

“Simplified Ancillary Administration in West Virginia  
(and Some Other Probate Reform)”©

FINANCIAL AND ESTATE PLANNING SEMINAR

Edgewood Country Club, Charleston, West Virginia

May 16, 2019

- I. The Regular Session of the 2019 West Virginia Legislature was noteworthy in passing significant probate reform bills.
  - A. Starting in 2016, a state-wide probate reform initiative was started by the West Virginia Law Institute at West Virginia University College of Law, involving:
    1. County Clerks Association; and
    2. West Virginia State Bar Probate Committee.
  - B. A “Wish List” of reform issues has been developed from ongoing discussions with the County Clerks Association.
  - C. In 2019, impetus for reform was generated by reaction of the general public and the legal community to a decision of the West Virginia Supreme Court of Appeals in a case involving rights of an abused child in an intestate estate.
    1. A corrective bill defining child inheritance rights was drafted by the Probate Committee.
    2. Two other bills from the Wish List were also prepared by the Probate Committee after receiving positive feedback from the leadership of the West Virginia Senate and House.
    3. Three bills were simultaneously introduced in the House and the Senate in the 2019 Regular Session.
    4. All three bills were successfully passed, with minor revisions during the legislative process.
  - D. The probate bills are:
    1. House Bill 2740 (Children’s rights in inheritance);
    2. House Bill 2746 (Closing stale estates); and
    3. House Bill 2759 (Ancillary administration by affidavit).
- II. House Bill 2740 (Children’s rights in inheritance).
  - A. Background to the Problem.
    1. Hall v. Hall, 818 S.E.2d 838, 2018 WL 2186545 (WV 2018).
    2. Basic facts: Biological child was abused by her father. Father’s parental rights were terminated in an abuse and neglect proceeding. Thereafter, father died possessing property, without a

will, unmarried, and with no other children. Child of the decedent claimed to be the sole interstate heir. The decedent's parents also claimed to be the heirs, arguing that the termination of parental rights likewise terminated the child's right to inheritance.

3. Question presented to the Court is "whether the biological child of a deceased parent whose parental rights were terminated prior to his death is a descendant of the parent for purposes of the descent and distribution provisions of the West Virginia Code, W. Va. Code § 42-1-1 et seq., when the parent dies intestate."
  4. The Technical Legal Problem: Under W. Va. Code § 42-1-3a, the intestate estate passes to the decedent's surviving "descendants." W. Va. Code § 42-1-1(5) defines "Descendant" to mean "all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code." Nowhere in the West Virginia Probate Code is the word "child" defined.
  5. Answer of majority in 3-to-2 decision is that "such a child does not meet the statutory definition of a descendant and, therefore, does not qualify to inherit under the statutory provisions pertaining to descent and distribution." 8181 S.E.2d at 838.
  6. Majority determined that because a "terminated parent fails to meet the definition of 'parent' with respect to the subject child, the child is not a 'descendant' of that biological parent." 818 S.E.2d at 847.
  7. Result was perceived as harsh: "[T]his disturbing decision piles even more hardship on this child whose life was already severely damaged by parental abuse and neglect." 818 S.E.2d at 849-50 (*Workman dissent*).
- B. Vitals of H.B. 2740.
1. Introduced in House on January 30, 2019.
  2. Completed legislative action when House concurred to Senate floor amendment on March 1, 2019.
  3. Signed by governor on March 25, 2019.
  4. In effect 90 days from passage (May 30, 2019).
- C. H.B. 2740 overturns the Hall decision.
1. Definition of "parent" is revised to add that "a parent is barred from inheriting from or through a child of the parent pursuant to the provisions of § 42-1-11 of this code." W. Va. Code § 42-1-1(26).
  2. New Code § 42-1-11 is added:  
*When a parent may not inherit from a child.*  
*(a) A parent is barred from inheriting from or through a child of the parent if: (1) The parent's parental rights were terminated by court order and the parent-child relationship has not been judicially reestablished; or (2) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the*

*parent could have been terminated under the law of this state other than this article on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.*

*(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.*

3. New Code § 42-1-12 is added:

*When a child may inherit from a parent whose parental rights have been terminated.*

*If a parent is barred from inheriting under the provisions of W. Va. Code § 42-1-11, the child may still inherit from or through the barred parent as long as a parent-child relationship does not exist between the child as an adoptee with another person as the adoptee's adoptive parent.*

III. House Bill 2746 (Closing stale estates).

A. Background to the Problem.

1. Estates are easily opened but some are never closed.
2. Estates are not closed because:
  - a. Limited assets do not merit personal representative's effort or expense to close it.
  - b. There is no real penalty in failing to close an estate. County Clerk and County Commission have limited statutory authority or resources to enforce closing.
  - c. Personal representatives die in office, and their successors do not understand their duties.
  - d. Personal representatives move away and do not understand their duties.
  - e. Fraud is committed.
3. There is a massive backlog of unclosed estates in every county in West Virginia.

