

SMALL ESTATE FEES
AND INSTRUCTIONS

*ENCLOSED YOU WILL FIND SOME BASIC INFORMATION ON THE SMALL ESTATE PROCEDURE AND AN EXPLANATION OF HOW TO COMPLETE THE AFFIDAVIT.

AFFIDAVIT \$12.00 UP TO 5 PAGES EX: 6 PGS \$13.00 (\$1.00 PER PG OVER 5)

CERTIFICATE \$2.50

THE CLERK'S OFFICE IS REQUIRED TO MAIL A COPY OF THE AFFIDAVIT TO EACH HEIR. THERE IS A FEE PER HEIR. THE FEE INCLUDES THE COPY AND THE POSTAGE FOR MAILING.

FEE PER HEIR: \$3.51

AFFIDAVIT INTESTATE MEANS WITHOUT A WILL

AFFIDAVIT TESTATE MEANS WITH A WILL-IF THERE IS A WILL, THE ORIGINAL MUST BE ATTACHED TO THE AFFIDAVIT.

A CERTIFIED DEATH CERTIFICATE MUST BE ATTACHED OR ENCLOSED WITH THE AFFIDAVIT.

PLEASE ENCLOSE A COPY OF YOUR ID

AFTER THE AFFIDAVIT IS RECORDED, A CERTIFICATE WILL BE MAILED TO YOU MAKING IT POSSIBLE TO TAKE CARE OF THE DECEDENTS ESTATE. THE CERTIFICATE WILL EXPIRE IN 6 MONTHS AFTER ISSUANCE. IF AFTER THE SIX MONTHS YOU NEED AN EXTENSION, YOU NEED TO CONTACT THE PROBATE OFFICE AND REQUEST AN EXTENSION.

IF YOU HAVE ANY QUESTIONS PLEASE CALL LISA GARRETT, THE PROBATE CLERK, AT 304-574-4327

Return all necessary documents and fees to:

FAYETTE COUNTY CLERK'S OFFICE
ATTN: LISA GARRETT, PROBATE CLERK
PO BOX 569
100 N COURT STREET, SUITE ONE
FAYETTEVILLE, WV 25840

WEST VIRGINIA'S NEW -SMALL ESTATE PROCEDURE-

Senate Bill 80, regarding the creation of a new form of administration of an estate, was signed into law by the Governor and became effective July 1, 2021. The purpose of this new legislation is to avoid "probate" of small estates through the completion and filing of an Affidavit form designed by the Legislature.

A "small estate" is defined as being used only for a decedent who died as a resident of the State of West Virginia; the small estate process is done in the decedent's county of residence. A "small estate" is for a decedent who left behind PROBATE personal assets not exceeding \$50,000 in value, and/or PROBATE real property interests not exceeding \$100,000 value.

You may be asking "what is a probate asset." When someone dies, their property is divided into one of two categories: probate or non-probate. A "non-probate" asset is an asset that when we look at it, we know from the asset who is to receive it. For instance, a bank account with more than one name/owner (and one of the owners survived the decedent) is generally a non-probate asset (ask the bank). A life insurance policy that identifies a beneficiary upon the owner's death, is a non-probate asset if the beneficiary survived the decedent. Real property owned by the decedent and another (who survived the decedent) is a little more tricky. If the Deed says "with right of survivorship" then the property is non-probate. However, if those words do not exist, then the asset is "probate;" the fact that the word "and" connects the owners of the real property is not a matter of consideration.

The earliest that the Affidavit form can be submitted to the Clerk's Office, by an applicant, is as follows:

- if there is a Will, and the applicant is the nominated Executor, then 30 days after the decedent's death;
- if there is a Will, and the applicant is NOT the nominated Executor, then 60 days after the death of the decedent.
- if there is no Will, then 60 days after the death of the decedent.

Once the Affidavit is completed by the applicant, the Affidavit and any attached Wills and/or Codicils are sent to the Clerk's Office for review and approval. Upon submission, the Clerk will review the Affidavit to determine if all questions have been answered, AND if the listed assets do not exceed the permitted totals. The Clerk will notify the applicant of the fees and upon receipt of the fees, the Clerk will then issue the Certification letter, and send out copies of the Affidavit to all parties. PLEASE NOTE:

- (1) If there is a Will, the original Will needs to be made a part of the Affidavit; remember, the Will is not being probated.
- (2) A Death Certificate of the decedent must also be included with the Affidavit.

When the Affidavit is filed, the Clerk's Office requires from all applicants, a copy of the applicant's state ID or Driver's License to prove identity and address (the photocopy of the ID/Driver's License is not made public). This process will be very helpful to applicants who are not appearing at the Clerk's Office but rather doing everything by mail.

