

ESTATE ADMINISTRATION/PROBATE PROCESS

Please be advised that the Fiduciary Supervisor is NOT an attorney and therefore, cannot provide any legal advice. This information is very general and is only to assist in the estate process. It is recommended that for specific questions about your situation or complex estates, you should consult with an attorney.

The County Commission of Greenbrier County does have jurisdiction over any probate matters within Greenbrier County, West Virginia. If problems arise during the administration of an estate, a Fiduciary Commissioner will be chosen to oversee the completion of the probate process.

Definitions:

Administrator/Administratrix – the individual/entity that is given authority (appointed) when the decedent does not leave a Will.

Appraisal – this is a form that will be provided to you and which will include all assets either owned individually or jointly.

Assets – items owned by decedent that will be broken down into two categories:

Non-probate assets – items owned by the decedent that are jointly owned or are payable upon death to a beneficiary. These items do not pass through the estate.

Probate assets - items owned SOLELY (strictly in the decedents name only) by the decedent. These items will pass through the estate.

Beneficiary – an individual or entity that is named in the decedent's Last Will and Testament, which will receive either property (personal/real) or any monetary gift.

Bond – is a guarantee that can be provided by a corporation or an insurance company, which serves as security, for the individual/entity who is performing the appointed duties in good faith and to be accountable for any deficits that may occur.

Claim – any debt that is filed against the estate of the decedent by a creditor.

Executor/Executrix – the individual named in a Last Will and Testament or Codicil that is given the authority to perform the administrative duties of the Estate.

Fiduciary – an individual or entity that manages the Estate of the decedent. Also known as; Executor/Executrix, Administrator/Administratrix, or Personal Representative.

Heir – individual(s) that are related to the decedent and who can inherit from the decedent's estate who did not leave a Last Will and Testament.

Holographic Will – A will that is written entirely by the decedent, in his/her own hand, but is not witnessed.

Intestate – a decedent that does not leave a valid Last Will and Testament.

Probate – is the legal process that needs to happen after a person dies, leaving an estate. This process assists in the gathering of information of the decedent's assets for distribution.

Testate – a decedent that leaves a valid Last Will and Testament.

Valid – in reference to a Last Will and Testament that has been properly signed, witnessed and notarized.

The Probate Process:

Probate is the legal manner in which a decedent's assets are transferred to either beneficiaries or heirs. To begin the probate process, the personal representative must come in person to the Fiduciary office to be appointed over the Estate. This is the only step that must be done in person. In the Fiduciary Office.

If there is a Last Will and Testament, the personal representative will need to bring in the following:

- A certified copy of the death certificate; and
- the original Will (no copies); and
- the names, addresses and relationship of the beneficiaries/heirs; and
- photo identification; and
- checks or cash to cover estate and recording fees.

If there is no Will, the personal representative will need to wait 30 days before beginning the probate process (if there is no relation to the decedent) and will need to bring in the following:

- A certified copy of the death certificate; and
- The names, addresses and relationship of the beneficiaries/heirs; and
- Photo identification; and
- Checks or cash to cover estate and recording fees; and
- The personal representative will need to be prepared to post a bond with a bonding agent.

Also, if there is no will, the personal representative will need to be bonded for the approximate value of the personal property of the decedent. The personal representative may choose to purchase bond through a bonding company or have a property bond. If a property bond is chosen, the personal representative will need to make arrangements to have someone other than themselves, who owns real estate in Greenbrier County, to come with them. If this person lives in another county, they will need to get a Justification of Surety from their county courthouse. This is to act as surety on your bond. If personal representative is an out-of-state resident, they will need to be bonded through an insurance company for twice the amount. NOTE: The bond is an additional fee that is payable to the insurance company.

The Appraisal

Once the personal representative is appointed, an estate appraisal will need to be completed, which is supplied by the Fiduciary office. These forms are standard for the entire state of West Virginia and are to include a complete listing of all assets that were held in the decedent's name alone or held jointly with another individual. The personal representative will have 90 days to complete the estate inventory for the Estate Appraisal and Non-probate Inventory booklet.

Inventory of Assets

Probate Assets - Are items of property that are owned solely by the decedent. This includes, but is not limited to: bank accounts, investment accounts, stocks, bonds, vehicles, boats, business interest, artwork, memorabilia, electronics, gun collections and dish collections, etc.