B. Vitals of H.B. 2746.

1. Introduced in House on January 30, 2019.
2. Completed legislative action when passed by Senate on February 28, 2019.
3. Signed by governor on March 25, 2019.
4. In effect 90 days from passage (May 29, 2019).
5. County Clerk and County Commission now have a semi-annual procedure to close stale or unprogressed estates.
  - a. Applies to both Fiduciary Commissioner and Fiduciary Supervisor counties.
  - b. New Code § 44-2-19a is added (for Commissioner counties), and revisions are made to Code § 44-3A-24 (for Supervisor counties).

- C. New procedure in closing stale or unprogressed estates.
1. Semi-annually, County Clerk or Fiduciary Supervisor reports to County Commission a List of delinquent or unprogressed estates.
    - a. Unprogressed estate is one that has been opened for 3 years or more with no progress or unsatisfactory progress.
    - b. Reports are made by:
      - (1) January 5; and
      - (2) July 5.
  2. After receiving the semi-annual reports, County Commission enters an Order to Show Cause why the personal representative (PR) should not be removed from office or the estate administratively closed.
  3. County Clerk or Fiduciary Supervisor mails the Order to Show Cause to:
    - a. PR; and
    - b. Heirs, creditors, surety, and interested persons.
  4. Personal representative has 30 days to respond to the Order and file a Verified Statement.
    - a. PR may cure any delinquency.
    - b. Otherwise PR must show good cause to stay in office.
    - c. Other interested parties may file responses.
  5. Report and Notice to the Response.
    - a. County Clerk or Fiduciary Supervisor evaluates the response or failure of a response after the 30 days.
    - b. County Clerk or Fiduciary Supervisor makes a Report and Notice to the County Commission for each specific estate, which may be:
      - (1) No Good Cause Shown; or
      - (2) Good Cause Shown.
    - c. County Clerk or Fiduciary Supervisor schedules a hearing before the County Commission on the Clerk's Report.
  6. County Clerk or Fiduciary Supervisor mails the Report and Notice with the set hearing date to:
    - a. PR; and
    - b. Heirs, creditors, surety, and interested persons.
  7. Notice of a Hearing on the Order to Show Cause against Delinquent or Unprogressed Estates is published locally by the County Clerk or Fiduciary Supervisor.
    - a. Notice is published as a Class I-0 legal advertisement on the first Monday of the next month after the date of the presentation by the County Clerk or Fiduciary Supervisor of the Reports on the estates to the County Commission.
    - b. Hearing date is to be not less than 30 days from the date of the Reports are mailed by the County Clerk or Fiduciary Supervisor to the personal representatives and interested

- parties.
- 8. Hearing before County Commission is held after 30 days.
  - a. PR or interested persons may attend and be heard in support or opposition.
  - b. County Commission enters an order, which may:
    - (1) Administratively close the estate;
    - (2) Allow PR to continue administration and close the estate; or
    - (3) Remove and replace PR with another fiduciary who will close the estate.
- 9. Ruling of the County Commission may be appealed to Circuit Court.

IV. House Bill 2759 (Ancillary administration by affidavit).

A. Background to the Problem.

- 1. The only statutorily-authorized procedure for administration of the West Virginia real estate of a nonresident decedent is full ancillary administration.
  - a. Personal representative must qualify in person in the local courthouse.
  - b. All administration documents must be filed.
- 2. Many nonresidents own fractional mineral interests with de minimis value, and costs of full administration can exceed the value of the interest.
- 3. Given these burdens, some county clerk's offices or practitioners designed local procedures or practices for ancillary administration *not authorized by statute*, including:
  - a. Foreign heirship affidavits; and
  - b. Foreign wills attached as exhibit to a deed.
- 4. Local procedures or practices vary greatly, and without standardization there is a risk that titles to real estate will be disputed or rejected by title attorneys.
- 5. Real estate titles are important, and the probate procedure should allow such titles to be cleared and made marketable.

