WEST VIRGINIA CODE CHAPTER 35 ARTICLE 2

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§35-2-1. Validation of conveyances, devises, gifts and bequests to trustees.

Where any conveyance, dedication or devise of land, or transfer, gift or bequest of personal property, has been made or shall be made to trustees for the use of any university, college, academy, high school, seminary, or other institution of learning; or for the use of any benevolent, fraternal, patriotic, literary, temperance, or charitable society, order, lodge or association, or labor union or similar association or brotherhood of craftsmen or employees, or any local branch thereof, or for the use of any orphan asylum, children's home, house of refuge, hospital, or home or asylum for the aged or incurables, or the afflicted in mind or body, or for the use of any other benevolent or charitable institution, association or purpose; or if, without the intervention of trustees, such conveyance, dedication or devise of land, or transfer, gift or bequest of personal property, has been made and has not been declared void in any suit or action, or has not been treated and acted upon as void under the law heretofore existing, or shall be hereafter made for any such use or purpose, the same shall be valid and such land or property, as well as any subsequently acquired by purchase or otherwise in furtherance of such use or purpose, shall be held for such use or purpose only.

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§35-2-2. Validation of conveyances, devises, gifts and bequests to trustees -- Appointment of trustee; designation of beneficiaries and objects; administration by chancery court cy pres.

No conveyance, devise, dedication, gift, grant or bequest hereafter made for any of the uses set forth in the preceding section 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, grant, or bequest, or for any failure to name or appoint a trustee for the execution of the trust; but such conveyance, devise, dedication, gift, grant, or bequest shall be valid; and whenever the objects of any such trust shall be undefined, or be so uncertain as not to admit of specific enforcement, or literal execution, or no trustee shall have been named or appointed to execute the trust, or there is no trustee or trustees in existence having authority to take the property, a suit in chancery may be instituted, by any party interested, in the circuit court of the county where the trust subject, or any part thereof is, in the case of a conveyance, dedication, gift or grant, or in which the will was probated, in the case of a devise or bequest, for the appointment or designation of a trustee or trustees to execute the trust, or for the designation of the beneficiaries in, or the objects of, any such trust, or, where such trust does not admit of specific enforcement or literal execution, for the carrying into effect as near as may be the intent and purposes of the person creating such trust; and thereupon such court shall have full power to appoint or designate a trustee or trustees to execute the trust, or to designate the beneficiaries in, or the objects of, any such trust, or where such trust does not admit of specific enforcement or literal execution, to carry into effect as near as may be the intent and purposes of the person creating such trust.

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§35-2-3. Trustees for unincorporated benevolent, fraternal, etc., organizations.

Any unincorporated benevolent, fraternal, patriotic, literary, temperance, or charitable society, order, lodge or association, or any labor union, or similar association or brotherhood of craftsmen or employees, or any local branch thereof, to which, or for the use of which, any property, real or personal, is conveyed, dedicated, devised, transferred, given or bequeathed, may from time to time, and whenever occasion may arise, appoint, in such manner as any such society, order, lodge, association, or union, may deem proper, a suitable number of persons as trustees for such society, order, lodge, association or union, and may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

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§35-2-4. Trustees for educational or charitable institutions.

The authorities of any university, college, academy, high school, seminary, or other institution of learning, or the authorities of any orphan asylum, children's home, house of refuge, hospital, or home or asylum for the aged or incurables or the afflicted in mind or body, or other benevolent or charitable institution or association, to which, or for the use of which, any property, real or personal, is conveyed, dedicated, devised, transferred, given or bequeathed, may from time to time, and whenever occasion may arise, appoint in such manner as any such authorities may deem proper, a suitable number of persons as trustees for any such institution or association, and may remove such trustees or any of them, and fill all vacancies caused by death or otherwise. Where there are no such authorities to make the appointment, the trustees in office shall have the power of removal, to appoint new members, and to fill vacancies, and if there be no such authorities and no trustees in office, then, on application of any one or more persons interested therein, or of the prosecuting attorney, the circuit court of the county where the trust subject, or any part thereof is, in the case of a conveyance, dedication, gift or grant, or in which the will was probated in the case of a devise or bequest, shall appoint such trustees.

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§35-2-5. Record of appointment of trustees; recording fee.

