

**Probate Department**

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**PROBATE AND ESTATE ADMINISTRATION**  
Morgan County, West Virginia

The Probate Department has general supervision of all fiduciary matters and of the fiduciaries (Executors/Administrators/Guardians/Trustees) thereof and of all fiduciary commissioners and of all matters referred to such commissioners.

The following information has been drafted to help you understand the process of probate (estate administration). It is general information and cannot be taken into consideration every factual situation. While statutory changes have made it easier for the taxpayer to complete estate administration without professional assistance, there are exceptions. Extraordinary issues may require that you seek the advice of legal counsel.

If you have any questions regarding the process of administration in Morgan County, please do not hesitate to call.

**References:**

**West Virginia Department of Tax & Revenue**  
**West Virginia State Code**

**WHY PROBATE**

When a person dies an estate is created. An estate includes but is not limited to real estate, personal property, vehicles, bank accounts, stocks, bonds, certificates of deposit, cash on hand, refunds, etc. Present law requires that someone "administer" or settle the estate of a decedent. Administration is the process called "probate" which seeks to protect the right of the decedents creditors to claim against the estate and insures that by following the procedures required by law, good and clear title to any remaining assets will be passed to the designated beneficiaries by Will or, if there is no Will, to the decedents heirs at law.

Every person who is legally competent has the right by making a Will to designate who shall take their property upon death, in what amount and under such conditions or restrictions he or she may want to set forth.

If a person does not make a Will they are said to have died "intestate". The estate then passes to the decedents surviving spouse and/or heirs at law in such proportions as designated by the West Virginia Code. (Statutes in effect on the date of death apply.)

## **APPOINTING A FIDUCIARY (EXECUTOR/ADMINISTRATOR)**

The term “fiduciary” is a general one used to include an executor, administrator, curator, trustee, guardian, conservator, or other person serving in a similar trust capacity.

If there is a Will which names an Executor(s) that person(s) has the right to serve. In the absence of a Will the husband or wife of the decedent is given preference and then other distributees (others entitled to share in the estate) are considered.

If a Will is not presented or a distributee does not apply within thirty (30) days of the date of death anyone, even a creditor, may apply for appointment as Administrator of the estate.

In any event the Probate Department is the first place to visit in order to determine who will be allowed to qualify as a Fiduciary.

The Probate Department is currently located in the historic Morgan County Courthouse, 77 Fairfax Street, Suite 1A, Berkeley Springs, West Virginia.

## **WILLS**

If an individual dies leaving a Will he or she is said to have died “testate”. The ORIGINAL Will, not a photo-copy, must be offered for probate with the Probate Department before administration can begin.

## **PROBATE OF A WILL**

A Will is accepted for probate after the Probate Department has determined the document to be executed in accordance with West Virginia statutes. If the Will is not accompanied by a self-proving affidavit, a deposition from the attesting witnesses must be obtained. If the witnesses cannot be located or are deceased, there are other provisions for proving the Will. The Probate office will advise you accordingly.

## **QUALIFYING AS FIDUCIARY**

Whether or not there is a Will a person cannot legally act as Executor or Administrator (Fiduciary) until they have appeared before the Probate Department and executed a bond (oath) for which security may or may not be required. The bond (oath) is a pledge to the State of West Virginia made to secure the estate against loss, damage or default on the part of the Fiduciary.

We will interview you in an attempt to determine an estimated value of the decedent’s probate estate in order for an appropriate “bond” to be set. If the subsequent inventory and appraisal of the estate reveals the assets to be greater or lesser than at first anticipated, the bond can be adjusted accordingly.

## **BOND (SURETY) – ADMINISTRATORS**

When there is NO WILL you are required to furnish surety on your official bond. The surety may be responsible for any loss or default of estate assets on the part of the Administrator.

If you are a resident of West Virginia you may ask someone who owns, or has sufficient equity in, real estate to sign as surety. If you do not wish to ask someone to sign as surety, you may purchase corporate surety through one of the local insurance agencies. An elected official, an attorney or anyone currently under bond may not sign as surety.

If you are NOT a resident of West Virginia, corporate surety will be required.

## **LETTERS OF ADMINISTRATION**

When qualified you will be issued "Letters of Administration". These are the documents which give you full power and authority to act as representative of the estate. If you or someone else had Power of Attorney that power died with the decedent. The appointment of an Executor or Administrator replaces the Power of Attorney. The Letters of Administration will allow you access to the decedent's monies and establish an estate account, endorse and deposit checks, pay bills, transfer titles, transfer stock, etc. It is important you maintain accurate financial records. Keep copies of all checks, receipts, deposit records, bank statements, etc.

## **INVENTORY & APPRAISEMENT OF ASSETS**

At the time you qualify you will be given a West Virginia Estate Appraisal and Inventory Booklet. It will be your responsibility as Fiduciary to identify the decedent's probate and non-probate assets and the value of those assets as of the date of death.

West Virginia statutes require that you complete an inventory and appraisal within NINETY (90) DAYS of your appointment as Fiduciary.

When returning the Inventory and Appraisal Booklet and the probate assets are more than \$100,000 (not including real estate) and there is more than one heir, a Fiduciary Committee is appointed.

## **NOTICE TO CREDITORS**

A notice to creditors as required by law will be scheduled after the appraisal has been completed. Publication dates are set by statute. Creditor notices are scheduled to appear in the Morgan Messenger on the first Wednesday of each month. Creditors have the option of filing a claim with the Supervisor's office OR forwarding it directly to the Fiduciary. You will be notified of any claim filed with the office. It is your responsibility as Fiduciary to resolve all debts/claims with the creditor and provide the Probate office with a copy of the paid receipt or release. The claim period will expire NINETY (90) DAYS after the publication date.

