

RECEIVED

98 APR -8 PM 3:33

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998

## ENROLLED

### Com. Sub. for House Bill No. 4310

(By Mr. Speaker, Mr. Kiss, and Delegates  
Jenkins, Stator, Varner, Trump and Dalton)

Passed March 14, 1998

In Effect Ninety Days from Passage

RECEIVED

98 APR -8 PM 3:33

OFFICE OF THE  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4310

(BY MR. SPEAKER, MR. KISS, AND DELEGATES  
JENKINS, STATON, VARNER, TRUMP AND DALTON)

---

[Passed March 14, 1998; in effect ninety days from passage.]

---

AN ACT to amend and reenact sections one, two and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising the short form settlement of a decedent's estate; providing for fees and expenses of fiduciary commissioners; establishing certain instances in which estates may proceed without reference to a fiduciary commissioner and requiring publication of notice in such instances; requiring unpaid creditors to file a claim in order to force reference to a fiduciary commissioner; permitting personal representatives to approve such claims and avoid reference to a fiduciary commissioner; addressing and clarifying certain language with respect to waivers of final settlement; and requiring unpaid creditors to file claims against an estate with the fiduciary commissioner within ninety days of the first notice publication date.

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

That sections one, two 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, all to read as follows:

**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 appraisement by the  
2 personal representative to the county clerk, the estate of  
3 his or her decedent shall, by order of the county  
4 commission to be then made, be referred to a fiduciary  
5 commissioner for proof and determination of debts and  
6 claims, establishment of their priority, determination of the  
7 amount of the respective shares of the legatees and  
8 distributees, and any other matter necessary and proper  
9 for the 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  
12 commissioners in rotation, in order that, so far as possible,  
13 there may be an equal division of the work.  
14 Notwithstanding any other provision of this code to the  
15 contrary, a fiduciary commissioner may not charge to the  
16 estate a fee greater than three hundred dollars and  
17 expenses for the settlement of an estate, except upon: (i)  
18 Approval of the personal representative or (ii) a  
19 determination by the county commission after a hearing  
20 that complicating issues or problems attendant to such  
21 settlement substantiate the allowance of a greater fee.

22 (b) If the personal representative shall deliver to the  
23 clerk an appraisement of the assets of the estate showing  
24 their value to be fifty thousand dollars or less, exclusive of  
25 real estate specifically devised and nonprobate assets, or, if  
26 it appears to the clerk that there is only one beneficiary of  
27 the probate estate and that the beneficiary is competent at  
28 law, the clerk shall record said appraisement and publish a  
29 notice once a week for two successive weeks in a  
30 newspaper of general circulation within the county of  
31 administration of the estate, substantially as follows:

NOTICE OF PENDING  
OR UNADMINISTERED ESTATE

“Notice is hereby given that settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first publication of this notice such reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the County Commission of  
\_\_\_\_\_ County, West Virginia.”

The clerk shall charge to the personal representative, and receive, the reasonable cost of publication of the notice. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

The personal representative shall, within a reasonable time after the date of recordation of the appraisal in such case: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article or (ii) make a report to the clerk of his receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. The clerk shall collect a fee of ten dollars for recording such report and affidavit, and for publication of the notice hereafter provided, the fee to be in lieu of any other fee provided by law for recording a report of settlement of the accounts of a decedent’s personal representative. At least once a month the clerk shall cause to be published once a week for two successive weeks in a newspaper of general circulation within the county of the

70 administration of the estate, with regard to reports received  
71 in the prior month, a notice substantially as follows:

72 NOTICE OF FILING OF ESTATE ACCOUNTS  
73 OR WAIVERS OF FINAL SETTLEMENT

74 "I have before me the account or waiver of final  
75 settlement of the executor(s) or administrator(s) of the  
76 estates of the following deceased persons:

77 \_\_\_\_\_

78 \_\_\_\_\_

79 \_\_\_\_\_

80 Any person having a claim against the estate of any  
81 such deceased person, or who has any beneficial interest  
82 therein, may appear before me or the county commission  
83 at any time within thirty days after first publication of this  
84 notice, and request reference of said estate to a  
85 commissioner or object to confirmation of the accounting.  
86 In the absence of such request or objection, the  
87 accounting may be approved by the county commission.

