



## Office of the Monongalia County Clerk

Carye L. Blaney, County Clerk

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# Probate Information Booklet

For Dates of Death July 13, 2001 or After  
Revised June 12, 2015

Website: [www.monongaliacountyclerk.com](http://www.monongaliacountyclerk.com)

Phone: 304/291-7236

Monongalia County Clerk

**Updated pursuant to law changes effective June 7, 2002**  
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### **Oath of Office (44-1-3)**

At the time of your appointment, you sign an oath that you attest that the information you provide the Clerk is true and correct to the best of your belief. Further, in accordance with West Virginia Code 44-1-3, you further attest that the writing admitted to record contains the true last will and testament of the deceased (if a will was presented), and you will faithfully perform the duties of your office to the best of your skill and judgment.

### **Estate Appraisement and Inventory ET 6.01 and the Nonprobate Inventory ET 6.02 (44-1-14)**

You are given Letters of Administration at the time of your appointment. Along with that you are given an Appraisement booklet in which you have ninety (90) days from your date of qualification as personal representative to complete and submit or be subject to the following penalty.

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

The appraisement booklet contains instructions for completion. Be advised that you have the authority as personal representative to retain the services of an expert as may be appropriate to assist and advise you concerning your duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and the reasonableness thereof is subject to review and approval of the county commission. Providing there are no additional pages added to the form, the recording fee will be \$11.00.

## **Estates Requiring a Fiduciary Commissioner**

\*If the estate has more than *one beneficiary* and the *probate assets* are over \$200,000, a fiduciary commissioner shall be assigned to the estate in accordance with West Virginia Code 44-2-1. If one has not been assigned at the time of your appointment and you find at the completion of the appraisal that a fiduciary commissioner is needed, call our office at 304/291-7236 and one will be assigned to you. His/her job will be to review the appraisal and publish in the local newspaper a notice to creditors to file claims. Consult with the fiduciary commissioner assigned as to how the estate will be handled. You will be communicating with your fiduciary commissioner from this point on unless you need copies or Letters of Administration from our office. Be advised, however, that the duties of the fiduciary commissioner do not in any manner require or allow him or her to practice law in connection with any matter which is before him or her as commissioner, a position in which he or she acts as a judicial officer in probate matters and settlement of the estates.

## **Explanation of Fees and Services of Estates Referred to a Fiduciary Commissioner (Effective December 11, 2002)**

Pursuant to the provisions of West Virginia Code, Chapter 44, Article 3A, Section 42, and West Virginia Code, Chapter 59, Article 1, Section 9, as amended, the Monongalia County Commission does hereby establish the following schedule of fees or rate of compensation for Fiduciary Commissioners in Monongalia County, West Virginia, as follows:

For services rendered in connection with the receiving, approving, filing and forwarding to Tax Department inventory and appraisal, initial and supplemental; determination of shares of legatees and distributes; preparation and publishing of notice to creditors and beneficiaries; certifying publication of such notice; mailing of notice to creditors and beneficiaries, for each creditor and beneficiary; receiving and filing names and addresses of creditors and beneficiaries; receiving and filing each proof of claim against an estate; receiving and filing of counter-affidavit

\*Except probate real estate whereby it is "specially devised" defined in the last will and testament in accordance with WV Code 44-2-1(b)

vouchers; preparation of notice of report of claims; preparation of notice of completion of account and report of claims; serving notice of completion of settlement and report of claims upon creditors, beneficiaries, attorneys and other interested parties; receipt and filing of exception to report of claims; filing report of account and report of claims with County Clerk; ratifying and authorizing fiduciary to compromise debt due or owing; preparation of notice of hearing on veterans settlements; and any other matter normally included within a summary settlement for an estate. ***\$40.00 per hour.***

