

## OFFICE OF FIDUCIARY SUPERVISOR - PROBATE

**JACKSON COUNTY COURTHOUSE**  
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### PROBATE....

is the process that determines whether a Will is valid and/or the process of estate settlement. Probate protects the right of creditors to file a claim against an estate and ensures remaining assets, *if any*, are distributed to the person or persons entitled to receive them, either by will or intestacy.

### ABOUT OUR OFFICE

In 1982 the West Virginia legislature created within the County Commission the Office of Fiduciary Supervisor (West Virginia Code 44, Article 3A). Known as the "optional procedure" for estate settlement this statute aids and assists county commissions in the administration of wills and estates. The 1982 legislation required use of the optional procedure in Kanawha County. Jackson County adopted this code section in 2000. Several other counties now use the optional procedure as well.

Under this statute any power, authority or duty conferred upon the County Clerk with respect to the settlement, regulation or supervision of estates in any provision of this article or in any provision of the West Virginia Code is transferred to the Fiduciary Supervisor.

### OUR STAFF

**Assists** in the process of probate and settlement of an estate. We do not provide legal advice. Most estates can be settled in less than a year and generally do not require an attorney. Barring extraordinary circumstances the only expert guidance you may find necessary is a tax professional.

### OFFICE LOCATIONS AND HOURS

We are located in The Jackson County Courthouse in downtown Ripley. Regular office hours are 8:30 A.M. until 4:30 P.M. Monday – Friday. (Closed for lunch hour 12noon-1pm). *Preliminary intake information **only** is done by walk-in BUT due to Covid 19 restrictions it is now required to make an appointment. Please allow 30 minutes to an hour for your intake visit. **PROBATE APPOINTMENTS of the Estate Representative are scheduled by appointment in the majority of circumstances. Please allow 1 to 2 hours for your probate appointment***

## **GETTING STARTED**

Carefully read the following to prepare for qualification and appointment as Personal Representative of a decedent's estate. Although you may be named to serve as executor/rix by a Will you do not have the legal right to act in that capacity until we admit the Will to probate and you've signed official documents for which security may or may not be required. When death occurs, you should begin the probate process (intake information) within 30 days if possible. **Immediate appointment of an estate representative will not be possible in most situations.** Depending on estate circumstances, qualification requirements will vary.

## **BEGINNING PROBATE**

Our staff will require:

1. A state issued death certificate or a copy of the application for the death certificate signed by the funeral director. If death occurred outside of West Virginia a **certified** copy will be required for recording in Jackson County. The certificate must list the date of death, the decedent's social security number, marital status and residence at death.
2. If the decedent left a **Will/Codicil** bring the **original(s)**, not a copy. In some instances witness depositions will be required **before** the document(s) is admitted to probate.
3. If there is a valid **Will/Codicil** we need the current address of each beneficiary named and their relationship, if any, to the decedent. Include the address and contact information for any charitable organizations named. Additional information may be required for any deceased beneficiary.  
**OR**  
If there is **no Will** we need the name, current address and relationship to the decedent of each heir as provided by "*West Virginia Intestate Succession Law*" (see page 4).
4. An **approximate** value of the probate estate. Include all personal property owned **solely** by the decedent, all real estate and other assets titled **solely** in the name of the decedent and all assets in which the decedent may own an **undivided** interest (1/2, 1/3, 1/4 etc.). If bond is required the value of probate real estate will not be factored in **unless** you qualified as a named executor/rix under a Will and the Will directs or empowers you to sell.
5. Costs of Administration: Range from \$85.00 to \$250.00 + depending on whether there is a Will/Codicil and on the gross value of the estate (see page 4). The cost of a surety bond, if required, is payable directly to the bond company. Costs of administration and bonding are reimbursable from probate estate assets as they may become available.

## **WHO WILL BE ALLOWED TO SERVE AS PERSONAL REPRESENTATIVE?**

If there is a **Will** the person(s) named as executor/rix will be entitled to serve. If a named executor/rix is unable or unwilling to serve the residuary beneficiaries under the Will are expected to nominate an administrator/rix CTA.

**OR**

If there is **no Will** and a spouse survives he or she is entitled to serve. If no spouse survives and there is more than

one heir at law the \*signed, notarized waiver from a majority of the heirs will be required (see pages 3 & 4 to determine the heirs at law). *\*waivers are not required if 30 days have passed since death.*

### **WILL A SURETY BOND BE REQUIRED?**

*“Surety – an individual or corporation who engages (agrees) to be responsible for the debt, default or miscarriage of another”.*

If there is no Will, or there is a Will but “surety”, “security” or “bond” was not waived, or the Will did not name an executor/rix, or if someone other than a named executor/rix wants to serve, a surety bond is required.

