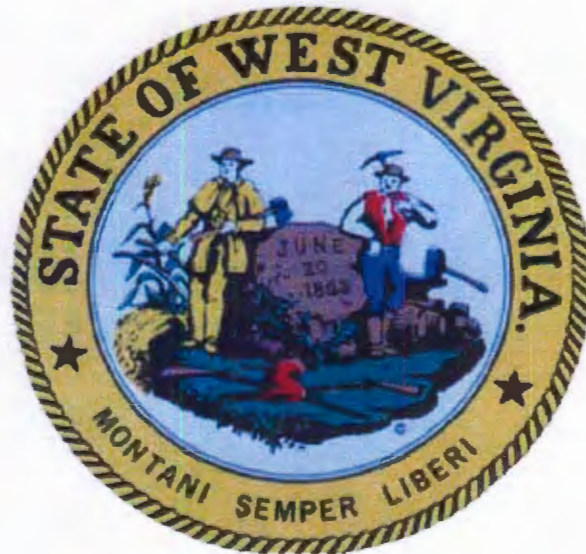


**Administration of Estates
in**

**Monroe County,
West Virginia**



Published by
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Monroe County Clerk

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Warning

Neither the County Clerk nor his or her staff members are attorneys. Therefore, they cannot provide legal advice. This book is intended to assist in the administration of an estate. If you should have a legal question, we recommend you contact an attorney. If you need assistance in completing your paperwork, this office will gladly assist you.

Section 1. Introduction

This booklet has been prepared to assist in the process of administering estates in Monroe County, West Virginia. The information provided herein is not intended to provide legal advice but simply to provide an overview of the procedures required in administrative probate of a decedent's estate. We hope you find the information contained in this booklet useful and helpful in understanding the process of administering an estate.

Section 2. County Commission

The County Commission of Monroe County has jurisdiction over probate matters in Monroe County, West Virginia. The Office of the County Commission was established by the Constitution of the State of West Virginia. The County Commission consists of three elected individuals with one individual representing each of the three magisterial districts of Monroe County. Commissioners serve a six year term and are elected on a rotating basis.

Section 3. County Clerk

The Office of the County Clerk was also established by the Constitution of the State of West Virginia. This office is also referred to as the Clerk to the Monroe County Commission. The Constitution authorizes the Clerk to act in place of the County Commission when such Commission is in vacation (not in session). The County Clerk is an elected position who serves a six year term.

Section 4. Definitions – The following terms are often used in the administration of an estate.

- 1. Probate of an estate:** a proceeding that is initiated by an interested person with the Office of the County Clerk for the appointment of a personal representative and admitting a Last Will and Testament to record or the determination of heirs to an estate when someone dies without leaving a Last Will and Testament. If a person dies without having a Will, the person is said to have died intestate. Intestate is defined as "without a Will"
- 2. Administration of an estate:** The process that the personal representative of an estate goes through when administering an estate. Duties and responsibilities included in the administration process include; conducting an inventory of assets owned by the person that died, securing such inventory until the assets can be distributed, pay any legitimate debts owed by the person that died, distribute the assets of the estate in accordance with a Last Will and Testament or in accordance with the intestate laws of the State of West Virginia and to prepare a final accounting of the estate that includes any and all assets of the estate and to whom the assets were distributed to.

3. **Estate:** The property owned by the person that died. This property could include real estate, vehicles, bank accounts, certificates of deposits, stocks, bonds, machinery, jewelry, tools, etc.
4. **Probate assets:** Assets owned by the person that died that were in his or her sole name.
5. **Non-probate assets:** Assets owned by the person that died that were jointly owned with someone else and do not pass through probate.
6. **Child:** a child who is a legitimate child, an adopted child or an illegitimate child.
7. **Testate:** Having died with a Last Will and Testament.
8. **Intestate:** Having died without a Last Will and Testament.
9. **Personal Representative:** The person appointed to administer an estate (often referred to as an executor, executrix, administrator or administratrix).
10. **Executor:** The personal representative of an estate who is of the male gender appointed by the person that died in their Last Will and Testament.
11. **Executrix:** The personal representative of an estate who is of the female gender appointed by the person that died in their Last Will and Testament.
12. **Administrator:** The personal representative of an estate who is of the male gender when the person that died didn't leave a Last Will and Testament.
13. **Administratrix:** The personal representative of an estate who is of the female gender when the person that died didn't leave a Last Will and Testament.
14. **Testator:** A female who prepares a Last Will and Testament.
15. **Testor:** A male who prepares a Last Will and Testament.
16. **Estate Appraisalment and Nonprobate Inventory Form:** This form is to be completed by the personal representative of the estate. Information required to be reported on this form are probate and nonprobate assets. The County Clerk's Office will provide the personal representative with this form at the time such personal representative is appointed.
17. **Tangible Property:** Personal property is defined as property that you can touch such as automobiles, goods and personal effects.
18. **Beneficiary:** A person who inherits from a Last Will and Testament.
19. **Heir:** A person who inherits according to the laws of intestacy.
20. **Claim:** A debt filed against the estate of the person who died. Claims must be filed with the Office of the County Clerk and on forms prescribed by such office.
21. **Appointment and Qualification Forms:** These are forms issued to the personal representative by the Office of the County Clerk. These forms provide proof that the person named on such form has the authority to act on behalf of the estate and perform the duties and responsibilities required of such personal representative.
22. **Fiduciary:** A person or institution that manages and administers money and other assets of another. A fiduciary includes trustee, receiver, custodian, guardian, executor, administrator or personal representative.
23. **Inheritance Tax:** A tax imposed on the privilege of receiving property from a decedent's estate.
24. **Decedent:** A deceased person
25. **Descendant:** One who is in the bloodline of an ancestor (Descendants include child, grandchild, great grandchild, etc.)

