

# Probate Avoidance, Deed Choices for WV Real Estate, and Appraisement and Inventory

MARCH 24, 2021 – Webinar

Host: The WV State Bar Probate Law Committee

CLE: 3 CLE credits

Time: 1:00 pm. to 4:00 p.m.

Speakers:

J. E. White - Probate Avoidance

Christopher J. Winton - Deed Choices for WV Real Estate

Anna Price - Preparing the Appraisement and Inventory

Location: Live, Interactive Webinar

BIOGRAPHICAL INFORMATION  
on  
**Christopher J. Winton**

Christopher J. Winton is the managing member of the Charleston, West Virginia law firm of Ray, Winton & Kelley, PLLC, where he practices in the areas of estate planning and administration, business planning, taxation, and civil litigation. He received his B.A. degree with High Distinction and his J.D. degree from the University of Virginia and was elected to Phi Beta Kappa.

Admitted to practice in West Virginia and Virginia, Mr. Winton is the Chair of the West Virginia State Bar Probate Committee. He is an elected Fellow of the American College of Trust and Estate Counsel (ACTEC). Mr. Winton has been selected and listed in *The Best Lawyers in America* in the field of Trusts and Estates and is a *West Virginia Superlawyer* in the field of Estate Planning and Probate. He is also a member of National Academy of Elder Law Attorneys, Million Dollar Advocates Forum, Charleston Estate Planning Council, and the Real Property, Probate and Trust Law Section of the American Bar Association.

Mr. Winton serves as special corporation counsel to the Kanawha County Public Library, the largest library system in the State of West Virginia. He is also a personal trustee of the Jacobson Foundation, a charitable trust which provides grants to exempt organizations in the greater Kanawha Valley, and the Minor Foundation, which awards college scholarships to deserving West Virginia students.

A frequent lecturer for professional and business groups on wills and trusts, ethics, and litigation, Mr. Winton is the co-author of the articles "Laying Claim" and "Still Laying Claim" published in the *West Virginia University Law Review* which analyze will contests. Mr. Winton is nationally published as the contributing author of the West Virginia chapter on domestic asset protection trusts which appears in the recognized treatise *Bogert on Trusts and Trustees*. He is also the author of the series known as "Probate Happens" which has been published in the *West Virginia Lawyer*.

A student of genealogy, Mr. Winton is the 23rd great-grandson of England's King John, who signed the Magna Carta in 1215.

Date: September 30, 2019

Chart of Deed Planning Choices for West Virginia Real Estate

Simplicity in Creation	Probate or Nonprobate	Recording Tax	Ad valorem Taxation	Gift or Estate Tax	Income Tax Basis	Senior Control and Future Flexibility	Risk from Children or Grantee	Medicaid Protection
<b>1. OUTRIGHT OWNERSHIP BY SENIOR</b>								
Very easy; no action to be taken	Probate	None	Homestead exempt	All property included in gross estate	Stepped up basis at death	Great; senior has full control	None; senior is sole owner	Home is exempt; estate recovery may apply
<b>2. DEED OF GIFT TO CHILDREN</b>								
Easy to do deed	Nonprobate	Exemption for transfer from parent to child	Not eligible for homestead exemption	Completed taxable gift	Children get carryover basis	None; children own property	Great; children own property	5 year transfer rule applies
<b>3. TENANTS IN COMMON DEED</b>								
Easy to do deed to convey fractional or percentile share to child	Probate for retained share	Exemption for transfer from parent to child	Homestead exemption should apply; county practice may vary	Conveyed share is subject to gift tax; retained share is included in gross estate	Gift portion gets carryover basis; estate portion is stepped up	Limited; cotenants have vested interest in property; partition may apply	Partial; child's share may be liened or conveyed	Partial; home is exempt; estate recovery may apply; 5 year transfer rule applies

Simplicity in Creation	Probate or Nonprobate	Recording Tax	Ad valorem Taxation	Gift or Estate Tax	Income Tax Basis	Senior Control and Future Flexibility	Risk from Children or Grantee	Medicaid Protection
<b>4. JOINT TENANTS WITH RIGHT OF SURVIVORSHIP DEED (equal shares)</b>								
Easy to do deed under W. Va. Code § 36-1-20a; or use straw deeds	Nonprobate	Exemption for transfer from parent to child	Homestead exemption should apply; county practice may vary	Conveyed share is subject to gift tax; retained share is included in gross estate	Entire property gets stepped up basis	Limited; cotenants have vested interest in property; partition may apply	Partial; child's share may be liened or conveyed	Partial; home is exempt; 5 year transfer rule applies
<b>5. JOINT TENANTS WITH RIGHT OF SURVIVORSHIP DEED (unequal shares)</b>								
Moderate complexity to do deed; possibly not permitted under common law but may be validated by W. Va. Code § 36-12-15	Nonprobate	Exemption for transfer from parent to child	Homestead exemption should apply; county practice may vary	Conveyed share is subject to gift tax; retained share is included in gross estate	Entire property gets stepped up basis	Limited; cotenants have vested interest in property; partition may apply	Partial; child's share may be liened or conveyed	Partial; home is exempt; 5 year transfer rule applies; value of transfer is reduced

