

Probate: West Virginia

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Status: **Law stated as of 10 Mar 2025** | Jurisdiction: **United States, West Virginia**

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A Q&A guide to the laws of probate in West Virginia. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in West Virginia, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate. Answers to questions can be compared across a number of jurisdictions (see Probate: State Q&A Tool).

Key Statutes and Rules

1. What are the state laws and rules that govern estate proceedings?

The rules and laws that govern probate proceedings in West Virginia are found in:

- Chapter 41 of the West Virginia Code, regarding general rules governing wills (W. Va. Code §§ 41-1-1 to 41-5-20).
- Chapter 42 of the West Virginia Code, regarding the framework for descent and distribution (intestacy) and includes provisions related to the decedent's spouse (including the elective share right), simultaneous deaths, and disclaimer of property (W. Va. Code §§ 42-1-1 to 42-6-19).
- Chapter 44 of the West Virginia Code, regarding the appointment and duties of personal representatives, the administration of estates and trusts, and testamentary guardianships (W. Va. Code §§ 44-1-1 to 44-11-10).
- If testamentary trusts are involved:
 - Chapter 44D of the West Virginia Code, regarding West Virginia's version of the Uniform Trust Code (W. Va. Code §§ 44D-1-101 to 44D-11-1105); and
 - Chapter 44B of the West Virginia Code, regarding West Virginia's version of the Uniform Principal and Income Act, applying to testamentary trustees (W. Va. Code §§ 44B-1-101 to 44B-6-606).

While these statutes establish the general rules for probate in West Virginia, actual practice can vary by county. Counsel should also check with the local Office of the Clerk of the County Commission (County Clerk) for the local procedures in each county. Unlike some other states, West Virginia does not have written rules of probate practice beyond the referenced statutes.

2. What court has jurisdiction over estate proceedings in your state?

In West Virginia, the county commission of each county has original jurisdiction over all probate matters, including:

- Admission of wills to probate.
- Appointment of personal representatives.
- Handling of creditor claims.
- Ancillary proceedings.
- Elective share proceedings.
- Closure of estates.

(W. Va. Code § 7-1-3.)

However, the circuit court of each county still has original jurisdiction over some probate-related actions, including:

- Will contests, whether on appeal, after the will is admitted to probate, or by filing a declaratory

judgment action to determine a will's validity before admitting it to probate (W. Va. Code §§ 41-5-7, 41-5-10, and 41-5-11).

- Requests for declaratory relief concerning the interpretation of wills (W. Va. Code §§ 41-3-7 and 55-13-1).

Fiduciary Commissioner and Fiduciary Supervisor Counties

In West Virginia, counties use either:

- The traditional fiduciary commissioner system under Article 2 of Chapter 44 of the West Virginia Code (W. Va. Code §§ 44-2-1 to 44-2-29).
- The optional fiduciary supervisor system under Article 3A of Chapter 44 the West Virginia Code (W. Va. Code §§ 44-3A-1 to 44-3A-4).

The two systems are similar, but the fiduciary supervisor counties hire a specific employee to handle most aspects of estate administrations. The following counties currently use the fiduciary supervisor system:

- Berkeley.
- Braxton.
- Greenbrier.
- Jackson.
- Kanawha.
- Marion.
- Putnam.
- Raleigh.
- Summers.

All other counties are currently following the fiduciary commissioner system.

Types of Estate Proceedings

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

In West Virginia, the four types of estate administration are:

- **Formal administration.** Formal administration involves:

- admitting a will to probate, if the decedent died with a will, or establishing the heirs of the decedent if the decedent died without a will;
- appointing a personal representative to administer a decedent's estate;
- handling creditor claims; and
- finalizing the administration and distributing the estate's assets.

Formal administration is required when either or both:

- the value of the entire personal property of the probate estate exceeds \$50,000; or
- the value of real estate associated with the probate estate exceeds \$100,000.

There are alternatives to formal administration if certain criteria are met, but formal administration is the most common estate proceeding in West Virginia. (W. Va. Code §§ 44-1-1 to 44-11-10.)

- **Small estate procedure.** West Virginia offers an expedited estate administration proceeding that can be used under certain circumstances if the value of decedent's probate estate does not exceed both \$50,000 in personal property and \$100,000 in real estate (W. Va. Code §§ 44-1a-1 to 44-1a-5; see Question 19: Small Estate Procedure).
- **Disposition of personal property without administration.** West Virginia offers an unsupervised procedure that permits a third party, including the decedent's employer, to pay up to \$5,000 in cash or other personal property assets to a surviving spouse or other distributees of a decedent as established by affidavit (W. Va. Code § 44-1-28; see Question 19: Disposition of Personal Property Without Administration). For unpaid wages due to a deceased employee, the West Virginia Wage Payment and Collection Act authorizes, in the absence of actual notice of a pending formal estate procedure, payment up to \$800 in the following order to the decedent's:
 - surviving spouse;
 - children 18 years of age and over in equal shares;
 - father and mother or the survivor of them; and
 - sisters and brothers or to the person paying the decedent's funeral expenses.(W. Va. Code § 21-5-8a.)

- **Ancillary administration.** West Virginia provides for an expedited estate administration that can be used if a non-West Virginia resident dies leaving probate real property located in West Virginia. Ancillary proceedings can be used whether a decedent dies with or without a will. (W. Va. Code §§ 41-5-13, 44-1-4, and 44-1-14b; see Question 19: Ancillary Administration.)

West Virginia generally refers to the person in charge of the estate administration as the personal representative, whether the estate administration is testate or intestate. However, a personal representative of a:

- Testate estate is sometimes more specifically called an executor, but the court may name an administrator with the will annexed if the decedent dies with a valid will that does not name an executor able or willing to serve (W. Va. Code § 44-1-2).
- Intestate estate is sometimes more specifically called an administrator.

West Virginia attorneys frequently use the phrase testate estate administration for the process of administering the decedent's probate assets when a decedent died with a valid will, and intestate estate administration for the process when a decedent died without a valid will. The term probate generally is also used for the process of administering the decedent's probate assets.

Opening the Estate

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

Original Wills

If a decedent dies leaving a will, West Virginia requires the person possessing the original will to deliver it,

including any codicils or separate writings, within 30 days of learning of the decedent's death, either to:

- The clerk of the county commission that has venue of the decedent's estate.
- The executor named in the will, who must offer it for probate or deliver it to the applicable clerk of the county commission within a reasonable time.

(W. Va. Code § 41-5-1.)

The venue for a probate proceeding is the West Virginia county, in the following order:

- Where the decedent had their residence.
- In which the decedent owned real estate.
- Where the decedent died.
- In any county where the decedent's personal property is located.

(W. Va. Code § 41-5-4.)

The will can be deposited with the appropriate county clerk without being admitted to probate. However, the will is normally not recorded without a probate (although some county clerks' offices record the last will and testament even without probate).

Admitting a Will to Probate

In West Virginia, there are two procedures for admitting a will to formal probate. The most common is an *ex parte* procedure, which requires the prospective executor named in the will (or administrator with will annexed where the will does not name a personal representative able and willing to act) to:

- Take an oath.
- Provide a list of the beneficiaries in the will and their last known addresses.
- Produce a certified death certificate.
- Post a bond, if not waived by the will (see Question 8).

(W. Va. Code § 41-5-10; see Documents Submitted with Initial Filing.)

