WEST VIRGINIA CODE CHAPTER 35 ARTICLE 1

WV Legislature

§35-1-1. Validation of transfers for use or benefit of religious organizations.

Every conveyance, devise or dedication of land which has heretofore been made and has not been declared void in any suit, action or proceeding, or has not been treated and acted upon as void under the law heretofore existing, and every conveyance, devise or dedication of land hereafter made, if it does not conflict with the limitations of section eight of this article, for the use or benefit of any church, religious sect, society or denomination as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church, religious sect, society or denomination as a residence for a bishop or other clergyman or minister who, though not in special charge of a congregation is yet an officer of such church, religious sect, society or denomination, and employed under its authority and about its business; or as a location for a parish house or house for the meeting of societies or committees of the church, religious sect, society or denomination, or of others for the transaction of business connected therewith; or as a place of residence of a sexton or caretaker if the same is adjacent to or near by the land used for public worship or the other purposes aforesaid, shall be valid, and shall be construed to give the local parish, congregation or branch of such church, religious sect, society or denomination, to which any such land or property has been or shall be so conveyed, devised or dedicated, the control thereof, unless from the intent expressed in the conveyance, grant, will, gift or dedication, some other or larger body be given such control. Any land so conveyed, devised or dedicated shall be held and used for the purposes aforesaid and no other.

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§35-1-2. Equitable title in contiguous congregations.

Any conveyance, devise or dedication of land for the use of two or more contiguous congregations shall be construed to give such contiguous congregations the equitable title to such property.

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§35-1-3. Property not to be taken from a religious organization.

Notwithstanding the provisions of section one of this article, no lot of ground or property now used for religious purposes shall be taken from the members of the church, religious sect, society, or denomination, or of the individual church, parish, congregation or branch, that has heretofore purchased the same, or for whose use or benefit it was heretofore conveyed, devised or dedicated.

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§35-1-4. Insufficient designations of beneficiaries or objects not to cause failure of trust; acquisition, conveyance, etc., of property.

No conveyance, devise, dedication, gift or bequest if the same does not conflict with the limitations of section eight of this article, and no gift or bequest hereafter made to any church, religious sect, society, denomination, or to any individual church, congregation, parish or branch within this state, or to the trustee or trustees for either, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such conveyance, devise, dedication, gift or bequest in any case where a lawful trustee or trustees of such church, religious sect, society, denomination, or of any individual church, parish, congregation or branch, are in existence or where such church, religious sect, society, denomination, or any individual church, parish, congregation or branch, is capable of appointing such trustee or trustees as provided in this article; but such conveyance, devise, dedication, gift or bequest shall be valid; and whenever the object of such trust shall be undefined, or so uncertain as not to admit of enforcement by a court of chancery, then such conveyance, devise, dedication, gift or bequest shall inure and pass to the trustee or trustees of the beneficiary church, religious sect, society, denomination, individual church, parish, congregation or branch, to be held, managed, and the principal or income appropriated for the religious and benevolent uses of such church, religious sect, society, denomination, or individual church, parish, congregation, or branch, as such trustee or trustees may determine, by and with the approval of the bishop, vestry, board of deacons, board of stewards, official board, board of elders, board of consultors, or other authorities which, under the rules or usages of such church, religious sect, society, denomination, or individual church, parish, congregation or branch, have charge of the administration of the temporalities thereof.

Whenever the laws, rules or ecclesiastic polity of any church or religious sect, society or denomination commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules or ecclesiastic polity, and not prohibited by the laws of West Virginia, and the power to hold, improve, mortgage, sell and convey the same in accordance with such laws, rules and ecclesiastic polity, and in accordance with the laws of West Virginia. In the event of the transfer, removal, resignation or death of any such bishop, minister or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon election or appointment, and pending election or appointment of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules or ecclesiastic polity of such church or religious sect, society or denomination.

All deeds, deeds of trust, mortgages, wills or other instruments heretofore made to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who, at the time of

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the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church or religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church, or religious sect, society or denomination, are hereby ratified and declared valid. All transfers of title and rights with respect to property, prior to the effective date of the ratification of this section, from a predecessor bishop, minister or other ecclesiastical officer who had resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

No gift, grant, bequest or devise hereafter made to any such church or religious sect, society or denomination, or the duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid, provided that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the chancery courts of the state, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious sect, society or denomination by its duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs.

This section shall not affect rights or litigation vested or pending on or before the day upon which this section becomes effective, nor shall it be so construed as to effect an implied repeal of any other provisions of this chapter.

