WEST VIRGINIA CODE CHAPTER 11 ARTICLE 22

WV Legislature

§11-22-1. Definitions.

As used in this chapter:

"Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned or conducted by two or more persons.

"Corporation" means a corporation or joint-stock association, organized under the laws of this state, the United States or any other state, territory or foreign country or dependency including, but not limited to, banking institutions.

"Commissioner" means the State Tax Commissioner.

"Document" means any deed, or instrument or writing by which any real property within this state or any interest in real property is granted, conveyed or otherwise transferred to the grantee, purchaser or any other person. "Document" as defined herein does not include:

(1) Wills, or lists of heirs or intestate administrations;

(2) Transfer of real property where the value of the property transferred is one thousand dollars or less, and for the purposes of this subdivision, "value" means the assessed value as defined in §11-1A-3 of this code divided by 0.60;

(3) Testamentary or inter vivos trusts;

(4) Deeds of partition;

(5) Deeds made pursuant to mergers of corporations, limited liability companies, partnerships, limited partnerships, or testamentary or inter vivos trusts;

(6) Deeds made pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships or trusts;

(7) Deeds without consideration between a natural person or persons or a testamentary or inter vivos trust and a limited liability company that is wholly owned by the natural person or persons or the trust;

(8) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

(9) Leases;

(10) Transfers between husband and wife, transfers between parent and child or transfers between parent and child and his or her spouse, without consideration, transfers between grandparent and grandchild, transfers between grandparent and grandchild and his or her spouse, without consideration, or transfers between siblings, without consideration. For

WV Legislature

purposes of this subdivision, the terms “child,” “grandchild,” and “sibling” include biological children, legally adopted children, stepchildren, and the corresponding lineal descendants thereof, and the terms “parent” and “grandparent” include biological parents, adoptive parents, stepparents, grandparents, and great-grandparents;

(11) Transfers without consideration between a principal and straw party for any purpose;

(12) Transfers from or between voluntary charitable or educational associations or trustees of voluntary charitable or educational associations and like nonprofit corporations having the same or similar purposes;

(13) Deeds for oil, gas, or other minerals, without consideration;

(14) Corrective deeds or confirmatory deeds without consideration;

(15) Transfers to or from the United States, the State of West Virginia, or to or from any of their instrumentalities, agencies or political subdivisions, by gift, dedication, deed or condemnation proceedings; or

(16) Mortgages or deeds of trust given as security for a debt.

"Limited liability company" means a limited liability company organized under the laws of this state, the United States or by any other state, territory or the District of Columbia.

"Person" means every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, means the partners or members of the association, and, as applied to corporations, the officers of the corporation, and as applied to limited liability companies, its members, managers, or member-managed staff.

"Transaction" means the delivering, accepting or presenting for recording of a document.

"Value" means in the case of any document, the amount of the full actual consideration for the document, paid or to be paid, including the amount of any lien or liens assumed; and in the case of any document without consideration, the actual monetary value of the property conveyed or transferred. In the event any document includes real property or any interest in real property lying outside the State of West Virginia or includes personal property, value is the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value as defined in this subsection shall be stated in the declaration of consideration or value provided for in §11-22-6 of this code.

WV Legislature

§11-22-2. Rate of tax; when and by whom payable; additional county tax; county clerk funding for election administration, infrastructure, and security, and other county clerk purposes.

(a) Every person who delivers, accepts, or presents for recording any document, or in whose behalf any document is delivered, accepted, or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, an excise tax upon the privilege of transferring title to real estate at the rate of $1.10 for each $500 value or fraction thereof as represented by the document as defined in §11-22-1 of this code: *Provided*, That beginning July 1, 2021, ten percent of each excise tax collected pursuant to the provisions of this subsection shall be retained by the county wherein the tax was collected to be used for county purposes: *Provided, however*, That beginning July 1, 2022, 20 percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used for county purposes: *Provided further*, That beginning July 1, 2023, thirty percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used as provided in subsection (c) of this section: *And provided further*, That beginning July 1, 2024, 65 percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used as provided in subsection (c) of this section: *And provided further*, That beginning July 1, 2025, the excise tax collected pursuant to this subsection shall be a county excise tax retained by the county wherein the tax was collected and to be used by the county as provided in subsection (c) of this section. The excise tax collected pursuant to this subsection is payable at the time of delivery, acceptance, or presenting for recording of the document. In addition to the excise tax described in this subsection, there is assessed a fee of $20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional $20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the Affordable Housing Fund as provided in §31-18-20d of this code. The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund. The West Virginia Housing Development Fund shall publish monthly on its Internet site an accounting of all revenue deposited into the fund during the month and a full disclosure of all expenditures from the fund including any person or entity receiving funds, its location, and any contractor awarded a construction contract.