The second, less common procedure is probate in solemn form, which requires the filing of a verified petition and a formal hearing before the county commission (W. Va. Code § 41-5-5). Probate in solemn form is generally reserved for circumstances where there is an anticipated objection to the admission of the will to probate or the qualification of the personal

representative. Solemn form probate can be requested by either the personal representative or required by the county clerk's office. The procedure for solemn form probate varies from county to county. Most counties simply set a hearing before the county commission, and any interested party may appear to present evidence and offer argument for or against the will.

Unlike most other states, there generally is no formal petition that must be filed before West Virginia admits an original will to probate and appoints an executor (or opens an intestate estate administration to appoint an administrator), except for Ohio County, West Virginia, where a formal petition is required for almost every administration, or if a solemn form probate is requested in other counties (see [Ohio County Clerk: Probate Practice](#)).

E-Filing

None of the West Virginia counties currently permit e-filing for the probate of wills, though West Virginia permits e-filing for other matters (see [West Virginia Judiciary: E-Filing](#)).

Documents Submitted with Initial Filing

The initial filing to open an estate proceeding in West Virginia includes:

- The original will, if any, and any codicils, if not already deposited with the county clerk (see [Original Wills](#)).
- A certified copy of decedent's death certificate. If it is anticipated that an official death certificate will not be available for some time, some county clerk's offices accept a temporary death certificate, a copy of the obituary, or other proof of death. The nominated personal representative or a family member should order multiple certified copies of the decedent's death certificate as soon as possible. Certified copies of the death certificate may be needed to facilitate the transfer of the decedent's assets throughout the estate administration.
- A verified petition if probate in solemn form is requested (see [Admitting a Will to Probate](#)).
- A surety bond, if required.
- A list of the beneficiaries named in the will (including those not specifically named, but named as part of a class), or heirs if there

is no will, and their most recent addresses (W. Va. Code § 44-1-13). Most county clerk's offices prepare their own affidavits of heirship for the personal representative to sign if the representative provides the names and addresses of beneficiaries or heirs. Some county clerk's offices may also require, for notice purposes, the names and addresses of those inheriting from the decedent in intestacy, even if there is a will. Counsel should check with the applicable county clerk's office to ensure the appropriate names and addresses are provided.

- Any waivers or renunciations of those with preference to serve as personal representative in a will or, if it is less than 30 days since the decedent's death, in an intestate administration (W. Va. Code § 44-1-4).

The person seeking appointment as personal representative must also take an oath of personal representative. The county clerk's office provides the oath. The personal representative has no powers under the will until the representative takes an oath (W. Va. Code § 44-1-1). The personal representative may appear before the county clerk to take the oath in person or may take the oath remotely (W. Va. Code § 44-1-31). Therefore, West Virginia currently admits many original wills to probate by mail, with the oath taken and bond posted (if required) remotely.

Court Forms

Some counties may provide forms for certain filings in the various estate proceedings. Using these forms may be mandatory when the county clerk's office provides them. Counsel should check the applicable county clerk's website or contact the county clerk's office by telephone to determine the specific forms used in that county, if any.

Contacting the Court

If counsel is unfamiliar with a particular county's normal procedure, counsel should contact the applicable county clerk's (if a fiduciary commissioner county) or fiduciary supervisor's office (if a fiduciary supervisor county) to check on the initial filing requirements and with additional questions. For more information on fiduciary commissioners versus fiduciary supervisors, see [Question 2: Fiduciary Commissioner and Fiduciary Supervisor Counties](#).

5. Who can open an estate and what information is required for the estate opening?

Standing to Open Estate

In West Virginia, when the decedent dies, any interested person can file to open a formal estate administration proceeding. However, the person seeking appointment as personal representative typically initiates the formal estate administration process. If the decedent died:

- Testate, the personal representative nominated under the last will and testament (executor) typically initiates the formal process, which is commonly known as probate.
- Intestate, the heirs of the estate, with preference given first to the surviving spouse, have, for the first 30 days after the decedent's death, priority to serve as personal representative (administrator). The heir seeking appointment typically initiates the formal intestate estate administration process. After 30 days, any person may commence the intestate administration process, including a creditor of the decedent. (W. Va. Code § 44-1-4.)

For more information about appointing personal representatives, see Question 7.

Statutes of Limitation

There is no statute of limitations for admitting a will to probate in West Virginia or opening an intestate estate administration proceeding. If a personal representative administers what appears to be an intestate estate and a will is later discovered, the will can be admitted to probate. When an after-found will is later admitted to probate, the court revokes the initial letters of administration and grants new letters.

Similarly, if a will is discovered that was executed later than the will that was admitted to probate, any interested person may petition to revoke the probate of the earlier will (*In re Winzenrith's Will*, 55 S.E.2d 897, 901 (W. Va. 1949)).

Petition for Administration

In West Virginia, there is no official petition for probate or petition for an intestate estate administration required in any county except for Ohio County, though certain documents generally must be filed

and information must be provided (see Question 4: Admitting a Will to Probate and Documents Submitted with Initial Filing). However, every county has its own nuances of what the county clerk's office must be provided to open a probate. Counsel should contact the county clerk's office if they are not familiar with probate in that county.

Although the specific procedure varies from county to county, a verified petition must be filed where probate in solemn form is requested, stating:

- When and where the testator died.
- The testator's last place of residence.
- The nature of the testator's estate.
- The relationship of the petitioner to the testator.
- The place of residence of each of the testator's heirs at law and distributees, surviving wife or husband, and each of the beneficiaries of the will.

(See Question 4: Admitting a Will to Probate.)

For information on commencing a process for small estate administration, disposition of personal property by affidavit, or ancillary administration, see Question 19.

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

Notice of Filing for Estate Administration

West Virginia does not require notice when filing for an estate administration or any advance notice of the appointment of an executor or administrator. However, in:

- A testate administration, if the testator named a different executor than the one seeking appointment, a renunciation needs to be filed for any executor named before the application.
- An intestate administration, if 30 days has not yet elapsed since the decedent's death and someone

other than the surviving spouse or an heir is applying to open probate, renunciations from those with priority during the first 30 days must be filed (see Question 7: Appointing a Personal Representative Where Decedent Died Without a Will).

(See Waivers and Consents.)

If there is a petition for a solemn form probate, the petition must be served on all interested persons in the same manner as process is served in suits in equity, meaning civil suits under the West Virginia Rules of Civil Procedure, which includes publication for unknown persons. If a person wants to contest the will, the person must file a notice of contest stating the grounds of the contest. Service must then be made on all persons with an interest adversely affected by a refusal to admit the will to probate, requiring them to appear and defend that interest. This service must be made at least ten days before the hearing on the matter. (W. Va. Code § 41-5-5; see Question 4: Admitting a Will to Probate.)

Notice After Appointment of Personal Representative

West Virginia requires notice after the appointment of a personal representative. Within 90 days of the personal representative's appointment, the representative must file an appraisal of the estate on a form provided by the state tax commissioner (W. Va. Code § 44-1-14; see Question 20: Estate Appraisal). The county clerk's office publishes a notice of administration in a newspaper of general circulation in the county of the estate administration for two successive weeks within either:

- 30 days of the filing of the appraisal.
- 120 days of the date the personal representative was appointed, if the appraisal is not timely filed.

(W. Va. Code § 44-1-14a(a).)