The rights created and remedies provided herein shall be construed as cumulative and not exclusive.

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§35-1-5. Trustees for real and personal property -- How appointed and removed.

The conference, synod, presbytery, convention, association, consultors, official board, or other ecclesiastical body or individual representing any church, religious sect, society, or denomination within this state, as also any individual church, parish, congregation or branch, when holding any property separately from the church, denomination, society or sect as a whole, within this state, may from time to time, and whenever occasion may arise, appoint, in such manner as such ecclesiastical body or such individual church, parish, congregation or branch may deem proper, a trustee or trustees for its real and personal property. The body appointing may remove such trustee or trustees, or any of them, and fill all vacancies caused by death, removal or otherwise.

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§35-1-6. Same -- Recording order of appointment; recording fee.

The trustee or trustees heretofore appointed by the circuit court of any county to hold the title to the real and personal property of any church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, within this state, and who may be acting as such at the time this code goes into effect, or the proper authorities of such church, religious sect, society or denomination, or of any individual church, parish, congregation or branch, shall cause a certified copy of the order of appointment of such trustee or trustees to be recorded in the office of the clerk of the county court of the county where such appointment was made; and a certificate of every appointment of any trustee or trustees hereafter made by any conference, synod, presbytery, convention, association, consultors, official board, or other ecclesiastical body or individual representing any church, religious sect, society or denomination, or by any individual church, parish, congregation or branch, in accordance with the provisions of the preceding section signed by the secretary, clerk or other officer in charge of the records of the organization making such appointment, and verified by his affidavit, shall be recorded in the office of the clerk of the county court of each county wherein such church, religious sect, society or denomination, or the individual church, parish, congregation or branch, has any property. The county court of every county shall supply the clerk of the county court with a proper record book, to be labeled "Church Trustees," wherein all such certified copies of orders of appointment and such certificates of appointment shall be recorded. The fee for recording such certified copy or such certificate shall be $1.

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§35-1-7. Same -- May take and hold property.

The trustee or trustees of any church, religious sect, society or denomination, or of any individual church, parish, congregation or branch, within this state, shall have power to receive donations, gifts and bequests of personal property, and, subject to the limitations of section eight of this article, to take by devise, conveyance or dedication or to purchase and to hold, real property, in trust for such church, religious sect, society or denomination, or for any individual church, parish, congregation or branch; and in their own name or names to sue or be sued in all proper actions and suits, for or on account of the real or personal property so held or claimed, and for and on account of any matters relating thereto: Provided, That, in the absence of gross negligence, no trustee shall be personally liable for any tort arising from or growing out of the ownership of property as a trustee and no such action or suit shall abate because of the death, removal or resignation of any trustee, or the appointment of another trustee, but may be proceeded with in the name of the trustee or trustees by or against whom it was instituted, or in the name of the succeeding trustee or trustees. The trustee or trustees shall be accountable to that church, religious sect, society, or denomination, or to that individual church, parish, congregation or branch, for which he or they hold in trust, for the use and management of such property, and shall surrender it to any person or persons authorized to demand it.

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§35-1-8. Quantity of real estate trustee may take and hold.

[Repealed]

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§35-1-9. Power of trustee to sell, convey and encumber property.

The trustee or trustees of any church, religious sect, society, or denomination within this state, whenever directed by the ecclesiastical officer or the delegated or select body to whom the authority to administer the affairs of such church, religious sect, society, or denomination is committed by its rules and ecclesiastical polity, or the trustee or trustees of any individual church, parish, congregation or branch of any religious sect, society or denomination within this state, whenever directed by a majority of the members of such individual church, parish, congregation or branch who are over eighteen years of age, or by the ecclesiastical officer or the delegated or select body to whom the authority to administer the affairs of such church, parish, congregation or branch is committed by the rules and ecclesiastical polity of such church, religious sect, society or denomination, may sell and convey any property, real or personal owned by such church, religious sect, society or denomination, or by such individual church, parish, congregation or branch, as the case may be, or upon like direction, may borrow money and execute a lien upon the church property to secure the payment thereof; and all conveyances so made, or liens so executed, by the persons who appear from the records in the office of the county clerk to be the trustee or trustees of the religious body making such conveyances or executing such liens, shall be effective to pass from such trustee or trustees such title or interest in the property under his or their control as is purported to be conveyed or passed by such conveyances or instruments of lien, and shall not be invalidated or affected by any defect or informality in the proceedings for the selection or appointment of such person or persons as trustee or trustees, or by any want of authority or lack of power in such trustee or trustees.

