# WEST VIRGINIA CODE CHAPTER 36 ARTICLE 1

WV Legislature

## §36-1-1. Creation of estates; necessity of deed or will.

No estate of inheritance or freehold, or for a term of more than five years, in lands, or any other interest or term therein of any duration under which the whole or any part of the corpus of the estate may be taken, destroyed, or consumed, except for domestic use, shall be created or conveyed unless by deed or will.

WV Legislature

## §36-1-2. Power of attorney to execute deed of land; necessity of writing.

No power of attorney to execute a deed of land for another person shall be valid, unless it be in writing signed by the person on whose behalf such deed is to be made.

WV Legislature

## §36-1-3. Contracts for sale or lease of land; necessity of writing.

No contract for the sale of land, or the lease thereof for more than one year, shall be enforceable unless the contract or some note or memorandum thereof be in writing and signed by the party to be charged thereby, or by his agent. But the consideration need not be set forth or expressed in the writing, and it may be proved by other evidence.

WV Legislature

**§36-1-4.**

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

## §36-1-4a. Memorandum of trust; requirements; recordation.

(a) A memorandum of trust that satisfies both of the following requirements may be presented for recordation in the office of the clerk of the county commission of any county in which real property that is subject to the trust is located:

(1) The memorandum shall be executed by the currently acting trustee or trustees of the trust, and, if living, by the settlor or settlors, personally, or by a duly appointed attorney-in-fact or conservator of the settlor or settlors, and shall be acknowledged in the manner a deed must be acknowledged in order to be recorded.

(2) The memorandum shall contain at least the following information with respect to the trust:

(i) The existence of the trust and the date of the trust;

(ii) The names and mailing addresses of the settlor or settlors and of the currently acting trustee or trustees of the trust, the names and mailing addresses of any successor trustee or trustees, and the circumstances under which any successor trustee or trustees will assume trust powers;

(iii) The revocability or irrevocability of the trust; and

(iv) A verbatim recitation of the trust powers specified in the trust relative to the acquisition, sale, disposition, or encumbering of real property by the trustee or trustees or the conveyance or disposition of real property by the trustee or trustees and any restrictions upon those powers, or a statement that the trust powers include at least all those trust powers contained in section three, article five-a, chapter forty-four of this code as they existed at the date of the execution of the trust.

(b) A memorandum of trust may also set forth the substance or actual text of any or all of the provisions of the trust.

(c) A memorandum of trust that satisfies the provisions of this section constitutes notice only of the information contained therein.

(d) Upon the presentation of a memorandum of trust that satisfies the provisions of this section and the payment of the requisite fee, the clerk shall record the memorandum of trust with the records of deeds and list it in the grantor index under the name of the settlor or settlors and in the grantee index under the names of the then-acting trustee or trustees.

(e) Nothing herein shall be construed or deemed to require recordation of any original trust agreement or other governing instrument which establishes the trust identified in the memorandum of trust.

WV Legislature

## §36-1-5. Gifts of personal property.

No gift of any goods or chattels shall be valid unless made by writing, signed by the donor or his agent, or by will, or unless actual possession shall have come to and remained with the donee or some person holding for or under him If the donor and donee reside together at the time of the gift, possession at the place of their residence shall not be a sufficient possession within the meaning of this section. The requirements of this section shall not apply to the wife's paraphernalia. No seal shall be necessary to give validity to a gift of goods or chattels by writing, as hereinbefore provided.

WV Legislature

**§36-1-6.**

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

## §36-1-7. Rights of persons not parties to instrument.

An immediate estate or interest in, or the benefit of a condition respecting any estate in, property may be taken by a person under an instrument, although he be not a party thereto.

WV Legislature

## §36-1-8. Conveyance by attorney in fact.

If, in a deed of land, or a conveyance by writing of personal property, made by one as attorney in fact for another, the words of conveyance or the signature be in the name of the attorney, it shall be as much the principal's deed or conveyance as if the words of conveyance or the signature were in the name of the principal by the attorney, if it be manifest on the face of the instrument that it should be construed to be that of the principal to give effect to its intent.