This notice of administration must include:

- The decedent's name.
- The name and address of the county commission where probate proceedings are pending.
- The personal representative's name and address.
- The name and address of the attorney representing the personal representative, if any.
- The fiduciary commissioner's name and address, if a fiduciary commissioner is assigned to the estate.

- The date of first publication.
- A statement that any claims against the estate must be filed as provided under applicable statute within 60 days from first publication.
- A statement that any person seeking to impeach or establish a will must do so as provided under applicable statute.
- A statement that any person objecting to the qualification of the personal representative or the venue or jurisdiction of the county commission must file their objection within the later of:
 - 60 days from the date of first publication; or
 - 30 days from the date of service of the notice on that person.
- If the appraisal of the estate shows the assets of the estate to be less than \$200,000, exclusive of real estate specifically devised and nonprobate assets, or if there is only one beneficiary of the estate, a statement substantially as provided under statute that probate of the estate proceeds without reference to a fiduciary commissioner unless timely requested.

The county clerk's office (in fiduciary commissioner counties) or fiduciary supervisor's office (in fiduciary supervisor counties) prepares and publishes the notice of administration. (W. Va. Code § 44-1-14a(a).)

The proper publication of the notice is the equivalent to personal service on the creditors, distributees, and legatees (W. Va. Code § 44-1-14a(a)(1)).

The personal representative must, within 60 days after the date of first publication, provide a copy of the notice of administration by first class mail to or by personal service on:

- The surviving spouse, if any (unless that spouse is the personal representative and sole heir).
- If there is a will and the personal representative is not the sole beneficiary, the beneficiaries under the will.
- If there is no will and the personal representative is not the sole heir, the intestate heirs.
- The trustee of any trust in which the decedent was a grantor (also known as settlor or trustor), if any.
- Any known creditors of the estate, except those already filing claims or with claims that were paid in full.

(W. Va. Code § 44-1-14a(d).)

Waivers and Consents

If either the testator named an executor with greater priority to serve ahead of the person seeking appointment as executor, or it is less than 30 days since an intestate decedent's death, counsel should ask those entitled to preference in appointment to sign a renunciation or waiver. This waiver should be included in the documents filed to open the estate administration (W. Va. Code §§ 44-1-1 and 44-1-4; see Question 4: Documents Submitted with Initial Filing). Most county clerk's offices have sample renunciation and waiver forms that they prefer to use in their respective counties.

Standing to Object

Any party interested in the estate generally may file objections to the appointment of the personal representative or to the venue or jurisdiction of the county commission presiding over the probate. These objections must be filed within the later of:

- 60 days from the date the notice of administration was first published.
- 30 days from the date the notice was served on the interested party.

If an objection is not timely filed, it is forever barred. (W. Va. Code § 44-1-14a(e).)

For information on notice requirements for small estate administration, disposition of personal property by affidavit, and ancillary administration, see Question 19.

Appointing an Estate Fiduciary

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? In particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person's eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

Appointing a Personal Representative Where Decedent Died with a Will

In West Virginia, a personal representative, whether named in a will or not, generally cannot act on behalf of the decedent's estate before the court appoints the representative. However, the executor named in a decedent's will may, before appointment, provide for the decedent's burial, pay reasonable funeral expenses, and preserve the decedent's estate from waste. (W. Va. Code § 44-1-1.)

The executor named in the will, if qualified, generally has priority to serve (see Qualification as Personal Representative).

Almost all appointments of an executor under a will are made by an informal, *ex parte* procedure where the prospective executor meets with the county clerk's office or submits a remote application affidavit by mail to take an oath (W. Va. Code § 41-5-10). If the will does not waive bond, the personal representative must post a bond at the time of appointment (W. Va. Code § 44-1-1; see Question 8).

In certain cases where controversy or uncertainty is expected concerning the probate of a will or a person named as executor, the county clerk's office may require a solemn form proceeding, which involves a hearing before the county commission to determine whether the will should be probated or which person is to be named as personal representative, or both (W. Va. Code § 41-5-5; see Question 4: Admitting a Will to Probate).

If the will does not name an executor or none of the named executors are willing and able to serve, the county clerk may grant administration with the will annexed to any person entitled to be appointed as personal representative if the decedent died intestate (W. Va. Code § 44-1-2).

Appointing a Personal Representative Where Decedent Died Without a Will

If a decedent died without a will, the court appoints a qualified administrator to administer the decedent's estate, in the following order of priority:

- Within the first 30 days after the decedent's death:
 - the surviving spouse, if any; or
 - if there is no surviving spouse or the surviving spouse declines appointment, the other heirs

entitled to distribution in the discretion of the county commission or county clerk.

- If more than 30 days after the decedent's death, any qualified person or creditor, in the discretion of the county commission or county clerk.

(W. Va. Code § 44-1-4; see Qualification as Personal Representative.)

The administrator must post a surety bond and take an oath before appointment (W. Va. Code § 44-1-6; see Question 8). This process is usually an informal *ex parte* process before the county clerk (in fiduciary commissioner counties) or the fiduciary supervisor (in fiduciary supervisor counties). If multiple persons are seeking appointment as administrator, some county clerks set a hearing before the county commission to take evidence and hear argument regarding which person should be appointed.

Appointing a Personal Representative in Urgent or Unusual Circumstances

There is no formal procedure for appointing a fiduciary in urgent or unusual circumstances in West Virginia. Probate usually does not begin until West Virginia issues an official death certificate, which generally takes two to three weeks after death (and can take longer if an autopsy is involved). County clerk's offices generally accept appointments of personal representatives before the official death certificate is issued in circumstances where a personal representative needs to be appointed on an expedited basis. The procedure varies from county to county.

In circumstances where there is a dispute or other uncertainty concerning which person should serve as personal representative, the county clerk or county commission can appoint a curator to prevent waste to the estate. The appointment of a curator is often made in situations where a will is being contested or declaratory relief is needed from a circuit court regarding the validity of a purported will. On the qualification of an executor or administrator, the curator must account for and pay over to the executor or administrator the estate that came into the curator's hands or for which the curator is liable. (W. Va. Code § 44-1-5.)

The procedure for appointment of a curator is not governed by statute or rule, and varies from county to county. Generally, any person or entity interested

in having a curator appointed may file a petition with the county clerk's office (in fiduciary commissioner counties) or fiduciary supervisor (in fiduciary supervisor counties). The county commission may also appoint a curator for the estate on its own motion.

Qualification as Personal Representative

There are no specific statutory requirements for a personal representative in West Virginia. The personal representative must be an adult at least 18 years of age and mentally and physically able to perform the duties of the personal representative. This is not an express statutory requirement, but is necessary given the personal representative's duties, including the management and transfer of property. This means the representative generally must be over the age of 18 years and have the capacity to contract. West Virginia law presumes that every adult over the age of 18 years has capacity to contract unless it is otherwise shown that the party was incapable of understanding the nature and consequences of the person's actions or the character of the transaction in question (see Syl. Pt. 1, *Delaplain v. Grubb*, 30 S.E. 201 (W. Va. 1898)).

Nonresidents may serve as personal representative in most instances if they were named in the will (commonly called an executor) or appointed under W. Va. Code § 44-1-4 (commonly called an administrator) (W. Va. Code § 44-5-3(4), (5)).

Practically, if the personal representative is going to be required to post a bond, either because it is required for an intestate administration or because a will does not expressly waive bond, the personal representative must have a sufficient credit rating to acquire the bond.

