

## 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.

IN THE COUNTY COMMISSION OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

RE: THE ESTATE OF \_\_\_\_\_

DOD: \_\_\_\_\_

## AFFIDAVIT FOR SMALL ESTATE

STATE OF \_\_\_\_\_:

COUNTY OF \_\_\_\_\_, To-wit:

I, \_\_\_\_\_, being a Successor of the Decedent identified below, being duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is \_\_\_\_\_, and my current address is

\_\_\_\_\_  
\_\_\_\_\_.

2. The Decedent, \_\_\_\_\_, died on \_\_\_\_\_, as a resident of \_\_\_\_\_ County, State of West Virginia, with his/her usual residence being \_\_\_\_\_.

A certified Death Certificate has been furnished herewith for filing in this County. I am a Successor of the Decedent as \_\_\_\_\_ (state relationship).

3. The Decedent died (check one):

TESTATE (with a Will) \_\_\_\_\_ (if "checked" complete Paragraph 4)  
or INTESTATE (without a Will) \_\_\_\_\_ (if "checked" complete Paragraph 5); In either case, now proceed to Paragraph 6.

4. If TESTATE:

At the date of death, the Decedent died with an original Last Will and Testament of the Decedent dated \_\_\_\_\_, without any codicil thereto ( ) or with codicil(s) thereto dated \_\_\_\_\_ ( ) {Check if applies}. The aforesaid

original Last Will and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this County as permitted by West Virginia §44-1A-2(b).

Under the Last Will and Testament of the Decedent, the following person(s) is/are nominated to be the personal representative(s) of the Estate:

a. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to the provisions of the above referenced Will of the Decedent, the following person(s) is/are the named beneficiaries of the estate of the Decedent:

a. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

g. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
RELATIONSHIP to Decedent: \_\_\_\_\_  
Share or percentage or particular item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. If INTESTATE

At the date of death, the Decedent died intestate with no known Will. The Decedent left as his/her heirs-at-law and distributes in accordance with the laws of intestate descent and distribution of the State of West Virginia, the following persons:

a. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

b. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

c. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

d. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

e. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

f. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

g. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP to Decedent: \_\_\_\_\_

Share or percentage: \_\_\_\_\_

6. The Decedent's entire personal probate estate, as of the date of the Decedent's death, wherever located, consists only of small assets and the aggregate fair market value of the small assets does not exceed \$50,000. The small assets of the Decedent are described and itemized as follows:

	DESCRIPTION	FAIR MARKET VALUE
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

(IF MORE SPACE IS NEEDED, attach additional pages to affidavit)

7. The Decedent did ( ) / did NOT ( ) {Check one which applies} die seized and possessed of any probate real estate or interests in probate real property in the State of West Virginia. If the Decedent died seized and possessed of any probate real estate or interest in real estate in the State of West Virginia, the aggregate fair market value of all of the real estate interests in real property situate in the State does not exceed \$100,000 and the real estate of the Decedent in West Virginia, is as follows:

DESCRIPTION	County	Assessed Value	Fair Market Value
1. _____			
2. _____			
3. _____			
4. _____			
5. _____			
6. _____			
7. _____			
8. _____			
9. _____			
10. _____			

(IF MORE SPACE IS NEEDED, attach additional pages to affidavit)

8. ( ) {Check if applies} or ( ) {Check if Not Applicable}. If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above Will of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction.

or

( ) {Check if applies} or ( ) {Check if Not Applicable}. If the affiant is a Successor who was NOT nominated as a personal representative or executor under the provisions of the above Will of the Decedent or if the Decedent died intestate without a Will, at least 60 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been



granted in any jurisdiction, and no affidavit of Small Estate has been filed by a Successor nominated as a personal representative or executor under the provisions of the Will of the Decedent.

9. The undersigned Affiant will faithfully administer the small assets of the Decedent in accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant/Successor

Taken, subscribed and sworn to before me the undersigned authority by  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

# 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; ( ) 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 distributes and legatees.