B. Vitals of H.B. 2759.

- 1. Introduced in House on January 30, 2019.
- 2. Completed legislative action when House concurred to Senate floor amendment on March 1, 2019.
- 3. Signed by governor on March 25, 2019.
- 4. In effect 90 days from passage (May 30, 2019).
- 5. Code § 41-5-13 (dealing with testacy) and § 44-1-4 (dealing with intestacy) are amended, and new Code § 44-1-14b (dealing with publication and notice to parties) is added.
- 6. New statewide Ancillary Administration Affidavit forms are included in the statute. WOW! TALK ABOUT REFORM!

- C. There are now two statutory options for ancillary administration of West Virginia real estate of a nonresident decedent:
1. Full ancillary administration can still be done for both testate and intestate estates, if desired.
    - a. With a will, the personal representative (PR) may appear and file an authenticated copy of the foreign will in the County Commission.
    - b. Without a will, an interested person may appear and open an intestate estate by filing an affidavit of heirs.
    - c. Person desiring appointment as PR, with or without will, must appear in person in West Virginia before the County Commission and qualify.
    - d. Normal administration will be done with filing of Appraisement and Inventory, annual accountings, and a long or short form settlement.
  2. Ancillary administration can now be done by affidavit and without appointment of any personal representative in West Virginia, which applies to:
    - a. Testate estates (with a will); and
    - b. Intestate estates (without a will).
- D. Ancillary Testate administration by Affidavit and without appointment of a fiduciary.
1. Applies only if:
    - a. Decedent was a nonresident of West Virginia;
    - b. A will has been probated in another state;
    - c. There is only real estate in West Virginia; and
    - d. No appointment of PR to administer real estate in West Virginia is necessary.
  2. Authenticated copy of the foreign will is recorded in the county.
  3. Foreign PR or other interested person executes and files an Affidavit, set forth in the statute, establishing:
    - a. Description of the real estate in West Virginia with assessed value and fair market value;
    - b. Decedent died testate a nonresident of West Virginia;
    - c. Authenticated copy of the foreign will is recorded in the county; and
    - d. Names and addresses of:
      - (1) PR; and
      - (2) Devisees or beneficiaries under the Will.
  4. County Clerk records and indexes the Affidavit and collects fee.
  5. No bond, security, or oath is required of the foreign PR.
  6. No fiduciary is appointed in West Virginia.
  7. If original foreign will does not need to be probated under foreign law, the original will can be probated or recorded in West Virginia.
  8. Notice by publication and by mail is made for the ancillary testate

- administration without appointment (further described below).
- E. Ancillary Intestate administration by Affidavit and without appointment of a fiduciary.
1. Applies only if:
    - a. Decedent was a nonresident of West Virginia;
    - b. Decedent died without any will;
    - c. There is only real estate in West Virginia;
    - d. No appointment of PR to administer real estate in West Virginia is necessary; and
    - e. More than 60 days have passed since the decedent's death and no PR has been appointed in West Virginia.
  2. Interested person, including the appointed foreign PR, executes and files an Affidavit, set forth in the statute, establishing:
    - a. Description of the real estate in West Virginia with assessed value and fair market value;
    - b. Decedent died intestate a nonresident of West Virginia without any will probated in West Virginia or any other state;
    - c. More than 60 days have passed since the decedent's death and no PR has been appointed in West Virginia; and
    - d. Names and addresses of the decedent's heirs at law under West Virginia law.
  3. County Clerk records and indexes the Affidavit and collects fee.
  4. No bond, security, or oath is required of the foreign PR.
  5. No fiduciary is appointed in West Virginia.
  6. Notice by publication and by mail is made for the ancillary intestate administration without appointment (further described below).
- F. Notice of the ancillary testate or intestate filing without administration.
1. Within 30 days of the filing of the foreign will or affidavit, County Clerk publishes a Notice as class II legal advertisement in local paper.
  2. Notice states:
    - a. Name and address of decedent;
    - b. Name and address of County Commission of the filing;
    - c. Name and address of the party filing the foreign will or affidavit and relationship to the decedent;
    - d. Date of first publication; and
    - e. Statement that interested persons may object to the filing or the absence of administration within 60 days after first publication or 30 days after service of notice, whichever is later.
  3. Party filing the foreign will or affidavit must serve within 30 days of the first publication a Notice by mail or personal service to:
    - a. Surviving spouse, if any;
    - b. PR under the will, if any;
    - c. Devisees or beneficiaries under the will, if any;

