decedent without  
113 complying with the provisions of this section, the provisions  
114 of article eleven, chapter forty-four of this code or any other  
115 requirement pertaining to fiduciaries generally, shall be  
116 guilty of a misdemeanor, and upon conviction thereof, shall  
117 be punished by a fine of not more than one thousand dollars  
118 or by confinement in the county jail for not more than one  
119 year, or, in the discretion of the court, by both such fine and  
120 imprisonment.

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

1 A judge of the circuit court, member of the county

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

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

1 The county commission under whose order, or under the  
2 order of whose clerk, any such fiduciary derives his authority,  
3 when it appears proper on any report of the clerk or a  
4 fiduciary commissioner or a commissioner in chancery, or on  
5 evidence adduced before it by any party interested, may, at  
6 any time, whether such fiduciary shall or shall not have  
7 before given any bond, or whether he shall have given one  
8 with or without sureties, order him to give before the  
9 commission an additional bond within a prescribed  
10 reasonable time, in such penalty, and with or without  
11 sureties, as may appear proper; or when any surety on the  
12 bond of a fiduciary, or the personal representative of any  
13 surety, shall apply therefor, the commission shall order the  
14 fiduciary to give before it a new bond within a prescribed  
15 reasonable time, in such penalty, and with such sureties, as  
16 may appear proper it may, in either case, if the order be not  
17 complied with, or whenever from any cause it appears proper,  
18 revoke and annul the powers of such fiduciary. No such order  
19 shall be made unless reasonable notice is given to the  
20 fiduciary by the clerk or the fiduciary commissioner who  
21 made the report, or by the surety or the personal  
22 representative of the surety making the application aforesaid,  
23 or by the service of a rule or otherwise. No such order of  
24 revocation shall invalidate any previous acts of the fiduciary.

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

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

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

1 It shall be lawful for any guardian, committee, or trustee, to  
2 compound and compromise any liability due to or from him,  
3 provided that such compounding and compromise be ratified  
4 and approved by a court of equity of competent jurisdiction,  
5 all parties in interest being before the court by proper  
6 process. When such compounding and compromise has been  
7 so ratified and approved, it shall be binding on all parties in  
8 interest before the court. It shall be lawful for any personal  
9 representative to compound and compromise any liability  
10 due to or from him, provided that compounding and  
11 compromise is ratified and approved by the fiduciary  
12 commissioner to whom the estate or trust has been referred,  
13 or by a commissioner in chancery when the estate of the  
14 decedent is being settled in a chancery suit, and is reported  
15 by the fiduciary commissioner to his court. When the report is  
16 confirmed, the compounding and compromise shall be  
17 binding on all parties to the proceedings.

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

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

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

1 The costs of any proceedings, authorized or directed to be  
2 brought against any fiduciary to enforce or compel his  
3 compliance with the requirements of the law, shall include a  
4 reasonable fee to the fiduciary commissioner at whose  
5 instance the same are had, and shall be charged and paid as  
6 the court may direct. In every case where the fiduciary is in

7 default, without reasonable excuse therefor, the costs shall be  
8 adjudged against and paid by the fiduciary personally. In no  
9 case shall the costs be adjudged against the fiduciary  
10 commissioner unless he instituted the proceedings in bad  
11 faith.

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

1 In each county in which there exists a separate tribunal for  
2 police and fiscal purposes, created under article VIII, section  
3 thirty-four, of the constitution of one thousand eight hundred  
4 and seventy-two, the clerk of the county commission shall  
5 have the powers and discharge the duties which by this  
6 chapter are vested in and imposed upon the county  
7 commission.

