

## KANAWHA COUNTY PROBATE CHECK LIST

407 Virginia St. East, Charleston, WV 25301

P.O. Box 3627, Charleston, WV 25336

Ph: 304-357-0125 Fax: 304-357-0426 Website: www.kanawha.us

Hours: M-F 8 to 5p.m.

# PROBATE WITHOUT WILL

**Please, complete this form and return it, along with the required documents, and photo identification to the front desk. Thank you for your cooperation.**

**NAME OF ESTATE:** \_\_\_\_\_  
(Decedent)

- DEATH CERTIFICATE:** Check to see that the following is correct for the decedent:
- **Social Security Number is correct.**
  - **Item 7B** for the decedent's place of residence at the time of death.
    - Indicate **KANAWHA COUNTY**.
- FIDUCIARY:**
- Bring your **Driver's License** or some other form of identification.

**On the lines below, the Fiduciary will fill out their name and phone numbers.  
Please, print all of the information requested for easy legibility.**

**NAME:** \_\_\_\_\_  
(Fiduciary)

- **Home #:** \_\_\_\_\_.
- **Cell #:** \_\_\_\_\_.
- **Work #:** \_\_\_\_\_.

**RELATIONSHIP TO DECEDENT:** \_\_\_\_\_

**\*\*PLEASE INDICATE IF MAILING ADDRESS IS DIFFERENT THAN WHAT ID SHOWS\*\***

*This checklist, along with the required documents, will begin the 1<sup>st</sup> Step of Probate.*

**The 1<sup>st</sup> Step of Probate:** The **Appointment** for a personal representative to serve as the Fiduciary over the Estate. The Fiduciary is called an Administrator/Administratrix if there is no will for the decedent. The appointment of the Fiduciary will normally be made within 30 days from the date of death. **This first step takes about an hour to an hour and a half, at least, to complete (this includes your wait time). Please, plan accordingly.** This is the only step that must be done, in person, in our office. Everything else can be sent back by mail. **We do not close during lunch, however, we do start rotating lunches, please, plan accordingly.**

**There are fees for each step of the probate process that must be paid to our office, either by cash, check or money order, payable to the Kanawha County Fiduciary Fund.**

**DO NOT** fill in the amount as it will be determined by the Deputy **at the time you are appointed.**

**Step 1: Our fees range from \$75-\$300.**

(Based on everything that the decedent's name was on at the time of death.)

**This will be separate from a bonding fee for the assets of the estate.**

(Based on everything that was in the decedent's name alone at the time of death.)

**LISTING OF HEIRS:**

- **Names, relationship and complete mailing addresses for all heirs.**
- West Virginia state law dictates that before an appointing over an estate can occur, that bloodline heirs to the decedent must be shown by providing **complete mailing addresses (even if it is a last known mailing address).**
  
- **The bloodline goes as follows:** List on last page.
  - **SPOUSE:** only if there are no children born prior to the current marriage. If there are children born prior to the current marriage, then list them first, then the spouse.
  - **CHILDREN:** includes any children born prior to the current marriage. If there is a pre-deceased child, you must show, by a complete mailing address, that child's children, because the bloodline must be continued to show living heirs. If there are any children who had been legally adopted by the decedent or adopted by the decedent's children will also be considered as bloodline. If there are minor children involved, someone may have to appointed as Guardian for them, depending on their inheritance.
  - **IF NO SPOUSE OR CHILDREN:** List Mother and Father.
  - **IF BOTH PARENTS ARE PRE-DECEASED:** List the decedent's siblings, including half-siblings or adopted siblings. Again, if any siblings are pre-deceased, then you must show each one's child/children.
  - **IF NO SIBLINGS:** List the mother's siblings, leading to living heirs. List the father's siblings, leading to living heirs.

**THE BLOODLINE MUST ALWAYS LEAD TO LIVING HEIRS.**

**The fiduciary must show, by providing complete mailing addresses, any and all heirs, because the heirs have a right to contest the probate process if they choose to do so.**

- CONSENT:** Within the **first thirty days from the date of death, the fiduciary will need consent from the majority of the heirs**, either by a personal appearance, or in a writing acknowledged before a Notary Public. (Make sure it has original signature, notary clause, and seal.) **On the thirty-first day after the date of death, anyone, including creditors can be appointed over the estate without consent.** Example: If there are 5 children in the estate, we would need notarized and original consent forms from 3 of them, in order for the fiduciary to be appointed.

□ **BOND INFORMATION:**

- A surety bond is a third party guarantee that the fiduciary will fulfill their obligations.
- No surety is required on the bond of the executor/administrator if they are the **SOLE** beneficiary of the decedent. (July 7, 2017)
- Covering assets in the decedent's name **alone**, excluding **real estate**.
- **Without a will, state law dictates that you must be bonded.**

There are two types of bonds:

**1. Corporate Surety Bond: Assets over \$10,000.00**

- An insurance company provides bond. A list of bonding agents are provided in our office. Or the fiduciary can contact a bonding company in the yellow pages, under bonds – surety and fidelity.
- Minimum bond covers \$10,000. Bond fee starts at rate of \$100.
- Required if the assets in the decedent's name only are over \$10,000, excluding any real estate.
- The bondsman must come with you/meet you in our office.
- If the fiduciary is an out of state resident, he/she is required to get a Corporate Surety bond.
- Bonds at \$50,000 or more will require an attorney (must have address).

**2. Justification of Surety Bond: Assets under \$10,000.00**

- A real estate/property bond. The property used, must assess for at least \$10,000.
- This certificate has a fee around \$2.50.
- Required if assets in the decedent's name only are under \$10,000, excluding any real estate.
- The fiduciary cannot use their own property unless he/she jointly owns it; and the other party can come in person with the fiduciary at the time of appointment.
- Must be someone who owns real estate in West Virginia. This bond can be obtained in the County Clerk's office in whichever county the property is located (Kanawha, Putnam, Wayne, etc.). Then bring the document back, along with the other party, to our office. Both the fiduciary and bond person must bring photo ID.
- If the fiduciary cannot find a bonds person, he/she must have a minimum Corporate Surety bond instead.
- The property, once bonded, will not be able to be sold, re-financed or used as collateral. This bond will place a \$10,000 tax lien against the real estate till the estate has closed.

Once you have gathered the other necessary information first, then work on getting a bond.

**This should be the last step for this checklist.**

**PLEASE LIST COMPLETE MAILING ADDRESSES ON NEXT PAGE.**

Name:	Address:	Relationship to Decedent:	If a MINOR, check:	If a MINOR, list birthday:
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Name of Estate: \_\_\_\_\_