The trustees heretofore appointed by the circuit court of any county to hold the title to the real and personal property of any society, order, lodge, association, union or brotherhood, or of any institution of learning, or of any benevolent or charitable institution or association, in this article mentioned, and who are still occupying such positions at the time this code goes into effect, or the proper authorities of such society, order, lodge, association, union or brotherhood, or of any institution of learning, or of any benevolent or charitable institution or association, shall cause a certified copy of the order of appointment of such trustees to be recorded in the office of the clerk of the county court of the county where such trustees were appointed; and a certificate of every appointment of any trustees hereafter made in accordance with the provisions of this article, signed by the secretary, clerk or other officer in charge of the records of the organization, authorities or trustees making such appointment, and verified by his affidavit, or, if such appointment is made by the circuit court, a certified copy of the order of appointment, shall be recorded in the office of the clerk of the county court of the county wherein such society, order, lodge, association, union or brotherhood, or such institution of learning, or such benevolent or charitable institution or association, has any real or personal property. The county court of every county shall supply the clerk of the county court with a proper record book, to be labeled "Trustees of Institutions," wherein all such certified copies of orders of appointments and such certificates of appointments shall be recorded. The fee for recording such certified copy or such certificate of appointment shall be $1.

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§35-2-6. Trustees of certain organizations to be corporations; powers.

The trustees of every institution, society, order, organization, or association in this article mentioned (except trustees for any labor union or similar association or brotherhood of craftsmen or employees), or any local branch thereof, whether named in the conveyance, dedication, devise, gift or bequest, or appointed as provided in this article, shall be a corporation by the name and style of "Board of Trustees of ..... University," (or college, academy, etc., as the case may be), and as such corporation they shall be governed by all the provisions of law relating to, and have and exercise all the privileges and powers of, nonstock corporations, including the power to take and hold real and personal property, to borrow money for any legitimate purpose in the execution of the trust and to execute a lien on the trust property as security therefor, and to do and perform any and all acts and business pertaining to the trust created by any conveyance, dedication, devise, gift or bequest to such institution, society, order, organization, or association.

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§35-2-7. Certain provisions of article one applicable to property of labor unions.

Sections seven, nine, ten, eleven and twelve of article one of this chapter, relating to the property of religious organizations and the powers of the trustees and the rights of members of such organizations, shall apply to and govern labor unions, or similar associations, or brotherhoods of craftsmen or employees, or any local branches thereof, and the trustees and members thereof; and nothing in this chapter contained shall make any such labor union, association or brotherhood, or the trustees thereof, a corporation.

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§35-2-8. Quantity of real estate certain organizations may hold.

Except as may otherwise be allowed by law, the trustees of any society, order, lodge, association, union or brotherhood mentioned in this article may take and hold at any one time not exceeding two acres of land to be used as a place of meeting for such society, order, lodge, association, union or brotherhood, for the education and maintenance of children charitably provided for by them.

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§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; definition of terms.

(a) Distribution of income by trust which is deemed a private foundation; prohibitions as to such private foundation. -- Every trust, receiving a gift, grant, devise or bequest, which is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income for each taxable year at such time and in such manner as not to subject such trust to tax under section 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing as defined in section 4941 (d) of the Internal Revenue Code, retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code, make any investments in such manner as to subject the trust to tax under section 4944 of the Internal Revenue Code, or make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code. This subsection shall apply to any charitable trust established after December 31, 1969, and to any charitable trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972.

(b) Prohibitions as to trust which is deemed a split-interest trust. -- Every trust, receiving a gift, grant, devise or bequest, to the extent that such trust is deemed to be a split-interest trust subject to the provisions of section 4947 (a) (2) of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall not:

(1) Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code;

(2) Retain any excess business holdings, as defined in section 4943 (c) of the Internal Revenue Code;

(3) Make any investments in such manner as to subject the foundation to tax under section 4944 of the Internal Revenue Code; or

(4) Make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code.

Subparagraphs (2) and (3) of this subsection shall not apply to a split-interest trust if:

(1) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170 (c) (2) (B) of the Internal Revenue Code, and all amounts in such trust for which a deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the Internal Revenue Code have an aggregate fair market value not more than sixty percent of the aggregate fair market value of all amounts in such trust, or

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(2) A deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the Internal Revenue Code for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(c) Definitions; meaning of terms. -- Any term used in this section nine shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes and any reference in this section to the Internal Revenue Code or to the Internal Revenue Code of 1954 or to any section or provision thereof shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes, including all amendments made to the laws of the United States prior to January 1, 1971, but no amendment to the laws of the United States made on or after January 1, 1971, shall be given effect.

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