

MARSHALL COUNTY CLERK'S OFFICE
CONNIE HOWARD, COUNTY CLERK

PO BOX 459

MOUNDSVILLE WV 26041

PHONE 304-845-1220 www.marshallcountywv.gov FAX 304-845-5891

2025 HOUSE BILL 2867 PASSED APRIL 10, 2025; EFFECTIVE 90 DAYS FROM PASSAGE, JULY 9, 2025

AN ACT to amend and reenact §44-1A-2 of the Code of West Virginia, 1931, as amended, relating to precluding an estate with probate real property of with an interest in probate real property from being processed as a small estate.

ARTICLE 1A WEST VIRGINIA SMALL ESTATE ACT

§44-1A-2 Administration of small estate upon affidavit and without appointment.

Attached is a Small Estate Packet. If the decedent's assets meet the financial qualifications, please complete the form and return the hard copy to this office for processing or you may make an appointment to file the same.

Please Note: An **original Death Certificate must** be attached to the Affidavit

-Decedent **must have been a resident** of Marshall County.

The earliest that the Affidavit can be submitted to the Clerk's Office by an applicant:

-if there is a **Will**, and the applicant is the nominated Executor/rix, then **30 days** after death;

-if there is a **Will**, and the applicant is **NOT** the nominated Executor/rix, then **60 days** after death;

-if there is no **Will** (intestate) then **60 days** after death.

AND-the **entire market value** of the Decedent's assets does **NOT EXCEED \$50,000.00**.

The cost to file the affidavit is \$12.00 up to 5 pages and \$1.00 per page thereafter plus \$.47 for postage. If you have any questions, fee free to call our office.

Sincerely, Probate, Marshall County Clerk's Office

yholstine@marshallcountywv.gov

jgordon@marshallcountywv.gov

WEST VIRGINIA'S NEW SMALL ESTATE PROCEDURE

House Bill 2867, regarding the creation of a new form of administration of an estate, was signed into law by the Governor and became effective July 9, 2025. The purpose of the new legislation is to avoid "probate" of small estates through the completion and filing of an Affidavit from 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 no exceeding \$50,000.00 in value.

You may be asking "What is a probate asset?". When someone dies, their personal 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.

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

Once the Affidavit is completed by the applicant, the Affidavit and any attached Wills and 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 total. 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. An **original** Death Certificate of the decedent must also be attached.

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 probe 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, the Clerk will **refer the matter to a Fiduciary Commissioner at cost to the objecting party. (\$300.00 fee for referral)**

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/beneficiaries through magistrate court or circuit court**; if an heir/beneficiary believes they have **not been treated properly, they too must seek relief from the magistrate court or circuit court.** See WV Code §44-2-21 below.

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

This is a new process and the Clerk's Office will be learning and working out the kinks too, please be patient.

PLEASE READ CAREFULLY:

Settle Any Claims Against the Estate from Creditors

After filing the Small Estate Affidavit, there is no newspaper publication. Creditors will not file claims with the County Clerk's office. Instead, they will file claims against the authorized successor of the person who died, his or her heirs, and/or beneficiaries through magistrate or circuit court. If an heir or beneficiary believes they have been mistreated, they must also seek relief from the Magistrate Court or Circuit Court. Persons interested in filing an objection about the administration of the estate have thirty (30) days after the mailing of the affidavit. Creditors have two (2) years to make claims on the estate.

The authorized successor pays all claims against the decedent's estate for debts and pays any taxes due. This payment obligation includes any funeral expenses. The authorized successor must sell off the decedent's property if they do not have enough money to pay all the debts and taxes, which is often done by an estate sale. In addition, the authorized successor must use the raised money from selling the decedent's property to pay debts and taxes in the order listed in W. Va. Code § 44-2-21

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, tax bills, car titles, etc.

DOD – Stands for "date of death" of the decedent

DECEDENT 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 and you are the named personal representative (ie: Executor/rix) 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/heirs of the deceased beneficiary.

If there is NO WILL (INTESTATE) then relationship is based upon marriage or relationship to the decedent by blood (see WV Code §42-1-1 et seq).

