WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 474

(By Senator Mitchell, et al)

PASSED March 9, 2002

In Effect fifteen days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 474

(SENATORS MITCHELL, FANNING, KESSLER, MINARD, OLIVERIO, ROWE, FACEMYER AND McKENZIE, original sponsors)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to repeal section thirteen-a, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen of said article; to further amend said article by adding thereto a new section, designated section fourteen-a; to amend and reenact section one, article two of said chapter; and to amend and reenact section twelve, article four of said chapter, all relating to the administration of estates; eliminating certain requirements that county clerks publish and that personal representatives mail notices; eliminating the requirement that county clerks mail appraisement and questionnaires to heirs and beneficiaries; requiring county clerks to publish a notice regarding estates;
requiring county clerks to notify the personal representative that no appraisement has been filed; establishing time limits for the filing of objections; requiring personal representatives to send notice to certain individuals; providing for a fee for publication; limiting the liability of the personal representative in certain circumstances; defining terms; providing that the allowable expense of a fiduciary for payment to a surety may be based on the rates set by the insurance commissioner; and providing that nonprobate inventory form shall be confidential tax information.

Be it enacted by the Legislature of West Virginia:

That section thirteen-a, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fourteen of said article be amended and reenacted; that said article be further amended by adding thereto a new section, designated article fourteen-a; that section one, article two of said chapter be amended and reenacted; and that section twelve, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§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) After having taken the appropriate oath, the personal representative shall, on the appraisement form prescribed by the tax commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent's death:
(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

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

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

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

(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the tax commissioner for the purpose of reporting 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; Provided, That the tax commissioner shall design a questionnaire that is as much as possible phrased in understandable English.

(f) The appraisement form must be executed and signed by the personal representative. The original appraisement form and two copies thereof, together with the completed
and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor and mail a certified copy of the appraisement form, together with the unrecorded nonprobate inventory form, to the tax commissioner. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be considered confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees, except to the tax commissioner as provided in this section. Nothing in this section shall be construed to hinder, abrogate, or prevent disclosure of information as authorized in section thirty-five, article eleven of said chapter.

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

(1) Of the value of the property listed;

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

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

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

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

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

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

(a) Within thirty days of the filing of the appraisement of any estate as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

(1) The name of the decedent;

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

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

(4) The name and address of any attorney representing the personal representative;
(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed in accordance with the provisions of article two or article three-a of this chapter;

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

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

(10) If the appraisement of the assets of the estate shows the value to be 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, a statement substantially as follows: "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 a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner".

(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed. Notwithstanding any other provision of this code to the contrary, the county
clerk shall publish the notice required in subsection (a) of this section within six months of the qualification of the personal representative.

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

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

1. If the personal representative is not the decedent's surviving spouse and not the sole beneficiary or sole heir, the decedent's surviving spouse, if any;
2. If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;
3. If there is not a will and the personal representative is not the sole heir, any heirs;
4. The trustee of any trust in which the decedent was a grantor, if any; and
5. All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.
(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

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

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

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

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

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and 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 must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating issues or problems attendant to the 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. 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 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 commissioner. 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 an objection or request is made, the county commission may confirm and record the accounting or may refer
the estate to its fiduciary commissioners: Provided, That the personal representative has 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.

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

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

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

The fiduciary commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Any executor, administrator, guardian, committee, assignee, receiver, special fiduciary commissioner, or other fiduciary, required by law or by the order of any court or judge to give a bond or obligation as such, may include, as a part of the lawful expense of executing his duties, such reasonable sum paid a company, authorized under the laws of this state so to do, for becoming his surety on such bond or obligation, as may be allowed by the court in which, or the fiduciary commissioner before whom, he is required to account, or a judge of such court, not exceeding, however, the amount authorized by the insurance commissioner pursuant to the provisions of article twenty, chapter thirty-three of this code and the legislative rules promulgated thereunder.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26th Day of March, 2002.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/25/62
Time 11:00 AM