For services rendered in connection with contested claims against an estate; including preparation of proper notice of hearing and giving of such notice to claimant, party objecting and personal representative; preparation and serving of notice for deposit of cost for recording testimony at hearing; preparation of summons for witness; swearing each witness; certifying testimony of witnesses; conducting hearing, considering evidence, drafting recommendations with respect to such hearing and appearance before the County Commission with respect thereto and any other matters of an extraordinary nature not normally included within settlement for such estate; review of any extraordinary demands or conditions imposed by a fiduciary or imposed by the circumstances of an estate, including summoning a fiduciary to appear before the Circuit Court or County Commission for failure of fiduciary to make return of inventory, account of sale, settlements of accounts; conduct of any hearing in regard to any controversy referred by County Commission which requires considering evidence, hearing proof, making findings and advising Court on law. ***\$55.00 per hour.***

In addition, the Fiduciary Commissioner shall charge and collect the actual costs incurred in the administration of an estate, such as publication costs, mailing of notices, recording costs, etc., and at the time of receipt of the initial inventory and appraisal the fiduciary shall pay a deposit on such costs in the amount of ***\$50.00.***

In-house photocopying expenses shall not exceed \$0.25 per page.

In all cases each Fiduciary Commissioner shall prepare a voucher for the County Commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the Fiduciary Commissioner or whether such service was performed

by an employee or deputy of such commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected and, in addition thereto, shall indicate those services for which charges are to be made over and above that amount. In the case of any service for which a fee is not fixed or the fee fixed is based on time expended, the voucher shall show the actual time personally expended by the commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the County Commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies.

In reviewing any fee charged by the Fiduciary Commissioner, the County Commission shall consider the following:

- (1) The time and effort expended;
- (2) The difficulty of the questions raised;
- (3) The skill required to perform properly the services rendered;
- (4) The reasonableness of the fee;
- (5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and
- (6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The County Commission may approve any such voucher or may reduce the same, as it deems proper. Any such approval shall be by Order of the Commission and be entered of record by the Clerk of the County Commission in the fiduciary record book and the general order books of the Commission. In no event shall any fee for any service, whether performed by the Fiduciary Commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

### **Estates Remaining with the Clerk**

If the estate is not assigned to a fiduciary commissioner, you will need to either mail or bring **both forms (ET6.01 and ET6.02)** to the County Clerk's Office for certification. A fee will be collected for recordation.

Please note the cost for recording ET6.01 is **\$11.00**. Should there be attachments, cost is \$1.00 per additional page.

The County Clerk will record ET6.01 and retain the original ET6.02 in the estate file in the office of the County Clerk.

### **Personal Representative to Make Nonprobate Inventory Form Available (11-11-35)**

Please note you are required to make the Nonprobate Inventory Form ET 6.02 available for inspection by or disclosure to:

- 1) Any heir at law or beneficiary under the will;
- 2) a creditor who has timely filed a claim against the estate with the County Clerk or Fiduciary Commissioner;
- 3) any party who has filed a civil action in any court of competent jurisdiction in which any assets of the decedent is in issue; or
- 4) the attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described above.

## **Duty of Personal Representative to Pay All Taxes**

The Internal Revenue Service requires the filing of a Federal Estate Tax Return for the estate of every United States citizen whose gross estate at the time of death was larger than the amount of the federal exemption equivalent. The exemption equivalents 2006 to 2012 are:

<u>Year of Death</u>	<u>Exemption Equivalent</u>
2006 through 2008	\$2,000,000
2009	\$3,500,000
2010 through 2011	\$5,000,000
2012	\$5,120,000
2013	\$5,125,000
2014	\$5,340,000
2015	\$5,430,000

*Note: For further information concerning federal estate tax requirements and instructions regarding older deaths, contact your local IRS office or call their toll-free number at 1-800-829-1040. WV estate tax is no longer in effect for dates of death on or after January 1, 2005. Please contact the WV State Tax Department at 1-800-982-8297 regarding deaths prior to January 1, 2005 for filing requirements.*

## **Notice of Administration (44-1-14a (a) (1) - (9) and Notice to Creditors (44-1-14a (a) (10)**

After the County Clerk records the Appraisalment and Inventory Form ET 6.01, the first week of the following month, publication will appear in the local newspaper a Notice of Administration and Notice to Creditors stating that any person seeking to impeach or establish a will must make a complaint in accordance with the provisions of West Virginia Code 41-5-11 through 13. An interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within *sixty* days after the date of the first publication or within *30* days of service of the notice, whichever is later. If an objection is not timely filed, the objection is forever barred.