**§44-5-11. Designation of testamentary trustee as beneficiary of insurance.**

1 A policy of life insurance may designate as beneficiary a  
2 trustee or trustees named or to be named by will, if the  
3 designation is made in accordance with the provisions of the  
4 policy and the requirements of the insurer. The proceeds of  
5 such insurance shall be paid to the trustee or trustees to be  
6 held and disposed of under the terms of the will as they exist  
7 at the death of the testator; but if no trustee or trustees make  
8 claim to the proceeds from the insurance company within one  
9 year after the death of the insured, or if satisfactory evidence  
10 is furnished the insurance company within such one-year  
11 period showing that no trustee can qualify to receive the  
12 proceeds, payment shall be made by the insurance company  
13 to the executors, administrators, or assigns of the insured,  
14 unless otherwise provided by agreement with the insurance  
15 company during the lifetime of the insured. The proceeds of  
16 the insurance as collected by the trustee or trustees shall not  
17 be subject to debts of the insured or to inheritance tax to any  
18 greater extent than if such proceeds were payable to any  
19 other named beneficiary other than the estate of the insured,  
20 and shall not be considered as payable to the estate of the  
21 insured for any purpose. Such insurance proceeds so held in  
22 trust may be commingled with any other assets which may  
23 properly come into such trust as provided in the will.  
24 Enactment of this section shall not invalidate previous life  
25 insurance policy designations naming trustees of trusts  
26 established by will.

**§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements.**

1 (a) Where a will authorizes or directs the fiduciary to  
2 satisfy wholly or partly in kind a pecuniary bequest unless  
3 the will shall otherwise expressly provide, the assets selected  
4 by the fiduciary for that purpose shall be valued at their  
5 respective values on the date or dates of their distribution.

6 (b) Whenever a fiduciary under the provisions of a will or  
7 other governing instrument is required to satisfy a pecuniary  
8 bequest or transfer in trust in favor of the testator's or donor's  
9 spouse and is authorized to satisfy such bequest or transfer  
10 by selection and distribution of assets in kind, and the will or  
11 other governing instrument further provides that the assets to  
12 be so distributed shall or may be valued by some standard  
13 other than their fair market value on the date of distribution,  
14 the fiduciary, unless the will or other governing instrument  
15 otherwise specifically directs, shall distribute assets,  
16 including cash, fairly representative of appreciation or  
17 depreciation in the value of all property available for  
18 distribution in satisfaction of such pecuniary bequest or  
19 transfer. This section shall not apply to prevent a fiduciary  
20 from carrying into effect the provisions of the will or other  
21 governing instrument that the fiduciary, in order to  
22 implement such a bequest or transfer, must distribute assets,  
23 including cash, having an aggregate fair market value at the  
24 date or dates of distribution amounting to no less than the  
25 amount of the pecuniary bequest or transfer as finally  
26 determined for federal estate tax purposes.

27 (c) Any fiduciary having discretionary powers under a will  
28 or other governing instrument with respect to the selection of  
29 assets to be distributed in satisfaction of a pecuniary bequest  
30 or transfer in trust in favor of the testator's or donor's spouse,  
31 shall be authorized to enter into agreements with the  
32 commissioner of internal revenue of the United States of  
33 America and other taxing authorities requiring the fiduciary  
34 to exercise the fiduciary's discretion so that cash and other  
35 properties distributed in satisfaction of such bequest or  
36 transfer in trust will be fairly representative of the  
37 appreciation or depreciation in value of all property then  
38 available for distribution in satisfaction of such bequest or  
39 transfer in trust and any such agreement heretofore entered  
40 into after April one, one thousand nine hundred sixty-four, is

41 hereby validated. Any such fiduciary shall be authorized to  
42 enter into any other agreement not in conflict with the  
43 express terms of the will or other governing instrument that  
44 may be necessary or advisable in order to secure for federal  
45 estate tax purposes the appropriate marital deduction  
46 available under the internal revenue laws of the United States  
47 of America, and to do and perform all acts incident to such  
48 purpose.

