

**WELCOME TO JACKSON COUNTY WV FIDUCIARY SUPERVISOR OFFICE!**

**Mailing address:** PO Box 800, Ripley WV 25271

**Physical address:** 100 N Court St, Ripley WV 25271 (ground floor of Jackson County Courthouse)

**Fax #:** 304-372-2079

**Website:** [jacksoncountyclerkwv.com](http://jacksoncountyclerkwv.com)

Emails: [jennifer.morrison@jacksoncountywv.com](mailto:jennifer.morrison@jacksoncountywv.com)

[angie.casto@jacksoncountywv.com](mailto:angie.casto@jacksoncountywv.com)

**To schedule Appointment,** please call: 304-373-2254 (appointment times generally scheduled 9:30am/11am/1:30pm/3pm)

**Office hours:** M-F 8:30am – 4:30pm (office closed for lunch from noon – 1pm)

***WV NOW HAS 3 OPTIONS TO TRANSFER ASSETS OF A DECEDENT/PROBATE AN ESTATE—***

**OPTION 1: REGULAR PROBATE (TRADITIONAL PROCESS) WV CODES 41-1/44-3A**

**1. SOME REASONS REGULAR PROBATE MAY BE A GOOD OPTION (OR THE “ONLY” OPTION):**

- A. You would like to start the estate as soon as possible &/OR you are not a beneficiary under the Will or an heir-at-law but want to probate the estate.
- B. You need to access medical records of the decedent. (this is required for *some* insurance policies or lawsuit situations)
- C. You would like more supervision from our office regarding probate process &/or you need more flexibility because not all assets are known (or you are unsure if more assets may come in after appointment).
- D. You need a longer time frame to complete your duties (such as filing income taxes for the next year).
- E. You need to file a lawsuit on behalf of the decedent (OR the decedent is already involved in a current lawsuit).
- F. You (or the heirs/beneficiaries) plan to sell the probate real estate quickly--within 2 years. OR Will says real estate MUST be sold.
- G. You think the estate will have more debts than assets/you need RECORD the estate cannot pay debts in full.
- H. You know there is a dispute with family members (beneficiaries or heirs-at-law) that would make the estate more complicated &/OR the Will appoints Co-Executor/trixes who want to serve together.

**2. OVERVIEW OF THE REGULAR PROBATE PROCESS (in-person OR remote appointment):**

- A. **STEP 1: The Appointment** of the Fiduciary. (Recording the ORIGINAL Will &/or Bond Order if applicable, Appointment Order with list of beneficiaries/heirs-at-law, collection of appropriate fees & providing Fiduciary with Letters of Administration as proof of Appointment). For complete details, the website has forms found under the TAB: REGULAR PROBATE OPTION
- B. **STEP 2: The Appraisement** of the Estate. Our office can assist you with completing the inventory of assets (the forms are on the website under WV ESTATE APPRAISEMENT & NONPROBATE INVENTORY); however, you will need to gather the information *prior to* Appointment. On the website the form ASSETS OF THE DECEDENT will help you determine the assets for the Appraisement. Upon receipt of the Appraisement forms (with appropriate recording fees), our office is required to publish the estate in the Jackson County newspaper for 2 weeks (generally the 1<sup>st</sup> two Tuesdays of each month) that gives notice to creditors that the 60-day period for filing claims against the estate has begun. When estate has assets, the fiduciary must use them to satisfy creditor claims (in order directed by WV Code).
- C. **STEP 3: The Settlement** of the Estate. At the end of the claim period, our office will notify you that settlement can begin using a choice of 2 estate settlement forms when the fiduciary has completed their duties (payment of estate debts/transfer of titles/filing of incomes taxes &/or other forms/settlement of lawsuits, etc.) AND the fiduciary is ready for distribution of remaining assets to the beneficiaries/heirs-at-law.
  - If there are no outstanding debts AND/OR there are no disputes with the proposed distribution of assets, the fiduciary can use the Affidavit & Waiver of Final Settlement (aka Short Form Settlement) that allows beneficiaries/heirs-at-law to sign as their agreement that the fiduciary has handled the estate properly and they do not require a formal accounting be put on record for the estate. This is the preferred, simple way to settle an estate. Distribution by the fiduciary begins after the Short Form Settlement has been filed with our office (recording fee of \$12+) and before estate closes through Order from Jackson Co. Commission.
  - If there are more debts than assets AND/OR the beneficiaries/heirs-at-law do not agree with the proposed distribution of assets, the fiduciary must complete the Report of Receipts, Disbursements & Distributions (aka Long Form Settlement) and provide proof to support the entries on their Report and file with our office. (recording fee of \$12+ AND postage fees) A copy of the Report is sent Certified Mail by our office to each beneficiary/heir/creditor as applicable with a deadline to object. The fiduciary cannot make distribution of assets until formally notified by our office to do so.