- d. West Virginia heirs at law; and
  - e. Any known creditors residing or located in West Virginia or who may claim a lien against the West Virginia real estate.
4. Interested persons may file an objection with the County Commission within 60 days after first publication or 30 days after service of notice, whichever is later.
    - a. Untimely objections are barred.
    - b. If timely objection is filed, County Commission schedules a hearing and can order relief, including directing full ancillary administration.
  5. County Clerk collects cost of the publication.
  6. After the publication deadline passes, objections are barred and the ancillary process is complete.

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# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENROLLED**

**House Bill 2759**

BY DELEGATE SHOTT

(BY REQUEST OF THE WEST VIRGINIA STATE BAR

PROBATE COMMITTEE)

[Passed March 1, 2019; in effect ninety days from  
passage.]

1 AN ACT to amend and reenact §41-5-13 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §44-1-4 of said code; and to amend said code by adding thereto a  
3 new section, designated §44-1-14b, all relating to the administration of estates and  
4 providing for the ancillary administration of West Virginia real estate owned by  
5 nonresidents by affidavit and without administration.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 41. WILLS.**

### **ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.**

#### **§41-5-13. Ancillary administration; Probate or recordation of foreign will.**

1 (a) Where a will relative to any personalty or real estate located or situate within this state  
2 has been proved or probated outside of this state by another state or jurisdiction within the United  
3 States of America, an authenticated copy thereof and the certificate of probate thereof, by such  
4 other state or jurisdiction may be offered for probate in this state, in accordance with the provisions  
5 of §41-5-5 or §41-5-10 of this code, and an ancillary personal representative, executor, or  
6 administrator, as the case may be, may be appointed in this state with like effect and with the  
7 same powers, authorities, duties, and liabilities as are given to domiciliary personal  
8 representatives, executors, and administrators under the provisions of this code.

9 (b) Where a will, relative only to real estate situate within this state, has been proved or  
10 probated outside of this state by another state or jurisdiction within the United States of America  
11 and no appointment of an ancillary personal representative, executor, or administrator to  
12 administer the real estate within this state is necessary for any proper purpose, an authenticated  
13 copy thereof and the certificate of probate thereof may be admitted to record in any county of this  
14 state in which the real estate is situate by any person having an interest in the real estate,  
15 including a personal representative who has qualified in the other state or jurisdiction.

16 (1) The interested person or personal representative shall also execute and tender for  
17 recording in the county an affidavit setting forth in substance:

18 (A) A description of the real estate owned by the decedent at the time of his or her death  
19 situate within the county in this state where the affidavit is to be recorded together with its  
20 assessed value for tax purposes and its fair market value at the date of death of the decedent;

21 (B) That the decedent died testate a nonresident of this state and that the authenticated  
22 copy of the will and the certificate of probate of the other state or jurisdiction is being or has been  
23 recorded in the county; and

24 (C) The names and last known addresses of the personal representative of the decedent's  
25 estate, if any, and of the decedent's devisees or beneficiaries who are devised or given the real  
26 estate under the will.

27 (2) The clerk of the county commission shall record and index the affidavit, together with  
28 the authenticated copy of the will and the certificate of probate, in the same manner and upon the  
29 same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of  
30 probate administration with appointment of a personal representative. The clerk of the county  
31 commission may require a certified copy of the decedent's death certificate or other proof of death  
32 and residence prior to fulfilling the clerk's responsibilities under this chapter.

33 (3) A bond, security, or oath is not required when no appointment of an ancillary personal  
34 representative, executor, or administrator is made under the provisions of this section.

35 (c) A document substantially in the following form may be used as the affidavit provided in  
36 subsection (b) of this section with the effect as prescribed in this section:

37 **THE COUNTY COMMISSION OF \_\_\_\_\_ COUNTY, WEST VIRGINIA**

38 **IN RE: THE ESTATE OF \_\_\_\_\_**

39 **DOD: \_\_\_\_\_**

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**AFFIDAVIT FOR ANCILLARY ADMINISTRATION  
OF WEST VIRGINIA REAL ESTATE  
WITHOUT APPOINTMENT  
(TESTATE)**

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STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:  
I, \_\_\_\_\_, whose address is \_\_\_\_\_  
\_\_\_\_\_  
being first duly sworn, upon oath and under penalty of perjury, do depose and say as  
follows:

1. The decedent, \_\_\_\_\_, died testate (with a will) on \_\_\_\_\_ (date of death), a resident of \_\_\_\_\_ County, State of \_\_\_\_\_.