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

#### ARTICLE 7. RESIGNATION OF FIDUCIARIES AND PROCEDURE UPON RESIGNATION.

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

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

##### **§44-7-3. Hearing on petition.**

1 When the summons has been served upon all the parties

2 named and referred to in the petition, and any necessary  
3 order of publication has been duly completed, the  
4 commission shall, on the day named in the summons, or on  
5 some later day to which a continuance may have been taken,  
6 proceed to hear the matter. If no objection is made to the  
7 resignation of the fiduciary by any person interested in the  
8 estate mentioned in the petition, and if the commissioner's  
9 certificate shows he has fully and properly rendered all  
10 inventories, appraisements and accounts due from him, his  
11 resignation may be accepted and entered of record by the  
12 commission. But if objection be made by any such person on  
13 the ground that the fiduciary has not fully settled and  
14 accounted for the estate committed to his care, at the time of  
15 filing his petition, or for any other valid reason, or it appears  
16 from the commissioner's certificate that an inventory, an  
17 appraisal, or an account is due from the fiduciary, the  
18 petition and objections or commissioner's certificate shall be  
19 referred to the fiduciary commissioner or to some other  
20 fiduciary commissioner or to a special commissioner  
21 appointed for the purpose, to do and perform such duties, and  
22 report upon such matters and things as are stated in the order  
23 of reference, and report the same to the commission. The  
24 same proceedings shall be had on such order of reference and  
25 the report when made as are had in the circuit court in a suit  
26 in chancery in that court. If it shall appear to the commission  
27 in any such case that the fiduciary has not fully settled and  
28 accounted for the estate committed to his charge, or that  
29 there is money or other property in his hands, or under his  
30 control, not yet paid over or disposed of, such orders as may  
31 be necessary and proper for the disposition and safekeeping  
32 thereof shall be made by the commission, and when such  
33 orders are complied with by the fiduciary, his resignation  
34 may be accepted. His resignation when accepted shall not  
35 affect or impair the liability of the sureties on his official bond  
36 in force at the time of his resignation and the acceptance  
37 thereof, for any default by him in the discharge of his duties  
38 as such fiduciary, remaining unsettled or unsatisfied. The  
39 costs in such cases shall be paid as the court may order.

**ARTICLE 8. REAL ESTATE OF DECEDENTS.**

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

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

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

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

23 Given under my hand this .....day of .....,  
24 .....

25 C.....D.....,  
26 Commissioner in chancery.

27 Such notice shall be published as a Class II legal  
28 advertisement in compliance with the provisions of article  
29 three, chapter fifty-nine of this code, and the publication area  
30 for such publication shall be the county in which the action is  
31 pending. The court shall designate the newspaper in which  
32 such notice shall be published. The court may direct such  
33 other notice to be given as it may deem proper. Such  
34 publication of such notice shall be equivalent to personal  
35 service thereof on all creditors, including those holding liens  
36 on such real estate, unless the court shall in the order  
37 directing publication otherwise order. Any creditor who may  
38 have filed his claim before a fiduciary commissioner may  
39 withdraw the same and the proof thereof made before such

40 commissioner, and may file such claim and proof before the  
41 commissioner in chancery, and the commissioner in  
42 chancery shall, unless there be objection by any party to the  
43 suit, accept such proof for what the same may legally show.  
44 No other publication to creditors than the one provided by  
45 this section shall be necessary, and when any notice of the  
46 reference is required by law or by the court to be published,  
47 the notice of the reference shall be included in the above  
48 notice, so that there may be but one publication.

**ARTICLE 9. PERSONS PRESUMED TO BE DEAD AND THEIR  
ESTATES.**

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

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

11 No administrator, executor or personal representative of  
12 any person who is presumed to be dead under this section  
13 shall make final distribution of the assets of any such person  
14 until the expiration of three years after the date of the making  
15 of such presumptive findings by persons authorized to do so  
16 by the provisions of this section: *Provided*, That assets in the  
17 estate of any such person, which are exempt from attachment  
18 by creditors, including moneys paid by the United States of  
19 such nature, and other assets of any such estate which would  
20 otherwise be available for support of the wife, children and  
21 other dependents of such person, if he were alive, after  
22 allowance for debts and costs of administration, may be paid  
23 by the personal representative for the support of the wife and  
24 children and the dependents of such person upon order of the  
25 circuit court of the county which has jurisdiction in probate  
26 proceedings until such time as distribution may be made or  
27 administration terminated, and such sums shall be treated for  
28 all purposes of law as expenditures legally chargeable against

29 such person, as if he were living to the time a final  
30 presumption of death becomes effective in this state. In case  
31 any such person presumed to be dead as a result of a finding,  
32 as aforesaid, is not heard from as provided in section one of  
33 this article, for a period of three years after making of such  
34 presumption, the presumption provided in section one of this  
35 article shall become effective to permit final distribution of  
36 his estate.