8. Is a fiduciary bond required, and if so, in what circumstances?

In West Virginia, an individual personal representative generally must post a bond before the court appoints the representative, unless:

- A will waives the requirement to post the bond (W. Va. Code §§ 44-1-1, 44-1-6, and 44-1-8; see Question 20: Waiving Bond).
- The executor is the sole beneficiary under the will and the will does not require a bond.

- The administrator is the decedent's sole distributee of the decedent's intestate estate.

However, despite any of these circumstances excusing a bond, on the application of an interested person and after a hearing, the county commission can require a bond if it determines a bond should be given (W. Va. Code § 44-1-8).

The county clerk or the county commission determines the amount of the bond. The bond must be set in an amount at least equal to both:

- The full value of the personal probate assets of the decedent.
- Where there is a will that expressly authorizes the executor to sell real estate, the value of the real estate.

(W. Va. Code § 44-1-7(a).)

Often the personal representative must estimate the value of the decedent's assets to post the initial bond. If, after appointment, the representative submits an appraisal of the estate showing assets more than the required bond, the personal representative, on notification from the applicable county clerk or county commission, must increase the bond within a reasonable time (W. Va. Code § 44-1-7(b)).

The personal representative is generally permitted to pay the bond premium out of the estate assets as an expense of administration (W. Va. Code § 44-4-12).

If a bond is required, the personal representative or the representative's counsel should contact the local county clerk's office to determine what insurance company or agency the clerk's office recommends to assist with the surety bond. It is usually easier to have the surety bond posted if the personal representative works with a surety familiar to the county clerk.

For sample language for waiving the bond requirement in a West Virginia will, see Question 20.

9. How are the key estate fiduciaries compensated?

Individual Personal Representatives

In West Virginia, individual personal representatives are generally entitled to compensation determined by a statutory fee schedule compensating the representative based on the value of the estate and

the income generated by the personal estate and on proceeds from real estate that is sold, as follows:

- Five percent of the first \$100,000.
- Four percent of the assets above \$100,000 but not exceeding \$400,000.
- Three percent of the assets above \$400,000 but not exceeding \$800,000.
- Two percent of the assets above \$800,000.

(W. Va. Code § 44-4-12a(a).)

The personal representative is also entitled to a commission of one percent on the value of both:

- Real estate not sold.
- Nonprobate assets included to compute the decedent's gross estate for federal estate tax purposes (but excluding joint and survivorship property).

(W. Va. Code § 44-4-12a(b).)

Personal representatives are also allowed reimbursement for reasonable expenses incurred in the administration of the estate (W. Va. Code § 44-4-12a(a)).

The county commission may:

- Reduce or deny the personal representative's commission on a determination that the personal representative did not faithfully perform their duties.
- Increase the personal representative's commission on a determination that the personal representative performed extraordinary services.

(W. Va. Code § 44-4-12a(d).)

An attorney serving as personal representative may charge a commission for acting as personal representative or charge for the attorney's professional services but may not do both (W. Va. Code § 44-4-12a(e)).

While the statutory compensation is the default, a testator may provide for compensation other than the statutory compensation by express language in the testator's will (W. Va. Code § 44-4-12a(f)).

A personal representative generally does not need to file a petition or any other document to take their commission. If a final accounting is required, the commission should be stated on the final accounting (see Question 13: Final Accounting). Any interested party may file an objection to the commission. If so, a hearing

may be held before a fiduciary commissioner, fiduciary supervisor, or the county commission to determine the proper amount of the commission (depending on the procedure followed in the particular county).

Counsel should pay careful attention to the statutory compensation scale when preparing a last will and testament and ensure the client is comfortable with this compensation structure. In particular, the one percent compensation on nonprobate assets can surprise the beneficiaries of an estate. In practice, most last wills and testaments provide for the statutory compensation.

Multiple Fiduciaries

If there are multiple personal representatives, the total allowable compensation is apportioned between them:

- According to any agreement the representatives may reach.
- If the representatives cannot agree on apportionment, according to their respective services to the estate, as determined by the county commission.

(W. Va. Code § 44-4-12a(c), (d).)

A testator may provide for the apportionment between representatives in the testator's will (W. Va. Code § 44-4-12a(f)).

Corporate Personal Representatives

In West Virginia, unless the will provides otherwise, corporate personal representatives are compensated for their services on the same statutory scale as individual personal representatives (W. Va. Code § 44-4-12a). Corporate fiduciaries that serve as personal representatives sometimes:

- Expect higher compensation than individual personal representatives.
- Set compensation by a commission schedule provided by the corporate fiduciary.
- Request the testator expressly reference the schedule in the will.

Drafting Attorney as Personal Representative

There is no rule in West Virginia prohibiting a drafting attorney from acting as personal representative for

a client's estate. Clients commonly ask, and West Virginia permits, attorneys drafting estate plans, or the attorneys' partners or associates, to serve as executors, trustees, or in other fiduciary capacities for their clients. However, these appointments are subject to the conflict of interest parameters of the West Virginia Rules of Professional Conduct, Rule 1.7. (West Virginia Rules of Professional Conduct, Rule 1.8, Cmt. [8].)

Counsel drafting a client's estate plan are advised to proceed with caution when including language appointing counsel to serve in a fiduciary capacity for the client. Counsel should first inform the client, in writing, of the financial interest involved with the appointment and the availability of alternate candidates for the position. Although not necessarily required by West Virginia Rules of Professional Conduct, Rule 1.8, counsel may want to accept this appointment only if:

- It is for a long-term client whom the lawyer has known for some time.
- There are no other persons or entities the client feels comfortable appointing.
- Counsel's compensation is reasonable given the estate's complexity.

Under the default statutory compensation scale, a lawyer serving as personal representative may charge for the lawyer's services either the statutory commission or the lawyer's professional services according to their standard hourly rate for legal services, but not both. If the will includes compensation provisions, counsel is generally bound by those provisions if they accept the appointment. (W. Va. Code § 44-4-12a(e), (f).)

For more information on attorney's fees in estate administration, see Question 17.

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

A personal representative of a decedent's estate acts in a fiduciary capacity, with the duty to manage the estate under the representative's control to the advantage of those interested in it. In the discharge of this duty, West Virginia holds the personal representative to the highest degree of good faith. The representative must exercise the ordinary care

and reasonable diligence which a prudent person ordinarily exercises, under like circumstances, in the person's own personal affairs. (Syl. Pt. 1, *Latimer v. Mechling*, 301 S.E.2d 819 (W. Va. 1983).)

Administering the Estate

11. What are the main duties of the estate fiduciary in administering the estate?

The general duties of the personal representative are to:

- Act efficiently and in the best interests of the estate and the persons interested in the estate, including creditors.
- Settle and distribute the estate according to the will or, if there is no will, according to West Virginia law, including the statutes of intestate succession.

The duties required depend on each estate's own unique set of facts. During the estate administration, the personal representative often:

- Pays any unpaid funeral expenses.
- Marshals the decedent's probate assets and transfers them into the estate.
- Files the appraisal (Form ET 6.01) and nonprobate inventory (Form ET 6.02). These forms are generally available on the applicable county clerk or commission website (see, for example, [Kanawha County Commission, West Virginia Estate Appraisal & Nonprobate Inventory, Form and Instructions](#)).
- Notifies known creditors of the decedent's death and their right to file a claim in the estate proceeding.
- Considers any creditor claims filed in the estate proceeding and either pays or objects to those claims.
- Manages and preserves the estate's assets before distribution.
- Pays estate expenses and taxes, if any.
- Distributes estate assets to the appropriate beneficiaries or heirs according to the terms of the will or the rules of intestate succession.