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§35-1-10. Notice of conveyance or lien; proof thereof.

Before any such conveyance of real estate or instrument creating a lien thereon shall be made, the proper authorities of such church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, shall cause to be published a notice describing the real estate and stating that the same will be sold and conveyed, or subjected to a lien, as the case may be, on or following a designated date. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be the county where the land is situated. In lieu of such publication, the notice may be read at the principal services of such church, parish, congregation or branch, on at least two separate occasions during a period of two weeks. No conveyance or instrument creating a lien shall be made or become effective until such notice shall be published or read, as aforesaid. An affidavit setting forth the facts regarding such publication or reading, shall accompany, and be recorded with, any deed of conveyance or instrument creating a lien, and shall be sufficient proof of the facts therein set forth.

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§35-1-11. Proceedings to prevent conveyances or creation of liens.

When any conveyance of, or any lien upon, the real estate of any church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, is proposed to be made or created by the trustee or trustees thereof, and such conveyance or the creation of such lien will, it is believed, violate or be inconsistent with the conditions or purposes of the trust under which the real estate is held, or the proper authorities or the requisite number of members do not desire, or have not directed, that a conveyance be made of or a lien be created upon such real estate, or the rights of other parties will thereby be affected, or for any other cause the making of such conveyance or the creation of such lien is improper; one fourth or more of the total number of members of the conference, synod, presbytery, convention, association, consultors or other ecclesiastical body representing any church, religious sect, society or denomination, when the property involved is that of the church, religious sect, society, or denomination as a whole; or one fourth or more of the total number of members who are over eighteen years of age of any individual church, parish, congregation or branch, when the property involved is that of such individual church, parish, congregation or branch, may, in the name of two or more of them, on behalf of themselves and the others similarly objecting, file their petition in the circuit court of the county where such real estate is situated, or before the judge of such court in vacation, against the trustee or trustees, or the surviving or remaining trustee or trustees, setting up the reasons why such conveyance should not be made or such lien should not be created. The court or judge, on the filing of such petition, shall fix a time and place for the hearing of the same, and direct a copy of such petition and a notice of the time and place of such hearing to be served on such trustee or trustees a reasonable time in advance thereof; and at the time and place so fixed the court or judge shall proceed to hear the objections to the making of such conveyance or creation of such lien, and make such order in reference thereto as may be right and proper.

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§35-1-12. Disposition of property of extinct or dissolved religious organization.

When any individual church, parish, congregation, or local branch of any religious sect, society, or denomination, has become extinct, or has dissolved, or has ceased to occupy and use its property for its religious and charitable purposes, or its property may be regarded as abandoned, a suit in chancery may be instituted in the county where the property of such individual church, parish, congregation, or local branch is situated, either by the trustee or trustees, or the surviving or remaining trustee or trustees, should there be any, or by any member of such individual church, parish, congregation, or local branch, should there be any, or by the ecclesiastical officer or religious body that by the laws of the church, religious sect, society, or denomination to which such individual church, parish, congregation, or local branch belongs, has the charge or custody of such property, or in whom or which it may be vested by the laws of such church, religious sect, society or denomination; and the court shall hear the matter and make such disposition of the property, or proceeds thereof, as is allowable under the terms of the conveyance, dedication, devise, gift or bequest of such property, and will be in accordance with the laws of such church, religious sect, society or denomination. The printed acts or laws of such church, religious sect, society or denomination, issued by its authority, embodied in book or pamphlet form, shall be taken and regarded as the laws and acts of such church, religious sect, society or denomination.

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§35-1-13. Validation of certain transactions.

Where any church, religious sect, society, or denomination, or where any individual church, parish, congregation or local branch of any religious sect, society, or denomination, has under its rules and ecclesiastical polity heretofore acquired, by purchase or otherwise, and held, sold or conveyed, church property, or property used for church purposes, by or in the name of its duly appointed bishop, minister, or other ecclesiastical officer, person, or board, such acquisition, purchase, holding, sale or conveyance, heretofore made, is hereby ratified and declared valid: Provided, however, That no such acquisition, purchase, holding, sale or conveyance heretofore made, which has been declared void in any suit or action, and that no rights of third parties who have treated any such acquisition, purchase, holding, sale or conveyance as void under the law as it heretofore existed, and acted accordingly, shall be affected hereby.

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