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

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

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

**§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect.**

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

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

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

**ARTICLE 10. GUARDIANS AND WARDS GENERALLY.****§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.**

1 No disbursements, beyond the annual income of the ward's  
 2 estate, shall be allowed to any guardian where the deed or  
 3 will, under which the estate is derived, does not authorize it,  
 4 unless the same shall have been authorized by the circuit  
 5 court of the county in which the guardian was appointed or  
 6 qualified. Any guardian, who may desire to spend more than  
 7 the annual income of his ward's estate for any purpose, shall  
 8 file in such circuit court a petition, verified by his oath,  
 9 setting forth the reasons why it is necessary to make such  
 10 expenditures, to which petition the ward shall be made  
 11 defendant. The court shall appoint a guardian ad litem for the  
 12 ward, who shall answer such petition, be present at the  
 13 hearing, and represent the infant. Five days' notice shall be  
 14 given to the defendant before such petition can be heard. At  
 15 the hearing the evidence may be taken orally, and the court, if  
 16 satisfied that such expenditure would be judicious and  
 17 proper, may grant the prayer of the petition. Such petition  
 18 may be filed and heard before the judge of such court in  
 19 vacation as well as in term time. In the settlement of the  
 20 guardian's accounts no credit shall be allowed him by the  
 21 fiduciary commissioner or the court for expenditures for his  
 22 ward, except for expenditures of the annual income of his  
 23 ward's estate and for expenditures of such amounts of the  
 24 principal of the ward's personal estate as are authorized by  
 25 the court as provided by this section: *Provided*, That if the  
 26 personal estate in the hands of the guardian does not exceed  
 27 in amount the sum of three thousand dollars, disbursement  
 28 may be made by the guardian from the corpus of such  
 29 personal estate for the ward's maintenance and education,  
 30 after first securing the written approval so to do of and from  
 31 the fiduciary commissioner to whom the settlement of the  
 32 ward's estate was referred.

**§44-10-15. Disbursements of funds of infant wards.**

1 In any such settlement, pursuant to the next preceding

2 section, wherein the amount paid the guardian does not  
3 exceed the sum of one thousand dollars, the court or judge  
4 approving the settlement may, in its or his discretion,  
5 dispense with, or withdraw a reference to a fiduciary  
6 commissioner, authorize the disbursement of the fund so  
7 created by the settlement and may discharge the guardian  
8 and the surety on his bond. In all such cases a certified copy  
9 of the order of the court or judge, as the case may be, shall be  
10 recorded in the office of the clerk of the county commission  
11 wherein the guardian was appointed.

#### **ARTICLE 15. VETERAN'S GUARDIANSHIP AND COMMITMENT.**

##### **§44-15-8. Settlement of accounts.**

1 Every guardian, who shall receive on account of his ward  
2 any moneys from the government of the United States or any  
3 agency thereof, shall file with a fiduciary commissioner  
4 annually, on the anniversary date of the appointment, or  
5 within thirty days thereafter, in addition to such other  
6 accounts as may be required, a full, true, and accurate  
7 account under oath of all moneys so received by him, of all  
8 disbursements thereof, and showing the balance thereof in  
9 his hands at the date of such account and how invested:  
10 *Provided*, That in cases where the income received by the  
11 committee or guardian does not average annually more than  
12 eight hundred dollars, the committee or guardian may make  
13 his report of account to the commissioner once in every three  
14 years. The fiduciary commissioner shall send a true copy of  
15 each such account to the office of the bureau or other agency  
16 of the government having jurisdiction over the area in which  
17 the court is located and from which payments are made. The  
18 fiduciary commissioner shall fix a time and place for the  
19 hearing on such account not less than fifteen nor more than  
20 thirty days from the date of filing the same, and notice thereof  
21 shall be given by the fiduciary commissioner to the aforesaid  
22 bureau or other agency of the government not less than  
23 fifteen days prior to the date fixed for the hearing. Notice of  
24 such hearing shall in like manner be given to the guardian.

