WEST VIRGINIA CODE CHAPTER 36 ARTICLE 11

WV Legislature

§36-11-1. Definitions.

In this article:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the coowners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

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§36-11-2. Supplementary general principles of law and equity.

Principles of law and equity supplement this article unless displaced by a particular provision of it.

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§36-11-3. Territorial application.

Real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

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§36-11-4. Real and personal property; nonprofit association as legatee, devisee or beneficiary.

(a) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract.

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§36-11-5. Statement of authority as to real property.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) The name of the nonprofit association;

(2) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state;

(3) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and

(4) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) A filing officer may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

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§36-11-6. Liability in tort and contract.

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

(b) A person may not be liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(c) A person may not be liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable may not be imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

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§36-11-7. Capacity to assert and defend; standing.

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

WV Legislature

§36-11-8. Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member.

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§36-11-9. Disposition of personal property of inactive nonprofit association.

If a nonprofit association has been inactive for three years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(1) If a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency or instrumentality.

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§36-11-10. Appointment of agent to receive service of process.

(a) A nonprofit association shall file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) The name of the nonprofit association;

(2) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.

(d) A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

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§36-11-11. Claim not abated by change of members or officers.

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

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§36-11-12. Venue.

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or where it conducts its business or activities, or where any of its officers or managers reside.

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§36-11-13. Summons and complaint; service on whom.

In an action or proceeding against a nonprofit association a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.

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§36-11-14. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

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§36-11-15. Short title.

This article may be cited as the Uniform Unincorporated Nonprofit Association Act.

WV Legislature

§36-11-16. Transition concerning real and personal property.

(a) If, before the effective date of this article, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on the effective date of this article the estate or interest vests in the nonprofit association unless the parties have treated the transfer as ineffective.

(b) If, before the effective date of this article, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after the effective date of this article the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

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§36-11-17. Savings clause.

This article does not affect an action or proceeding commenced or right accrued before this article takes effect.

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