(b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of 55 cents for each $500 value or fraction thereof as represented by such document as defined in §11-22-1 of this code, which county tax shall be payable at the time of delivery, acceptance, or presenting for recording of such document: *Provided*, That after July 1, 1989, the county may increase said excise tax to an amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes: *Provided, however*, That

after July 1, 2017, the county may increase the excise tax to an amount not to exceed $1.65 for each $500 value, or fraction thereof, as represented by a document, as defined in §11-22-1 of this code: *Provided further*, That only one such state tax and one such county tax shall be paid on any one document and shall be collected in the county where the document is first admitted to record and the tax shall be paid by the grantor therein unless the grantee accepts the document without such tax having been paid, in which event such tax shall be paid by the grantee: *And provided further*, That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee. The county excise tax imposed under this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission of such county. Any county commission intending to increase the excise tax imposed in its county shall publish a notice of its intention to increase such tax not less than 30 days nor more than 60 days prior to the meeting at which such increase will be considered, such notice to be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code and the publication area shall be the county in which such county commission is located.

(c)(1) Beginning July 1, 2023, and ending June 30, 2024, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Twenty percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Five percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

(C) Five percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq*. of this code.

(2) Beginning July 1, 2024, and ending June 30, 2025, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Thirty percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Seventeen and one-half percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

WV Legislature

(C) Seventeen and one-half percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq*. of this code.

(3) Beginning July 1, 2025, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Ninety percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Five percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

(C) Five percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq*. of this code.

(4) The Secretary of State propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish minimum standards for election administration, infrastructure, and security, which rules shall include, but not be limited to, standards regarding cyber and physical security, and a minimum reserve funding requirement for each county from funds transferred to the separate fund required by this subsection for election administration, infrastructure, and security: *Provided*, That the minimum reserve funding requirement may not exceed the cost of upgrading voting equipment at the statewide average price to upgrade a voting system by precinct. Upon a determination by the Secretary of State that a county has satisfied the minimum reserve funding requirement and standards, the moneys in excess of the minimum reserve funding requirement may be transferred to the county's general fund at the county commission's direction.

(5) Any moneys that are deposited into two separate funds for use in improving election administration, infrastructure, and security, and other purposes relating to the office of the clerk of the county commission, shall be in addition to and separate from typical county budget allocations and shall not be supplanted by a budget reduction to the clerk of the county commission's office: *Provided*, That reasonable budget reductions are permitted if made in the ordinary course for reasons other than offsetting the additional funding as provided in this section.

WV Legislature

§11-22-3. Payment from proceeds of judicial sale.

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, commissioner, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith.

WV Legislature

§11-22-4. Documentary stamps; affixing; cancellation; declaration of value.

The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person executing, delivering or presenting for recording such document. Each stamp shall be affixed in such manner that its removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, That the commissioner may prescribe such other method of cancellation as he may deem expedient.

WV Legislature

§11-22-5. Commissioner to provide for sale of stamps; rules and regulations.

(a) The commissioner shall prescribe, prepare and furnish adhesive stamps of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this article, to the clerks of the various county commissions whose duty it shall be to offer said stamps for sale.

(b) The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

(1) The method and means to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.

(2) The denominations and sale of stamps.

(3) Any other matter or thing pertaining to the administration and enforcement of the provisions of this article.

(c) In addition to the form of the stamps described in subsection (a) of this section, and the method and means to be used in affixing the stamps heretofore authorized by the commissioner, the commissioner may authorize the clerks of the county commissions to affix stamps by meter or other similar device. Stamps that are affixed by the use of such devices shall be uniform as to size and design and shall be in such form as determined by the commissioner. Notwithstanding the provisions of section four of this article, cancellation of the stamps affixed by the use of such devices is not required.

WV Legislature

§11-22-6. Duties of clerk; declaration of consideration or value; filing of sales listing form for Tax Commissioner; disposition and use of proceeds.

When any instrument on which the tax as herein provided is imposed is offered for recordation, the clerk of the county commission shall ascertain and compute the amount of the tax due thereon and shall ascertain if stamps in the proper amount are attached thereto as a prerequisite to acceptance of the instrument for recordation.

When offered for recording, each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed. The declaration may be in the following language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property conveyed by the document to which this declaration is appended is $_____; or

(b) The true and actual value of the property transferred by the document to which this declaration is appended is, to the best of my knowledge and belief $_____; or

(c) The proportion of all the property included in the document to which this declaration is appended which is real property located in West Virginia is _____%; the value of all the property $_____; the value of real estate in West Virginia is $_____; or

(d) This deed conveys real estate located in more than one county in West Virginia; the total consideration paid for, or actual cash value of, all the real estate located in West Virginia conveyed by this document is $_____; and documentary stamps showing payment of all of the excise tax on all of said real estate are attached to an executed counterpart of this deed recorded in _____ County.

Given under my hand this ___ day of _____, 19__.

Signed _____ (Indicate whether grantor, grantee, or other interest in conveyance). _____ Address"

The declaration shall be considered by the clerk in ascertaining the correct number of stamps required, and if declaration (d) above is used, no stamps may be required on the duplicate deed to which it is attached and the duplicate deed shall be admitted to record, and when recorded shall have the same effect for all purposes as if stamps were attached thereto.