## **INSOLVENT ESTATES**

If you believe the estate is insolvent, meaning there are insufficient assets to fully satisfy all debts/claims of the estate, you cannot provide for payment to any one creditor until the estate has been fully liquidated and the statutory claim period has expired. West Virginia statutes provide for the pro rata distribution of assets to creditors according to class.

## **INHERITANCE/ESTATE TAX**

Everyone is pleased to learn that West Virginia has adopted the Federal guidelines with regard to inheritance and estate tax. If the gross estate does not exceed the exemption equivalent in effect during the year of death you will not have to file a Federal Estate Tax Return (Form 706) and you will not have to file a West Virginia Estate Tax Return.

The schedule for determining whether an estate tax return is due can be found in the back of your appraisement booklet. For 2000-2001 the exemption equivalent was \$675,000; for 2002-2003, \$1,000,000; for 2004-2005, \$1,500,000; 2006 through 2008, \$2,000,000; and 2009, \$3,500,000. Prior years are also listed in the appraisement booklet.

Any estate required to file a Federal Estate Tax Return (Form 706) will be required to file a West Virginia Estate Tax Return. The proper forms and instructions will be sent to the Executor/Administrator after the appraisement has been filed. For decedents dying July 13, 2001, and after a release or certificate of non-liability from the West Virginia State Tax Department will be required even for estates who did not need to file a tax return.

## **OTHER TAX RETURNS**

It is your responsibility as Fiduciary to determine whether or not the decedent had any taxable income for which a return may be due.

It is also your responsibility to determine whether or not there will be any tax due on monies earned by the estate. PLEASE DO NOT ASK THE PROBATE DEPARTMENT ANY TAX QUESTIONS. All questions regarding possible estate, gift and capital gains tax; tax due on monies earned by the estate or returns due to be filed in behalf of the deceased must be directed to your tax professional.

## **5% COMMISSION ALLOWED**

You are generally allowed a five percent (5%) commission for administering an estate. The commission is based upon the PROBATE ESTATE and may not include real estate. Real estate can be included ONLY if you are the named Executor(s) under the Will and the Will empowers you to sell PROBATE real estate. If you convert the real estate to cash, you may include the proceeds in your commission; otherwise, you will need the consent of the beneficiaries/heirs to include it in your commission.

You do not have to take a commission. It is earned income and must be reported on your personal tax return.

## SETTLEMENT OF ACCOUNTS

Following the ninety (90) day claim period, if all debts, claims and taxes have been paid or provided for, you may file a settlement report. Probate Department will provide you with the appropriate settlement form and instructions.

**Waiver of Final Settlement** – Single beneficiary/heir estates and estates where there is no controversy or dissention among the beneficiaries/heirs qualify for a Waiver of Final Settlement. Each beneficiary/heir must sign the document in the presence of a Notary Public.

**Final Settlement** – All other estates will be required to complete a Final Settlement. The proposed settlement is a complete and comprehensive statement of accounts made available for inspection by the beneficiaries/heirs at law.

Upon receipt of a Waiver Form or Final Settlement, we notify the heir as required by law. If the decedent died on or before July 12, 2001, then notice of settlement will be published on the first Wednesday of every month in the Morgan Messenger. If the decedent died after July 12, 2001, the Probate Department will hold the Final Settlement for ten (10) days. Provided no exceptions are filed, the settlement will be eligible for approval by the County Commission on the next Commission meeting.

Following approval by the County Commission you will receive written notification directing you to immediately disburse any remaining assets in the manner outlined in your report.

## FEES

Fees collected by the Probate Department for the purpose of recording, copying, mailing costs and add fees, payable to the Morgan County Clerk's Office, are as follows:

Qualification	\$16.00
Notice of Administration	\$20.00
Bond (if required)	\$6.00
Appraisement	\$6.00
Settlement	\$11.00
Certificate of Acting	\$2.50
Will*	\$11.00

(\*fee will be higher if document exceeds five (5) pages)

## **REAL ESTATE**

If a person dies with an interest in real estate, it will pass one of three ways:

1. Any real estate titled jointly in the name of the decedent or another person(s) WITH RIGHT OF SURVIVORSHIP passes directly to the co-owner(s) and is NOT controlled by the Will or estate.
2. If there is real estate NOT titled jointly with right of survivorship and the decedent had a Will, the decedent's interest in the real estate passes to the beneficiary or beneficiaries under the Will who are designated to receive it. When you receive real estate under a Will, the Will serves as your deed.
3. If the decedent died intestate (without a Will) real estate NOT titled jointly with right of survivorship passes to the decedent's heir or heirs at law as provided by the West Virginia Code. (Statute in effect on date of death applies.)

If the decedent has a Will and it specifically directs and empowers the named Executor(s) to sell real estate (that which is NOT titled jointly with right of survivorship), then the qualified Executor(s) may do so without the consent of the beneficiaries.

If the Executor does NOT have power of sale under the Will, only the beneficiaries have the right to sell or transfer the real estate.

If there is NO Will the real estate (that which is NOT titled jointly with right of survivorship) passes directly to the heirs at law as provided by the West Virginia State Code. (Statute in effect on date of death applies.)

If there is more than one beneficiary or heir and they cannot agree as to the sale, transfer or use of probate real estate, they will need to retain an attorney and, if necessary, petition the CIRCUIT Court for relief.