**OPTION 2: SMALL ESTATE AFFIDAVIT (NEW PROCESS) WV CODE 44-1A**

**1. SOME REASONS SMALL ESTATE AFFIDAVIT MAY BE A GOOD OPTION:**

- A. You KNOW the PROBATE assets (see website form ASSETS OF THE DECEDENT) AND they meet the Small Estate value limits of:
  - ALL titled Probate personal property, tangible Probate personal property, Probate monetary assets combined values do not exceed \$50,000
  - ALL Probate Real estate &/or Mineral Rights combined values do not exceed \$100,000
- B. You are the nominated Executor/trix of the decedent's valid Will OR – if there is NO valid Will – you are entitled to a share of the decedent's estate (you are an heir-at-law). *\*You cannot file if not direct heir/beneficiary OR Executor/trix in the Will.\** See website for form FAMILY TREE if unsure who is heir.
- C. You believe the estate has NO complications/issues. This process is a “simplified” version of probate.
- D. Will does not direct real estate to be sold OR you DO NOT plan to SELL the probate real estate quickly.
- E. You DO NOT need to access medical records of the decedent.
- F. You DO NOT need to file a lawsuit on behalf of the decedent OR DO NOT believe the decedent was involved in current/pending litigation at death.
- G. You are fully aware of the decedent's debts and believe the small assets can satisfy those debts. This process DOES NOT publish the estate in the newspaper to give notice of a deadline for a creditor to file a claim. YOU would be responsible for making sure creditors are notified and satisfied within 6 months from start of the Small Estate process.
- H. You have current mailing addresses for the heirs-at-law AND you have good communication with them. This process puts YOU ONLY in charge of ALL probate tasks (following Will, notifying/paying creditors, distributing assets to beneficiaries/heirs) without supervision from our office.

**2. OVERVIEW OF THE SMALL ESTATE PROBATE PROCESS (in-person OR remote appointment):**

- A. Small Estate process is restrictive due to the “small” assets in the estate & simple nature of assets vs. creditors/beneficiaries/heirs-at-law. (NO complications expected).
- B. Small Estate has limits of \$50,000 in personal property/\$100,000 in real estate/mineral rights.
- C. Small Estate has limits on when probate can start:
  - o With Valid Will AND Executor/trix filing Affidavit: **30 days or more AFTER Date of Death of the Decedent**
  - o With NO Valid Will OR Valid Will but beneficiary filing Affidavit instead of Executor/trix: **60 days or more AFTER Date of Death of the Decedent**
- D. Small Estate can be rescinded (AKA Cancelled and Regular Probate required) after it has started **if**:
  - o A beneficiary or heir-at-law objects (in writing) within 30 days after filing of the Small Estate Affidavit.
  - o The Authorized Successor tries to sell the real estate but attorney finds that title company won't issue clear title based on the Small Estate process.
  - o The Authorized Successor finds additional assets that exceed the limitations for personal property of \$50,000 or real estate of \$100,000.
  - o The Authorized Successor must finish a lawsuit for the Decedent or needs to file a lawsuit for the Decedent.
- E. NO PUBLICATION of the estate is required/NO Claim Deadline published.
- F. NO ESTATE FINAL SETTLEMENT is required/NO additional documents need to be recorded.
- G. **STEP ONE:** Only ONE document is required for the ENTIRE Small Estate probate: Small Estate Affidavit. IF estate is Testate, the ORIGINAL Will &/or any ORIGINAL Codicil must be recorded WITH the Affidavit. Probate fees are generally smaller---from \$14.50 to over \$100 (the average fees stay under \$50, including recordings). Can be filed In-Person through an appointment OR can be filed Remotely by *regular mail only*. For complete details, the website has forms found under the TAB: SMALL ESTATE OPTION
- H. **STEP TWO:** When Small Estate Affidavit is recorded, the Authorized Successor will be given proof of the Small Estate process and helpful information on how to complete their duties in SIX (6 months).

**OPTION 3: PRIVATE AFFIDAVIT Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications. (NEW NON-PROBATE PROCESS) WV CODE 44-1-28 (c) (d)**

FROM WV CODE:

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed \$5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, **after 120 days from the death of the decedent**, that person may pay the amount owed to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, "person" includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.

(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

**1. SOME REASONS PRIVATE AFFIDAVIT MAY BE A GOOD OPTION (NO PROBATE NEEDED):**

- A. The Decedent had **NO real estate such as vacant land, land with dwellings, oil/gas/mineral rights in their name ALONE.**
- B. The Decedent had NO other reason to go through probate such as lawsuits OR disputes with heirs.
- C. The Decedent's ONLY had tangible personal property OR monetary, ie bank account.
- D. The Person filing the Private Affidavit is the surviving spouse OR (if spouse is deceased) heir-at-law. (see website for form FAMILY TREE if unsure who is an heir-at-law)
- E. There is NO reason to probate the decedent's Will (**Private Affidavit would NOT follow a Will at all.**)
- F. There is NO RUSH to transfer asset(s) to the spouse or heir(s)-at-law. (**Private Affidavit cannot start until the decedent has been deceased 120 days or more.**)
- G. There are NO OUTSTANDING DEBTS owed by the decedent. (Private Affidavit does NOT appoint a Personal Representative to notify creditors).

**2. OVERVIEW OF THE PRIVATE AFFIDAVIT PROCESS (NO-PROBATE) PROCESS:**

- A. The Fiduciary Office can only provide you with a blank form. We CANNOT:
  - Help you complete the Private Affidavit
  - Notarize the Private Affidavit
  - Record the Private Affidavit
- B. **NO PROBATE STEPS! This means there is NO ESTATE/PROBATE documents recorded in Jackson County WV. NO PROOF OF PROBATE ISSUED BY OUR OFFICE.** For complete details, the website has forms found under the TAB: NO PROBATE OPTION: PRIVATE AFFIDAVIT (WITH WV CODE REFERENCE
- C. Person who completed Private Affidavit must present it (and a certified Death Certificate) to the place holding each asset of the decedent.
- D. This type of transfer process is so limited it seldom is a valid option for anyone except a surviving spouse who only needs to transfer 1 or 2 older vehicles or small bank accounts.

**I have chosen Option:**

**PLEASE CONTACT OUR OFFICE FOR THE NEXT STEP OR ACCESS APPROPRIATE PROBATE FORMS ON OUR WEBSITE**