Claims against the estate must be filed in accordance with West Virginia Code 44-2 or 44-3.

Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within *ninety* days from the first

publication of this notice a reference is requested by a party of interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner.

### **Search of Creditors (44-1-14a (c))**

As personal representative, you have the duty of promptly making a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

### **Responsibilities of Personal Representative in Mailing Publication (44-1-14a (d))**

You as personal representative will receive a copy of the Notice of Administration/Notice to Creditors called a “Publisher’s Certificate” from the County Clerk in which you are required within 90 days after the date of first publication to serve a copy by first class mail, postage prepaid, to the following persons:

- 1) The decedent’s surviving spouse, if any;
- 2) Any beneficiaries and heirs;
- 3) The trustee of any trust in which the decedent was a grantor, if any; and
- 4) All creditors ascertained by the search made by you as personal representative, *other* than a creditor who filed a claim or a creditor whose claim has been paid in full.

At the time of mailing, you are responsible for immediately returning the “Affidavit of Mailing Notice” which you would have received with the copy of the “Notice of Administration” from the County Clerk.

*Please Note: At the time of your appointment, if you gave the name and address of attorney you have retained to assist you in the probate process, such attorney will automatically receive a copy of the above to process for you if this is part of his/her service.*

### **Claims (44-2-5 through 44-2-22)**

\*The County Clerk can receive claims from the date an estate is opened to the date of expiration. Date of expiration is determined by counting 90 days from the first date of publication of the “Notice of Administration/Notice to Creditors”. If a claim is received, a copy will be promptly forwarded to you as personal representative and the estate attorney.

If you receive a claim, you need to promptly examine it to determine whether or not it is a valid claim and filed within proper statute of limitations. If you object to the claim, written objections are to be mailed to the County Clerk within 20 days. If no written objections are filed, and you have not contacted the claimant to arrange satisfying the debt, the County Clerk may forward the estate to a fiduciary commissioner for further action.

If the applicable assets of the estate are insufficient to pay all claims against the estate in full, you as personal representative, shall make payment on a pro-rated basis as outlined in West Virginia Code 44-2-21. If you have not retained an attorney to assist you in the probate process, you may want to seek legal counsel to assist you in this regard.

### **Filing Annual Accountings, Waiver of Final Settlement and/or Report of Receipts and Disbursements (44-4-2, 44-2-1(b) and 44-2-29)**

#### **Annual Accountings**

If the estate will not be closed within one year of the personal representative’s qualification, a statement of all the money, and an inventory of all securities, stocks, bonds, and all other property, including the value, which any personal representative or curator, has received, become chargeable with or disbursed, within two months after the end of every such period, be exhibited by the fiduciary

\*The estates assigned to a fiduciary commissioner will be published through the fiduciary commissioner’s office.

(personal representative) to the fiduciary commissioner to whom the estate or trust has been referred. This is outlined in the form of a Report of Receipts and Disbursements report.

The West Virginia Legislature passed a law in 1999 that every personal representative is required to file a final accounting within five (5) years of their appointment. If the personal representative is unable to make such a full and final accounting, he/she may request an extension in writing to the county commission and include a date by which the personal representative reasonably expects to make the full and final settlement. Failure to comply with this section results in the personal representative being personally liable to beneficiaries or creditors for any loss or waste caused by failure to make the final settlement. He/she may be guilty of a misdemeanor and may be fined not less than two hundred fifty dollars but no more than one thousand dollars, unless good and sufficient cause is shown.

