

**GENERAL OVERVIEW OF WEST VIRGINIA ESTATE ADMINISTRATION
PROCESS**

When an individual passes away, an estate *may* be created. In West Virginia, the estate of a deceased person is administered at the county level in a **three-step process**. With or without a Will, the law requires that someone be appointed who will be responsible to administer, or settle, the decedent’s last affairs.

Be advised that opening an estate comes with legislatively mandated **fees**. Fees are dependent on both the estimated gross value of the estate and the amount of pages to be recorded. Furthermore, estate management can conclude as early as six months. However, some circumstances force longer times prior to estate settlement.

Be further advised that the information contained herein is *general* and cannot possibly consider every factual estate situation.

STEP 1: Appointment of a Fiduciary (Executor/Administrator)

For Berkeley County residents who have passed away, the Fiduciary/Probate office is typically the first place to visit. Visit our website at Berkeleywv.org to obtain either a “Probate Checklist WITH Will” or a “Probate Checklist WITHOUT a Will,” whichever applies.

A “Fiduciary” is a general term meaning trust. The term applies to anyone serving as Executor, Administrator, Trustee, Curator, or Guardian. A fiduciary known as Executor was specifically named by a valid Last Will and Testament. Should there be no Will or there is a Will but the applicant is not named Executor in the document, they are known as Administrator or Administrator CTA.

Applicant(s) must appear in our office IN PERSON OR REMOTELY with the completed checklist, death certificate, Will/Codicil if applicable, and their surety bondsperson/proof of a corporate surety.

SURETY BOND: A surety is an individual or corporation (insurance company) who agrees to be responsible for the debt, default or miscarriage of another. A bond is generally required if there are multiple heirs/beneficiaries who have an interest in an estate. Put simply, the bond ensures that an Executor/Administrator does what is legally required of them.

HOW TO GET A SURETY BOND:

If the Administrator/Executor is a West Virginia Resident, there are two options:

1. Bring another West Virginia Resident who owns or has sufficient equity in real estate located in West Virginia who is willing to sign as your surety. If there real estate is located

in another county in West Virginia, they would need to go to the County Clerk's Office in said county and ask for a document known as a "**JUSTIFICATION OF A SURETY.**"

2. You can purchase a **CORPORATE SURETY** through an insurance agency licensed by – and conducting business in – West Virginia.

All Non-resident Administrators are required to purchase a corporate surety.

Of course, a valid Will and Testament may waive this requirement. Indeed, **MOST WILLS NEGATE THE REQUIREMENT FOR A SURETY BOND.**

If there is NO WILL or if there is a Will, but surety, security, or bond is not waived; or if the Will did not name an executor/ix; or if someone other than a named Executor applies to serve, a surety bond is required.

Fiduciary Staff will determine if all qualification requirements have been met prior to issuing **Letters of Administration.**

Letters of Administration will allow the Executor/Administrator to legally manage the estate. It is a signed and sealed document showing public and private entities that an estate has been opened and that an Executor/Administrator has been appointed. If a Power of Attorney or Conservator/Guardian appointment had been made during the decedent's life, that appointment terminates upon the death of a decedent. Further, a person who – during the decedent's lifetime – served as Power of Attorney does not automatically qualify as Executor/Administrator. One must complete Step 1 of the Probate process to claim that title.

STEP 2: Filing of the Inventory and Appraisal of the Estate

Once appointed, Executors/Administrators are issued West Virginia Estate Appraisal and Inventory Forms 6.01 and 6.02 with instructions. Armed with the Letters of Administration, Executors/Administrators are tasked with accounting the assets within the estate.

West Virginia law requires the filing of this document within ninety (90) days of an Executor/Administrator's appointment. Failure to comply with a filing requirement can result in late fees, misdemeanor fines, removal of the Executor/Administrator and other relief as allowed by West Virginia statute. Extensions *may* be granted by Fiduciary staff upon a receipt of a written request.

The appraisal is to include a complete listing of **ALL** assets the decedent owned or had an interest in at the time of death, the value of those assets and how **EACH** asset was titled.

DO NOT ATTEMPT TO FILL OUT THE INVENTORY AND APPRAISEMENT UNTIL (1) A THOROUGH INVESTIGATION REGARDING WHAT PROPERTY AND ASSETS EXIST WITHIN THE ESTATE HAS OCCURRED AND (2) YOU UNDERSTAND THE DIFFERENCE BETWEEN PROBATE AND NON-PROBATE ASSETS

PROBATE assets include those owned/titled solely in the name of the decedent or any in which they may have a fractional interest, i.e. 1/2, 1/3, etc.

