Small Estate Affidavit
Ritchie County, West Virginia

Effective July 1st, 2021, the West Virginia Legislature amended the West Virginia Code to create a Small Estate process using an Affidavit for Small Estates. This legislation amends WV Code §44-1-28 (dealing with the payment of small sums due where no qualifications have been made) and adding §44-1A-1, §44-1A-2, §44-1A-3, and §44-1A-5, to allow estates containing under $50,000 in personal ~~property and under $100,000 in real property~~ (effective July, 2025 legislation changes to disallow the use of Small Estate Affidavits for the purpose of transferring real estate, oil, gas, and/or minerals) to be administered without appointment of a personal representative. This process can be utilized if the following criteria are met:

- The decedent was a resident of the state of West Virginia at the time of death **(§44-1A-2(a))**;
- The fair market value of probate personal assets is under $50,000 (**§44-1A-1(4))**;
- The estate has not been opened in any jurisdiction and a personal representative has not been appointed in any jurisdiction **(§44-1A-2(7))**;
- If there is a will, at least 30 days have passed **(§44-1A-2(7))**;
- If there is no will, at least 60 days have passed. **(§44-1A-2(7))**;
- If there is a will, the original will must be submitted to the County Clerk within 30 days of the date of death and can be recorded on its own or as an attachment to the Affidavit for Small Estates **(§44-5-1 and §44-1A-2(b))** (a 'proof of death' must be filed with the Will);
- A copy of the death certificate has been filed with the Clerk's Office or is attached to the Affidavit (**§44-1A-2(e)(2))**;
- Definitions to know:
    - Successor – any person who is nominated as a personal representative by the Will, is a beneficiary under the will, or entitled under the laws of intestate;
    - Authorized Successor – successor of a decedent who files an affidavit and is certified an authorized by the Clerk;
    - Objection – can be made by any interested party to the estate; a written objection must be filed within 30 days the mailing of affidavit by the County Clerk **(§44-1A-2(g));**
    - Small Estate is defined in §44-1A-1(4) is one whose fair market value of all probate personal property in the state of West Virginia is less than $50,000.

Any person who is nominated by the will, entitled under the provisions of the will, or is entitled under the laws of intestate descent is able to complete and file the Affidavit for Small Estates. Most of the Affidavit for Small Estate is self-explanatory. Here are a few notes:

- #4 - is to be filled out if there is a valid Will.
- #5 - is to be filled out if there is not a valid Will. This section includes the heirs at law (living and deceased). If deceased, please list the date of death in the address field. Heirs are based on the laws of intestate succession.
- #6 - This section requires you to list all probate (in the decedent's name only) personal assets including but not limited to: vehicles, boats, household goods, jewelry, tools, guns, cash, bank accounts, stocks, bonds, disability payments, royalty payments, back salary due,

tax refunds, insurance policies to the estate, farming equipment, livestock, rental income, etc. The fair market value is based on the fair market value as of the date of death.

- #10 - This is the guarantee that you who want to handle this estate are providing the correct and most up to date contact information, the correct asset determination, and understand what your duties are.
- #11 – This is the same oath that is given and taken when someone is appointed on the estate. This holds you to a legal standard.

The recording fee for the Affidavit for Small Estates is based on the number of pages of the completed Affidavit. The equation used to determine the cost is:

Recording Cost = Recording Fee + Copy Fee + Certificate.

The recording fee is $12 for the first 5 pages of the Affidavit and follows state guidelines for recording fees. The Copy fee is the number of pages in the Affidavit * the number of parties. The Certificate fee is the number of Certificates of Authorization that you request * $2.50.

**** Please keep in mind these instructions are NOT legal advice and are for the purpose of recording a document in the County Clerk's Office.****

Timeline: As this form and process are meant to replace the need for appointment and opening an estate that is deemed 'small' in Ritchie County, WV,

- The Affidavit is completed and submitted to the County Clerk's Office along with the necessary attachments. If there is a Will, it must be submitted for recording.
- Once received, the Affidavit will be examined to ensure it is completed correctly.
- The day it is correctly filed with our office it will be stamped received.
- A Certificate and Authorization of a Small Estate will be issued to the affiant the day the Affidavit is correctly filed.
- A copy of the Affidavit will be mailed to all beneficiaries under the will or to all heirs listed in the Affidavit.
- Interested parties have 30 days from the date of mailing to file a written objection. If this occurs, pursuant §44-1A-2(g)), a Fiduciary Commissioner will be appointed.
- A Certificate of Authorization is good for a period of 6 months from the date issued.

The Ritchie County Clerk's Office is located at 115 East Main Street, Room 201, Harrisville, WV 26362 and is open Monday through Friday from 8:00 AM to 4:00 PM. If you have any questions or would like to set a probate appointment, please call Jessica Hodges at (304) 643-2164 ext. 103 or you can email her at jhodges@clerk.state.wv.us. All documents recorded in the Ritchie County Clerk's Office can be viewed at any time online at www.ritchiecountyclerk.com.