PLEASE NOTE –

STEPCHILDREN/STEPPARENTS

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)

KINDRED OF HALF-BLOOD

Relatives of the half-blood inherit the same share they would inherit the same share they would inherit if they were of the whole blood. §42-1-3e

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 the assets after payment of expenses and debt).

If there is NO WILL (INTESTATE), 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's 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.

FAIR MARKET VALUE – Refers to the value of the asset at the time of the decedent's 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 checking the stock's value as the "high" of the day and **ADDING** the stock's "low" value of the day and **DIVIDING** by two (2) (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.

sue 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.

Settle Any Claims Against the Estate from Creditors

After filing the Small Estate Affidavit, there is no newspaper publication. Creditors will not file claims with the County Clerk's office. Instead, they will file claims against the authorized successor of the person who died, his or her heirs, and/or beneficiaries through magistrate or circuit court. If an heir or beneficiary believes they have been mistreated, they must also seek relief from the Magistrate Court or Circuit Court. Persons interested in filing an objection about the administration of the estate have thirty (30) days after the mailing of the affidavit. Creditors have two (2) years to make claims on the estate.

The authorized successor pays all claims against the decedent's estate for debts and pays any taxes due. This payment obligation includes any funeral expenses. The authorized successor must sell off the decedent's property if they do not have enough money to pay all the debts and taxes, which is often done by an estate sale. In addition, the authorized successor must use the raised money from selling the decedent's property to pay debts and taxes in the order listed in W. Va. Code § 44-2-21

The next page is the affidavit you will be filing with the Clerk

IN THE COUNTY COMMISSION OF MARSHALL COUNTY, WEST VIRGINIA

RE: THE ESTATE OF _____

DATE OF DEATH _____

AFFIDAVIT FOR SMALL ESTATE

STATE OF WEST VIRGINIA:

COUNTY OF MARSHALL, 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 follow:

1. My name is _____,
and my current address is _____

2. The Decedent, _____,
died on _____,
as a resident of MARSHALL 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 (amendment) thereto () or

With a 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 of particular item(s): _____

b. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

c. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

d. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

e. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

f. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

g. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

IF INTESTATE (WITHOUT A WILL)

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 of particular item(s): _____

b. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

c. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

d. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

e. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

f. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

g. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

5. The Decedent's entire personal probate estate, as of the date of the Decedent's death, where ever located, consists only of small assets and the aggregate fair market value of the small assets does not exceed \$50,000.00. 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. _____
11. _____

(If more space is needed, attach additional pages to Affidavit)

6. The Decedent did not die seized and possessed of any probate real estate of interests in probate real estate in the State of West Virginia.

7. () Check if applies or () Check if Not Applicable

If the affiant is a Successor who was nominated as 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/rix 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/rix under the provisions of the Will of the Decedent.

8. 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

Print name of Affiant/Successor

This _____ day of _____, 20____.

(SEAL)

My Commission expires:

Notary Public

CONTINUATION PAGE FOR BENEFICIARIES (WITH WILL) DISCARD IF NOT NEEDED

h. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

i. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

j. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

ADDITIONAL PG TO AFFIDAVIT

DISCARD IF NOT NEEDED

k. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

l. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

m. NAME _____
ADDRESS _____

RELATIONSHIP to Decedent: _____
Share or percentage of particular item(s): _____

ADDITIONAL PG TO AFFIDAVIT

CONTINUATION PAGE FOR HEIRS-AT-LAW (INTESTATE – NO WILL) DISCARD OF NOT
NEEDED

h. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

i. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

j. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

ADDITIONAL PG TO AFFIDAVIT

DISCARD IF NOT NEEDED

k. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

l. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

m. NAME _____

ADDRESS _____

RELATIONSHIP to Decedent: _____

Share or percentage of particular item(s): _____

ADDITIONAL PG TO AFFIDAVIT

CONTINUATION PAGE FOR PERSONAL ASSETS

DISCARD IF NOT NEEDED

13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

ADDITIONAL PG TO AFFIDAVIT