

ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.

§44-1A-3. PAYMENT OR DELIVERY OF SMALL ASSETS TO AUTHORIZED SUCCESSOR.

- (a) Any person having possession of a small asset of the decedent shall pay or deliver the small asset to the authorized successor of the decedent upon being presented the certificate and authorization of a small estate of the county clerk or fiduciary supervisor.
- (b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver the small asset or assets to the successor or successors of the decedent entitled to the small asset as required by the laws of the State of West Virginia.
- (c) The authorized successor may discharge his or her fiduciary duty concerning the payment or delivery of the small asset or assets by:
- (1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;
 - (2) Paying or delivering the small asset to a successor entitled to the small asset who is sui juris; or
 - (3) For any successor entitled to the small asset who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the small asset to the successor's conservator or, if no conservator exists, guardian; to any custodian of an account for the successor under §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult relative or other person having legal or physical care or custody of the successor to be expended on the successor's behalf directly to the incapacitated or disabled successor or applying it for the successor's benefit. Any successor may be represented and bound under the provisions of virtual representation set forth in §44D-3-1 *et seq.* of this code with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.
- (d) Upon the presentation of the certificate and authorization of a small estate, the authorized successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate.
- (e) A transfer agent of any security, upon the surrender of any certificate evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the successor entitled to the small asset upon the presentation of the certificate and authorization of small estate.
- (f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the small assets constituting the small estate of the decedent is subsequently found to exceed \$50,000.
- (g) The authorized successor is liable to the successors of the decedent, including any personal representative subsequently appointed for the decedent's estate, for any breach of fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a small asset and causing injury to the entitled successor for a period of three years after the date of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary supervisor.

§44-1A-4. DISCHARGE AND RELEASE OF PAYOR; TREATMENT OF REAL ESTATE IN A SMALL ESTATE.

- (a) Any person paying or delivering a small asset pursuant to the provisions of this article is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. That person is not required to see the application of the small asset or to inquire into the truth of any statement in the affidavit or the certificate and authorization of a small estate presented under this article.
- (b) If any person to whom the certificate and authorization of small estate is presented refuses to pay or deliver any small asset to the authorized successor, the small asset may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to the small asset in the magistrate court or circuit court of this state having jurisdiction.
- (c) For any real estate or interest in real property of the decedent which is reported on the recorded affidavit provided in this article, the provisions of §44-8-5, §41-5-19 and §41-5-20 of this code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be duly admitted to probate. The authorized successor or a successor or creditor of a decedent in a small estate may within six months of the issuance of the certificate and authorization of small estate commence a proceeding in equity before the circuit court under the provisions of §44-8-7 of this code to subject real estate to the payment of debts when the small assets are insufficient for the payment thereof.

(d) Nothing in this article releases or discharges 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 §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

§44-1A-5. CONSTRUCTION OF ARTICLE.

(a) The remedies provided by this article are in addition to, and not in exclusion of, any other remedies provided by the laws of this state.

(b) For any will attached to and tendered with the affidavit provided in this article, the provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an order of the county commission entered on the date of the issuance of the certificate and authorization of a small estate by the county clerk or fiduciary supervisor.

(c) Nothing in this article may be construed to affect or limit the right of a surviving spouse of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1 et seq. of this code.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-26. 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 the 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 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.

§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.

Every creditor who shall not have presented his claim to the fiduciary or the fiduciary supervisor before distribution of the surplus by the personal representative, or before that time shall not have instituted an action thereon against the personal representative may, if not barred by limitation, bring his action against the distributees and legatees, jointly or severally, at any time within two years after such distribution. But no distributee or legatee shall be required to pay to creditors suing by virtue of this section a greater sum than the value of what was received by him out of the decedent's estate, nor shall any distributee or legatee be required to pay to any one creditor a greater proportion of such creditor's debt than the value of what was received by such distributee or legatee bears to the total estate distributed. A creditor suing by virtue of this section shall not recover against such distributees and legatees the costs of his action.