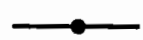


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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute, For
SENATE BILL NO. 458

(By Senator JACKSON)



PASSED MARCH 11, 1995

In Effect 90 days FROM Passage

*1264
4/10/95*

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 458

(SENATOR JACKSON, *original sponsor*)

_____ ninety days
[Passed March 11, 1995; in effect from passage.]

KCL 4/10/95

An ACT to amend and reenact sections one and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proceedings of decedents' estates; references thereon; service and publication of notice of time for receiving claims; proceedings relating thereto; claims against decedents' estates; and providing that final settlement of certain decedents' estates may be waived in specified circumstances.

Be it enacted by the Legislature of West Virginia:

That sections one and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

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

1 (a) Upon the return of the appraisement by the per-
2 sonal representative to the county clerk, the estate of his
3 or her decedent shall, by order of the county commission
4 to be then made, be referred to a fiduciary commissioner
5 for proof and determination of debts and claims, estab-
6 lishment of their priority, determination of the amount
7 of the respective shares of the legatees and distributees,
8 and any other matter necessary and proper for the
9 settlement of the estate: *Provided*, That in counties
10 where there are two or more such commissioners, the
11 estates of decedents shall be referred to such commis-
12 sioners in rotation, in order that, so far as possible, there
13 may be an equal division of the work: *Provided, how-*
14 *ever*, That a fiduciary commissioner may not charge to
15 the estate a fee greater than two hundred dollars for the
16 settlement of an estate, except upon approval of the
17 county commission because of complicating issues or
18 problems attendant to such settlement and amount of
19 time involved in and about its resolution.

20 (b) If the personal representative shall deliver to the
21 clerk an appraisement of the assets of the estate showing
22 their value to be fifty thousand dollars or less, exclusive
23 of nonprobate assets, the clerk shall record said ap-
24 praisement and publish a notice once a week for two
25 successive weeks in a newspaper of general circulation
26 within the county of administration of the estate, sub-
27 stantially as follows:

28 **NOTICE OF PENDING ESTATE**

29 "Notice is hereby given that settlement of the estate of
30 the following named decedents will proceed without
31 reference to a fiduciary commissioner unless within
32 ninety days from the first publication of this notice such

33 reference is requested by a party in interest or an unpaid
34 creditor and good cause is shown to support such refer-
35 ence.

36 Dated this _____ day of _____,
37 _____

38 Clerk of the County Commission
39 of _____ County, West Virginia.”

40 The clerk shall charge to the personal representative,
41 and receive, the reasonable cost of publication of the
42 notice.

43 The personal representative shall, within a reasonable
44 time after the date of recordation of the appraisement in
45 such case, make a report to the clerk of his receipts,
46 disbursements and distribution, and shall make affidavit
47 that all claims against the estate, for expenses of
48 administration, taxes and debts of the decedent, have
49 been paid in full. The clerk shall collect a fee of ten
50 dollars for recording such report and affidavit, and for
51 publication of the notice hereafter provided, the fee to be
52 in lieu of any other fee provided by law for recording a
53 report of settlement of the accounts of a decedent's
54 personal representative. At least once a month the clerk
55 shall cause to be published once a week for two
56 successive weeks in a newspaper of general circulation
57 within the county of the administration of the estate,
58 with regard to reports received in the prior month, a
59 notice substantially as follows:

60 NOTICE OF FILING OF ESTATE ACCOUNTS

61 “I have before me the account of the executor(s) or
62 administrator(s) of the estates of the following deceased
63 persons:

64 _____
65 _____
66 _____

67 Any person having a claim against the estate of any
68 such deceased person, or who has any beneficial interest
69 therein, may appear before me or the county commission
70 at any time within thirty days after first publication of
71 this notice, and request reference of said estate to a
72 commissioner or object to confirmation of the
73 accounting. In the absence of such request or objection,
74 the accounting may be approved by the county
75 commission.

76

77 _____
Clerk of the County Commission
78 of _____ County, W. Va.”