NON-PROBATE assets include real estate and assets titled in the name of the decedent “OR” a surviving person(s) as “**joint tenant with rights of survivorship**,” and life insurance paid to pre-established surviving beneficiaries, assets titled “**payable on death**” to a surviving person, assets contained in a trust, and real estate transferred by a “**Transfer on Death Deed**.”

****Non-Probate assets are NOT controlled by the Will or the estate. They pass immediately upon death to the surviving co-owners/beneficiaries.****

When the signed, notarized appraisal form are received and accepted for filing by our staff, you are advised when a required **Notice to Creditors** will be scheduled for publication in the local Journal newspaper. The Fiduciary Office publishes the name of the decedent as well as the name and address of the Executor/Administrator one time (typically, the first Wednesday of each Month).

Starting on the date of publication, creditors are put on legal notice for a period of sixty (60) calendar days. This time is also called the “**Claim Period**.” During this time, creditors may contact Executors/Administrators directly or they may choose to file a formal claim with our office. If a creditor contacts our office, Executors/Administrators are given written notice of the claim. It is the **EXECUTOR/ADMINISTRATOR’S RESPONSIBILITY** as representative of the estate to:

1. Make a diligent search to determine the name and address of ALL creditors who are reasonable ascertainable.
2. To contact/respond to creditors/claimants to discuss/resolve debt.
3. To determine whether there are any final tax returns to be filed on behalf of the decedent or estate.

IMPORTANT: If you suspect the estate you are managing may not have enough assets to fully pay all debt (otherwise called “insolvent”), contact our staff immediately for further information. Assets of an insolvent estate are distributed pro rata among creditors, according to class, in accordance with West Virginia law.

If you believe you are administering an insolvent estate it is recommended you consult an attorney. If debt is paid out of order designation, by law the Executor/Administrator can be held personally liable.

Remember, any asset identified as probate property is subject to be **sold** to satisfy debt.

STEP 3 - SETTLEMENT

AFTER the **claim period** has expired (provided there are no outstanding claims of debt upon the estate) there are two methods for concluding the probate process.

1. An **Affidavit and Waiver of Final Settlement** (short form)

An Affidavit and Waiver of Final Settlement **REQUIRES** the signatures of **ALL RESIDUARY BENEFICIARIES/HEIRS.**

OR

2. A **Settlement of Accounts Form** is required **IF** –
One or more residuary beneficiaries/heirs **DECLINE to sign** the Waiver of Final Settlement
OR
The estate is **insolvent**.

A **Settlement of Accounts** form asks you to list the comprehensive accounting of all estate activity you have taken on behalf of the estate. A copy will be mailed by Fiduciary staff to each residuary beneficiary/heir prior to presenting the document for approval to the County Council. Indeed, beneficiary's/heirs have a vested property interest in the estate and this process allows them to utilize their due process right to object. Should any objections occur, you will be notified by mail with a copy of the written objection.

Upon filing of either document, staff will advise when a required Notice of Settlement will be scheduled for publication. West Virginia law requires a second publication to ensure any interested (non-claimant) party notice. The publication will list the estate name, the type of settlement filed, and the tentative date the estate will be read in front of the Berkeley County Council.

Provided no objections are received, the settlement may be approved and confirmed by the Berkeley County Council and the estate is closed. You will then receive an approval/closing letter from the Fiduciary Office advising you to proceed with distribution of the residuary estate, if any.

If probate real estate has been sold during the course of administering the estate, the estate-closing letter will allow a title attorney to release any escrowed proceeds.

When the Order closing the estate is entered, your power as Executor/Administrator terminates.

REAL ESTATE OWNED BY THE DECEDENT IN OTHER JURISDICTIONS

If the decedent owned or had an interest in real estate in another WV COUNTY(IES) contact the Berkeley County Clerk to receive **CERTIFIED** copies of the Will and/or Appraisal and Settlement for recording in those counties.

If, however, they owned or had an interest in real estate in ANOTHER STATE/OTHER STATES you will likely need **EXEMPLIFIED** (triple seal) copies from the Berkeley County Clerk. Contact the Clerk/Register of Wills/Probate Court in that jurisdiction to determine any documentation they may require.

Finally,

OUR STAFF DOES NOT PROVIDE LEGAL ADVICE

If you have any questions regarding the PROCESS of administration, please do not hesitate to contact our office.