2. On \_\_\_\_\_ (date), the following person(s) was/were appointed as the personal representative of the Estate of \_\_\_\_\_ by the \_\_\_\_\_ (name of foreign court), of \_\_\_\_\_ (county), \_\_\_\_\_ (state), being case number \_\_\_\_\_, if applicable:

a. Name:

\_\_\_\_\_

Address: \_\_\_\_\_

b. Name:

\_\_\_\_\_

Address: \_\_\_\_\_

3. An authenticated copy of the Last Will and Testament dated \_\_\_\_\_ and the certificate of probate of such other state or jurisdiction is being furnished herewith for recording in this County.

68 4. The Decedent died owning and possessing the following real estate  
69 situate in West Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

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71 5. Pursuant to the provisions of the Last Will and Testament of  
72 \_\_\_\_\_, the decedent devised the aforesaid real estate to the  
73 following beneficiaries of the estate:

74 a. Name: \_\_\_\_\_

75 Address: \_\_\_\_\_

76 Relationship to Decedent: \_\_\_\_\_

77 Share or percentage: \_\_\_\_\_

78 b. Name: \_\_\_\_\_

79 Address: \_\_\_\_\_

80 Relationship to Decedent: \_\_\_\_\_

81 Share or percentage: \_\_\_\_\_

82 c. Name: \_\_\_\_\_

83 Address: \_\_\_\_\_

84 Relationship to Decedent: \_\_\_\_\_

85 Share or percentage: \_\_\_\_\_

86 d. Name: \_\_\_\_\_

87 Address: \_\_\_\_\_

88 Relationship to Decedent: \_\_\_\_\_

89 Share or percentage: \_\_\_\_\_

90 6. The Estate of \_\_\_\_\_, the decedent, will be/has been fully  
91 administered by the domiciliary personal representative under the domiciliary  
92 proceedings in the other state or jurisdiction. No appointment of an ancillary  
93 personal representative to administer the decedent's real estate within the State  
94 of West Virginia is necessary for any proper purpose.

95 7. I have personal knowledge of the above facts and am interested in the  
96 Estate of \_\_\_\_\_, the decedent, as the ( ) acting domiciliary  
97 personal representative, ( ) surviving spouse, ( ) beneficiary under the  
98 decedent's will, ( ) heir at law, or ( ) other \_\_\_\_\_  
99 (describe relationship or interest). [Check one]

100

101 \_\_\_\_\_  
102 Signature of Affiant

103

104 Taken, subscribed, and sworn to before me the undersigned authority by  
105 \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

106 {seal}

107 My Commission expires: \_\_\_\_\_

108 \_\_\_\_\_  
109 Notary Public

110

111 (d) When the authenticated copy of the will and the certificate of probate is so offered, as  
112 provided in subsection (a) of this section, the county commission, or the clerk thereof in the  
113 vacation of the commission, to which or to whom it is offered, shall presume, in the absence of  
114 evidence to the contrary, that the will was duly executed and admitted to probate as a will of  
115 personalty in the state or country of the testator's domicile, and shall admit the copy to probate  
116 as a will of personalty in this state; and if it appears from the copy that the will was proved in the  
117 foreign court of probate to have been so executed as to be a valid will of land in this state by the  
118 laws thereof, the copy may be admitted to probate as a will of real estate. But any person

119 interested may, within one year from the time the authenticated copy is admitted to record, and  
120 so probated, upon reasonable notice to the parties interested, object to the same and have the  
121 order admitting the same to probate in this state set aside, upon due and satisfactory proof that  
122 the authenticated copy was not a true copy of the will, or that the probate of the will has been set  
123 aside by the court by which it was admitted to probate, or that the probate was improperly made.

124 (e) Notwithstanding anything in this section to the contrary, where an original will of a  
125 nonresident decedent exists but has not been proved or probated outside of this state by another  
126 state or jurisdiction within the United States of America because the provisions of the laws of the  
127 state or jurisdiction do not require the proof or probate of the will, the original of the will may be  
128 offered for probate in this state as provided in subsection (a) of this section or may be admitted  
129 to record as provided in subsection (b) of this section.

