WEST VIRGINIA CODE CHAPTER 36 ARTICLE 12

WV Legislature

§36-12-1. Short Title.

This article may be cited as the Uniform Real Property Transfer on Death Act.

WV Legislature

§36-12-2. Definitions.

In this article:

(1) "Beneficiary" means a person who receives property under a transfer on death deed.

(2) "Contingent beneficiary" means a person designated in a transfer on death deed to receive property only if a different person fails to survive the transferor.

(3) "Designated beneficiary" means a person designated to receive property in a transfer on death deed. The term includes contingent beneficiaries.

(4) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship.

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

(6) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(7) "Transfer on death deed" means a deed authorized under this article.

(8) "Transferor" means an individual who makes a transfer on death deed.

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§36-12-3. Applicability.

This article applies to a transfer on death deed made on or after the effective date of this article, by a transferor dying on or after the effective date of this article.

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§36-12-4. Nonexclusivity.

This article does not affect any method of transferring property otherwise permitted under the law of this state.

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§36-12-5. Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries or contingent beneficiaries effective at the transferor's death by a transfer on death deed.

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§36-12-6. Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

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§36-12-7. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

WV Legislature

§36-12-8. Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

WV Legislature

§36-12-9. Requirements.

A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this section, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) Must be recorded before the transferor's death in the office of the clerk of the county commission in the county where the property is located: Provided, That, notwithstanding section two, article twenty-two, chapter eleven of this code, a transfer on death deed is exempt from the payment of excise tax on the privilege of transferring real estate for the reason that no interest in the property is at the time of recording being passed to the beneficiary and the deed remains revocable until the death of the transferor.

WV Legislature

§36-12-10. Notice, delivery, acceptance and consideration not required.

A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

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§36-12-11. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

(C) As to property that was described in a transfer on death deed made by a transferor and previously recorded, an *inter vivos* deed made by the same transferor that conveys the same real estate, or part thereof, whether or not the *inter vivos* deed expressly revokes the transfer on death deed, or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the clerk of the county commission of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor revocation by a transferor does not affect the deed as to the interest of another transferor; and a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an *inter vivos* transfer of the property.

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§36-12-12. Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

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§36-12-13. Effect of transfer on death deed at transferor's death

(a) Except as otherwise provided in the transfer on death deed in this article, §41-1-6 of this code, §41-3-3 of this code, §42-3-1, *et seq.* of this code, §42-§4-2 of this code, or §42-5-1, *et seq.* of this code, on the death of the transferor the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary, when there is only one beneficiary designated, is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor, when there is only one beneficiary designated, lapses.

(3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares, unless the deed specifies otherwise, as tenants in common or with right of survivorship if the deed specifies joint tenancy with right of survivorship.

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently as tenants in common or with right of survivorship if the deed specifies joint tenancy with the right of survivorship.

(b) Subject to §39-2-1, *et seq.*, and §38-1-1, *et seq.* of this code, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor's death. For purposes of this subsection, §39-2-1, *et seq,* and §38-1-1, *et seq.* of this code, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner with other joint owners with right of survivorship and is:

(1) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed is effective.

(d) If a transferor is an owner with other owners as tenants in common, the transfer on death deed is only effective as to the interest in the property which was held by the transferor.

(e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

WV Legislature

(f) The amendments to this section, enacted during the 2023 regular session of the Legislature, shall apply only to transfer on death deeds recorded after the effective date of this section.

WV Legislature

§36-12-14. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by article six, chapter forty-two of this code.

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§36-12-15. Prior transfer on death liberally construed.

(a) Any transfer on death deed properly recorded in an office of the clerk of a county commission before the effective date of this article containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so.

(b) Any survivorship clause in a deed properly recorded before the effective date of this article in an office of the clerk of a county commission that attempts to create a right of survivorship tenancy, which survivorship tenancy otherwise fails, but otherwise is an effective deed, and shows a clear intent to designate a beneficiary to receive the property upon death of one or more cotenants by survivorship shall be liberally construed to be an effective transfer on death deed governed by this article.

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§36-12-16. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

WV Legislature

§36-12-17. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U. S. C. §7001, et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U. S. C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U. S. C. §7003(b).

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