Simplicity in Creation	Probate or Nonprobate	Recording Tax	Ad valorem Taxation	Gift or Estate Tax	Income Tax Basis	Senior Control and Future Flexibility	Risk from Children or Grantee	Medicaid Protection
<b>6. LEGAL LIFE ESTATE DEED</b>								
Moderate complexity to do deed	Nonprobate	Exemption for transfer from parent to child	Homestead exempt	Conveyed share is subject to gift tax and annual exclusion does not apply; retained share is included in gross estate	Entire property gets stepped up basis	Moderate; cotenants have vested interest in property (future interest); senior has possession; partition or commutation may apply	Limited; child's future interest is unlikely to be liened or conveyed	Partial; home is exempt; 5 year transfer rule applies; value of transfer is reduced under actuarial tables
<b>7. DEED TO REVOCABLE LIVING TRUST</b>								
Complex; need to do deed, trust agreement, and memo of trust	Nonprobate	Probably exempt if properly claimed	Homestead exemption should apply	Not a completed gift; all property included in gross estate	Entire property gets stepped up basis	Great, depending on trust terms; trustee has control	Limited; trustee has control	None, but home is exempt; estate recovery may apply

Simplicity in Creation	Probate or Nonprobate	Recording Tax	Ad valorem Taxation	Gift or Estate Tax	Income Tax Basis	Senior Control and Future Flexibility	Risk from Children or Grantee	Medicaid Protection
<b>8. DEED TO IRREVOCABLE LIVING TRUST</b>								
Complex; need to do deed, trust agreement, and memo of trust	Nonprobate	Probably exempt if properly claimed	Homestead exemption should apply	Depends on trust terms	Depends on trust terms	Great, depending on trust terms; trustee has control	Limited; trustee has control	Depends on trust terms; 5 year transfer rule applies; D(4)(A) trusts may be exempt
<b>9. DEED TO BUSINESS ENTITY (Corporation, Limited Liability Company, Partnership, Etc.)</b>								
Very complex; need to do deed and entity documents; state registration of entity; file entity tax returns and annual reports	Nonprobate, but interest in entity is probate (shares or units). Converts realty into personalty	Technically no exemption for funding entity; quitclaim deed may be exempt	Not eligible for homestead exemption	Transfer of shares or units is a gift; retained shares or units are included in gross estate. Problem of valuation	Transferred shares or units get carryover basis; retained shares or units get stepped up basis	Mixed, depends on other entity members; officers have control	Limited; officers have control	None; 5 year transfer rule applies; value of transfer is reduced depending on value of shares or units

Simplicity in Creation	Probate or Nonprobate	Recording Tax	Ad valorem Taxation	Gift or Estate Tax	Income Tax Basis	Senior Control and Future Flexibility	Risk from Children or Grantee	Medicaid Protection
<b>10. TRANSFER ON DEATH DEED</b>								
Moderate complexity; statute must be followed; see W. Va. Code § 36-12-1	Nonprobate	Exempt by statute	Homestead exemption applies; no transfer occurs during life	No gift tax; all property is included in gross estate	Entire property gets stepped up basis	Great; TOD deed can be revoked during life	None; children have no interest until death of senior	Strong; home is exempt; no transfer is made; estate recovery should not apply because home is not in estate

Examples:    A - Deed of Gift      B - Deed as Tenants in Common      C - Deed as Joint Tenants w/ Right of Survivorship      D - Straw Deeds to Create Survivorship  
                   E - Lion-Cub Deed    F - Life Estate Deed    G - Deed to Trust      H- Memorandum of Trust    I - Quitclaim to Corporation  
                   J - Revocable Transfer on Death Deed

Prepared: March 2021

Christopher J. Winton, Esq.  
 RAY, WINTON & KELLEY, PLLC  
 109 Capitol Street, Suite 700  
 Charleston, West Virginia 25301  
 (304) 342-1141

**THIS DEED OF GIFT** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, party of the first part, as “Grantor”; and \_\_\_\_\_, party of the second part, as “Grantee”.