## **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

### **ARTICLE 1. PERSONAL REPRESENTATIVES.**

#### **§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.**

1 (a) When a person dies intestate the jurisdiction to hear and determine the right of  
2 administration of his or her estate shall be in the county commission or clerk thereof during the  
3 recess of the regular sessions of the county commission which would have jurisdiction as to the  
4 probate of his or her will, if there were one. Administration shall be granted to the distributees who  
5 apply therefor, preferring first the husband or wife, and then such of the others entitled to  
6 distribution as the county commission or clerk shall see fit. If no distributee apply for administration  
7 within 30 days from the death of the intestate, the county commission or clerk may grant  
8 administration to one or more of the creditors of the decedent, or to any other person who shall  
9 be fit.

10 (b) Notwithstanding the provisions of subsection (a) of this section:

11 (1) Any person having an interest in real estate situate in this state that was seized and  
12 possessed by a decedent who was a nonresident of this state and who has died intestate without  
13 any will, including a personal representative who has qualified in another state or jurisdiction, for  
14 which no appointment of an ancillary personal representative or administrator to administer the  
15 real estate within this state is necessary for any proper purpose may execute and tender for  
16 recording in the county an affidavit setting forth in substance:

17 (A) A description of the real estate owned by the nonresident decedent at the time of his  
18 or her death situate within the county where the affidavit is to be recorded together with its  
19 assessed value for tax purposes and its fair market value at the date of death of the decedent;

20 (B) That the nonresident decedent died intestate without any will presented or probated in  
21 this state or in any other state or jurisdiction;

22 (C) That more than 60 days have passed since the death of the decedent and no personal  
23 representative or administrator of the decedent's estate has been otherwise appointed in this  
24 state for any proper purpose; and

25 (D) The names and last known addresses of the decedent's heirs at law determined under  
26 the laws of this state entitled to the real estate situate in this state.

27 (2) The clerk of the county commission shall record and index the affidavit in the same  
28 manner and upon the same fees as affidavits of heirs are recorded and indexed in case of  
29 intestate administration with appointment of a personal representative. The clerk of the county  
30 commission may require a certified copy of the decedent's death certificate or other proof of death  
31 and residence prior to fulfilling the clerk's responsibilities under this chapter.

32 (3) A bond, security, or oath is not required when no appointment of an ancillary personal  
33 representative or administrator is made under the provisions of this section.

34 (c) A document substantially in the following form may be used as the affidavit provided in  
35 subsection (b) of this section with the effect as prescribed in this section:

36 THE COUNTY COMMISSION OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

37 IN RE: THE ESTATE OF \_\_\_\_\_

38 DOD: \_\_\_\_\_

39 AFFIDAVIT FOR ANCILLARY ADMINISTRATION

40 OF WEST VIRGINIA REAL ESTATE

41 WITHOUT APPOINTMENT

42 (INTESTATE)

43

44 STATE OF \_\_\_\_\_,

45 COUNTY OF \_\_\_\_\_, to-wit:

46

47 I, \_\_\_\_\_, whose address is \_\_\_\_\_

48 \_\_\_\_\_, being first

49 duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

50

51 1. The decedent, \_\_\_\_\_, died on

52 \_\_\_\_\_ (date of death), a resident of \_\_\_\_\_ County, State of

53 \_\_\_\_\_.

54 The decedent has left no will so far as I know, and no will of the  
54 decedent has been presented or probated in this state or in any other state or jurisdiction.

55 2. More than 60 days have passed since the death of the decedent and no personal

56 representative or administrator of the decedent's estate has been otherwise appointed in the

57 State of West Virginia for any proper purpose.

58 3. A certified death certificate has been furnished herewith for filing in this County.

