

Berkeley County Office of Fiduciary & Probate
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GENERAL OVERVIEW OF THE WEST VIRGINIA SMALL ESTATE PROCESS

What is the “Small Estate Process” in West Virginia

The Small Estates Act came into effect in West Virginia on July 1, 2021 as an alternate, less formal type of probate for those estates having a small amount of probate assets.

Prior to any discussion of the Small Estate law in West Virginia, it is important to remember that “classic/full” probate has not changed at all in this state. The classic/full probate process remains an option for any and all Executor/Administrators who seek it. As such, the Small Estate process remains an optional procedure left to the discretion to those who may qualify as a Small Estate Successor.

Conversely, the small estate procedure allows for a streamlined, one-time Affidavit filing when circumstances allow as a means to circumvent the common scenario where an Executor/Administrator of an Estate refuses to continue with probate due to a lack of funds. To date, Berkeley County has several Estates that remain open, many of which simply ceased activity because of a lack of probate funds. The small estate law also seeks to create more accountability upon an Estate’s Personal Representative through civil courts rather than through County Commissions/County Clerk’s Offices.

However, even with this shift from full/regular probate, the circumstances when this procedure is appropriate are quite limited. As will be discussed, the three key limiting factors are (1) the kinds of individuals who may qualify; (2) the time limitations of a personal representative’s authority; (3) the time delay required for filing a small estate; and (4) the institutions that may or may not accept a personal representative’s authority. In any event, when circumstances allow, those who choose to avail themselves of this new procedure will be called an “Authorized Successor” (“Successor”). Any such Successor will be required to file an “Affidavit for Small Estate,” something our office will form once we’ve received a certified, state-issued death certificate, a list of probate assets (and their suspected values), and the names & addresses of all beneficiaries/heirs of the Decedent’s estate.

Definitions: What technically is a Small Estate?

Under the Act, a “Small Estate” is defined as **not exceeding \$50,000.00 in personal, tangible, and intangible property.**

What kind of Property qualifies for a Small Estate?

The Small Estate law has an expansive definition and examples of the kinds of property that are applicable. For instance, the following assets are considered personal, tangible, and intangible property – all assets must be **PROBATE** (meaning solely owned by the decedent):

- Cash bank accounts, savings accounts, credit union accounts, and certificates of deposits;
- Brokerage accounts, stock, mutual funds, securities, and bonds;
- Notes, promissory notes, obligations, or debts owed to the decedent;
- Deposits, tax refunds, refunds of any kind, and overpayments; and
- Tangible personal property, including motor vehicles.

IMPORTANT NOTE: Individuals seeking to open a Small Estate must be able to swear to tangible/cash assets' values. If you are unable to declare (under penalty of perjury) an asset's fair market value on public record, our office will insist upon classic/full probate. For example, if you are seeking to open a Small Estate to close a Decedent's bank account, but cannot approximate the funding level of said account, then our office will not accept your Small Estate filing.

What about Real Estate?

No individual with any probate real estate interest of any kind qualifies for a Small Estate in West Virginia. Initially, the West Virginia Legislature deemed that a Decedent who passed away with probate real estate with a fair market value of \$100,000 or less could qualify for a Small Estate in West Virginia. In the following years, title companies and their attorneys voiced various concerns – including unverified title being transferred due to the lack of public filings regarding claims of debt against the Decedent and their real property (which will be discussed below). Ultimately, the Legislature decided to remove the real estate provisions from the law effective July 9, 2025, meaning any small estate seeking qualification/amendment after that date cannot include real property of any kind.

Difference: How is this different from Classic/Full Probate?

The difference between classic/full probate and the Small Estate process are substantial. First, a Successor filing for a Small Estate Affidavit is not bonded. This lack of a surety bond requirement is irrespective of circumstances as the law disallows the Fiduciary Supervisor to issue a bond under the law.

Issues arising other beneficiaries/heirs are given two (2) means of satisfaction within the Small Estate law.

- (1) Should a beneficiary/heir have proof that an estate is worth more than the allotment defined in the law or in any other way objects to an Estate's small estate filing, then the objecting party has thirty (30) days to file a written objection with the Fiduciary Supervisor's Office. Only interested parties (individuals who receive probate assets from the Estate) may file such an objection and the objection must state the specific, legal reasons for the objection and the relief sought. Please also note that the thirty (30) days to file the objection starts from the date of the legal/actual notice is received.
- (2) Should a beneficiary/heir have objections, but fail to deliver them to our office in time or fails to sufficiently state a claim upon which relief can be granted by the County Commission, then those interested parties are instructed to seek the advice of a West Virginia licensed attorney of their choosing to discuss options in magistrate or circuit court of the appropriate jurisdiction. Part of the design of the Small Estate process is to take estate conflicts from the County Commission and place them firmly in the Judiciary.

Furthermore, Small Estates are not published and Creditors of a Small Estate are meant to deal directly with the Estate's Successor regarding the Decedent's debts. In turn, Successors have the same rights and duties to deal with the Estate's Creditors as if it were classic/full probate, risking personal liability if the Successor arbitrarily refuses to do so.

Lastly, a Small Estate **only requires one (1) step**, where a Successor declares the Decedent's probate assets and the fair market value of same, the individuals who take either by a valid last will & testament or via intestacy, and swears to the information's accuracy before a notary public. Once a Successor files their Affidavit, declaring all of the above, and files it on public record, the Successor has six (6) months to transfer, liquidate, or otherwise handle the probate asset as required by law.

However, the cost of filing a Small Estate is comparable to the fees associated with classic/full probate. Obviously, given there are less assets and less documents to file on public record, the total figure due when a Successor files for a Small Estate will likely be less than classic/full probate, but the scale for such fees remain the same.