**WITNESSETH:**

That for and in consideration of love and affection and the sum of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantee all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantor by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantor does hereby covenant with the Grantee that he will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the excise tax on the privilege of conveying real property because it is a conveyance from a parent to a child.

EXAMPLE A - DEED OF GIFT



Witness the following signature and seal:

\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_

Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, party of the first part, as “Grantor”; and \_\_\_\_\_, party of the second part, as “Grantee”.

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantee an undivided one-half (1/2) interest as tenant in common in and to all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantor by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantor does hereby covenant with the Grantee that he will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the excise tax on the privilege of conveying real property because it is a conveyance from a parent to

EXAMPLE B - DEED AS TENANTS IN COMMON

a child.

Witness the following signature and seal:

\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_

Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, party of the first part, as “Grantor”; and \_\_\_\_\_ and \_\_\_\_\_, parties of the second part, as “Grantees”.

**W I T N E S S E T H:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantees as joint tenants with right of survivorship as at common law, and not as tenant in common, all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantor by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

This conveyance is made pursuant to the provisions of West Virginia Code § 36- 1-20a to create a joint tenancy with right of survivorship in the Grantees.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantor does hereby covenant with the

**EXAMPLE C - DEED AS JOINT TENANTS W/ RIGHT OF SURVIVORSHIP**

Grantees that he will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the excise tax on the privilege of conveying real property because it is a conveyance from a parent to a child.

Witness the following signature and seal:

\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_, parties of the first part, as “Grantors”; and \_\_\_\_\_, party of the second part, as “Grantee”.

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby GRANT and CONVEY unto the Grantee all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantors by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantors do hereby covenant with the Grantee that they will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto declare that this conveyance is exempt from the excise tax on the privilege of transferring real property because it is a conveyance from a principal to a straw party.

Witness the following signatures and seals:

\_\_\_\_\_

\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_

Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, party of the first part, as “Grantor”; and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, parties of the second part, as “Grantees”.

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantees as joint tenants with right of survivorship as at common law, and not as tenants in common, all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed to the Grantor by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, of even date and recorded simultaneously herewith in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantor does hereby covenant with the Grantees that he will WARRANT SPECIALLY the title to the real estate hereby conveyed.

The parties hereto declare that this conveyance is exempt from the excise tax on the privilege of transferring real property because it is a conveyance from a straw party to a principal.

Witness the following signature and seal:

\_\_\_\_\_



STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, party of the first part, as “Grantor”; and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, parties of the second part, as “Grantees”.

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantees as joint tenants with right of survivorship as at common law, and not as tenants in common, in the undivided interests as specified hereinbelow, all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantor by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

This conveyance is made pursuant to the provisions of West Virginia Code § 36- 1-20a to create a joint tenancy with right of survivorship in the Grantees.

TO HAVE AND TO HOLD unto the Grantees in the following undivided interests:

To \_\_\_\_\_ 98%,

To \_\_\_\_\_ 1%, and

To \_\_\_\_\_ 1%,

EXAMPLE E - LION-CUB DEED (UNEQUAL SURVIVOR SHARES)

as joint tenants with right of survivorship, so that upon the death of any one Grantee his or her interest herein shall pass under this deed by operation of law to the survivor or survivors.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk's Office or visible upon the ground, the Grantor does hereby covenant with the Grantees that he will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the excise tax on the privilege of conveying real property because it is a conveyance from parent to children.

Witness the following signature and seal:

\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_, parties of the first part, as “Grantors”; and \_\_\_\_\_, party of the second part, as “Grantee”.

**W I T N E S S E T H:**

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantee all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantors by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

The Grantors hereby RESERVE unto themselves a life estate in the property hereby conveyed for and during their natural lives with vested remainder in the Grantee.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantors do hereby covenant with the Grantee that they will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the

EXAMPLE F - LIFE ESTATE DEED

excise tax on the privilege of conveying real property because it is a conveyance from parents to a child.

Witness the following signatures and seals:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without benefit of title search by:

\_\_\_\_\_

**THIS DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_, parties of the first part, as “Grantors”; and \_\_\_\_\_ AS TRUSTEE OF THE \_\_\_\_\_ TRUST UNDER AGREEMENT DATED \_\_\_\_\_, 2021, party of the second part, as “Grantee”.

W I T N E S S E T H:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby GRANT and CONVEY unto the Grantee all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantors by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

Subject to the real estate taxes for the year 2021, and also subject to easements, covenants, and restrictions in deeds and other instruments affecting said real estate of record in said Clerk’s Office or visible upon the ground, the Grantors do hereby covenant with the Grantee that they will WARRANT GENERALLY the title to the real estate hereby conveyed.

