

**Distribution of Assets through West Virginia Intestate Succession Law (Partial List)**

<b>If you die with:</b>	<b>here's what happens:</b>
children but no spouse	children inherit everything
spouse but no descendants	spouse inherits everything
spouse and descendants from you and that spouse, and the spouse has no other descendants	spouse inherits everything
spouse and descendants from you and that spouse, and the spouse has descendants from another relationship	spouse inherits 3/5 of your intestate property your descendants inherit 2/5 of your intestate property
spouse and descendants from you and someone other than that spouse	spouse inherits 1/2 of your intestate property your descendants inherit 1/2 of your intestate property
parents but no spouse or descendants	parents inherit everything
siblings but no spouse, descendants, or parents	siblings inherit everything

To assist you in understanding this brochure, we offer the following definitions:

**Administrator/Administratrix:** The person appointed by and qualified before the Clerk to administer the decedent's estate when there is no will.

**Administration:** The management and settlement of the estate of a decedent, performed under the supervision of the court, by a person duly qualified and legally appointed, and usually involving: (1) the collection of the decedent's assets; (2) payment of debts and claims against him/her and expenses; (3) distributing the remainder of the estate among those entitled thereto.

**Beneficiary:** A person or organization who receives property, benefits, or advantages

from another whether by Will, deed or law of succession of property.

**Bond:** Guarantees that the individual or legal entities appointed by the court to oversee the property of the estate will execute those appointed duties in good faith and be accountable for any deficits that may occur.

**Certificate of Qualification:** The Certificate of Qualification, sometimes referred to as "Letters of Administration," is the paper that the personal representative receives from the Clerk at the time of qualification which states that a person has qualified as executor or administrator and has authority to act on behalf of the estate.

**Certified Copy:** A copy of a document or record signed and certified as a true copy by the officer to whose custody the original is entrusted.

**Codicil:** A supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in an existing will.

**Court:** The County Commission, or branch thereof, in this state, which has jurisdiction in matters relating to affairs of decedents.

**Creditor:** Person or organization owed money by the decedent.

**Decedent:** A deceased person.

**Descendant:** Issue or offspring of decedent.

**Estate:** The decedent's property, including real estate, personal property and all other assets owned or controlled by the decedent at the time of his/her death.

**Estate Appraisalment and Nonprobate**

**Inventory Forms:** The law requires that someone administer the estate by filing the Appraisalment and Nonprobate Inventory Forms within 90 days of qualification.

**Executor/Executrix:** The person named in decedent's will to administer the estate.

**Fiduciary:** A person in a position of trust with respect to another's property; a

general term used to refer to executor, administrator or trustee.

**Heirs at Law:** Person(s) who are entitled to the property of a decedent under the statutes of intestate succession.

**Holographic Will:** Will written entirely by the testator with his own hand and not witnessed (attested).

**Intestacy:** The condition of dying without leaving a valid Will.

**Intestate Estate:** Any part of a decedent's estate not effectively disposed of (devised) by a Will, which then passes to the decedent's heirs under intestate succession.

**Inventory:** Detailed list of articles; a list or schedule of property, containing the designation or description of such specific article.

**Life Estate:** A transfer or holding of assets which is limited to the life of the owner.

**Personal Representative:** A term used to mean either the executor or the administrator of the estate.

**Probate:** Procedure whereby a will is admitted to record in the clerk's office. Also, refers to the entire estate process.

**Qualification:** Procedure whereby a person is appointed by the clerk to serve as executor or administrator of a decedent's estate.

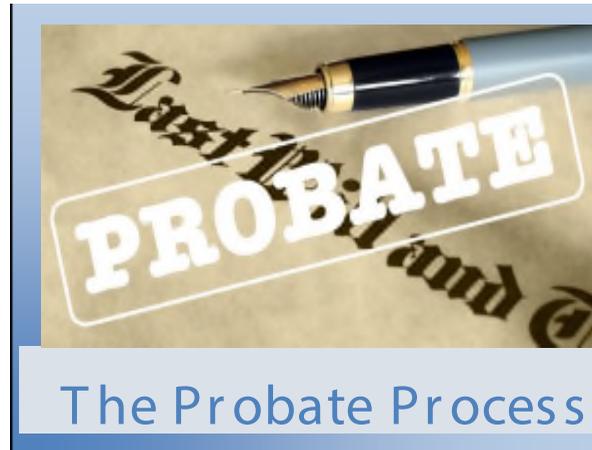
**Self-Proved Will:** Will that includes a notarized affidavit of the testator and attesting witnesses.