The personal representative may perform other acts throughout the administration, depending on the circumstances. For example, the personal

representative may sell real property if directed or authorized to do so in the will or if that real estate is needed to satisfy debts of the estate that cannot be satisfied from the personal estate alone (W. Va. Code §§ 44-8-1, 44-8-3, and 44-8-7). The personal representative should consider the estate's liquidity needs, proper asset management, and any tax consequences from the sale and distribution of assets.

For information on small estate administration, disposition of personal property by affidavit and ancillary estate administration, see Question 19.

12. What are the key documents and procedures in your state for ongoing estate administration?

In West Virginia, the personal representative generally:

- Opens the estate proceeding and notifies the interested parties (see Question 4).
- Notifies creditors of the estate proceeding and handles any creditor claims (see Question 14).
- Files the appraisal and nonprobate inventory for the estate (see Estate Appraisal).
- Files any final tax returns for the decedent (Form 1040 and WV IT-140) and, if applicable, the estate income tax return (Form 1041 and WV IT-141) and the estate tax return (Form 706) (see Question 13: Tax Returns).
- Closes the estate (see Question 15).

Estate Appraisal

Within 90 days of the personal representative's appointment, the personal representative must:

- Identify and collect the decedent's probate assets.
- File an appraisal with the county clerk's office or with a fiduciary commissioner, if one was appointed, listing the decedent's probate assets and the estimated fair market value of those assets at the decedent's death.
- File a nonprobate inventory with the county clerk's office or the fiduciary commissioner that details the decedent's nonprobate assets and the estimated fair market value of those assets at the decedent's death.

(W. Va. Code §§ 11-11-7 and 44-1-14.)

The West Virginia State Tax Department provides the following forms:

- The appraisalment is Form ET 6.01.
- The nonprobate inventory is Form ET 6.02.

These forms are generally available on the applicable county clerk or commission website (see, for example, [Kanawha County Commission, West Virginia Estate Appraisalment & Nonprobate Inventory, Form and Instructions](#)). The appraisalment becomes public record on filing. However, the nonprobate inventory is not public record and is treated as confidential tax return information by the county clerk's office (W. Va. Code §§ 11-11-7(d) and 44-1-14(f)).

If the personal representative cannot obtain sufficient asset information and values to prepare and file the appraisalment and nonprobate inventory within 90 days of appointment, the personal representative should write the county clerk's or fiduciary commissioner's office to keep the office informed of the personal representative's progress. If the personal representative discovers additional assets or determines a different fair market value of assets after filing the appraisalment or nonprobate inventory, the personal representative should file a supplemental or amended appraisalment or nonprobate inventory or both, as required.

For information about key procedures in small estate administration, disposition of personal property by affidavit, and ancillary estate administration proceedings, see Question 19.

13. What are the due dates for key documents and processes during and after the estate proceeding?

Notice of Administration

In most cases, notice is not required when opening an estate administration in West Virginia (see Question 6: Notice of Filing for Estate Administration).

Within the earlier of 30 days of the filing of the appraisalment (Form ET 6.01) for the estate or 120 days after the qualification of the personal representative, the county clerk publishes a notice of administration in a newspaper of general circulation within the applicable county, once a week for two consecutive weeks (W. Va. Code § 44-1-14a(a); see Question 12:

Estate Appraisalment). Within 60 days after the first publication, the personal representative must serve a copy of the notice of administration by first class mail, postage prepaid, or personal service, on:

- The decedent's surviving spouse, if any.
- If there is a will and the personal representative is not the sole beneficiary, any beneficiaries.
- If there is no will, all intestate heirs.
- The trustee of any trust in which the decedent was the grantor.
- All known creditors of the estate, other than a creditor already filing a claim or already paid in full.

(W. Va. Code § 44-1-14a(d).)

Some West Virginia counties require the personal representative to file an affidavit with the county clerk to prove the representative complied with this notice requirement. This form is typically referred to as an Affidavit of Mailing Notices. Counsel should consult the applicable county clerk's office for guidance regarding whether this affidavit is required in the particular county.

For more information on notices when opening a West Virginia estate administration, see Question 6.

Notice to Creditors

The personal representative must make a diligent search to determine the names and addresses of the decedent's reasonably ascertainable creditors (W. Va. Code § 44-1-14a(c)). The personal representative must provide each known and reasonably ascertainable estate creditor that has not already filed a claim or been paid in full the notice of administration within 60 days of the clerk's publication of notice (see Question 6: Notice After Appointment of Personal Representative).

The State of West Virginia may be a creditor if the decedent was receiving Medicaid. If the personal representative suspects the decedent was receiving Medicaid benefits, the personal representative needs to notify West Virginia's estate recovery unit (see Question 14: Notice to the Agency for Health Care Administration).

For more information regarding creditor's claims generally, see Question 14.

Inventory of Assets

Within 90 days of the personal representative's appointment, the representative must file with the county clerk or, if one was appointed, the fiduciary commissioner:

- An appraisal on the required Form ET 6.01.
- A nonprobate inventory on the required Form ET 6.02.

(W. Va. Code § 44-1-14; see Question 13: Estate Appraisal.) These forms are generally available on the applicable county clerk or commission website (see, for example, [Kanawha County Commission, West Virginia Estate Appraisal and Nonprobate Inventory, Form and Instructions](#)).

If the personal representative is unable to marshal and value all assets within 90 days, the personal representative should write the county clerk's or fiduciary commissioner's office to inform the appropriate office of the personal representative's progress and the need for additional time.

Final Accounting

Most estates in West Virginia are closed with either:

- An informal waiver of final settlement in fiduciary commissioner counties (W. Va. Code § 44-2-29).
- A short form settlement in fiduciary supervisor counties (W. Va. Code § 44-3A-4a).

(W. Va. Code § 44-2-29 and 44-3A-19; see Question 2: Fiduciary Commissioner and Fiduciary Supervisor Counties.)

These informal waiver or settlement processes allow closing an estate without a formal accounting at any time after the creditor claims period expires (W. Va. Code § 44-2-29 and 44-3A-4a).

However, if a final accounting is required, the personal representative must file the final accounting within five years of appointment (W. Va. Code § 44-4-14a(a)). The time period can be extended for cause. Although West Virginia law provides a generous time period for the filing of a final accounting, most county clerk's offices and fiduciary commissioners follow up with the personal representative and ask for closure much sooner.

West Virginia requires interim accountings starting one year after the personal representative's appointment and every succeeding year until

the final accounting (W. Va. Code § 44-4-2). The accounting is due only every three years for estates that do not average more than \$800 of income annually (W. Va. Code § 44-4-4).

For more information regarding closing the estate, see Question 15.

Tax Returns

Federal Estate Tax Return

The due date for filing a federal estate tax return (Form 706), if required, is nine months after the decedent's date of death (26 U.S.C. § 6075). A six-month extension for filing the return (Form 4768) is automatically granted if filed before the due date of the return (26 C.F.R. § 20.6081-1(b)).

If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return (26 C.F.R. § 20.6018-2; see "Signature and Verification" section of the [Form 706 Instructions](#)). If a federal estate tax return is required, the personal representative must also file [Form 8971](#) (Information Regarding Beneficiaries Acquiring Property from a Decedent).

