

Affidavit for Ancillary Administration of West Virginia **Real Estate without Appointment**

Effective May 30th, 2019, the West Virginia Legislature amended the West Virginia Code §41-5-13, §44-1-4, and §44-1-14b, to allow Real Estate, oil, gas, and minerals to transfer title through 'probate' without completing a full probate under WV law. These Affidavits are to be completed by someone who has knowledge of the probated estate in the original state of jurisdiction. There are two forms that may be obtained from the County Clerk's Office.

- **Affidavit for Ancillary Administration of West Virginia Real Estate without Appointment (Testate with Authenticated Will)** is for estates with a Will probated in another state.
 - The Authenticated/Exemplified probated will must either be recorded as a separate document or attached to the Affidavit. This must include the order admitting the will to probate.
 - A copy of the death certificate is not required for this Affidavit.
- **Affidavit for Ancillary Administration of West Virginia Real Estate without Appointment (Testate with Original Will)** is for estates where for whatever reason the original will was not probated or admitted to probate in the original jurisdiction.
 - The original will must be attached to the Affidavit for recording.
 - A certified copy of the death certificate is required to be filed as an attachment.
- **Affidavit for Ancillary Administration of West Virginia Real Estate without Appointment (Intestate)** is for estates that did not have a Will probated in another state.
 - A certified copy of the death certificate is required to be filed as an attachment.

Determining the Fair Market Value: The Assessed Value of the real estate is determined the same way it is determined when completing the Estate Appraisal. The Assessed Value is taken from the most recent tax ticket.

- If the property is Fee, Surface, or a combination of surface and OGM: Market Value is determined by Assessed Value / 0.6
- If OGM ONLY and there IS PRODUCTION, Average the net income received in the past 3 years (sum of last 3 years of income divided by 3), multiplied by 5 = Fair Market Value
- If OGM ONLY and there is NO PRODUCTION, multiple the tax assessment by 3 = Fair Market Value

The recording fee for the Affidavit of Ancillary Administration of West Virginia Real Estate without Appointment is \$11.00 for the first 5 pages plus the cost of publication (is a sliding fee depending on the number of publications). A letter will be mailed to you once the objection period has expired with an invoice for recording. We do not accept out-of-state personal checks.

**** 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 these forms are meant to replace the need for appointment and fully opening an estate in Ritchie County, WV, a similar process to probate must be completed after the County Clerk's Office receives the Affidavit and prior to the recording of these Affidavits. Once the Affidavit is complete and submitted to the County Clerks' Office, the following is a timeline for your information on what will happen.

- The day it is correctly filed with our office it will be stamped received.
- Within 30 days of filing, the Clerk's Office will publish a Class II legal advertisement once a week for 2 consecutive weeks in a local paper.
- Within 30 days of the first date of publication, the Clerk's office will forward a copy of the Notice of Ancillary Administration of West Virginia Real Estate without Appointment and a copy of the legal advertisement to the Affiant who shall hand deliver or serve a copy on all parties (surviving spouse, personal representatives, beneficiaries, heirs at law, and creditors). Once they have mailed or served each party (also within 30 days of the date of the first publication), the Affiant is required to file the Certificate of Service with the Clerk's Office.
- Beneficiaries/Heirs have 30 days from the date of service or 60 days from the date of the first publication, whichever is later, to note an objection (in writing to the County Clerk's Office) to the estate being transferred without appointment.
- If no objection is noted, a letter will be mailed to the Affiant for the recording fee (see above) and the Affidavit will be recorded upon receiving the recording fee.
- If an objection is noted, a hearing will be set before the County Commission where all parties (Affiant, beneficiaries, heirs, etc.) will be notified and the County Commission will enter an order.

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 me at jhodges@clerk.state.wv.us.