On or after July 1, 1996, the clerk may not record any document with or without stamps

WV Legislature

affixed unless there is tendered with the document a completed and verified sales listing form for the benefit and use of the State Tax Commissioner. Preprinted forms for this purpose shall be provided to each clerk by the Tax Commissioner.

The forms shall require the following information: (1) If the last deed in the chain of title represents the last transfer of the property, the names of the grantor and grantee and the deedbook and page number; or (2) if the last transfer was not made by deed, the source of the grantor's title, if known; or (3) if the source of the grantor's title is unknown, a description of the property and the name of the person to whom real property taxes are assessed as set forth in the landbook prepared by the assessor. In all cases the forms shall require the tax map and parcel number of the property, the district or municipality in which the real property or the greater portion thereof lies, the address of the property, the consideration or value in money, including any other valuable goods or services, upon which the buyer and seller agree to consummate the sale, and any other financing arrangements affecting value. The sales listing form required by this paragraph is to be completed in addition to, and not in lieu of, the declaration required by this section: Provided, That the Tax Commissioner may design and provide a form which combines into one form the contents of the declaration and the sales listing form required herein and recordation and filing of that form may be used as an alternative to filing the sales listing form required herein: Provided, however, That the filing with the clerk of a duplicate deed containing the sales listing form information required by this section shall also satisfy the requirements of this section regarding the sales listing form. The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the county excise tax into the county general fund for use of the county.

On or before the tenth day of each month the clerk shall deliver to the Tax Commissioner, or a person designated by the Tax Commissioner, the sales listing forms or other alternative forms as may be authorized by this section for documents recorded during the preceding month.

The sales listing form required by this section shall also include a portion thereof for the information required of a person claiming a lien against the real property described in the document who desires to file a statement pursuant to the provisions of subsection (a), section three, article three, chapter eleven-a of this code. Upon receipt of the form, the clerk shall, no later than the end of the business day upon which it was received, provide a copy of the statement to the assessor and a copy thereof to the sheriff. The assessor shall note any new owner of the real property indicated on the sales listing form upon the landbooks. The sheriff shall promptly compare the information contained in the sales listing form with his or her records and shall:

(1) Provide the lienholder such notice as the lienholder would thereafter otherwise be entitled to receive pursuant to the provisions of chapter eleven-a of this code had the lienholder provided the information in the form of a statement as permitted by the provisions of section three, article three of said chapter;

WV Legislature

(2) Provide any other person listed on the sales listing form such notice as the person would thereafter otherwise be entitled to receive pursuant to the provisions of chapter eleven-a of this code as a result of the person's interest in the real property;

(3) Deliver to any person listed on the sales listing form as the new owner of the real property described in the document a copy of any subsequently issued tax ticket required to be sent by the provisions of section eight, article one, chapter eleven-a of this code; and

(4) Promptly notify any person listed on the sales listing form as the lienholder or the new owner of the real property of any due and unpaid taxes assessed against the property.

WV Legislature

§11-22-7. Failure to affix stamps.

No document upon which a tax is imposed by this article shall be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this state, nor shall the same be recorded in the office of any clerk of any county court of this state, unless or until a documentary stamp or stamps as provided in this article have been affixed thereto, but if recorded without stamps or without the proper amount of stamps, said document shall nevertheless be duly of record except that no copy thereof may be admitted in evidence until the proper amount of stamps has been placed on the original or such copy.

WV Legislature

§11-22-8. Penalty for recording without documentary stamp; effect.

Any clerk who shall record any document upon which a tax is imposed by this article without the proper documentary stamp or stamps affixed thereto as required by this article as is indicated in such document or accompanying declaration shall, upon conviction in a court of competent jurisdiction, be fined $50.

Failure of the clerk to require the attachment of the proper number of stamps shall not affect the recordability of the instrument, if otherwise recordable and regularly recorded. The failure to pay this tax and to attach the required stamps shall not be or constitute a lien or claim against the property conveyed by the recorded instrument.

WV Legislature

§11-22-9. Unlawful acts; penalty.

It shall be unlawful for any person to:

(1) Knowingly make a false statement in the declaration provided for in section six of this article; or,

(2) Fraudulently affix to any document upon which tax is imposed by this article any previously used documentary stamp which has been cut, torn or removed from any other document upon which tax is imposed by this article, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate or other article; or,

(3) Wilfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any person for use, or knowingly use the same; or,

(4) Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this article: Provided, That the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause; or,

(5) Knowingly or wilfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than $100 nor more than $1,000 or be imprisoned for not more than five years, or both, in the discretion of the court.

WV Legislature

§11-22-10. Erroneous collections; refund.

Any person who may have been required to pay the state tax provided for in this article because of any mistake of law or fact or because the tax herein provided for was improperly collected may apply for a refund thereof either to the county clerk receiving such payment, or to the State Auditor.

Any person who may have been required to pay the county tax provided for in this article because of any mistake of law or fact or because the tax herein provided for was improperly collected may apply for a refund thereof to the county clerk receiving such payment.

WV Legislature