WV Legislature

## §36-1-9. Conveyance of various interests and future estates in land or personal property.

Any interest in or claim to real estate or personal property may be lawfully conveyed or devised. Any estate in such property may be made to commence in futuro, by conveyance inter vivos, in like manner as by will, and any estate which would be good as an executory devise or bequest, shall be good if created by conveyance inter vivos.

WV Legislature

## §36-1-10. Operation of conveyance in excess of actual interest.

A deed which purports to convey a greater right or interest in real property than the person making it may lawfully convey shall operate as an alienation of such right or interest in such real property as such person might lawfully convey. The application of the doctrine of estoppel by deed, and the liability of the grantor, his heirs and personal representatives upon the covenants, if any, contained in such conveyance shall be determined according to the rules of law applicable to other deeds.

WV Legislature

## §36-1-11. Fee simple may be created without words of limitation.

When any real property is conveyed or devised to any person, and no words of limitation are used in the conveyance or devise, such conveyance or devise shall be construed to pass the fee simple, or the whole estate or interest, legal or equitable, which the testator or grantor had power to dispose of, in such real property, unless a contrary intention shall appear in the conveyance or will.

WV Legislature

## §36-1-12. Estates tail.

Every estate in lands so limited that, as the law was on October 7, in the year seventeen hundred and seventy- six, in the state of Virginia, such estate would have been an estate tail, shall, except as provided in section fourteen of this article, be deemed an estate in fee simple, and every limitation upon such an estate shall be held valid, if the same would be valid when limited upon an estate in fee simple.

WV Legislature

## §36-1-13. Limitations contingent upon death.

Every limitation in any conveyance or will disposing of real or personal property, contingent upon the dying of any person without heirs, or heirs of the body, or issue of the body, or children, or offspring, or descendant, or other relative shall be construed as a limitation, to take effect when such person shall die, not having such heir, or issue, or child, or offspring, or descendant, or other relative, as the case may be, living at the time of his death, or en ventre sa mere at the time of his death and born alive thereafter, unless the intention of such limitation be otherwise plainly declared on the face of the conveyance or will creating it.

WV Legislature

## §36-1-14. Rule in Shelley's Case abolished.

Wherever any person, by conveyance inter vivos or by will, takes an estate of freehold in land, or takes such an estate in personal property as would be an estate of freehold, if it were an estate in land, and in the same conveyance or will an estate is afterward limited by way of remainder, either mediately or immediately to his heirs, or the heirs of his body, or his issue, the words "heirs,""heirs of the body," or "issue" or other words of like import used in the conveyance or will, in the limitation therein by way of remainder, shall not be construed as words of limitation carrying to such person the inheritance as to the land, or the absolute estate as to the personal property, but they shall be construed as words of purchase, creating a remainder in the heirs, heirs of the body, or issue; it being the intent and purpose of this section to completely abolish the rule of law known as the rule in Shelley's Case.

WV Legislature

## §36-1-14a. Doctrine of worthier title and rule that grantor cannot create a limitation in his own heirs or next of kin abolished.

Wherever a person, by conveyance inter vivos or by will, purports to create any present or future interest in real or personal property in a class of persons described as his own heirs, next of kin, distributees, or by other words of like import, such heirs, next of kin or other described persons shall take, by purchase and not by descent or distribution, the interest so purported to be created; it being the intent and purpose of this section to completely abolish the rule of law known as the doctrine of worthier title and the rule of law that a grantor cannot create a limitation in favor of his own heirs or next of kin. This section shall only apply to instruments which become effective after the effective date of this section.

WV Legislature

## §36-1-15. Contingent remainder; validity; indestructibility.

A contingent remainder shall in no case fail for want of a particular estate to support it, nor because of the termination of a preceding particular estate by merger, forfeiture, or in any other manner, before the contingent remainder shall have been vested. It is the intent and purpose of this section to abolish the common-law doctrine of the destructibility of contingent remainders.