The parties hereto do hereby declare that the conveyance made hereby is exempt from the excise tax on the privilege of conveying real property because it is a conveyance to a

EXAMPLE G - DEED TO TRUST

trust without consideration.

Witness the following signatures and seals:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_, and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

## MEMORANDUM OF TRUST

Pursuant to the provisions of West Virginia Code § 36-1-4a, the parties hereto hereby execute and proffer for recording this Memorandum of Trust containing and disclosing the following information:

1. The name of the Trust is the \_\_\_\_\_ **TRUST** created under Agreement dated \_\_\_\_\_, 2021 by and between \_\_\_\_\_, as Settlor, and \_\_\_\_\_, as Trustee.

2. The name and mailing address of the **Settlor** are \_\_\_\_\_, \_\_\_\_\_, Charleston, West Virginia \_\_\_\_\_.

3. The name and mailing address of the current acting **Trustee** are \_\_\_\_\_, \_\_\_\_\_, Charleston, West Virginia \_\_\_\_\_.

4. The names of the successor trustees and conditions under which successor trustees are appointed are specified in Section \_\_\_\_ of the Agreement dated \_\_\_\_\_, 2021 as follows:

5. The Trust is revocable by act of the Settlor, \_\_\_\_\_, during his life.  
William Harold Haas, during his life.

6. The Trustee has all of the powers, authorities, discretion, and immunities given to

EXAMPLE H - MEMORANDUM OF TRUST



fiduciaries by the provisions of Article 5A of Chapter 44 and Section 816 of Article 8 of Chapter 44D of the West Virginia Code, as amended, including but not limited to the power to sell, exchange, give options upon, partition, or otherwise dispose of any property or interest in property including real property.

IN WITNESS WHEREOF, the Settlor and the Trustee, have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

SETTLOR

\_\_\_\_\_

TRUSTEE

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as Settlor.

My commission expires \_\_\_\_\_.

\_\_\_\_\_

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_, as Trustee.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS QUITCLAIM DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_, parties of the first part, as “Grantors”; and \_\_\_\_\_, a West Virginia corporation, party of the second part, as “Grantee”.

W I T N E S S E T H:

That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors do hereby RELEASE, REMISE, QUITCLAIM, and CONVEY unto the Grantee all of their right, title, and interest, including the right of survivorship, in and to all that certain lot or parcel of land which is more particularly described as follows:

And being the same property conveyed unto Grantors by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

This conveyance is made without any warranty of title to the real estate hereby conveyed.

The parties hereto do hereby declare that this deed is exempt from the excise tax on the privilege of conveying real property because it is a quitclaim without consideration.

Witness the following signatures and seals:

\_\_\_\_\_  
\_\_\_\_\_

EXAMPLE I - QUITCLAIM TO CORPORATION

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_, and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

**THIS REVOCABLE TRANSFER ON DEATH DEED** Made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_, parties of the first part, as “Transferors”; and \_\_\_\_\_, party of the second part, as “Beneficiary”.

**WITNESSETH:**

That pursuant to the provisions of the West Virginia Uniform Real Property Transfer on Death Act, West Virginia Code § 36-12-1, *et seq.*, the Transferors do hereby DESIGNATE the Beneficiary as the designated beneficiary to receive upon their deaths the real property which is more particularly described as follows:

And being the same property conveyed unto Transferors by deed of \_\_\_\_\_ and \_\_\_\_\_, his wife, dated \_\_\_\_\_, 19\_\_ of record in the Office of the Clerk of the County Commission of \_\_\_\_\_ County, West Virginia in Deed Book \_\_\_\_\_, page \_\_\_\_\_.

**THE TRANSFERORS HAVE THE RIGHT TO REVOKE THIS TRANSFER ON DEATH DEED AT ANY TIME BEFORE DEATH IN ACCORDANCE WITH THE PROVISIONS OF WEST VIRGINIA LAW.**

This deed is exempt from the excise tax on the privilege of conveying property because it is a revocable transfer on death deed.

Witness the following signatures and seals:

\_\_\_\_\_  
\_\_\_\_\_

**EXAMPLE J - REVOCABLE TRANSFER ON DEATH DEED**

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_, and \_\_\_\_\_, as Transferors.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared without  
benefit of title search by:

\_\_\_\_\_

# PROBATE AVOIDANCE IN WEST VIRGINIA

WEST VIRGINIA STATE BAR  
PROBATE LAW COMMITTEE

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## What is Probate?

- Process through which a decedent's estate is administered and settled

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## Probate Jurisdiction

- County Commissions
- WV Constitution Article IX, Section 11:  
Powers of County Commissions
- WV Code §7-1-3: Jurisdiction, powers  
and duties

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## Where to probate?