### **BONDING OPTIONS**

1. If you are a West Virginia resident there are two options:
  - a. If assets are less than \$5,000, bring **another** person who owns or has sufficient equity in **real estate** who is willing to sign your bond as surety. If their real estate is located in another county in West Virginia they need to bring a “justification of surety” from the County Clerk’s Office in that county or,
  - b. you may purchase corporate surety through an insurance agency licensed by the State of West Virginia and conducting business in the State. They will need to appear with you at the time of your appointment to complete the bond form.
2. If bond is necessary and you reside outside of West Virginia corporate surety is required and the amount will be doubled.

### **DISTRIBUTEES OF AN ESTATE (LEGAL HEIRS)– WHEN THERE IS NO WILL - WEST VIRGINIA INTESTATE SUCCESSION LAW**

- a. If the decedent is survived by a spouse and the decedent has no children or descendants of children from another marriage or relationship the surviving spouse inherits **100%** of the estate.
- b. If the decedent is survived by a spouse and they have children together and the decedent also has children from another marriage or relationship, the surviving spouse will inherit **50%** of the estate and all children of the deceased share the remaining **50%**, by representation\*.
- c. If the decedent is survived by a spouse and they have children together and the surviving spouse has children from another marriage or relationship, the surviving spouse inherits **60%** of the estate and all children of the deceased share the remaining **40%**, by representation\*. Children of surviving spouse from a previous marriage or relationship receive nothing.
- d. If no spouse survives the descendants of the decedent share **100%** of the estate, by representation\*.
- e. If no spouse survives, no children or descendants of children survive the surviving parent(s) of the decedent inherit **100%** of the estate.
- f. If no spouse, no children, no descendants of children and no parent(s) survive the descendants of the parents receive **100%** of the estate, by representation\*.

- g. If no spouse, no children, no descendants of children, no parent(s) and no descendants of parents survive the maternal grandparent(s), or their descendants, inherit **50%** and the paternal grandparent(s), or their descendants, inherit **50%**.
- h. If the maternal and the paternal grandparents are all deceased and leave no surviving descendants, the entire estate passes to the State of West Virginia. This is an extremely rare occurrence.

*\*Representation: first-generation descendants of decedent would share equally in the estate. If the decedent is predeceased by one or more first-generation descendants, their share(s) are combined and then divided equally among the second-generation descendants.*

### **PROBATE FEE SCHEDULE**

Your **first** administrative costs are due the day you are appointed estate representative. There are no waivers of fees. However, as stated previously, Costs of administration and bonding are reimbursable from probate estate assets as they may become available. The combined costs depend on whether there is a Will/Codicil and the value of the gross estate.

BOND FEE (if applicable). Payable to the bonding company.

APPOINTMENT FEES: *(WV Code 44-3A-42)* PAYABLE TO JACKSON COUNTY FIDUCIARY SUPERVISOR

<b>Gross Estate</b> (includes joint assets)	<b>Required Fee</b>
Estates up to \$10,000	\$ 25.00
Estates over \$10,000 but not exceeding \$50,000	\$100.00
All Estates over \$50,000	\$175.00
Reopened Estates	\$ 5.00
Notice to beneficiaries (when there's a will) per notice	\$ .50
Notice of Administration (publication fee)	\$ 20.00

RECORDING FEES: PAYABLE TO JACKSON COUNTY CLERK

Wills/Codicils(including orders/depositions)	\$11.00*
Executor/rix Appointments	\$11.00*
Administrator/rix Appointments	\$11.00*
Inventory & Appraisalment of Estate (6.01)	\$11.00*
Settlement of Estate (all applicable forms)	\$11.00*

***(\*up to five pages - \$1.00 will be added for each page thereafter)***

#### MISCELLANEOUS FEES (AFTER PERSONAL REPRESENTATIVE APPOINTMENT)

Proof of Claim (payable to Jackson Co. Fiduciary Supervisor)	\$5.00
THE FOLLOWING PAYABLE TO JACKSON COUNTY CLERK:	
Letter of Administration (with raised seal)	\$2.50 each
General Copies	\$1.50 1 or 2 pages, then \$1.00 each additional page

*Request certified & exemplified (triple seal) copies from the Jackson County Fiduciary Supervisor's Office*