##### **§44-15-9. Failure to make settlement.**

1 If any guardian shall fail to file any account of the money  
2 received by him from the bureau or other agency of the  
3 government on account of his ward within thirty days after  
4 such account is required by either the fiduciary

5 commissioner or the bureau or other agency of the  
6 government, or shall fail to furnish the bureau or other  
7 agency of the government a copy of his accounts as required  
8 by this article, such failure shall be grounds for a removal.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

#### §56-10-4. **Compromise of actions and suits in behalf of infants and insane persons and disbursement of funds arising therefrom.**

1 In any action or suit wherein an infant or insane person is a  
2 party, the court in which the same is pending, or the judge  
3 thereof in vacation, shall have the power to approve and  
4 confirm a compromise of the matters in controversy on behalf  
5 of such infant or insane person, if such compromise shall be  
6 deemed to be to the best interest of the infant or insane  
7 person. Such approval or confirmation shall never be granted  
8 except upon written application therefor by the guardian,  
9 committee, curator, or next friend of the infant or insane  
10 person, setting forth under oath all the facts of the case and  
11 the reasons why such compromise is deemed to be for the  
12 best interest of the infant or insane person. And the court or  
13 judge, before approving such compromise, shall, in order to  
14 determine whether to approve or disapprove the  
15 compromise, hear the testimony of witnesses relating to the  
16 subject matter of the compromise and cause said testimony to  
17 be reduced to writing and filed with the papers in the case.  
18 The court or judge, upon approving and confirming such  
19 compromise, shall enter judgment or decree accordingly.  
20 Such judgment or decree shall bind the respective parties  
21 thereto, including such infant or insane person, with like  
22 force and effect, and shall be subject to review, modification  
23 or reversal to the same extent only, as if it were a consent  
24 judgment or decree, entered under similar circumstances, in  
25 a case in which all the parties were adults and sane. In any  
26 such compromise wherein the amount paid to the guardian or  
27 committee does not exceed the sum of ten thousand dollars,  
28 the court or judge approving and confirming the compromise  
29 and entering judgment or decree thereon may, in its or his  
30 discretion, dispense with or withdraw a reference to a  
31 fiduciary commissioner as to said compromise, authorize the

32 disbursement of the fund so created by the compromise and  
33 may discharge the guardian or committee and the surety on  
34 his bond as to the proceeding then pending in the circuit  
35 court, and in all such cases a certified copy of the order of the  
36 court or judge, as the case may be, shall be recorded in the  
37 office of the clerk of the county commission wherein the  
38 guardian or committee was appointed.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-9. Compensation of fiduciary commissioners; procedure  
for approving.**

1 The county commission shall promulgate by order a  
2 schedule of fees or a rate of compensation for the guidance of  
3 fiduciary commissioners, based upon the actual time spent  
4 and actual services rendered, or both a schedule and a rate of  
5 compensation as the commissioners may deem appropriate:  
6 *Provided*, That no fee may be based solely upon the amount  
7 of the estate. A copy of these fees or rates shall be posted in a  
8 conspicuous place in the county courthouse.

9 The fiduciary commissioner shall submit to the  
10 commission an itemized statement of services rendered and  
11 time expended in the settling of every estate, along with a  
12 statement of fees charged therefor. The county commission  
13 shall review all fees charged by a fiduciary commissioner, and  
14 shall approve, disapprove or modify the fee as it may deem  
15 appropriate. In reviewing any fee the county commission  
16 shall consider the following: (1) The time and labor expended;  
17 (2) the difficulty of the questions raised; (3) the skill required  
18 to perform properly the services rendered; (4) the customary  
19 fee for like work; and (5) any time limitations imposed by the  
20 personal representative, any beneficiary, or by the attendant  
21 circumstances.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*R. P. Bayles*  
Chairman Senate Committee

*Sony L. Whitlow*  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

*Todd C. White*  
Clerk of the Senate

*VA Blankenship*  
Clerk of the House of Delegates

*Warren R. McSwain*  
President of the Senate

*Alfred M. DeLoach Jr.*  
Speaker House of Delegates

The within *is approved* this the *31*

day of *March*, 1982.

*John L. Ralston*  
Governor



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SECY. OF STATE