### WV Code §41-5-4

The county court shall have jurisdiction of the probate of wills according to the following rules:

- (a) In the county wherein the testator, at the time of his death, had a mansion house or known place of residence; or
- (b) If he had no such house or place of residence, then in the county wherein any real estate devised thereby is situated; or
- (c) If there be no real estate devised thereby, and the testator had no such house or place of residence, then in the county wherein he died, or in any county wherein he had any property at the time of his death; or
- (d) If he died out of this state, his will or an authenticated copy thereof, may be admitted to probate in any county in this state, wherein there is property devised or bequeathed thereby.

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## West Virginia Probate

### Two Probate Systems for Proof and Allowance of Claims:

- 1) Fiduciary Commissioner Counties
  - WV Code §44-2-1, et seq.
  
- 2) Fiduciary Supervisor Counties
  - WV Code §44-3A-1, et seq.

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## Who handles the probate process?

Personal Representative (WV Code §44-1-1, *et seq.*)

Executor/Executrix

or

Administrator/Administratrix

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## How to Probate?

- Death Certificate
- Original Will
- Affidavit of Heirs
- Checkbook

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## How to qualify?

**Call Office of Fiduciary Supervisor or Fiduciary Commissioner to  
Verify What Process is in particular County**

**Differences in how they are handling qualifications due to COVID-19**

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## Preparing & Filing

- 1) Form 6.01 (*Appraisement of the Estate*)
- 2) Form 6.02 (*Nonprobate Inventory of the Estate*)

[within 90 days from qualification]

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## Typical Probate Assets

### - IN DECEDENT'S NAME-

- Tangible Personal Property
- Real Estate
- Stocks/Bonds/Securities
- Bank Accounts/CDs
- Notes/Accounts Receivable
- Business interests

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## Nonprobate Assets

Assets that generally pass by contract or some means other than pursuant to the Will.

- JTROS assets
- Retirement Plan assets
- POD or TOD assets
- Life Insurance
- Annuities
- Assets in a Revocable Trust

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## Nonprobate Assets

Not Governed by the Last Will and Testament

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## Nonprobate Assets

Included in Gross Estate for tax purposes  
If taxable estate (current exemption \$11.7 million)

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## Nonprobate Assets

2031 includes “the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.”

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## Nonprobate Assets

2033 – “[t]he value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.”

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## Joint Tenants with Right of Survivorship

- Real Estate
- Bank accounts
- Investment accounts
- Vehicles
- Can be litigious

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# And vs. Or

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## Nonprobate Real Property

### ★ List on Form 6.01, Part 2

- Did the decedent own an interest in any real estate as joint tenant with right of ownership?
- Did the decedent transfer an interest in any real estate without adequate consideration within three years prior to the date of death?
- Did the decedent own an interest in any real estate in an inter vivos trust (living trust) arrangement or in which the decedent retained the right of use and enjoyment?
- Did the decedent own an interest in any real estate in which the decedent retained a power of appointment, whether special or general?
- Did the decedent own an interest in any real estate as a life estate including a dower interest?
- Did the decedent own an interest in any real estate transferable by a transfer on death deed?

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## Life Insurance

- Normally, contract between decedent and life insurance company
- Pays to listed beneficiaries

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## Retirement Plans

- Pension plans
- 401(k) type plans
- IRA type plans
  - Pay to designated beneficiaries

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## SECURE ACT

Recent change in law

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## Payable on Death (or Transfer on Death)

- Bank account (W. Va. Code §31-4-33a)
- Investment account (W. Va. Code §36-10-1 *et seq.*)
- W. Va. Code 36-10-9(a) “[a] transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this article is not testamentary.”
- Certificate of Deposit account

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## Transfer on Death Deed

### Uniform Real Property Transfer on Death Act

- W.Va. Code §36-12-1 *et seq.*
- Effective in West Virginia since June 5, 2014
- Decedent owns, but transfers on death to beneficiaries

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## Assets Moved to Revocable Trust Pre-Death

### Pourover Will/Revocable Trust Planning

- If moved pre-death, nonprobate and private
- If Revocable Trust formed but assets not transferred pre-death, then list on 6.01, even though Will pours into Trust after administration

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## Other Nonprobate Assets

- Power of appointment
- Gifts within three years of death
- JTROS personal property
- Annuities
- Life tenant of personal property

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## Listing Nonprobate Assets

If decedent has any nonprobate assets, must answer these questions with respect thereto:

1. Type of transfer
2. Name of person with an interest in the property
3. Relationship to the decedent
4. Market value at death
5. Description of property

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Questions?