**Testator:** One who dies leaving a will.

**Testate Estate :** An estate to be administered pursuant to a will.

**Will:** A written document that gives instruction on how a person wants his or her property distributed after death.

*The County Clerk and/or her office staff are not attorneys and are not able to render legal advice or legal opinions in this or any other matter. This brochure is intended to provide information for the estate process only. If you have a legal question or request legal advice, it is recommended that you contact an attorney.*



**The Probate Process**

Please Contact the Pocahontas County Clerk's Office to schedule an appointment or if you have any questions.

**Office Hours**  
Monday – Friday  
8:30 am – 4:30 pm



**Pocahontas County Courthouse**  
900C Tenth Avenue  
Marlinton, WV 24954  
(304) 799-4549  
Fax (304) 799-6947

Melissa Bennett, Clerk  
pocack@clerk.state.wv.us

Nancy Jordan, Probate Clerk  
njdeputyclerk@hotmail.com

## QUALIFICATION PROCESS

In order to get appointed as Personal Representative of a decedent's estate, you will need to bring the following information with you to the County Clerk's Office:

1. You will need to bring a certified copy of the death certificate if the decedent died out of state. If the decedent died in West Virginia, it is not necessary to have the death certificate as long as you have the basic information on the decedent including his/her social security number.
2. The ORIGINAL will and/or codicil, if there is one. If there is no will and it is within 30 days of the decedent's passing, it is requested that at least half of the heirs sign a Waiver designating you as personal representative. This Waiver must be notarized. After 30 days, anyone may qualify to administer to the estate.
3. The names and mailing addresses of the heirs/beneficiaries. If you are unsure of who might be an heir, we will assist you.
4. If there is no will, the personal representative will need to be bonded

for the approximate value of all personal property held SOLELY in the decedent's name, this excludes real estate. The personal representative may choose to purchase a bond through a bonding company or have a property bond. If you choose to use a property bond you will need to make arrangements to have someone other than yourself who owns real estate in Pocahontas County, to come with you. If this person resides in a county other than Pocahontas County, they will need to get a Justification of Surety from their county courthouse. This is to act as surety on your bond. If you are an out-of-state resident, you will need to be bonded through an insurance company for twice the amount. Our office can assist with this step. There is an additional fee for an insurance bond. In some cases when there is a will, it may be required to have surety for your bond.

Once this information is provided to the County Clerk, you will need to sign papers to appoint you as Personal Representative. There are some circumstances in which you may not be able to qualify on your first visit. The qualification fee is normally \$47.00. Sometimes this fee can vary, depending on several

factors. This fee does not include the surety bond. The fee for the surety bond is paid directly to the bonding company and is determined by the amount of your bond. These fees are required to open an estate, please be sure to have this with you. We accept cash, check or credit card.

## APPRAISAL PROCESS

When you are appointed, you will be given a West Virginia Estate Appraisal & Nonprobate Inventory Packet. You will have 90 days to complete this booklet and return it to the County Clerk's Office. The filing fee for the Appraisal Booklet is usually \$11.00 but this fee can vary depending on number of pages. If the total probate assets excluding real estate is in excess of \$200,000.00 and the estate has more than one beneficiary/heir, the estate will be referred to a Fiduciary Commissioner. Upon filing of the Appraisal by representative or within 120 days of qualification if Appraisal is not filed, a publication will be placed in the newspaper by the county clerk's office. Creditors will have 60 days from the date of first publication to file claims against the estate

## FINAL SETTLEMENT PROCESS

Once the waiting period is over and all claims are released, you may

contact this office to close the estate. There are two ways to close the estate:

1. Waiver of Final Settlement: This form requires the signature of all beneficiaries/heirs unless the beneficiary only receives a bequest of tangible personal property or a bequest of cash (44-2-29).
2. Report of Receipts and Disbursements: This is an accounting by you as personal representative of the estate and requires only your signature. After completed, this form is sent to all beneficiaries/heirs, at which time, they will have 10 days to file an objection.

If the decedent owned real estate and the estate has insufficient funds to pay all creditors, the estate cannot be finalized until all claims are released.

The fee for filing this form is usually \$11.00, but can vary. This is your last step with our office. Once filed, there is a 10 day holding period before it can be presented to the County Commission for approval. When the said settlement is approved, a copy will be mailed to you. At this time, you may distribute any monies to beneficiaries and creditors.