88 \_\_\_\_\_

89 Clerk of the County Commission

90 of \_\_\_\_\_ County, W. Va."

91 If no such request or objection is made to the clerk or  
92 to the county commission, the county commission may  
93 confirm the report of the personal representative, and  
94 thereupon the personal representative and his surety shall  
95 be discharged; but if such objection or request is made,  
96 the county commission may confirm the accounting and  
97 record the same, or may refer the estate to one of its  
98 fiduciary commissioners: *Provided*, That the personal  
99 representative has twenty days after the date of the filing  
100 of a claim or claims against the estate of the decedent to  
101 approve or reject the claim before the estate is referred to  
102 a fiduciary commissioner and if all claims are approved as  
103 filed, then no reference may be made.

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

1 Each month the fiduciary commissioner shall publish  
2 a notice designating the date by which claims against the  
3 estate or estates referred to him during the previous  
4 calendar month must be presented. The date so  
5 designated by the fiduciary commissioner shall be ninety  
6 days from the date of the first publication of the notice  
7 hereinafter set forth. The notice shall be to the following  
8 effect: To the Creditors and Beneficiaries of the Estate(s)  
9 of

10 \_\_\_\_\_

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

12 All persons having claims against the estate(s) of the  
13 said\_\_\_\_\_,

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

23 Given under my hand this \_\_\_\_ day of \_\_\_\_\_

24 \_\_\_\_\_  
25 Fiduciary Commissioner,

26 County of \_\_\_\_\_

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  
30 area for such publication shall be the county. The  
31 publication of such notice shall be equivalent to personal  
32 service on the creditors, distributees and legatees, or any of  
33 them.

**§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, if 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 the  
6 provisions of this article, even though such estate may  
7 have been referred to a fiduciary commissioner, a final  
8 settlement may be waived by a waiver containing an  
9 affidavit made by the personal representative, that the time  
10 for filing of claims has expired, that no known and unpaid  
11 claims exist against the estate, and that all beneficiaries  
12 have each been advised of the share or shares to which  
13 each is entitled from the estate and signed by every  
14 beneficiary.

15 In the case of a deceased beneficiary or a beneficiary  
16 under a disability, the duly qualified fiduciary or agent of  
17 such beneficiary may sign in lieu of such beneficiary. A  
18 fiduciary or agent signing such waiver shall be responsible  
19 to the beneficiary for any loss resulting from such waiver.

20 The waiver shall be recorded as in the case of and in  
21 lieu of a settlement as provided in section one, article two  
22 of this chapter.

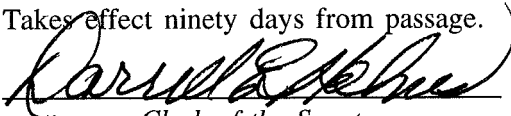
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

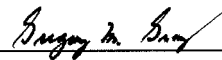
  
Chairman Senate Committee


  
Chairman House Committee

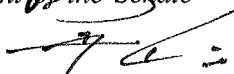
Originating in the House.

Takes effect ninety days from passage.

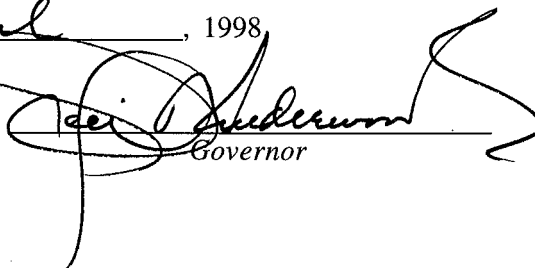
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 8th  
day of April, 1998

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:39 pm