Difference: How to determine Decedents' probate assets and their worth?

In classic/full probate, would-be Executors/Administrators need only estimate what a Decedent owns as well as the value of said assets. Same goes for a Small Estate – only now that estimate is sworn to on an Affidavit. If it turns out the assets exceed the \$50,000 in fair market value, then the Successor would need to convert the Small Estate to classic/full probate with our office.

Those considering the Small Estate route are encouraged to use resources like previous bank statements or Kelley Blue Book to use for their estimates. Ultimately, it is the would-be Successor's responsibility to report assets to the Fiduciary Supervisor's Office and this office cannot aid in the estimation of valuation of assets, however situated.

Limiting Factor (1): Who can qualify as a Successor of a Small Estate?

The Small Estate law dictates that this process is initiated by an "Authorized Successor" and defines same as follows:

"[A]ny person, other than a creditor, who is nominated as a personal representative or executor under the provisions of the will of the decedent or who is entitled under the provisions of the decedent's will or the laws of intestate descent and distribution of this state to a part or all of a small asset of the decedent."

W.Va. Code § 44-1A-(b)(6).

Therefore, by law **ONLY** the following individuals can qualify as a Successor of a Small Estate:

- (1) A named Executor(ix) in a legally valid last will & testament;
- (2) A named beneficiary in a legally valid last will & testament; or
- (3) An heir at law who receives probate property in cases where there is no last will & testament.

The Small Estate law does not give the Fiduciary Supervisor the discretion to expand the Successor definition, thus – if you fail to meet one of the three definitions of a successor, then your only option is to proceed via classic/full probate.

As will be discussed below, depending on the circumstances, you may have other reservations regarding opening a small estate even if you otherwise qualify as noted above. Indeed, various limiting factors make the Small Estate law attractive to some and unappealing to others. Not only is your relationship to the decedent a limiting factor, but the following timing factors may also limit your ability to utilize the Small Estate law.

Limiting Factor (2): How long can a Successor act on a Small Estate's behalf?

A West Virginia Small Estate only requires that a Successor file one affidavit one time with the Fiduciary Office. Given this one-time filing, the Small Estate law limits the amount of time a Successor has to transfer, allocate, liquidate, or otherwise handle a Small Estate's affairs.

Once a Successor files their affidavit and successfully qualifies through the Fiduciary Office, they have six (6) months from the date they qualified to handle all Estate business. Our office can – when cause is shown by the Successor – extend said deadline to twelve (12) months from the date from the original qualification. However, please note that the Fiduciary Office cannot extend a Successor's authority beyond those twelve (12) months.

Therefore, if you believe a Decedent's affairs may take more than a calendar year, you must open an estate via classic/full probate. Often times the Fiduciary Office will ask the reason a person is seeking to open an Estate for this precise purpose. For example, if a Decedent owns no probate property at the date of his/her passing, but their family is seeking to open an Estate to gain access for medical records – perhaps investigating whether or not a lawsuit is appropriate – then it is likely that a Small Estate is not a good option. This is because it is highly unlikely that any litigation would conclude within twelve (12) months of a Successor's qualification.

Limiting Factor (3): When can a Successor open a Small Estate?

The West Virginia Small Estate law requires a longer wait period than classic/full probate. There are two key reasons for this contingency; first, it allows time for beneficiaries/heirs to open classic/full probate if so desired. Second, it allows time for would-be Small Estate Successors to ascertain probate assets and their fair market values.

As it stands, **NO SMALL ESTATE CAN BE FILED WITHIN THE FIRST THIRTY (30) DAYS** from the Decedent's date of death. However, a Small Estate can be opened **AFTER thirty (30) days** from a Decedent's date of death **IF** the Successor is a nominated Executor(ix) of a legally valid last **WILL** and testament. Should **NO WILL** exist (or if the will proves to not be legally valid), then a would-be Successor (a legal distributee/heir at law) must await **sixty (60) days** from the Decedent's date of death to pass.

As highlighted above, should these time restrictions prove untenable for your situation, then classic/full probate is your only route forward. Indeed, the Small Estate process remains an optional procedure for those Estates that meet the necessary limitations and in scenarios where classic/full probate is not necessary. It will be up to you to determine what path works best for you.

Limiting Factor (4): Who Accepts Small Estate Certificates?

Ideally, everyone/every entity holding either title to or a Decedent's probate assets will accept a Small Estate Certificate issued by this office. However practically, this is not always true. Be advised, multiple local and national banks have shown hesitancy in allowing Successors access to probate property – ignoring West Virginia law in favor of institutional policies.

To that end, it is this office's advice that you to check with your banking institution(s) to check and see what type of probate documentation they require. For instance, if a bank will only allow you to present a Letter of Administration to gain access to a Decedent's probate checking account, then – as discussed – a Small Estate is not an option for you. Similarly, if an institution holding a Decedent's money will only issue money made payable to "the Estate of [Decedent]" and your bank will only deposit same into an Estate Account, then a Small Estate is not an option for you.

The very factors that make a Small Estate attractive to would-be Successors – specifically the lack of supervision and paperwork – are the very same factors that make banks and insurers hesitant to adhere to the law described above. Ultimately, you will need to determine what works best for your set of conditions.

CONCLUSION

The West Virginia Small Estate law provides an *optional* alternative to probate for families/friends of deceased loved ones in *limited circumstances*. While far more convenient than classic/full probate, the Small Estate process does present several challenges and it is up to you to determine whether the Small Estate is appropriate or even applicable to your situation.