

# EXPLANATION FOR COMPLETION OF "AFFIDAVIT FOR SMALL ESTATE"

-**DECEDENT'S NAME** What is the legal name of the Decedent. What name of the Decedent appears on bank accounts, real estate tax bills, car titles, etc.

-**"DOD"** stands for "date of death" of the Decedent

-**"Decedent who died domiciled in this state"** The Decedent was a resident of the State of West Virginia at his/her time of death. The decedent may have died outside of the State of West Virginia, but he/she was a resident of the State of West Virginia, at the time of death.

-**YOUR "relationship" to the Decedent** can be by marriage (ie: spouse), or by blood (ie: child, sibling, nephew, niece, cousin), or, if the Decedent died with a Will are you the named personal representative (ie: Executor) or a named beneficiary (someone who inherits through the Will).

-**"RELATIONSHIP to the Decedent"** refers to:

**if there is a Will**, to those individuals, charities, or trusts named in the document. If a person named (beneficiary) is deceased then: (1) to whomever the Will directs in such event; (2) if the beneficiary died before the Decedent, then to the beneficiaries blood-relations; (3) if the beneficiary died after the Decedent, then to the beneficiaries/heirs of the deceased-beneficiary.

**if there is NO Will** then relationship is based upon marriage or relationship to the Decedent by blood (see WV Code §42-1-1 et seq).

PLEASE NOTE: STEPCHILDREN/STEP PARENTS: a stepparent does not inherit from the estate of a deceased stepchild. A stepchild does not inherit from their deceased-stepparent. §42-1-1(26)

PLEASE NOTE: KINDRED OF HALF-BLOOD: Relatives of the half-blood inherit the same share they would inherit if they were of the whole blood. WV Code §42-1-3e

PLEASE NOTE: If individuals inherit as a result of a deceased-beneficiary, you should refer to WV Code §42-1-3d, for explanation of how to divide the assets.

-“Share or percentage...” refers to the amount to be given to that named individual:

**If there is a Will**, the share may be a specific dollar amount, or a percentage of the residue (remainder of the assets after payment of expenses and debt)

**If there is NO Will**, the share is based upon WV Code §42-1-1 et seq. The percentage is based upon the residue of the decedent’s assets (remainder of the assets after payment of expenses and debt).

-“Personal property” refers to anything that the Decedent owned that is:

- (1) Not real estate, and
- (2) Not already in someone else name (ie: a joint bank account, or a bank account payable on death (POD)/transferred on death (TOD) to someone, or a life insurance with a named-beneficiary, etc.

-“Fair Market Value” refers to the value of the asset at the time of the Decedent’s date of death. For example only:

- 1) a bank account’s value can be obtained from the bank;
- 2) a stock can be obtained online by obtaining the stock’s value as the high of the day and ADDING the stock’s low value of the day and DIVIDING by two (this is the value of one share of the stock) and then multiply by the number of shares.

- 3) in regard to a car, you can refer to the Kelley Blue-Book value.
- 4) in regard to real estate, you can: 1) obtain an appraisal of the real estate, or 2) you can guess the value of the real estate, or 3) you can take the Assessor's "gross assessed value" and multiply that number by 1.67 (this is authorized by the law that created a "Small Estate"). In any case, the total value of the real estate (collectively) cannot exceed \$100,000.

PLEASE NOTE: that the "Fair Market Value" you state creates the "tax basis" which will be used to determine if a capital gains tax was incurred when the property is later sold. You should discuss this with a professional who deals with taxes.

-**"sui juris"** is a Latin term meaning a person who has the capacity to manage his/her own affairs and not being under a legal disability to act for one's self.

**-claims of creditors** This new form of administering an estate DOES NOT RELEASE, OR DISCHARGE ANY CLAIM which a creditor may have against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a small estate have the same rights provided under the provisions of WV Code §44-2-27 and §44-3A-33 as against distributees and legatees.

The cost of the filing is \$12.00 for the first five pages of the forms. Over five pages cost an additional \$1.00 per page.