26. Domicile: The place where a person has physically been present with the intention to make the place a permanent home.

27. Certificates of Appointment: A document issued to the personal representative by the County Clerk that provides official proof that the personal representative has authority to administer and act on behalf of the estate.

28. Final Settlement Form (Long Form): A final accounting of an estate prepared by the personal representative that reflects the assets of an estate as well as the expenditures of such estate. This form is filed with the Clerk's Office and presented to the County Commission for approval or rejection.

29. Final Settlement Form (Waiver Form): This form can be filed in lieu of a "Final Settlement Form (Long Form)" when there is only one beneficiary to the estate or when all beneficiaries agree to sign this form and waive any accounting of the estate by the personal representative.

30. Federal Estate Tax Return: The Internal Revenue Service requires the filing of this form (Form 706) for the estate of every citizen of the United States whose gross estate at the time of death was larger than the amount of the federal exemption equivalent. The exemption equivalents are:

2006 through 2008: \$2,000,000.00

2009: \$3,500,000.00

Any estate which is required to file a Federal Estate Tax Return will also be required to file a West Virginia Estate Tax Return. For further information concerning federal estate tax requirements, contact the Internal Revenue Service at 1-800-829-1040.

31. Fiduciary Commissioner: In accordance with WV Code, Fiduciary Commissioners are appointed by the Monroe County Commission. Monroe County has two Fiduciary Commissioners. Their responsibilities and duties are to assist the personal representative with placing the "Notice to Creditors" in the local newspaper and assisting the personal representative with preparing the final settlement (accounting) of an estate. Once the "Appraisal and Inventory" booklet is returned to the County Clerk by the personal representative, and the estate has more than one heir or beneficiaries, and the total of the probate assets of the estate are in excess of \$100,000.00, the Clerk is required to refer the estate to a Fiduciary Commissioner. Another responsibility of a Fiduciary Commissioner is to act as a judge when a dispute arises among the heirs of an estate. In the event of a dispute, the Fiduciary Commission can elect to hold a hearing, take testimony and make a recommendation to the County Commission. A Fiduciary Commission may not charge a fee greater than \$300.00 plus expenses. If a Fiduciary Commission is required to spend additional time in dealing with an estate, such Commissioner can apply to the County Commission to approve a fee greater than \$300.00. The fee for the services of a Fiduciary Commissioner can be paid from the estate funds.

SECTION 5. WHO ARE THE HEIRS TO AN ESTATE IF THE PERSON THAT PASSED DID NOT HAVE A LAST WILL AND TESTAMENT.

In accordance with WV Code 42-1-3 and 42-1-3a, when someone passes and they do not have a Last Will and Testament, the following is the order that is to be followed as to who will be an heir to the estate.

- 1) If the person that passed was married and had no children from a previous marriage or other source than the marriage with the surviving spouse, then the surviving spouse would be the sole heir to the estate.
- 2) If the person that passed was married and did have children from a previous marriage, the spouse would be an heir as well as all of the children of the person that passed.
- 3) If the person that passed was not married, his or her children would be the heirs to the estate.
- 4) If the person that passed was not married, had no children, then his or her surviving parents would be the heirs to the estate.
- 5) If the person that passed was not married, had no children, and his or her parents did not survive him or her, then the surviving siblings of the person that passed would be the heirs to the estate.
- 6) If the surviving spouse of the person who passed had children from a previous marriage or other source than the marriage with the deceased, the surviving spouse's share of the estate will be decreased.

SECTION 6. THE STEPS OF ADMINISTERING AN ESTATE

The following is a summary of the steps that take place in the administration of an estate.

- 1) A person who has left a Last Will and Testament generally names a personal representative of his or her estate in their Will. This personal representative needs to bring the original Will, unopened, to the County Clerk's Office. Failure to deliver a Will to the Clerk's Office within 30 days from the date of death is classified as a misdemeanor and is punishable by law. In the event the person that died didn't have a Last Will and Testament, the following order shall be followed in reference as to who has priority as serving such personal representative:
 - a. surviving spouse
 - b. if no surviving spouse, surviving children
 - c. if no surviving children, surviving parents
 - d. if no surviving parents, surviving brothers or sisters
 - If there are more than one surviving children, or
 - More than one surviving parent, or
 - More than one surviving brothers or sisters
 - Those surviving children or parents or brothers or sisters or whichever the case may be, must decide on who is going to serve.