79 If no such request or objection is made to the clerk or
80 to the county commission, the county commission may
81 confirm the report of the personal representative, and
82 thereupon the personal representative and his surety
83 shall be discharged; but if such objection or request is
84 made, the county commission may confirm the
85 accounting and record the same, or may refer the estate
86 to one of its fiduciary commissioners: *Provided*, That the
87 personal representative has twenty days after the date of
88 the filing of a claim or claims against the estate of the
89 decedent to approve or reject the claim before the estate
90 is referred to a fiduciary commissioner and if all claims
91 are approved as filed, then no reference may be made.

92 (c) If upon the return and recordation of the
93 appraisement, it appears to the clerk that there is only
94 one beneficiary of the estate and that the beneficiary is
95 competent at law, there shall be no further
96 administration upon the estate, and no reference to a
97 fiduciary commissioner, unless, for due cause, the county
98 commission orders further administration and a
99 reference to a fiduciary commissioner: *Provided*, That
100 the personal representative has twenty days after the
101 date of the filing of a claim or claims against the estate
102 of the decedent to approve or reject one claim before the
103 estate is referred to a fiduciary commissioner and if all

104 claims are approved as filed, then no reference may be
105 made. The bond of the personal representative and his
106 surety shall be discharged one year after the date of
107 qualification of the personal representative if no claim
108 has been filed with the county clerk and no suit has been
109 instituted against the personal representative. The clerk
110 shall publish a notice once a week for two successive
111 weeks in a newspaper of general circulation within the
112 county of administration of the estate, substantially as
113 follows:

114 NOTICE OF UNADMINISTERED ESTATE

115 "Notice is hereby given that, there being only one
116 beneficiary of the deceased, there will be no
117 administration of the estate unless within ninety days
118 demand for administration be made by a party in
119 interest or an unpaid creditor.

120 Dated this _____ day of _____, _____.

121 _____

122 Clerk of the County Commission

123 of _____ County, W. Va."

124 The clerk shall charge to the personal representative,
125 and receive, the reasonable cost of publication of the
126 notice.

127 If no person demands administration and no creditor
128 appears in response to the notice hereinabove provided,
129 the clerk shall enter an order declaring the estate closed,
130 without final settlement or waiver thereof and alienation
131 of the decedent's real estate more than six months after
132 the date of the notice to a bona fide purchaser for value
133 shall be free of any lien for taxes or debts of the
134 decedent, notwithstanding the provisions of section five,
135 article eight, chapter forty-four of this code.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration

2 under this article where a release of lien required by the
3 provisions of article eleven, chapter eleven of this code
4 has been filed with the clerk and more than ninety days
5 have elapsed since the filing of any notice required by
6 the provisions of this article, even though such estate
7 may have been referred to a fiduciary commissioner, a
8 final settlement may be waived by a waiver containing
9 an affidavit made by the personal representative, that
10 the time for filing of claims has expired, that no known
11 and unpaid claims exist against the estate, and that all
12 beneficiaries have each been advised of the share or
13 shares to which each is entitled from the estate and
14 signed by every beneficiary.

15 In the case of a beneficiary under a disability, the duly
16 qualified personal representative of such beneficiary,
17 may sign in lieu of such beneficiary. A personal
18 representative signing such waiver shall be responsible
19 to his or her cestui que trust for any loss resulting from
20 such waiver.

21 The waiver shall be recorded as in the case of and in
22 lieu of a settlement.

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

[Handwritten signature]

Chairman Senate Committee

[Handwritten signature]

Chairman House Committee

Originated in the Senate. ^{ninety days} ^{4/10/95}
In effect from passage.

[Handwritten signature]

Clerk of the Senate

[Handwritten signature]

Clerk of the House of Delegates

[Handwritten signature]

President of the Senate

[Handwritten signature]

Speaker House of Delegates

The within *is approved* this the *24th*

day of *March*, 1995

[Handwritten signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 3:56 pm