**J.E. WHITE, JR., ESQ.**

**WEST VIRGINIA STATE BAR PROBATE SEMINAR**

**MARCH 24, 2021**

J.E. White, Jr. is a member of Jackson Kelly PLLC in its Charleston office. J.E. graduated from West Virginia University College of Law (Order of the Coif) in 1993 and obtained an LL.M. in Taxation from New York University School of Law in 1994. J.E.'s practice is focused on estate planning, trust and estate administration, special needs trusts, federal and state tax issues, and closely held businesses. J.E. is a member of the Probate and Tax Committees of the West Virginia State Bar, and the Real Property, Probate and Trust Law Section of the American Bar Association. J.E. is a member of both the Charleston Estate Planning Council and the Greater Huntington Estate Planning Council.

J.E. has been selected and listed in *The Best Lawyers in America* in the fields of Closely Held Companies and Family Businesses Law and Tax Law. He is Peer Review Rated AV Preeminent by Martindale Hubbell.

J.E. is a frequent speaker on various estate planning, estate and trust administration and closely held business topics.

Anna Price is a member at Jenkins Fenstermaker, PLLC. Anna focuses her practice in the areas of simple and complex [estate planning](#), estate administration, elder law, tax, corporations, and probate litigation. Working with a variety of clients, Anna has developed the skillset and relationships to plan for and administer estates of all levels.

Born and raised in West Virginia, Anna received her bachelor of arts degree in elementary and special education from [Marshall University](#) in 2007. She then went on to become a Mountaineer alumna, graduating from [West Virginia University College of Law](#) in 2010. She began her legal career with Huddleston Bolen LLP and Anspach Meeks Ellenberger LLP, but in July 2016, Anna began putting her knowledge of West Virginia estate planning to work for Jenkins Fenstermaker, PLLC. In 2017, 2018, 2019, and 2020 Anna's excellence as a top-rated estate planning lawyer in WV brought her national recognition in [Super Lawyers®](#) as a [Rising Star](#).

Anna's motivation is handling the paperwork for grieving families to allow them time to find a new normal. Along with that she has dedicated her career to helping her clients through the complexities of the probate process as well as estate planning and administration. She makes it her mission to help and support every client based on his or her individual needs. She also strives to ensure that her services will not only benefit her clients now but will help them to secure a strong future.

Anna's caring and compassionate personality shines through not only as an estate planning lawyer in WV but also in her involvement with the community she calls home. She proudly serves as a vital part of several local organizations including the [Mountaineer Spina Bifida Camp](#), [Charleston Estate Planning Council](#), and the [Huntington Estate Planning Council](#).

Outside of the office, you might find Anna enjoying time with her husband, Greg her dogs, and friends and family. Anna and Greg are expecting their first child in July.

March 24, 2021 Webinar

**Probate Avoidance, Deed Choices for WV Real Estate,  
and Appraisal and Inventory**

Preparing the Appraisal and Inventory

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A. Strategies for Discovering Assets

One of the most important duties of a personal representative is the duty to take custody of the decedent's probate assets and complete an inventory of such probate and nonprobate assets on the appraisal and nonprobate inventory forms. Thus, the personal representative has a duty to make every reasonable effort to track down the decedent's assets. As an attorney assisting with the estate administration process, it is my practice to employ several strategies.

1. Interviewing the decedent's relatives, financial professionals (investment advisors, bankers, attorneys, accountants, and insurance agents), and friends may lead to asset information that the decedent explained to loved ones or professionals.
2. Determining where a decedent may have kept assets will assist in have a comprehensive inventory. Safe deposit boxes may be located at a financial institution other than where the decedent banked most often. Decedents sometimes keep lists of financial professionals or assets in safe deposit boxes or fire proof safes at home.

3. Reviewing the decedent's income tax returns from several prior years will lead to income producing assets. Schedule A of an income tax return provides interest and dividend information, and Schedule D provides capital gains information. Sources for dividend income are provided on Forms 1099.
4. Searching property tax tickets will assist in getting an idea of a decedent's real property interests; however, sometimes it can be misleading. A title search is the only accurate way of obtaining a Decedent's real property interest.
5. Checking all mail that is delivered to the Decedent's last known address or post office box may provide statements, invoices, or other helpful items.
6. Reviewing bank statements, cancelled checks, credit card bills, or other paper trails may lead to evidence of large purchases or premium payments.

Certain issues can arise in preparing the appraisal form and gathering assets. Sometimes family members may have access to the personal residence of a decedent and take items of property prior to the personal representative getting an inventory. The County Commission can issue a summons to such individual to appear and produce the property. Other problems include the difficulty in valuing stock in a closely-held company. While it is advisable to obtain a formal business valuation, it is not always reasonable to do so. If the estate is not taxable, a supported estimate may be sufficient.