Parties having an interest in the decedent's estate, have 30 days after the mailing of the Affidavit to challenge/object to the administration of the decedent's estate. If there is a challenge then the Clerk refers the matter to a Fiduciary Commissioner.

There is no newspaper publication. Creditors will NOT be filing claims with the Clerk's Office but rather will be pursuing their claims directly against the applicant/heirs/beneficiaries through magistrate court or circuit court; if an heir/beneficiary believes that they have not been treated properly, they too must seek relief from the magistrate court or circuit court.

The recorded Affidavit serves as the "appraisement." There will NOT be any accounting filed with the Clerk's Office.

This is a new process and the Clerks' Office will be learning and working out the kinks too; please be patient.



EXPLANATION FOR COMPLETION OF "AFFIDAVIT FOR SMALL ESTATE"

-**DECEDENT'S NAME** What is the legal name of the Decedent. What name of the Decedent appears on the Death Certificate, bank accounts, real estate tax bills, car titles, etc.

-**"DOD"** stands for "date of death" of the Decedent

-**"Decedent who died domiciled in this state"** The Decedent was a resident of the State of West Virginia at his/her time of death. The decedent may have died outside of the State of West Virginia, but he/she was a resident of the State of West Virginia, at the time of death.

-**YOUR "relationship" to the Decedent** can be by marriage (ie: spouse), or by blood (ie: child, sibling, nephew, niece, cousin), or, if the Decedent died with a Will are you the named personal representative (ie: Executor) or a named beneficiary (someone who inherits through the Will).

-**"RELATIONSHIP to the Decedent"** refers to:

if there is a Will, to those individuals, charities, or trusts named in the document. If a person named (beneficiary) is deceased then: (1) to whomever the Will directs in such event; (2) if the beneficiary died before the Decedent, then to the beneficiaries blood-relations; (3) if the beneficiary died after the Decedent, then to the beneficiaries/heirs of the deceased-beneficiary.

if there is NO Will then relationship is based upon marriage or relationship to the Decedent by blood (see WV Code §42-1-1 et seq).

PLEASE NOTE: STEPCHILDREN/STEP PARENTS: a stepparent does not inherit from the estate of a deceased stepchild. A stepchild does not inherit from their deceased-stepparent. §42-1-1(26)

PLEASE NOTE: KINDRED OF HALF-BLOOD: Relatives of the half-blood inherit the same share they would inherit if they were of the whole blood. WV Code §42-1-3e

PLEASE NOTE: If individuals inherit as a result of a deceased-beneficiary, you should refer to WV Code §42-1-3d, for explanation of how to divide the assets.

-“Share or percentage...” refers to the amount to be given to that named individual:

If there is a Will, the share may be a specific dollar amount, or a percentage of the residue (remainder of the assets after payment of expenses and debt)

If there is NO Will, the share is based upon WV Code §42-1-1 et seq. The percentage is based upon the residue of the decedent’s assets (remainder of the assets after payment of expenses and debt).

-“Personal property” refers to anything that the Decedent owned that is:

- (1) Not real estate, and
- (2) Not already in someone else name (ie: a joint bank account, or a bank account payable on death (POD)/transferred on death (TOD) to someone, or a life insurance with a named-beneficiary, etc.

-“seized and possessed” refers to the decedent, at the time of death, owning entirely or partially an interest in real property either through a Deed of conveyance, or by means of an inheritance, or through a Court Order.

-“Fair Market Value” refers to the value of the asset at the time of the Decedent’s date of death. For example only:

- 1) a bank account’s value can be obtained from the bank;

- 2) a stock value can be obtained online by obtaining the stock's value as the "high" of the day and ADDING the stock's "low" value of the day and DIVIDING by two (this is the value of one share of the stock) and then multiply by the number of shares.
- 3) in regard to a car, you can refer to the Kelley Blue-Book value.
- 4) in regard to real estate, you can: 1) obtain an appraisal of the real estate, from a licensed real estate appraiser or 2) you can guess the value of the real estate (be prepared to justify your estimation), or 3) you can take the Assessor's "gross assessed value" and multiply that number by 167% (this is authorized by the law that created a "Small Estate"). In any case, the total value of the real estate (collectively) cannot exceed \$100,000.

PLEASE NOTE: that the "Fair Market Value" you state creates the "tax basis" which will be used to determine if a capital gains tax will be incurred when the property is later sold. You should discuss this with a professional who deals with taxes.

-**"sui juris"** is a Latin term meaning a person who has the capacity to manage his/her own affairs and not being under a legal disability to act for one's self.

-**claims of creditors** This new form of administering an estate DOES NOT RELEASE, OR DISCHARGE ANY CLAIM which a creditor may have against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a small estate have the same rights provided under the provisions of WV Code §44-2-27 and §44-3A-33 as against distributees and legatees.