Those not wanting to serve must sign a "Nomination and Waiver Form" waiving their right to serve. The County Clerk's Office will provide these forms.

- 2) Once it is determined who is going to serve as the personal representative, the Clerk's Office completes the necessary paperwork to appoint an individual as a personal representative.
- 3) If the person that died didn't leave a Last Will and Testament, the personal representative will be required to post a bond. The County Clerk's Office basically accepts two types of bonds; a surety bond from any business authorized to perform bonding in the State of West Virginia and a Personal Recognizance Bond. The Clerk's Office normally uses Bill Shiflet Insurance, located in Union and Monroe Insurance Agency, also located in Union. The purpose of bond is to secure the funds of an estate if the personal representative should mismanage such funds.
- 4) Once the initial paperwork is completed, the personal representative is given "Qualification Certificates" and an "Appraisal and Inventory" form. The personal representative has 90 days from the date they are appointed to complete this form.
- 5) Once the personal representative completes the "Appraisal and Inventory" form, the personal representative must return it to the Clerk's Office for recordation.
- 6) Once the Clerk receives the "Appraisal and Inventory" booklet, the Clerk will review the inventory booklet and the number of heirs to the estate. If there are more than one heir to an estate and the total of probate assets of the estate total \$100,000.00 or more (excluding real estate), the law requires the estate to be referred to a Fiduciary Commissioner. The fee to record the Appraisal and Inventory can be obtained by contacting the County Clerk's Office.
- 7) If the estate is required to be referred to a Fiduciary Commissioner, said Commissioner is required to place a legal notice in the Monroe Watchman newspaper for two consecutive weeks. This basic purpose of this notice is to provide notice that an estate has been opened and anyone having a claim (or a bill) against the estate has 90 days to file such claim. The notice also provides the name and address of the personal representative. The calculating of the 90 day period starts from the first time the notice appears in the paper. Saturdays, Sundays and holidays are included when calculating the 90 day period.
- 8) If the estate doesn't get referred to a Fiduciary Commission, the County Clerk is responsible for placing this legal ad in the newspaper. You are required to pay the fee to place the legal notice in the newspaper at the time the "Appraisal and Inventory" is returned to the County Clerk. The fee to publish this ad can be obtained by contacting the County Clerk's Office.
- 9) Once the 90 day period has expired, the personal representative can file the "Final Settlement" of the estate. This settlement must reflect the assets of the estate as well as to whom the assets were distributed. If the estate has been referred to a Fiduciary Commissioner, the Commissioner will prepare this settlement for you based on information you provide to the Commissioner.

If the estate hasn't been referred to a Fiduciary Commissioner, the personal representative is responsible for preparing and filing the settlement. The fee to record such settlement can be obtained by contacting the County Clerk's Office.

- 10) Once the final settlement is recorded in the County Clerk's Office, the settlement is presented to the County Commission at their next scheduled meeting. If the settlement is deemed complete and accurate by the Commission, the final settlement will be approved by such Commission. If there are questions with the final settlement, the personal representative will be notified.

SECTION 7: ORDER TO PAY ESTATE DEBTS AND CLAIMS IF THERE ARE NOT ENOUGH ASSETS TO PAY SUCH DEBT OR CLAIM.

In some cases when administering an estate, the personal representative will find the amount of claims or debts against an estate are greater than the assets of the estate. In this case, WV Code is very specific as to which claims have priority over others. Listed below is the order in which debts or claims are to be paid when an estate has more debts or claims than assets.

- 1) Cost 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 the laws of the State of WV
- 6) Reasonable and necessary medical and hospital expenses of last illness of decedent, including compensation for person attending to the decedent during his or her last illness; and
- 7) All other claims

Note: If the applicable assets of an estate are insufficient to pay all claims, those claims within that class shall be paid on a pro-rata basis. No preference shall be given in the payment of any claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Note: If the funeral expenses of a decedent were provided for by a pre-need contract or irrevocable trust, neither the decedent's estate nor the decedent's surviving spouse has an obligation for the payment of such funeral expense, unless the heirs have changed the funeral arrangements resulting in an increase in the bill.

SECTION 8: SUMMARY OF RECORDING FEES:

Document recording fees are set by the West Virginia Legislature. Several factors determine the amount of the recording fees that will be charged by the County Clerk's Office. These fees are established by the West Virginia Legislature. Some of these factors include; whether or not the individual that passed left a Last Will and Testament, the value of the assets of the estate and how many heirs there are to the estate, the number of pages each document contains, and whether or not the estate will be referred to a Fiduciary Commissioner or not.

SECTION 9: QUESTIONS AND CONCLUSION

This concludes the general summary of the estate procedures. As mentioned at the beginning of this booklet, none of the information contained in this booklet is to be construed as legal advice. If you should have legal questions or need legal advice, we highly recommend an attorney. Upon request, the County Clerk's Office will provide you with a list of all the attorneys practicing law in Monroe County. The County Clerk's Office is here to assist you in anyway we can through the estate process. Please contact our office at 772-3096 with any questions.