#### B. Dealing with Digital Accounts and Assets

West Virginia Code Chapter 44, Article 5B outlines the West Virginia Uniform Fiduciary Access to Digital Assets Act. According to the Code, a "Digital Asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability, unless the asset or liability is itself an electronic record." Digital assets can include your social media accounts, email accounts, online photo albums, online banking accounts, blogs, digital music, and any other digital property. When heirs and personal representatives stumble upon the passwords and access information to these assets, they often think that they have full access to modify, amend, or control said property, but do they?

In a tangled web of state laws, federal laws, and online user agreements, most digital assets are restricted after the death of an original user. Using a decedent's password to access an account



may not only violate the user terms of the website, but it may also violate the federal Computer Fraud and Abuse Act. In, West Virginia, there are recommendations for how to plan for these assets after your death. For example, a user may use an online tool for disclosure of these assets to a fiduciary, or the user may allow or prohibit, in a will, trust, power of attorney, or other legal document, the disclosure of these digital assets. Such direction should override the terms of service agreement of a particular asset. Unfortunately, however, this new legislation does not change or allow any additional access to these assets by a user or fiduciary, unless it is permitted by the federal law and/or terms of service agreement.

Some of these digital assets may have a very limited financial value, but there are others, such as domain names, that may add significant wealth to your estate. First, it is encouraged to make a complete list of all online accounts, that you have created a profile or with which you have entered into a user agreement. For each account list the log-in and password, answers to your security questions, and keep that information in your safe deposit box. Second, consider signing an Authorization and Consent for Release of Electronically Stored Information drafted by your estate planning attorney. This release should authorize the companies that hold your digital assets to disclose pertinent information to your personal representative. An example of such a release is as follows:

I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my then-acting fiduciaries at any time: (1) any electronically stored information of mine; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; (3) any record or other information pertaining to me with respect to that service. The terms used in this authorization are to be construed as broadly as possible, and the term “fiduciaries” includes an attorney-in-fact acting under a power of attorney document signed by me, a guardian or conservator appointed for me, a trustee of my revocable trust, and an executor (executrix) of my estate.

The authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. This authorization is effective immediately. Unless this authorization is revoked by me in writing while I am competent, this authorization continues to be effective during any period that I am incapacitated and continues to be effective after my death.

Unless a person or entity has received actual notice that this authorization has been validly revoked by me, that person or entity receiving this authorization may act in reliance on the assumption that it is valid and unrevoked, and that person or entity is released and held harmless to me, my heirs, legal representatives, successors, and assigns from any loss suffered or liability incurred for acting according to this authorization. A person or entity may accept a copy or facsimile of this original authorization as though it were an original document.

While services are available online that claim to transfer your digital assets to your beneficiaries at your death, there is no guarantee for such transfer. Even these services would have to comply with federal law, state law, and the user agreements under each individual account. I also encourage ensuring that your will and powers of attorney address the issue regarding disclosure, access, and transfer of such assets. With the digital age taking over at a rapid rate, the pressure will be on law makers to tackle and keep up with this difficult issue.

### C. Identifying and Valuing Assets

West Virginia Code § 44-1-14 requires a personal representative of an estate to appraise the real estate and probate assets in which a decedent held an interest at the time of his or her death. Further, the same statute give every personal representative the authority to hire an expert to assist and advise him or her regarding the duties in appraising the assets or property. Such expert can be compensated with a reasonable sum out of the estate. The values of all assets or the decedent's estate are determined as of the date of the decedent's death.

### 1. Tangible Personal Property

Perhaps the most difficult asset to value is tangible personal property. Tangible personal property is listed on Schedule B of the appraisal form. Except for probate purposes, a nontaxable estate will not require a detailed appraisal of tangible personal property. Sometimes special property such as jewelry, artwork, antiques, collectibles, and firearms require a more detailed appraisal value. Jewelry uses a fair market value (not a cost of replacement or the cost used to value the jewelry for insurance applications). Vehicles are valued according to the NADA “Blue Book” or similar publications that list the value of car resale values by model and year.

### 2. Stocks and Bonds

Bonds and securities are listed on Schedule C of the appraisal. While the instructions for the West Virginia Appraisal do not give much guidance, the federal estate tax return guidelines state that the value of securities that are national, regionally, or locally exchanged is the mean of the high and low selling prices on the valuation date. Series E and EE bonds are valued by a government redemption table updated monthly and available at any commercial bank. Series H Bonds (and H bonds that were converted E bonds) are valued at full face amount.

### 3. Corporate Stock

Corporate stock is listed on Schedule D of the appraisal. The appraisal requires the company name, the number of shares, the value per share, whether the stock is closely-held, and the total market value of the decedent’s date of death interest. If the stock is closely-held, a business valuation may be necessary.