WV Legislature

## §36-1-16. Interest in property coupled with power of disposal.

If any interest in or claim to real or personal property be given by sale or gift inter vivos or by will to one, with a limitation over either by way of remainder or of executory devise or any other limitation, and by the same conveyance or will there be conferred, expressly or by implication, a power upon the first taker in his lifetime or by will to use or dispose absolutely of such property, the limitation over shall not fail or be defeated except to the extent that the first taker shall have lawfully exercised such power of disposal. The proceeds of a disposal under such power shall be held subject to the same limitations and the same power of use or disposal as the original property, unless a contrary intent shall appear from the conveyance or will: Provided, however, That a trust deed or mortgage executed by such first taker shall not be construed to be an absolute disposal of the estate thereby conveyed unless there be a sale thereunder, but shall be effective only to the extent of the lien or encumbrance created by such trust deed or mortgage.

WV Legislature

**§36-1-17.**

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

**§36-1-18.**

Repealed.

Acts, 2011 Reg. Sess., Ch. 66.

WV Legislature

## §36-1-19. Joint tenancy; tenancy by entireties; survivorship.

When any joint tenant or tenant by the entireties of an interest in real or personal property, whether such interest be a present interest, or by way of reversion or remainder or other future interest, shall die, his share shall descend or be disposed of as if he had been a tenant in common.

WV Legislature

# §36-1-20. When survivorship preserved.

(a) Section nineteen of this article does not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended that the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

(b) When the instrument of conveyance or ownership in any estate, whether real estate or tangible or intangible personal property, links multiple owners together with the disjunctive "or," such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated otherwise.

(c) A person convicted of violating the provisions of section one or three, article two, chapter sixty-one of this code as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, or who has been convicted of an offense causing the death of an incapacitated adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section when the victim of the criminal offense was a joint holder of title to the property. The property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the property if the convicted person had predeceased the victim.

(d) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult pursuant to section twenty-nine–b of that article, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section, when the victim of the criminal offense is a joint holder of the title to the property. The money or property which the person would have otherwise have received shall go to the person or persons who would have taken the money or property if the convicted person had predeceased the victim. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by two persons that would be competent as witnesses to a will of the victim, expresses a specific intent to allow the person so convicted to retain his or her tenancy in the property with rights of survivorship.

WV Legislature

## §36-1-20a. Elimination of need for straw party in creating joint tenancy with right of survivorship.

Any conveyance or transfer of property, or any interest therein, creating a joint tenancy with right of survivorship together with the person or persons conveying or transferring such property, executed by such person or persons to or in favor of another shall be valid to the same extent as a similar transfer or conveyance from a third party or by a straw party deed.

WV Legislature

## §36-1-21. Alien may own land.

Any alien may take by devise, inheritance, gift or purchase, and hold, convey, devise or otherwise dispose of land within this state as if he were a citizen, and if an alien owner of land within this state shall die, his land shall descend in the same manner as if he were a citizen.

WV Legislature

**§36-1-22.**

Repealed.

Acts, 1963 Reg. Sess., Ch. 94.

WV Legislature

## §36-1-23. Exemption of certain employee trusts from rule against perpetuities or restraints on alienation.

Pension, profit sharing, stock bonus, annuity or other employee trusts heretofore or hereafter established by employers for the purpose of distributing the income and principal thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities or restraints on the power of alienation of title to property; but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purposes for which they are established.

WV Legislature

## §36-1-24. Options in leases not affected by rule against perpetuities.

An option contained in any lease to purchase the whole or any part of the leased premises, exercisable either during the term of the lease or immediately upon its termination, shall, if otherwise valid, be enforceable in accordance with its terms, irrespective of the rule against perpetuities. In any suit to enforce such option, the lessor, or the successors in interest of the lessor, shall not plead the rule against perpetuities as a defense, and the same shall not constitute a defense either in law or in equity: Provided, That this section shall not apply to any lease heretofore executed.

WV Legislature