### Types of Forms to File to Close an Estate

1) The Waiver of Final Settlement is one form. It requires the signature of all beneficiaries/heirs unless the beneficiary only receives a bequest of tangible personal property or a bequest of cash (44-2-29).

Please note that a Waiver of Final Settlement cannot be used if any heir or beneficiary is a minor child. However, in the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary (personal representative) or agent of such beneficiary may sign in lieu of such beneficiary. A fiduciary or agent signing such waiver shall be responsible to the beneficiary for any loss resulting from such waiver.

2) The Report of Receipts & Disbursements along with an Affidavit attached thereto is the other form that can be used. It is basically an accounting by you as personal representative of the estate and requires only your signature.

### Closing The Estate

The County Clerk or Fiduciary Commissioner can receive a Waiver of Final Settlement or Report of Receipts & Disbursements to start the process to close out the estate, provided that:

1) the estate is exempt from receiving a release of Estate Tax, which means the estate did not require a federal and state estate tax return to be filed; or the estate is

required to receive a release of Estate Tax, and such release has been filed with the County Clerk by the State Tax Commissioner, which means the estate did require federal and estate tax returns to be filed;

2) more than ninety (90) days have elapsed since the filing of the Notice of Administration/Notice to Creditors and/or more than thirty (30) days have elapsed since mailing of the notice, whichever is later;

3) no known and unpaid claims exist against the estate; and

4) a “Certificate of Nonliability” has been filed with the County Clerk by the State Tax Commissioner. This certificate will only be required on estates in which appraisements were recorded prior to June 7, 2002 on dates of death July 13, 2001 or after.

*NOTE: This certificate will soon be eliminated with the latest law change. That is because the Clerk will be sending both appraisal forms ET 6.01 and ET 6.02. Prior to this, the personal representative mailed the ET 6.02 and the certificate was our proof that the State Tax Department did in fact receive it.*

5) Dates of death June 30, 1985 or before require a State Tax Release to be of record.

You will want to begin the process of closing the estate after you have paid all debts, taxes and have had access to all of the assets because your power as personal representative ends when the estate is closed. There are two types of forms which can be used.

### **Cost to File and When Estate is Considered Closed (44-2-1 (b))**

The cost to record either settlement form is determined by number of pages. Up to seven pages, the cost is \$16.00. Please call should it be more than seven pages to ascertain the total cost for filing.

The County Clerk will then mail a copy of such Report or Waiver to each beneficiary and creditor by first class mail, postage prepaid. The County Clerk will retain the report for ten (10) days to allow any beneficiary or creditor to appear before the county commission to request reference to a Fiduciary Commissioner.

If no request or objection is made to the Clerk or to the County Commission, the County Commission may confirm the report of the personal representative and the personal representative along with his or her surety shall be discharged. However, if such objection or request is made, the County Commission may confirm and record the accounting or may refer the estate to a Fiduciary Commissioner.

\*The County Clerk's Office will promptly send you, as personal representative, a letter confirming the date the report is confirmed at which time you can distribute assets. In the event that an objection or request was made to refer the estate to a Fiduciary Commissioner at the time of confirmation, such notice will be forwarded to you.

### **Final Note**

*If you have any questions, please call 304/291-7236. Be advised that according to Advisory Opinion 93-00, the Committee on Unlawful Practice of the West Virginia State Bar cautions that a county employee would not be allowed to advise the individual preparing the pre-printed appraisal and inventory forms about the application of legal principles to facts, purposes or desires. In other words, we have to be careful that we are not "practicing law". If you have retained an attorney or certified public accountant, your questions can best be answered through them. If you find we are unable to help you with certain matters, you should to confer with a professional to be assured your duties as personal representative are carried out according to state law.*

\*Those estates assigned to a fiduciary commissioner, our office forwards the confirmation to him/her who will then correspond with you.