WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2768

(By Mr. Speaker, Mr. Kiss, and Delegates Staton and Keener)

Passed April 14, 2001

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections seven and thirty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen, article one, chapter thirty-six of said code; to amend and reenact section three, article six, chapter forty-two of said code; to amend article one, chapter forty-four of said code, by adding thereto a new section, designated section thirteen-a; to amend and reenact section fourteen, article one of said chapter; to amend and reenact sections one and twenty-nine, article two of said chapter; and to amend and reenact section four-a, article three-a of said chapter, all relating to the administration of estates and trusts; providing for certain nonprobate inventories of estates and penalties for noncompliance; providing for the privacy of certain information from the public; providing for the administration of certain debts of beneficiaries and spendthrift trusts;
providing for the timing of disclaimers and delivery; providing for the certain appraisal of real estate and personal property; providing for certain proceedings and references of decedents' estates; setting forth certain requirements for waiver of a final settlement; and providing for certain optional procedures for short form settlements against estates of decedents.

Be it enacted by the Legislature of West Virginia:

That sections seven and thirty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eighteen, article one, chapter thirty-six of said code be amended and reenacted; that section three, article six, chapter forty-two of said code be amended and reenacted; that article one, chapter forty-four of said code be amended and reenacted by adding thereto a new section, designated section thirteen-a; that section fourteen, article one, chapter forty-four of said code be amended and reenacted; that sections one and twenty-nine, article two of said chapter be amended and reenacted; and that section four-a, article three-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.

(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the tax commissioner, all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its
fair market value on the date of the decedent’s death. The nonprobate personal property to be included on the nonprobate inventory form includes, but is not limited to, the following:

1. Personalty held as joint tenants with right of survivorship with one or more third parties;
2. Personalty payable on the death of the decedent to one or more third parties;
3. Personalty held by the decedent as a life tenant;
4. Insurance on the decedent’s life payable to beneficiaries other than the executor or administrator of the decedent’s estate;
5. Powers of appointment;
6. Annuities;
7. Transfers during the decedent’s life in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent;
8. Revocable transfers in trust or otherwise;
9. Taxable gifts under section 2503 of the United States Internal Revenue Code of 1986; and
10. All other nonprobate personalty included in the federal gross estate of the decedent.

(b) For purposes of this section, “nonprobate personal property” means all property which does not pass by operation of the decedent’s will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent’s estate at common law.
(c) The personal representative shall prepare the nonprobate inventory form and file it with the tax commissioner within ninety days of the date of qualification of the personal representative in this state.

(d) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

§11-11-35. Privacy of information.

(a) Notwithstanding the provisions of article ten of this chapter, the tax return of an estate shall be open to inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, or beneficiary under the will of the decedent; or

(3) The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in subdivision (1) or (2) of this section.

(b) Notwithstanding the provisions of article ten of this chapter, the personal representative of the decedent shall make the nonprobate inventory form of an estate available for inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, beneficiary under the will of the decedent, a creditor who has timely filed a claim against the estate of the decedent with the fiduciary commissioner or fiduciary supervisor, or any party who has filed a civil action in
any court of competent jurisdiction in which any asset of the
decedent is in issue; or

(3) The attorney for the estate or its personal representative
or the attorney-in-fact duly authorized by any of the persons
described in subdivision (1) or (2) of this subsection.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts;
nonmerger of trusts.

(a) Estates held in trust are subject to the debts of the
beneficiary of the trust, except where the creator has expressly
provided in the trust instrument that:

(1) The income or principal, or both, may only be applied
to the health, education, support or maintenance of a benefi-
ciary, other than the creator of the trust, for the life of the
beneficiary; and

(2) The trust is not subject to the liability of or alienation by
the beneficiary or beneficiaries.

(b) A trust, whenever created, may not be set aside or
terminated solely on the assertion of a creditor that the trustee
or trustees are the same person or persons as the beneficiary or
beneficiaries of the trust.

(c) This section applies to any trust established by an
instrument executed on or after the first day of July, two
thousand one, except as otherwise expressly provided in the
terms of the trust.