Non-probate Assets - Are items of property that are owned by the decedent and another individual(s). This includes, but is not limited to: bank accounts, investment accounts, stocks, bonds, vehicles, health savings account, life insurance policies, retirement accounts (IRA's, 401 (k's), annuities) and Trusts.

When the office of the Fiduciary Supervisor receives the appraisal booklet back it will then be recorded. Upon recordation, a "Notice to Creditors" will be placed in the West Virginia Daily Newspaper. This notice is required to be published for 2 consecutive weeks. This publication is to give notice to creditors that a 60 day claim period for filing claims against the estate has begun. This means that the decedent's creditors have 60 days to file a claim against the estate alleging that the decedent owes them money. The personal representative can object or challenge any claim.

After the 60 day claim period is over, if there is money to pay for the claims they will need to be paid and the creditor will need to file release form, which states that the claim has been paid. This office **MUST** have an original release form in order to proceed onto the last step of settling the estate.

NOTE: The personal representative pays any and all claims filed against the estate for debts and any taxes that may be due. This includes the funeral expenses. If there is not enough money in the estate, the personal representative **MUST** sell off the decedent's personal property (an estate sale) to pay any and all claims and taxes, if any. The personal representative will need to pay the debts in accordance with WV Code 44-2-21, in the following order:

1. Costs and expenses of administration;
2. Reasonable funeral expenses;
3. Debts and taxes with preference under federal law;
4. Any unpaid child support which is due and owing at the time of the decedent's death;
5. Debts and taxes with preference under other laws of West Virginia;
6. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during the last illness; and
7. All other claims.

If the personal assets are not enough to pay all claims in the class, they will need to be paid on a pro-rata basis.

The Settlement

At the end of the claim period, the personal representative will be sent a settlement form that will need to be completed and signed in front of a Notary Public. If there are no outstanding claims, a Waiver of Final Settlement may be completed. This is a list of all the beneficiaries/heirs and any and all individuals who may receive a gift from the Will.

On the other hand, if there are outstanding claims or if the beneficiaries or heirs do not agree on the proposed distribution then an accounting of the settlement will need to be filed instead. This form is the Report of Receipts and Disbursements and is a list of all receipts/disbursements or any expenses incurred during the probate process. After completion, this form needs to be sent to all beneficiaries, etc., and they will have 10 days to file an objection.

Once the settlement is filed, there is a 10 day waiting period before it can be presented to the County Commission for approval. When approved, a copy will be mailed to you. At this time, the personal representative may distribute any monies to the beneficiaries and creditors.

§44-2-21. Order in which debts of decedent are to be paid.

- (a) If the applicable assets of the estate are insufficient to pay all claims against the estate in full, the personal representative shall make payment in the following order:
 - (1) Costs and expenses of administration;
 - (2) Reasonable funeral expenses;
 - (3) Debts and taxes with preference under federal law;
 - (4) Unpaid child support which is due and owing at the time of decedent's death;
 - (5) Debts and taxes with preference under other laws of the State of West Virginia;
 - (6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and
 - (7) All other claims.
- (b) If the applicable assets of the estate are insufficient to pay all the claims within a class, those claims within that class shall be paid on a prorata basis. NO preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.
- (c) Notwithstanding the provisions of subsection (a) of this section, if the payment of all funeral expenses of the decedent is provided for by an irrevocable preneed funeral contract or trust neither the decedent's estate nor the decedent's surviving spouse shall have any obligation for the payment of such funeral expenses.

2011 West Virginia Code

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-5. Liability of heir or devisee for real estate conveyed; when such real estate not liable.

Universal Citation: WV Code §44-8-5 (2002 through Reg Sess)

Any heir or devisee who shall sell and convey any real estate, which by this article is made assets, shall be liable to those entitled to be paid out of such assets, for the value thereof, with interest; in such case the estate conveyed shall not be liable, if at the time of the conveyance the purchaser shall have no notice of any fraudulent intent on the part of the grantor, and no suit shall have been commenced for the administration of such assets, nor any report have been filed, as aforesaid, of the debts, and demands of those entitled. But no alienation of such estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within such year.