### **GENERAL OVERVIEW OF THE PROBATE PROCESS**

At the county level the estate of a deceased person is administered in a **3-step process**:

1. The **Appointment** of a personal representative, or fiduciary, to manage the estate. The PR is called an Executor/rix if named as such by a Will. They are called an Administrator/rix if there is no Will. If the Will does not name an executor/rix or if someone other than a named executor/rix qualifies they are Administrator/rix CTA.
2. The **Appraisalment** of the estate. When you are appointed you will need to supply information to complete the West Virginia Estate Appraisalment and Inventory forms. The forms identify assets of the decedent that are controlled by the estate, those that are not and their value as of the date of death. They also determine when a Federal Estate Tax Return (Form 706) is required (currently most estates do not exceed the amount of the federal exemption equivalent and therefore are not required to file a 706 (if in doubt see a tax professional). **Important Note:** Assets titled jointly in the name of the decedent "or" another person(s) with "right of survivorship", assets and life insurance paid to *named beneficiaries* and assets designated as "payable on death" are considered **non-probate** and **will not** be controlled by a Will or the estate. Assets titled in this manner pass immediately at death to the co-owner(s), named beneficiary or payee. You **must** complete and return the appraisalment forms **within 90 days**. **Failure to comply with the requirement to return the appraisalment within 90 days constitutes a late fee and may result in legal action and fines.** When the completed appraisalment forms are returned to our office the 6.01 portion will be recorded with the Jackson County Clerk. We will then schedule for publication in the Jackson Herald newspaper the required Notice to Creditors. Publication begins a **60 day period** that allows creditors to file claims against the estate. You will be notified of any claim filed with our office. It is your responsibility as fiduciary to interact with creditors on behalf of the estate.
3. **Settlement** – When the 60 day claim period expires, provided all debts, claims and other issues relative to the estate are paid, provided for and resolved, a **short form settlement (affidavit and waiver of final settlement)** may be submitted. You are provided a short form that must be signed in the presence of a Notary Public. Residuary estate beneficiaries are also required to sign this form in the presence of a Notary. Beneficiaries who have received a specific bequest of money or property are not required to sign. **If the residuary beneficiaries do not agree to sign a short form you are required to submit a proposed final settlement of accounts (receipts and disbursements).** This form is a comprehensive statement of accounts reporting all estate income/activity, all disbursements and the balance available for distribution. **If the estate is insolvent (insufficient assets to fully satisfy all creditors) a proposed final settlement of accounts is required.** Assets of an insolvent estate are distributed among all creditors, pro rata and according to class, as provided by state law (*West Virginia Code 44-2-21 and 44-2-22*).

When you have filed a settlement form our staff will schedule for publication in the Jackson Herald a required Notice of Settlement. Provided no objections are filed the settlement is eligible for approval by the Jackson County Commission on the second Wednesday after the publication of the following month.

If a **short form settlement (Affidavit & Waiver of Final Settlement)** is submitted, assets may be distributed to heirs/beneficiaries after the document has been filed with our office.

If a **proposed final settlement of accounts (Report of Receipts, Disbursements, & Distributions)** is submitted, **do not distribute** any assets until you receive a letter from our office confirming the County Commission approved your accounting.

When the County Commission issues the Order approving a short form or proposed final settlement of accounts the estate is considered closed and you will receive a closing letter stating your appointment and authority as fiduciary is discharged.

Occasionally an estate will have circumstances which may prolong final settlement. Fiduciaries for those estates are required to file interim or annual accountings until the estate can be finalized. You will be notified by mail as a reminder of that requirement. *\*Additional publication/postage/recording fees will be required for interim/annual accountings.\**

Estate representatives are allowed a commission for administering an estate. If the decedent died June 11, 2007 or after (*WV Code 44-4-12a*) the formula for computing the rate of compensation has changed. Our staff can provide you a compensation rate schedule. However a decedent may have altered the amount of compensation by Will.

*As previously stated, the above is a general overview of the probate process and cannot possibly consider every factual situation. Issues can arise that may require you to seek the advice of an attorney or may require assignment of the estate to a Fiduciary Commissioner (Attorney). We strongly advise estate representatives to keep an open line of communication with all persons having a beneficial interest in the estate.*

*If you have any questions regarding this process of estate administration please do not hesitate to call on our staff.*

**Reference Resources: West Virginia Code – Volume 12 – Chapters 41, 42, 43, & 44  
West Virginia Department of Tax & Revenue**