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2015 MAR 31 A 11:34

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2015



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2266**

(By Delegate(s) Shott, Ellington and Gearheart)



Passed March 14, 2015

In effect ninety days from passage.

HB 2266

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**E N R O L L E D**

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**H. B. 2266**

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(BY DELEGATE(S) SHOTT, ELLINGTON AND GEARHEART)

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[Passed March 14, 2015;  
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AN ACT to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5-9a; to amend and reenact §44-1-14a of said code; to amend said code by adding thereto a new section, designated §44-1-30; and to amend and reenact §44-2-1 of said code, all relating generally to administration of estates; repealing provision requiring fiduciary commissioner to publish notice of time for receiving claims against decedents' estates; changing requirements for publication by county clerk; requiring legal residences to be included on certificates of death; reducing

creditors claim period from ninety to sixty days; increasing value of estates for which a fiduciary commissioner need not be appointed; and authorizing clerk of the county commission to require a certified copy of a decedent's certificate of death or other proof of death and residence.

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

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 5. VITAL STATISTICS.**

#### **§16-5-9a. Legal residences to be included on certificates of death.**

1 In order to assist clerks of county commission fulfill their  
2 responsibilities under chapter forty-four of this code, the State  
3 Registrar shall require persons completing certificates of death,  
4 to include any known legal residences of the decedent, if  
5 different than the place of death.

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

### **ARTICLE 1. PERSONAL REPRESENTATIVES.**

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

1 (a) Within thirty days of the filing of the appraisal of  
2 any estate or within one hundred twenty days of the date of  
3 qualification of the personal representative if an appraisal is

4 not filed as required in section fourteen of this article, the clerk  
5 of the county commission shall publish, once a week for two  
6 successive weeks, in a newspaper of general circulation within  
7 the county of the administration of the estate, a notice, which is  
8 to include:

9 (1) The name of the decedent;

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

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

13 (4) The name and address of any attorney representing the  
14 personal representative;

15 (5) The name and address of the fiduciary commissioner, if  
16 any;

17 (6) The date of first publication;

18 (7) A statement that claims against the estate must be filed  
19 within sixty days of the date of first publication in accordance  
20 with article two or article three-a of this chapter;

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

25 (9) A statement that an interested person objecting to the  
26 qualifications of the personal representative or the venue or  
27 jurisdiction of the court must be filed with the county commis-  
28 sion within sixty days after the date of first publication or thirty  
29 days of service of the notice, whichever is later; and

30 (10) If the appraisal of the assets of the estate shows the  
31 value to be \$200,000 or less, exclusive of real estate specifically

32 devised and nonprobate assets, or, if it appears to the clerk that  
33 there is only one beneficiary of the probate estate and that the  
34 beneficiary is competent at law, a statement substantially as  
35 follows: "Settlement of the estate of the following named  
36 decedents will proceed without reference to a fiduciary commis-  
37 sioner unless within sixty days from the first publication of this  
38 notice a reference is requested by a party in interest or an unpaid  
39 creditor files a claim and good cause is shown to support  
40 reference to a fiduciary commissioner". If a party in interest  
41 requests the fiduciary commissioner to conclude the administra-  
42 tion of the estate or an unpaid creditor files a claim, no further  
43 notice to creditors shall be published in the newspaper, and the  
44 personal representative shall be required to pay no further fees,  
45 except to the fiduciary commissioner for conducting any  
46 hearings, or performing any other duty as a fiduciary commis-  
47 sioner. The time period for filing claims against the estate shall  
48 expire upon the time period set out in the notice to creditors  
49 published by the clerk of the county commission as required in  
50 this subsection (a). If an unpaid creditor files a claim, the  
51 fiduciary commissioner shall conduct a hearing on the claim  
52 filed by the creditor, otherwise, the fiduciary commissioner shall  
53 conclude the administration of the estate as requested by the  
54 interested party.

55 (11) This notice shall be published as a Class II legal  
56 advertisement in compliance with the provisions of article three,  
57 chapter fifty-nine of this code. The publication of such notice  
58 shall be equivalent to personal service on creditors, distributees  
59 and legatees.

60 (b) If no appraisal is filed within the time period  
61 established pursuant to section fourteen of this article, the county  
62 clerk shall send a notice to the personal representative by first  
63 class mail, postage prepaid, indicating that the appraisal has  
64 not been filed.

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

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

72 (1) If the personal representative is not the decedent's  
73 surviving spouse and not the sole beneficiary or sole heir, the  
74 decedent's surviving spouse, if any;

75 (2) If there is a will and the personal representative is not the  
76 sole beneficiary, any beneficiaries;

77 (3) If there is not a will and the personal representative is not  
78 the sole heir, any heirs;

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

81 (5) All creditors identified under subsection (c) of this  
82 section, other than a creditor who filed a claim as provided in  
83 article two of this chapter or a creditor whose claim has been  
84 paid in full.