Because of the high federal applicable exclusion amount, most estates are not required to file a federal estate tax return (see Federal Estate, Gift, and GST Tax Chart). Many surviving spouses still have the option to file a federal estate tax return to transfer the decedent's unused estate tax exemption to themselves, a concept typically referred to as portability. (26 U.S.C. § 2010(c); 26 C.F.R. § 20.2010-2 and 26 C.F.R. § 20-2010-3.) If the federal estate tax return is being filed only to elect portability, the personal representative has five years from the decedent's death to file the return (Rev. Proc. 2022-32). For more information on the federal estate tax, see [Practice Note, Federal Estate Tax](#).

West Virginia does not currently impose a state estate or inheritance tax.

Estate Income Tax Return

The due date for the federal estate income tax return (Form 1041), if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. The return is due on:

- April 15th of the year following the calendar year in which the estate received the income for calendar year estates.
- The 15th day of the fourth month following the close of the tax year for fiscal year estates.

An automatic five-month extension is available. (See [Instructions for IRS Form 1041](#).)

If the estate has West Virginia source income, a West Virginia estate income tax return ([Form IT-141](#)) may also be required. The deadline for this return is the same as the federal income tax return. If the estate has beneficiaries not residents of West Virginia, nonresident withholding of income taxes may be required. (See [Instructions for WV Form IT-141](#).)

Considerations for Creditor Claims

14. What is the procedure for notifying and paying creditors of the estate?

Creditor Claims in Fiduciary Commissioner and Fiduciary Supervisor Counties

In West Virginia, the procedure for handling creditor claims can vary from county to county, often depending on whether the county uses a fiduciary commissioner system or fiduciary supervisor system (see Question 2: Fiduciary Commissioner and Fiduciary Supervisor Counties).

Notifying Known or Reasonably Ascertainable Creditors

In West Virginia, the personal representative must perform a diligent search of the decedent's records to determine the identities of any known or reasonably ascertainable creditors of the decedent (W. Va. Code § 44-1-14a(c)). Each known or reasonably ascertainable creditor of the estate that has not already filed a claim or been paid in full is entitled to timely notice of administration (see Question 13: Notice of Administration).

Some counties require the personal representative to file an affidavit of mailing notice to show that the notice of administration was mailed to ascertainable creditors. Counsel should consult the applicable

county clerk's office for guidance regarding whether this affidavit is required.

Notifying Unknown Creditors

Publication of the notice of administration provides notice to unknown creditors (see Question 13: Notice of Administration).

Where an estate may have contingent or unliquidated claims, the fiduciary commissioner or fiduciary supervisor may direct the personal representative to withhold certain funds from final distribution to ensure payment of those claims if they mature (W. Va. Code §§ 44-2-17 and 44-3A-9).

Notice to the Estate Recovery Unit

If a decedent was potentially on Medicaid or any other needs-based government benefits that may lead to an estate recovery lien, the personal representative is responsible for notifying the estate recovery unit to resolve the claim. The current address for notice used by the State of West Virginia is:

The Recovery Unit

Attn: Estate Division

333 W. Hampden Drive, Suite 425

Englewood, CO 80113

(See [WV Recovery Unit: Estate Recovery](#).)

Relevant Time Periods for Creditor Claims

The notice of administration establishes the deadline for filing creditor claims against the estate. Known and unknown creditors generally have 60 days after first publication of the notice of administration to file their claims with the county clerk's office (in fiduciary commissioner counties) or the fiduciary supervisor's office (in fiduciary supervisor counties) (W. Va. Code § 44-1-14a(a)(7)). West Virginia does not provide a different deadline for known versus unknown creditors.

The personal representative should provide actual notice of administration to known creditors. Even if the representative does not provide actual notice, the creditor may still be barred from recovering from the estate since the creditor can still pursue payment from the beneficiaries of the estate.

In both fiduciary commissioner and fiduciary supervisor counties:

- Creditors must itemize and describe their claims and prove them by vouchers and affidavits (W. Va. Code §§ 44-2-5 and 44-3A-6).
- A timely filed claim tolls any applicable statute of limitations (W. Va. Code §§ 44-2-13 and 44-3A-14).

Creditor claims against the decedent's estate are barred if the creditor misses the creditor claim deadline. However, though the creditor may be barred from recovering from the decedent's estate and personal representative, the creditor may pursue payment from any distributee or legatee for up to two years after the estate is closed. This recovery is limited to the amount the specific distributee or legatee received from the estate. (W. Va. Code §§ 44-2-27 and 44-3A-33.) Therefore, a personal representative should try to resolve all claims presented while probate is still open, even if the creditor claim deadline has expired.

Paying and Objecting to Claims

West Virginia deems all claims as proper and allowed unless the personal representative files an objection before the fiduciary commissioner or fiduciary supervisor makes their report of claims (W. Va. Code §§ 44-2-6 and 44-3A-7). The personal representative must support any objection with a counter affidavit denying the claim in whole or in part (W. Va. Code §§ 44-2-6 and 44-3A-7).

If an objection to a claim is filed, the matter is often referred to a fiduciary commissioner for a hearing or, in a fiduciary supervisor county, heard by the fiduciary supervisor. On objection, the fiduciary commissioner or fiduciary supervisor sets and gives reasonable notice of the time and place for the hearing, at which time the validity of the claim is decided. (W. Va. Code §§ 44-2-6 and 44-3A-7.)

Payment of claims must be made in the statutory order of priority. Secured claims are always paid first, followed by, in order:

- Costs and expenses of administration (including the personal representative's commission and attorney fees).
- Reasonable funeral expenses. However, if the payment of all the decedent's funeral expenses is provided for by an irrevocable pre-need funeral contract or trust, neither the decedent's estate nor

the decedent's surviving spouse has any obligation to pay these funeral expenses.

- Debts and taxes with preference under federal law.
- Unpaid child support.
- Debts and taxes with preference under state law.
- Reasonable and necessary medical and hospital expenses for last illness.
- All other claims.

If the applicable estate assets are insufficient to pay all claims within a class, the personal representative pays those claims *pro rata*, without preference for any claim over any other claim of the same class (including that a claim due and payable is not preferred over claims not due) (W. Va. Code §§ 44-2-21 and 44-3A-26.)

Closing the Estate

15. What is the process for concluding (or closing) the estate?

There are two ways to close a formal probate estate in West Virginia, by either:

- A short form process consisting of:
 - an informal waiver of final settlement in fiduciary commissioner counties (W. Va. Code § 44-2-29); or
 - a short form settlement in fiduciary supervisor counties (W. Va. Code § 44-3A-4a).

These short form processes permit the closing of an estate without a formal accounting. The waiver or settlement must be signed by the personal representative and all beneficiaries or heirs, other than those beneficiaries only receiving specific cash bequests or bequests of tangible personal property. (W. Va. Code §§ 44-2-29 and 44-3A-4a.) Even in estates where a waiver of final settlement or short form procedure is used, the personal representative often provides an informal accounting to the beneficiaries or heirs for transparency.

- A personal representative's final accounting, which must be filed within five years of appointment. This time period can be extended for good cause. (W. Va. Code § 44-4-14a(a).) A final accounting is frequently used when the estate cannot be closed by the short form process due to disputes among

the beneficiaries or a party's refusal to sign the waiver of final settlement or short form settlement.