### 4. Accounts

Schedule E of the appraisal lists “money, certificates of deposit, notes, account, etc.” The description of each bank account should include the name and address of the financial institution, the account number, the time of account, and the date of death balance. While no proof of these items needs to be attached to the appraisal, I make it a general practice to have statements providing all of the above information in my file in the event these items are questioned at any time.

### 5. Life Insurance

Using a Form 712, *Life Insurance Statement*, a personal representative can obtain the valuation of life insurance for estate tax purposes. The Form 712 should identify the cash value, death value, accumulated dividends and interest, post-mortem dividends related to the period

before death, and returned premiums. If life insurance is payable to the estate, it is listed on Schedule F of the appraisal. If the beneficiary is a specific person or trust, the life insurance is listed on the nonprobate inventory.

#### 6. Real Estate

All real property is listed on the appraisal of the estate, regardless of its probate or nonprobate classification or out of state location. Natural resource holding interests are also considered real property for purposes of the appraisal. For real property owned outside the county of administration, a certified copy<sup>7</sup> of the decedent's will and appraisal must be recorded in each county where the real property is located.

The appraisal requires a fair market value of the real property on the decedent's date of death. The fair market value is the price at which the property would change hands between a willing buyer and seller who both have full and reasonable knowledge of the circumstances surrounding the transaction. While a certified appraisal of real property with a full legal description with photographs and maps shall be attached to a federal estate tax return, no attachment is necessary to the appraisal. May estates cannot support the cost of a full appraisal for listing on the appraisal; thus, if there is no tax liability, it may be appropriate to use the assessed value of the real property. The full assessed value of real property (located on the property tax ticket) must be listed on the appraisal form. The assessed value of real property is sixty (60) percent of the fair market value of the real property in West Virginia.

#### D. Reporting Assets on the Appraisal and Nonprobate Inventory Forms

Any personal representative has the duty to prepare and file the Appraisal and Nonprobate Inventory of an Estate. The appraisal and nonprobate inventory must include all probate and nonprobate real estate, personal property (specifically defined as stocks and bonds, bank accounts, mortgages, notes, cash, life insurance, and all personal property).

##### 1. Appraisal of the Estate.

The appraisal of the estate must list all probate property and nonprobate real property. The West Virginia Code defines probate property as "property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law." The personal representative of an estate

is required to appraise the real estate and probate assets in which a decedent held an interest in at the time of his or her death in accordance with West Virginia Code § 44-1-14. As stated above, West Virginia Code § 44-1-14(b) requires that these values be listed on the appraisal form, which is executed and signed by the personal representative in front of a notary public. The original appraisal and two copies must be filed within ninety days of the date of the qualification of the personal representative with the clerk of the county commission or the fiduciary supervisor. The appraisal form is recorded in the county where the estate is being administered. If a personal representative fails to file the appraisal in a timely manner, he or she is guilty of a misdemeanor and subject to a fine of \$25.00-\$500.00.

The appraisal document is extremely important because it is considered *prima facie* evidence of the value of the property listed, that the property is subject to administration, and that the property has been received by the personal representative.

## 2. Nonprobate Inventory of the Estate.

Prior to changes instituted in 2001, personal representatives were required to list all nonprobate assets on the appraisal form. However, many practitioners opposed this requirement opining that it was unnecessary and often lead to the disclosure of information to individuals who had no legitimate interest in the administration of the estate. Thus, the statute was amended, and the requirements of reporting nonprobate assets were altered. Now, personal representatives are required to file a nonprobate inventory form listing and appraising all nonprobate personal property in accordance with West Virginia Code § 11-11-7.

The assets typically listed on a nonprobate inventory include personal property owned as joint tenants with right of survivorship, has a payable on death beneficiary, or is held as a life tenant. Additional nonprobate assets would include powers of appointment, annuities, property passing via trust by reason of the decedent's death, taxable gifts, and any other property *not* passing by the decedent's will or laws of intestate descent and distribution in the absence of a will. The personal representative must include the type of transfer, the name of the person with an interest in the property as a joint tenant or transferee, and the relationship to the decedent of all above named persons on the inventory.

The nonprobate inventory is maintained and preserved by the clerk of the county commission or fiduciary supervisor, but is not recorded by the clerk of the county commission. Instead, it is a confidential tax return and may not be disclosed by the clerk of the county

commission. Although a certified copy of the appraisal and unrecorded nonprobate inventory is mailed to the tax commissioner, West Virginia's estate tax (or inheritance tax) is virtually inapplicable at this time due to various changes at the federal level.