85 (e) Any person interested in the estate who objects to the  
86 qualifications of the personal representative or the venue or  
87 jurisdiction of the court, shall file notice of an objection with the  
88 county commission within ninety days after the date of the first  
89 publication as required in subsection (a) of this section or within  
90 thirty days after service of the notice as required by subsection  
91 (d) of this section, whichever is later. If an objection is not  
92 timely filed, the objection is forever barred.

93 (f) A personal representative acting in good faith is not  
94 personally liable for serving notice under this section, notwith-

95 standing a determination that notice was not required by this  
96 section. A personal representative acting in good faith who fails  
97 to serve the notice required by this section is not personally  
98 liable. The service of the notice in accordance with this subsection  
99 may not be construed to admit the validity or enforceability  
100 of a claim.

101 (g) The clerk of the county commission shall collect a fee of  
102 \$20 for the publication of the notice required in this section.

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

**§44-1-30. Death certificate or other proof of death and residence  
may be required.**

1 The clerk of the county commission may require a certified  
2 copy of a decedents death certificate or other proof of death and  
3 residence prior to fulfilling the clerk's responsibilities under this  
4 chapter.

**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 appraisal by the personal  
2 representative to the county clerk, the estate of his or her  
3 decedent, by order of the county commission, must be referred  
4 to a fiduciary commissioner for proof and determination of debts  
5 and claims, establishment of their priority, determination of the  
6 amount of the respective shares of the legatees and distributees,  
7 and any other matter necessary for the settlement of the estate:  
8 *Provided*, That in counties where there are two or more commis-  
9 sioners, the estates of decedents must be referred to the commis-  
10 sioners in rotation, so there may be an equal division of the  
11 work. Notwithstanding any other provision of this code to the

12 contrary, a fiduciary commissioner may not charge to the estate  
13 a fee greater than \$300 and expenses for the settlement of an  
14 estate, except upon: (I) Approval of the personal representative;  
15 or (ii) a determination by the county commission that the fee is  
16 based upon the actual time spent and actual services rendered  
17 pursuant to a schedule of fees or rate of compensation for  
18 fiduciary commissioners promulgated by the commission in  
19 accordance with the provisions of section nine, article one,  
20 chapter fifty-nine of this code.

21 (b) If the personal representative delivers to the clerk an  
22 appraisalment of the assets of the estate showing their value to be  
23 \$200,000 or less, exclusive of real estate specifically devised and  
24 nonprobate assets, or if it appears to the clerk that there is only  
25 one beneficiary of the probate estate and that the beneficiary is  
26 competent at law, the clerk shall record the appraisalment. If an  
27 unpaid creditor files a claim against the estate, the personal  
28 representative has twenty days after the date of the filing of a  
29 claim against the estate of the decedent to approve or reject the  
30 claim before the estate is referred to a fiduciary commissioner.  
31 If the personal representative approves all claims as filed. then  
32 no reference may be made.

33 The personal representative shall, within a reasonable time  
34 after the date of recordation of the appraisalment: (I) File a  
35 waiver of final settlement in accordance with the provisions of  
36 section twenty-nine of this article; or (ii) make a report to the  
37 clerk of his or her receipts, disbursements and distribution and  
38 submit an affidavit stating that all claims against the estate for  
39 expenses of administration, taxes and debts of the decedent have  
40 been paid in full. Upon receipt of the waiver of final settlement  
41 or report, the clerk shall record the waiver or report and mail  
42 copies to each beneficiary and creditor by first-class mail,  
43 postage prepaid. The clerk shall retain the report for ten days to  
44 allow any beneficiary or creditor to appear before the county  
45 commission to request reference to a fiduciary commissioner.



46 The clerk shall collect a fee of \$10 for recording and mailing the  
47 waiver of final settlement or report.

48 If no request or objection is made to the clerk or to the  
49 county commission, the county commission may confirm the  
50 report of the personal representative, the personal representative  
51 and his or her surety shall be discharged; but if an objection or  
52 request is made, the county commission may confirm and record  
53 the accounting or may refer the estate to its fiduciary commis-  
54 sioners: *Provided*, That the personal representative has twenty  
55 days after the date of the filing of a claim against the estate of  
56 the decedent to approve or reject the claim before the estate is  
57 referred to a fiduciary commissioner and if all claims are  
58 approved as filed, then no reference may be made.

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

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

  
Chairman, House Committee

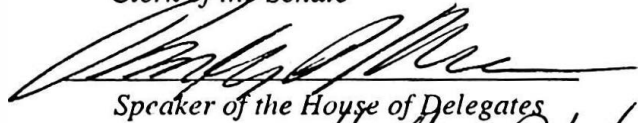
  
Chairman, Senate Committee

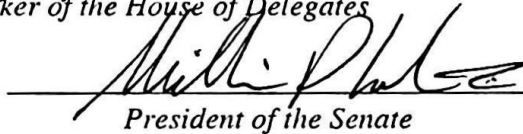
Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within is approved this the 31st  
day of March, 2015.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 4:55 PM