West Virginia requires interim accountings starting one year after the personal representative's appointment and every succeeding year until the final accounting (W. Va. Code § 44-4-2). This accounting is technically required even for those estates ultimately closed by a waiver of final settlement or a short form process if the estate is going to stay open for longer than a year. However, many personal representatives do not submit the accounting in these circumstances to save expenses.

The interim accounting is due only every three years for estates that do not average more than \$800 of income annually (W. Va. Code § 44-4-4).

After three years of an estate being open without significant progress within the prior 12 months, the county commission may seek to remove the personal representative or administratively close the estate (see Question 18: Timeline and Process for an Administrative Closing).

Final Accounting

There is no specific form required for a final accounting in West Virginia. Practitioners generally use their own accounting form, which should include:

- All inventoried assets.
- All receipts.
- All disbursements.
- All distributions.
- Capital transactions and adjustments.
- Proposed commissions and final administrative expenses to be paid.
- Assets on hand at the close of the accounting period.

(W. Va. Code § 44-4-2.) The personal representative should not make final distributions until the accounting is officially approved by the county commission, which officially closes the estate (see Question 2).

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

In West Virginia, no special action is needed to discharge the personal representative of the estate from continuing liability for actions taken on behalf of the estate. The personal representative is automatically discharged from their duties when the county commission accepts the waiver of final settlement (in fiduciary commissioner counties), short form settlement (in fiduciary supervisor counties), or final accounting and distribution of the remaining estate assets to the beneficiaries or heirs (see Question 15).

In some counties, the recorded waiver of final settlement, short form settlement, or final accounting is mailed back to the personal representative, and the recording of the document notifies the personal representative that it is time to distribute the assets. In other counties, a formal letter is mailed to the personal representative confirming that the estate is officially closed. Counsel should check with the county clerk's or fiduciary supervisor's office to confirm the procedure used in that county.

Unlike some other states, West Virginia does not have written rules of probate practice beyond the referenced statutes for this discharge process.

Expense and Timeline

17. What are the expected costs for a typical estate proceeding?

Expected Costs

The primary costs of an estate proceeding in West Virginia are:

- Filing fees in the appropriate county clerk's office. Court filing fees vary depending on the county with jurisdiction over the estate administration. Attorneys should consult the county clerk's webpage, call the clerk, or both to determine the applicable fees charged by the county once the estate is opened.
- Personal representative fees (see Question 9).
- Attorneys' fees. In West Virginia, there is no statutory fee schedule that is presumed reasonable for the personal representative's attorney. The fees charged for the estate administration vary depending on the attorney's expertise and the complexity of the estate. Most attorneys bill for their estate administration services on an hourly

rate, but some attorneys charge based on a certain percentage of the value of the estate. There is no specific percentage defined by statute for services as counsel for the estate, but the compensation must be reasonable. (W. Va. R. Prof. Conduct 1.5; and see *Law. Disciplinary Bd. v. Ball*, 633 S.E.2d 241, 265 (W. Va. 2006)). If the attorney is serving as personal representative of the estate, the attorney cannot charge both the statutory fee for personal representatives and fees for professional services (W. Va. Code § 44-4-12a(e)).

The expected costs of an estate proceeding vary greatly depending on:

- The size of the estate.
- The nature and complexity of the decedent's assets.
- Whether a bond is required.
- Whether there are any challenges to the estate administration or anticipated litigation, such as a will contest.
- How involved an attorney needs to be in the estate administration.

18. How long does the typical estate proceeding take?

The typical timeline for opening and closing an estate in West Virginia varies depending on the size, estate, nature, and complexity of the estate's assets. A simple estate administration can be finalized in as little as three to four months. The creditor claims period must expire before a personal representative can close an estate, which generally is 60 days after first publication of the notice of administration (W. Va. Code § 44-1-14a(a)(7)). The administration of an estate that is contested or with many or complex assets likely lasts longer.

If the estate must file a federal estate tax return (Form 706), it is not uncommon to see an estate administration take two years or longer, depending on if the estate tax return is selected for audit by the Internal Revenue Service. If litigation is involved it is not uncommon for estate administration to be delayed for many years. For more information on federal estate tax returns, see Question 13: Tax Returns.

In estates that cannot be closed by the short form process, the personal representative must file the final accounting within five years of appointment.

The period can be extended for good cause. (W. Va. Code § 44-4-14a(a), (d).) Although West Virginia law provides a generous time-period for the filing of a final accounting, most county clerk's offices and fiduciary commissioners follow-up with the personal representative and ask for closure sooner. For more information on closing an estate, see Question 15.

Timeline and Process for an Administrative Closing

West Virginia law permits the county commission to administratively close an estate open for longer than three years in which no or unsatisfactory progress was made within the previous 12 months. If an estate remained open for longer than three years:

- The county clerk includes the estate on semiannual reports issued to the county commission.
- The county commission may then issue an order to show cause to the personal representative, which is also mailed to the estate's heirs at law, the beneficiaries under a will, any creditors with unreleased claims, any surety on a bond, and any other person interested in an estate.
- The personal representative then has 30 days to file a verified statement under oath stating why the estate should not be closed. If a statement is not filed within 30 days, the county clerk then provides notice to all interested parties of the estate that the personal representative may be removed or the estate may be administratively closed 30 days after that notice at a hearing before the county commission.
- The personal representative or any other interested person may file an objection to the removal of the personal representative or administrative closure and the county commission may hear the objection at the hearing.

(W. Va. Code §§ 44-2-19a and 44-3A-24.)

Miscellaneous Estate Proceedings and Processes

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

West Virginia has two simplified estate administration procedures:

- A small estate procedure.
- A disposition of personal property without administration procedure.

Small Estate Procedure

Effective June 8, 2022, a small estate affidavit procedure is available in West Virginia to transfer a decedent's probate assets where:

- The decedent's aggregate probate personal property has a gross fair market value that does not exceed \$50,000.
- The decedent's aggregate probate real estate interests have a gross fair market value that does not exceed \$100,000.
- No application for administration of the decedent's estate is pending or open in any jurisdiction.

(W. Va. Code § 44-1A-2.)

Contents of the Small Estate Affidavit

West Virginia provides a statutory form of the affidavit (W. Va. Code § 44-1A-2(e)). The affidavit must include:

- The affiant's name and current address.
- The decedent's name, date of death of the decedent, and address and residence at the decedent's death.
- Whether the decedent:
 - had any known will. The original known will must be attached to the affidavit and tendered for recording in the county, if the will is in due and proper form for probate as a will in West Virginia (see [State Q&A, Wills: West Virginia](#)). If the original will is not available, the small estate process is likely not available, and probate in solemn form should be requested (see Question 4: Admitting a Will to Probate); or
 - died intestate with no known will.
- If there is:
 - a known will of the decedent, the names, current addresses, and relationships to the decedent of any person nominated as a personal

representative and persons designated as beneficiaries under the known will; or

- no known will of the decedent, a listing of the names, current addresses, and relationship to the decedent of all the intestate heirs under the West Virginia laws of intestate descent and distribution.
- That the decedent's entire personal probate estate at the decedent's death, wherever located, includes only small assets that do not have an aggregate fair market value exceeding \$50,000 and a description or itemization of the small assets with an estimate of value, if known or ascertainable.
- Whether the decedent died with any probate real estate interests in West Virginia and, if so, that the aggregate fair market value of all the West Virginia real estate interests does not exceed \$100,000 and a description of the real estate, the county in which it is located, its assessed value for tax purposes, and its fair market value at the decedent's death.
- That if the successor is:
 - nominated as a personal representative or executor in the decedent's will, at least 30 days elapsed since the decedent's death and no application for the appointment of a personal representative for the decedent is pending or granted in any jurisdiction; or
 - not nominated as a personal representative in the decedent's will, at least 60 days elapsed since the decedent's death, no application for the appointment of a personal representative for the decedent is pending or granted in any jurisdiction, and no small estate affidavit was filed by a successor nominated as a personal representative or executor under the decedent's will.
- That the affiant must faithfully administer the decedent's small assets under the applicable law and transfer the small assets to the entitled successor or successors, after paying the decedent's known or ascertainable creditors, if any.