(d) This section applies to any trust established under an
instrument executed prior to the first day of July two thousand
one, when the trustee elects, in his or her sole discretion, to administer the trust pursuant to the provisions of this section.

(e) Except as provided in subsection (c) of this section, this section may not be construed to create or imply a duty on a trustee to administer the trust pursuant to the provisions of this section, and a trustee may not be held liable for refusing to administer a trust pursuant to the provisions of this section.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-3. Time of disclaimer; delivery.

(a) Except as provided in subsection (c) of this section, if the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be delivered, as to a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, as to a future interest, not later than nine months after the event determining that the taker of the property or interest has become finally ascertained and his interest is indefeasibly vested. The disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary, of the decedent or the donee of the power, to the holder of the legal title to which the interest relates or to the person entitled to the property or interest in the event of disclaimer. A fully executed and acknowledged copy of the disclaimer shall be filed and recorded with the probate documents in the office of the clerk of the county commission of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced.

(b) Except as provided in subsection (c), if the property or interest has devolved to the disclaimant under a
nontestamentary instrument or contract, the disclaimer shall be
delivered as to a present interest, not later than nine months
after the effective date of the nontestamentary instrument or
contract and, as to a future interest, not later than nine months
after the event determining that the taker of the property or
interest has become finally ascertained and his interest indefeas-
sibly vested. If the person entitled to disclaim does not have
actual knowledge of the existence of the interest, the disclaimer
shall be delivered not later than nine months after he has actual
knowledge of the existence of the interest. The effective date of
a revocable instrument or contract is the date on which the
maker no longer has power to revoke it or to transfer to himself
or another the entire legal and equitable ownership of the
interest. The disclaimer shall be delivered in person or mailed
by registered or certified mail to the person who has legal title
to or possession of the interest disclaimed.

(c) In any case, as to a transfer creating an interest in the
disclaimant made after the thirty-first day of December, one
thousand nine hundred seventy-six, and subject to tax under
chapters eleven, twelve or thirteen of the Internal Revenue
Code of 1954, as amended, a disclaimer intended as a qualified
disclaimer thereunder must specifically so state and must be
delivered not later than nine months after the later of the date
the transfer is made or the day on which the person disclaiming
attains age twenty-one.

(d) A surviving joint tenant may disclaim as a separate
interest any property or interest therein devolving to him by
right of survivorship. A surviving joint tenant may disclaim the
entire interest in any property or interest therein that is the
subject of a joint tenancy devolving to him, if the joint tenancy
was created by act of a deceased joint tenant and the survivor
did not join in creating the joint tenancy.

(e) If real property or an interest therein is disclaimed, in
addition to recording the disclaimer in the county wherein
administration is had or commenced, a fully executed and
acknowledged copy of the disclaimer shall be recorded in the
deed books in the office of the clerk of the county commission
of the county in which the property or interest disclaimed is
located.

CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-13a. Filing of objections and claims; notice of administra-
tion; liability of personal representative.

(a) Any person interested in the estate of a deceased person
may file a claim against the estate of the decedent as provided
in article two of this chapter.

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

(c) Within thirty days of the filing of the administration of
any estate, the clerk of the county commission shall publish,
once a week for two successive weeks, in a newspaper of
general circulation within the county of the administration of
the estate, a notice, which shall include:

(1) The name of the decedent;

(2) The file number of the estate, if any;

(3) The name and address of the county commission before
whom the proceedings are pending;
(4) The name and address of the personal representative;

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

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

(7) The date of first publication;

(8) A statement that claims against the estate must be filed in accordance with the provisions of article two of this chapter; and

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

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

(e) The personal representative shall, within ninety days after the date of first publication, serve a copy of the notice by first class mail, postage prepaid, as required in subsection (c) of this section, on the following persons:

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

(2) Any beneficiaries;

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

(4) All creditors identified under subsection (d) above, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.
(f) The service of the notice required by subdivision (4), subsection (e) of this section may not be construed to admit the validity or enforceability of a claim.

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

(h) The clerk of the county commission shall collect a fee of ten dollars for the publication of the notice required in this section.

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

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

(b)(1) After having taken the appropriate oath, the personal representative shall, on a form prescribed by the tax commissioner list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent’s death:

(A) All real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and
(B) All probate personal property, whether tangible or intangible, including but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(2) Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such realty for purposes of real property ad valorem taxation.

