

**Berkeley County Office of Fiduciary & Probate
Berkeley County Courthouse - Administration Building
400 West Stephen Street, Suite 107
Martinsburg, West Virginia 25401**

INSOLVENT ESTATES – ASSET DISTRIBUTION

When probate assets are insufficient to fully satisfy all claims of debt against an estate, then that estate may be called “insolvent.” Keep in mind that **nearly all probate assets are subject to sale** to satisfy legally valid claims of debt. Thus, if an estate has no cash proceeds, but has various tangible items of significant value (including vehicles) titled solely to the decedent, then it is likely that those tangible assets would be subject to sale in order to pay off the creditors of the decedent before the estate can finalize and settle.

AFTER the claim period expires, the Administrator/Executor will prepare and submit a “long-form” settlement. This involves a full estate accounting, describing the distribution of estate assets among all creditors, pro rata and according to class, as provided by W.Va. Codes §§ 44-2-21 and 44-2-22.

**STATE LAW PROHIBITS OUR STAFF FROM ASSISTING WITH THE
PREPARATION OF YOUR ESTATE ACCOUNTING!¹ FOR AID IN THIS REGARD,
PLEASE SEEK THE ADVICE OF A WEST VIRGINIA LICENSED ATTORNEY**

Similarly, if you do not understand how to calculate the percentage of the estate that each creditor is entitled to receive, you will need to consult an accountant or an attorney. The fee for an accountant or an attorney is considered a cost of administration and need not be prorated. Be sure this fee, your commission for administering the estate, and the filing fees associated with filing probate documents are included as disbursements in your accounting – again, all are considered costs of administering the estate. Be also advised that the IRS considers fiduciary commissions earned income to be reported on your personal tax return.

Return the signed, notarized accounting to this office with a **\$12.00** filing fee payable to “Berkeley County Clerk.” Upon receipt of your completed, balanced, and notarized long-form settlement (showing zero disbursed assets to beneficiaries), our office will advise you when the settlement is eligible for approval before the Berkeley County Commission. **DO NOT** disburse any estate assets until you receive an approval letter from this office.

Please find the enclosed code sections as well as a blank long-form settlement to this document for your convenience.

Enclosure(s)

¹ See W.Va. Code § 44-3A-3(e)

West's Annotated Code of West Virginia

Chapter 44. Administration of Estates and Trusts

Article 2. Proof and Allowance of Claims Against Estates of Decedents

W. Va. Code, § 44-2-21

§ 44-2-21. Order in which debts of decedent are to be paid

Currentness

(a) If the applicable assets of the estate are insufficient to pay all claims against the estate in full, the personal representative shall make payment in the following order:

(1) Costs 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 other laws of the state of West Virginia;

(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(7) All other claims.

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

(c) Notwithstanding the provisions of subsection (a) of this section, if the payment of all funeral expenses of the decedent is provided for by an irrevocable pre-need funeral contract or trust, neither the decedent's estate nor the decedent's surviving spouse shall have any obligation for the payment of such funeral expenses.

Credits

Acts 1872-3, c. 122, § 25; Acts 1972, c. 2; Acts 1981, c. 112; [Acts 1996, c. 126](#), eff. 90 days after March 9, 1996.

Formerly Code Va. 1849, c. 130, § 25; Code Va. 1860, c. 130, § 25; Code 1868, c. 85, § 25; Code 1923, c. 85, § 25.

W. Va. Code, § 44-2-21, WV ST § 44-2-21

Current with legislation of the 2024 Regular Session approved through March 22, 2024. Some statute sections may be more current, see credits for details.

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West's Annotated Code of West Virginia

Chapter 44. Administration of Estates and Trusts

Article 2. Proof and Allowance of Claims Against Estates of Decedents

W. Va. Code, § 44-2-22

§ 44-2-22. Creditors to be paid in order of classification; when classes paid ratably

[Currentness](#)

No payment shall be made to creditors of any one class until all those of the preceding class or classes shall be fully paid; and when the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after six months from his qualification, pays a debt of his decedent, shall not thereby be personally liable for any debt or demand against the decedent of equal or superior dignity, whether it be of record or not, unless before such payment he shall have notice of such debt or demand by action, suit or presentation thereof to the fiduciary commissioner within the time allowed by law.

Credits

Acts 1872-3, c. 122, § 26; Acts 1982, c. 64.

Formerly Code Va. 1849, c. 130, § 26; Code Va. 1860, c. 130, § 26; Code 1868, c. 85, § 26; Code 1923, c. 85, § 26.

W. Va. Code, § 44-2-22, WV ST § 44-2-22

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COUNTY OF BERKELEY

(indicate Final or Interim)

IN RE: ESTATE OF _____

Date Received/
Transactions

Amount

TOTAL RECEIPTS/INCOME:	\$
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DISBURSEMENTS: (all checks issued from estate account i.e. debts/claims/taxes paid etc. including any commission to be paid to exor/admr.)

Attach Additional Pages if Necessary

IN RE: ESTATE OF _____

TOTAL RECEIPTS / INCOME (total page #1)	\$
LESS TOTAL DISBURSEMENTS (total page #2)	-\$
DISTRIBUTION (Balance, if any*)	=\$

[illegible]

*Note: For INSOLVENT estates total receipts (page 1) and total disbursements (page 2) must EQUAL. Distribution will be "0".

SETTLEMENT OF ACCOUNTS

IN RE: ESTATE OF _____

AFFIDAVIT

STATE OF _____

COUNTY OF _____, to-wit:

Before me, the undersigned authority this day personally appeared the Personal Representative (Fiduciary) of the Estate of _____, Deceased, who being by me first duly sworn did depose and say:

That the foregoing is a true and correct report of all receipts and disbursements made by me, Fiduciary of the above reference estate estate, as of the date entered below and the proposed monetary distribution amount(s) entered, if any, are representative of the current estate account balance.

Given under my hand this _____ day of _____, 20_____.

Signature of Fiduciary (Exor/Admr)

Taken, subscribed, and sworn to me, the undersigned authority, this _____ day
of _____, 20_____, by the Fiduciary whose signature appears above.

Notary Public

Affix Notarial Seal

My Commission expires:_____