(W. Va. Code § 44-1A-2(b).)

A certified copy of the decedent's death certificate must be filed in the applicable county where the small estate proceeding will be filed (W. Va. Code § 44-1A-2(c), (e)).

Filing the Affidavit and Issuance of Certificate and Authorization

Under the small estate procedure, a small estate affidavit is filed with the county clerk's office. The clerk appoints an authorized successor to receive and administer the small assets of the estate (W. Va. Code § 44-1A-2). The authorized successor may be:

- A personal representative named in a will.
- A beneficiary named in the will.
- An heir of an intestate decedent.

(W. Va. Code §§ 44-1A-1(b)(6) and 44-1A-2(a).)

Before filing the small estate affidavit with the county clerk or fiduciary supervisor:

- If there is a personal representative named under a will of the decedent, the personal representative must wait at least 30 days after the decedent's death.
- All other potential authorized successors must wait at least 60 days after the decedent's death.

(W. Va. Code § 44-1A-2(b)(7), (e).)

On acceptance of the affidavit, the county clerk or fiduciary supervisor mails notice to all parties interested in the estate. Any interested party may, within 30 days of the mailing, object to the small estate procedure. This objection is then referred to a fiduciary commissioner for determination. The county clerk or fiduciary supervisor issues a certificate and authorization on acceptance or approval of the affidavit. (W. Va. Code § 44-1A-2(f), (g).)

Collection and Distribution of Property with Certificate and Authorization

To collect the small asset under this process, the authorized successor presents a copy of the certificate and authorization issued by the county clerk or fiduciary supervisor to the third-party custodian of the asset, who then transfers the asset to the successor (W. Va. Code § 44-1A-3(a)). The successor has a fiduciary duty to deliver the assets to the persons entitled to them under West Virginia law. The successor may be liable for failure to deliver these assets within three years after the date of the county clerk's or fiduciary supervisor's issuance of the certificate and authorization of small estate. (W. Va. Code § 44-1A-3.)

Any third party transferring a small estate asset to the authorized successor under this process is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. Specifically, the third party is not required to:

- See how the transferee applies the small asset.
- Inquire into the truth of any statement in the affidavit or the certificate and authorization provided by the county clerk or fiduciary supervisor of a small estate.

(W. Va. Code § 44-1A-4(a).)

If any third-party custodian presented with the certificate and authorization of small estate refuses to transfer the asset to the authorized successor, transfer of the small asset may be compelled and damages recovered on proof of rightful claim in a proceeding by or for the person entitled to the small asset in the appropriate West Virginia magistrate court or circuit court with jurisdiction (W. Va. Code § 44-1A-4(b)).

Creditors of a small estate have the same rights under W. Va. Code §§ 44-2-27 and 44-3A-33 to collect from distributees and legatees within two years of distribution (W. Va. Code § 44-1A-4(d)).

Because the small estate procedure is relatively new in West Virginia, attorneys and third parties are still becoming familiar with the process. Many attorneys still opt to use the traditional probate procedure, even if the small estate procedure is potentially available, especially where the decedent's estate includes real estate.

Disposition of Personal Property Without Administration

After 120 days following the decedent's death, a third party holding a West Virginia decedent's personal property asset with a value not exceeding \$5,000 may transfer that asset to the decedent's surviving spouse or, if none, the person entitled to that asset under West Virginia law on being provided an affidavit to that effect. These assets may include wages or benefits owed an employee or any other tangible or intangible personal property assets, including assets in financial accounts, instruments evidencing a debt, causes of action, and a motor vehicle. (W. Va. Code § 44-1-28(c).) This procedure is valid for recovery of multiple assets under \$5,000 held by

multiple third parties, even if the value of those assets, when combined, are greater than \$5,000.

Because this process involves providing an affidavit directly to the third-party custodian of the asset, the county clerk's or fiduciary supervisor's office is not involved in this process. This informal procedure is rarely used in West Virginia, because:

- It is not available until 120 days following the decedent's death and a formal estate administration for a simple estate often may be completed or close to completed within that time.
- Many third parties do not recognize this procedure and therefore a formal estate administration process may be required to transfer the asset despite being presented with a valid affidavit. Third parties are not required to recognize and follow this procedure (W. Va. Code § 44-1-28(c)).

For unpaid wages due to a deceased employee, the West Virginia Wage Payment and Collection Act authorizes, in the absence of actual notice of a pending formal estate procedure, payment up to \$800 in the following order:

- Surviving spouse.
- Children 18 years of age and over in equal shares;
- Father and mother or the survivor of them;
- Sisters and brothers or to the person paying the decedent's funeral expenses.

(W. Va. Code § 21-5-8a.)

Ancillary Administration

If a non-West Virginia resident dies leaving real estate in West Virginia, an ancillary administration may be required to establish title to the real estate in the beneficiaries or heirs. An ancillary administration is typically secondary to a domiciliary administration, which takes place in the jurisdiction of the decedent's domicile and through which the bulk of the decedent's assets are handled. A personal representative appointed in a non-West Virginia decedent's domicile may recover the decedent's personal property located in West Virginia with the representative's letters of appointment or similar documents issued by the court in the decedent's domicile.

West Virginia's ancillary administration procedure is relatively simple, as it typically involves only the filing of the following with the county clerk's office where the real estate is located:

- An affidavit under W. Va. Code § 41-5-13(c) and an exemplified copy of the will, for a testate decedent.
- An affidavit under W. Va. Code § 44-1-4(c), for an intestate decedent.

Most ancillary administrations in West Virginia are handled with the filing of the above-referenced affidavits, which enables the personal representative appointed in the state of the nonresident decedent's domicile also to transfer title to the decedent's West Virginia real estate.

Waiver of Probate Requirements and Formal Probate

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

Estate Proceedings

In West Virginia, testators may not waive estate administration in their wills. However, many West Virginia estate planning practitioners plan estates using nonprobate means (for example, trusts, beneficiary designations, joint tenancies, and transfer on death deeds) to ensure that as few assets as possible pass through probate, which minimizes the need for a probate proceeding.

West Virginia offers alternatives to formal administration in certain circumstances, but this depends on whether the estate qualifies for these alternatives, not whether a testator waived formal administration in the will (see Question 19).

Waiving Bond

West Virginia wills typically include provisions waiving the requirement for personal representatives to purchase a fiduciary bond. However, a county commission may still require bond despite this language. (W. Va. Code § 44-1-8; see Question 8.)

Probate: West Virginia

Counsel can include the following sample waiver language in a West Virginia will (which contains optional language to include if the will contains a testamentary trust):

“No bond or other security shall be required of my Personal Representative [or of my Trustee] in any jurisdiction.”

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