59 4. The Decedent died owning and possessing the following real estate situate in West

60 Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

61

62 5. The decedent, \_\_\_\_\_, left as his/her heirs at law in accordance with  
 63 the laws of intestate descent and distribution of the State of West Virginia the following persons:

64 a. Name: \_\_\_\_\_

65 Address: \_\_\_\_\_

66 Relationship to Decedent: \_\_\_\_\_

67 Share or percentage: \_\_\_\_\_

68 b. Name: \_\_\_\_\_

69 Address: \_\_\_\_\_

70 Relationship to Decedent: \_\_\_\_\_

71 Share or percentage: \_\_\_\_\_

72 c. Name: \_\_\_\_\_

73 Address: \_\_\_\_\_

74 Relationship to Decedent: \_\_\_\_\_

75 Share or percentage: \_\_\_\_\_

76 d. Name: \_\_\_\_\_

77 Address: \_\_\_\_\_

78 Relationship to Decedent: \_\_\_\_\_

79 Share or percentage: \_\_\_\_\_

80 6. No appointment of an ancillary personal representative to administer the decedent's real  
81 estate within the State of West Virginia is necessary for any proper purpose.

82 7. I have personal knowledge of the above facts and am interested in the Estate of  
83 \_\_\_\_\_, the decedent, as the ( ) acting domiciliary personal representative,  
84 ( ) surviving spouse, ( ) beneficiary under the decedent's will, ( ) heir at law, or ( ) other  
85 \_\_\_\_\_ (describe relationship or interest). [Check one]

86

87 \_\_\_\_\_  
88 Signature of Affiant  
89

90 Taken, subscribed, and sworn to before me the undersigned authority by

91 \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

92 {seal}

93 My Commission expires: \_\_\_\_\_

94 \_\_\_\_\_  
95 Notary Public

**§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for filing of objections.**

1 (a) Within 30 days of the filing of a foreign will of a nonresident of this state without  
2 appointment of an ancillary personal representative, executor, or administrator as provided in the  
3 provisions of §41-5-13(b) of this code or within 30 days of the filing of an affidavit concerning the  
4 intestacy of a nonresident of this estate without appointment of an ancillary intestate administrator  
5 as provided in the provisions of §44-1-4(b) of this code, the clerk of the county commission shall  
6 publish, once a week for two successive weeks, in a newspaper of general circulation within the  
7 county of the filing of the foreign will or the affidavit, a notice which is to include:

8 (1) The name and last known address of the decedent;

9           (2) The name and address of the county commission before whom the foreign will or  
10 affidavit has been filed and a statement that no appointment or administration is being made  
11 pursuant to the provisions of law but that a foreign will or affidavit of heirs of the decedent has  
12 been filed with the county commission;

13           (3) The name and address of the party filing the foreign will or affidavit and his or her  
14 relationship to the decedent;

15           (4) The date of first publication of the notice;

16           (5) A statement that an interested person objecting to the filing of the foreign will or affidavit  
17 or objecting to the absence of appointment or administration being made in this state must be  
18 filed with the county commission within 60 days after the date of first publication or 30 days of  
19 service of the notice, whichever is later.

20           (b) This notice shall be published as a Class II legal advertisement in compliance with the  
21 provisions of §59-3-1 *et seq.* of this code. The publication of the notice is equivalent to personal  
22 service on creditors, devisees or beneficiaries under the will, and heirs at law of the decedent.

23           (c) The party filing the foreign will or affidavit shall, not later than 30 days after the date of  
24 first publication, serve a copy of the notice, published pursuant to subsection (a) of this section,  
25 at the last known address by first class mail, postage prepaid or by personal service on the  
26 following persons:

27           (1) The decedent's surviving spouse, if any;

28           (2) If there is a will, the personal representative or personal representatives named therein;

29           (3) If there is a will, all devisees or beneficiaries named therein;

30           (4) The heirs at law of the decedent determined under the laws of this state; and

31           (5) Any known creditors of the decedent residing or located in this state or who may claim  
32 a lien or interest against the real estate of the decedent situate in this state.

33           (d) Any person interested in the estate who objects to the filing of the foreign will or affidavit  
34 or objects to the absence of appointment or administration being made in this state shall file notice

35 of an objection with the county commission within 60 days after the date of the first publication as  
36 required in subsection (a) of this section or within 30 days after service of the notice as required  
37 by subsection (c) of this section, whichever is later. If an objection is not timely filed, the objection  
38 is forever barred. The county commission upon receiving any timely objection thereto shall  
39 schedule a hearing or hearings thereon and order relief, if any, it considers proper including, but  
40 not limited to, an order directing that full and complete ancillary administration of the estate of the  
41 nonresident decedent be made in this state.

42 (e) The clerk of the county commission shall collect a fee that is the amount of the  
43 publication of the notice required in this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within ..... this the.....  
day of ....., 2019.

.....  
*Governor*