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

(4) In addition, the personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the tax commissioner for the purpose of reporting to the tax commissioner whether the estate of the decedent is subject to estate tax as provided in article eleven, chapter eleven of this code and whether the decedent owned or had an interest in any nonprobate personal property.

(5) The appraisement and questionnaire shall be executed and signed by the personal representative. The original appraisement and questionnaire and two copies thereof shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement and questionnaire to determine whether the documents are in proper form. If the appraisement and questionnaire are returned to a fiduciary supervisor within ten days after being received and approved by him or her, the supervisor
shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement and questionnaire, the clerk of the county commission shall record the documents, with the certificate of approval of the supervisor, mail a certified copy of the documents to the tax commissioner, and mail a copy of the documents to every known heir or beneficiary of the estate of the decedent. The clerk of the county commission may charge an appropriate mailing fee for mailing the documents. The date of return of an appraisement shall be entered by the clerk of the county commission in his or her record of fiduciaries.

(c) An appraisement is prima facie evidence of:

(1) The value of the property listed;

(2) The property is subject to administration; and

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

(d) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

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

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST THE ESTATE OF DECEDEENTS.

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

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent shall, by order of the county commission, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary for the settlement of the estate: Provided, That in counties where there are two or more commissioners, the estates of decedents shall be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating issues or problems attendant to such settlement substantiate the allowance of a greater fee.

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

NOTICE TO CREDITORS AND BENEFICIARIES

"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 may charge the personal representative a reasonable cost for 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 appraisement: (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 or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final
settlement or report, the clerk shall record the waiver or report
and mail copies to each beneficiary and creditor of by first class
mail, postage prepaid. The clerk shall retain the report for ten
days to allow any beneficiary or creditor to appear before the
county commission to request reference to a fiduciary commis-
sioner. The clerk shall collect a fee of ten dollars for recording
and mailing the waiver of final settlement or report.

If no request or objection is made to the clerk or to the
county commission, the county commission may confirm the
report of the personal representative the personal representative
and his or her surety shall be discharged; but if such objection
or request is made, the county commission may confirm and
record the accounting or may refer the estate to it's fiduciary
commissioners: Provided, That 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 and if all claims
are approved as filed, then no reference may be made.

§44-2-29. Waiver of final settlement.

In all estates of decedents subject to administration under
this article where a release of lien, if required by the provisions
of article eleven, chapter eleven of this code, has been filed
with the clerk and more than ninety days have elapsed since the
filing of any notice required by the provisions of this article,
even though such estate may have been referred to a fiduciary
commissioner, a final settlement may be waived by a waiver
containing an affidavit made by the personal representative, that
the time for filing of claims has expired, that no known and
unpaid claims exist against the estate, and that all beneficiaries
have each been advised of the share or shares to which each is
entitled from the estate. Each beneficiary shall sign the waiver
unless the beneficiary receives a bequest of tangible personal
property or a bequest of cash.
In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of such beneficiary may sign in lieu of such beneficiary. A fiduciary or agent signing such waiver shall be responsible to the beneficiary for any loss resulting from such waiver.

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

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

§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the provisions of this article where more than ninety days has elapsed since the filing of any notice required by section four, an estate may be closed by a short form settlement filed in compliance with this section: Provided, That any lien for payment of estate taxes under article eleven, chapter eleven of this code is released and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement which shall contain an affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate and showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary; Provided, That a beneficiary receiving a bequest of tangible personal property or a bequest of cash may not be required to sign the waiver.
(c) Such waiver may be signed in the case of a distributee or beneficiary under a disability by the duly qualified personal representative of such distributee or beneficiary. A personal representative signing such waiver shall be responsible to his or her cestui que trust for any loss resulting from such waiver.

(d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver, both shall be recorded as in the case of and in lieu of settlement. If the fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing of such settlement give the fiduciary notice as in the case of any other incorrect settlement.

(e) If the short form settlement is proper the fiduciary supervisor shall proceed as in the case of any other settlement.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 was approved this the 1st day of May, 2001.

Governor