

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**ENROLLED**

**House Bill 4235**

(BY DELEGATE SHOTT)

[Passed March 5, 2016; in effect ninety days from passage.]



1 AN ACT to amend and reenact §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia,  
 2 1931, as amended, all relating to notice requirements for claims against an estate;  
 3 requiring claims against estates to be filed within sixty days of publication of Class II legal  
 4 advertisement; modifying language of advertisement to reflect sixty-day deadline for  
 5 exhibiting claims against estate of decedent; authorizing fiduciary supervisor to proceed  
 6 with supervision of estates following expiration of sixty-day deadline; permitting closure  
 7 after sixty days following publication by short form settlements of estates; and barring  
 8 recovery for claims against an estate not presented within specified time period except  
 9 under certain circumstances.

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

1 That §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as  
 2 amended, be amended and reenacted, all to read as follows:

**ARTICLE 3A. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.**

**§44-3A-4. Notice of claim; settlement in certain cases.**

1 (a) The fiduciary supervisor shall at least once a month as a Class II legal advertisement  
 2 in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be  
 3 published in a newspaper of general circulation within the county wherein letters of administration  
 4 have been granted, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

To the Creditors and Beneficiaries of the within named deceased persons:

7 I have before me the estates of the following deceased persons and the accounts of the  
 8 fiduciaries of their respective estates:

9 Name of Decedent: .....

10 Name of Fiduciary: .....

11 Address: .....

12 Name of Decedent:.....

13 Name of Fiduciary: .....

14 Address: .....

15 Name of Decedent: .....

16 Name of Fiduciary: .....

17 Address: .....

18 All persons having claims against the estate(s) of any of the above-named deceased  
19 persons whether due or not, are notified to exhibit their claims with vouchers thereof, legally  
20 verified, to the fiduciary of such deceased person as shown herein within sixty days of the first  
21 publication hereof; or, if not so exhibited to such fiduciary by that date, to exhibit the same at the  
22 office of the undersigned fiduciary supervisor at the address shown below within sixty days of the  
23 first publication of this notice; otherwise any or all such claims may by law be excluded from all  
24 benefits of said estate(s). No claims against the estate shall be accepted by the fiduciary  
25 supervisor after the last date shown above. All beneficiaries of said estate(s) may appear either  
26 before the above-named fiduciary by the date first shown above, or thereafter before the  
27 undersigned fiduciary supervisor by the date last shown above to examine said claims and  
28 otherwise protect their respective interests.

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

30 .....

31 Fiduciary Supervisor

32 ..... County, W.Va.

33 (b) All such claims are to be filed with the appropriate fiduciary at the address shown in  
34 such notice within sixty days of the date of the first publication of such notice or with the fiduciary  
35 supervisor within sixty days of such date. No claims against the estate shall be accepted by the  
36 fiduciary supervisor after the last date shown above.

37 (c) Subject to the provisions of this section, at the end of the sixty-day period set forth in  
38 such notice, the fiduciary supervisor may proceed with supervision of all estates referred to him  
39 or her for proof and determination of debts and claims, establishment of their priority,  
40 determination of the amount of the respective shares of the legatees and distributees and any

41 and all other matter or matters necessary and proper for the settlement of the estate, including,  
42 but not limited to, his or her recommendations concerning the approval of the fees of any fiduciary  
43 commissioner to whom the estate may have been referred, determination that inheritance taxes,  
44 if any, occasioned by the death of the decedent or returnable by reason thereof have been  
45 returned upon such estate and such taxes have been paid or such payment provided for and  
46 whether a release therefor has been issued by the proper authority, all matters required by section  
47 nineteen of this article and all other matters deemed proper by him or her.

**§44-3A-4a. Short form settlement.**

1 (a) In all estates of decedents administered under the provisions of this article where more  
2 than sixty days has elapsed since the filing of any notice required by section four, an estate may  
3 be closed by a short form settlement filed in compliance with this section: *Provided*, That any lien  
4 for payment of estate taxes under article eleven, chapter eleven of this code is released and that  
5 the release is filed with the clerk.

6 (b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement  
7 which shall contain an affidavit made by the fiduciary that the time for filing claims has expired,  
8 that no known and unpaid claims exist against the estate and showing the allocation to which  
9 each distributee and beneficiary is entitled in the distribution of the estate and contain a  
10 representation that the property to which each distributee or beneficiary is entitled has been or  
11 upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary  
12 has agreed to a different allocation. The application shall contain a waiver signed by each  
13 distributee and beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal  
14 property or a bequest of cash may not be required to sign the waiver.

15 (c) Such waiver may be signed in the case of a distributee or beneficiary under a disability  
16 by the duly qualified personal representative of such distributee or beneficiary. A personal  
17 representative signing such waiver shall be responsible to his or her cestui que trust for any loss  
18 resulting from such waiver.

19 (d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the  
20 allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper  
21 parties signed the waiver, both shall be recorded as in the case of and in lieu of settlement. If the  
22 fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing  
23 of such settlement give the fiduciary notice as in the case of any other incorrect settlement.

24 (e) If the short form settlement is proper the fiduciary supervisor shall proceed as in the  
25 case of any other settlement.

**§44-3A-32. When claims not presented and proved barred of recovery from personal  
representative.**

1 Every person having a claim against a deceased person, whether due or not, who shall  
2 not, when notice to creditors has been published as prescribed in this article, have presented his  
3 or her claim on or before the sixty-day time period fixed in such notice, or before that time have  
4 instituted an action thereon, shall, notwithstanding the same be not barred by some other statute  
5 of limitations that is applicable thereto, be barred from recovering such claim of or from the  
6 personal representative, or from thereafter setting off the same by way of counterclaim or  
7 otherwise against the personal representative in any action whatever; except that if a surplus  
8 remain after providing for all claims presented in due time, or on which action shall have been  
9 commenced in due time, and such surplus shall not have been distributed by the personal  
10 representative to the beneficiaries of the estate, and the claimant prove that he or she had no  
11 actual notice of the publication to creditors nor knowledge of the proceedings before the fiduciary  
12 supervisor or fiduciary commissioner, such creditor may prove his or her claim by action or suit  
13 and have the same allowed out of such surplus; and, in order that such late claims if proved may  
14 be provided for, the fiduciary supervisor or fiduciary commissioner shall reopen his or her report  
15 if the same has not been returned to the county commission, or if returned shall make and return  
16 a supplemental report.

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 ....., 2016.

.....  
*Governor*