WEST VIRGINIA CODE CHAPTER 36

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Repealed.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

§36-1A-1. Statutory rule against perpetuities.

(a) Except as provided in subsection (e) of this section, a nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) The interest either vests or terminates within 90 years after its creation.

(b) Except as provided in subsection (e) of this section, a general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) Except as provided in subsection (e) of this section, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under the provisions of this section, the possibility that a child will be born to an individual after the individual’s death is disregarded.

(e) As to any trust created on or after July 1, 2025, this article shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this article, unless the terms of the trust expressly require that all beneficial interests in the trust vest or terminate within a lesser period.

WV Legislature

§36-1A-2. When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and in subsection (a), section five of this article, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this article, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (1) a nonvested property interest or (2) a property interest subject to a power of appointment described in subsections (b) or (c), section one of this article, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this article, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(d) For the purposes of this article, if a nongeneral or testamentary power of appointment created for any trust is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such nongeneral or testamentary power of appointment is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

WV Legislature

§36-1A-3. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by the provisions of subdivision (2), subsection (a), or subdivision (2), subsection (b), or subdivision (2), subsection (c), section one of this article and if:

(1) A nonvested property interest or a power of appointment becomes invalid pursuant to the provisions of section one of this article;

(2) A class gift is not but might become invalid pursuant to the provisions of section one of this article and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by the provisions of subdivision (1), subsection (a), section one of this article can vest but not within ninety years after its creation.

WV Legislature

§36-1A-4. Exclusions from statutory rule against perpetuities.

The provisions of section one of this article do not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of: (A) A premarital or postmarital agreement; (B) a separation or divorce settlement; (C) a spouse's election; (D) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; (E) a contract to make or not to revoke a will or trust; (F) a contract to exercise or not to exercise a power of appointment; (G) a transfer in satisfaction of a duty of support; or (H) a reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another provision of this code.

WV Legislature

§36-1A-5. Application.

(a) Except as extended by subsection (c) of this section, this article applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2025. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) This article also applies to a power of appointment that was created before July 1, 2025, but only to the extent that it remains unexercised on July 1, 2025.

(c) If a nonvested property interest or a power of appointment was created before the effective date of this article and is determined in a judicial proceeding, commenced on or after the effective date of this article, to violate this state's rule against perpetuities as that rule existed before the effective date of this article, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

WV Legislature

§36-1A-6. Short title.

This article may be cited as the "West Virginia Uniform Statutory Rule Against Perpetuities."

WV Legislature

§36-1A-7. Uniformity of application and construction.

(a) With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears in the instrument, as a rule of construction it shall be presumed that the transferor of the interest intended that the interest be valid.

(b) The provisions of 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.

WV Legislature

§36-1A-8. Supersession repeal.

The provisions of this article supersede the rule of the common law known as the rule against perpetuities.

WV Legislature

§36-2-1. Sale or lease of real or personal property subject to future interests.

Whenever there is, either at law or in equity, in any personal property, or in any land, timber, oil, gas, coal, or other minerals, any contingent remainder, or any vested remainder, which is liable to open and let in afterborn children or to open and let in members of any class, or any executory interest, or executory devise, or any base, qualified, conditional or limited fee, or any other qualified, conditional, limited or determinable estate, or interest, it shall be lawful for the circuit court of the county in which the personal property, land, timber, oil, gas, coal, or other minerals, or any part thereof, are situate, upon a bill filed by any of the persons specified in section two of this article, to decree a sale, lease, mining lease, or other conveyance of such personal property, land, timber, oil, gas, coal, or other minerals, or any one or more of them, or of any interest in them, as hereinafter provided.

WV Legislature

§36-2-2. Persons who may file bill.

Such bill may be filed by any person having any interest hereinafter mentioned in this section, in the personal property, land, timber, oil, gas, coal, or other minerals sought to be sold, leased or otherwise conveyed:

(a) Any person who alone or with others has, either at law or in equity, any vested freehold estate, whether in possession, remainder or otherwise;

(b) Any person in whom alone or with others a contingent remainder would vest, either at law or in equity, if the contingency or event upon which the remainder is to vest, or determining who the remainderman or remaindermen are, should happen at the time of the commencement of the suit;

(c) Any one or more of the remaindermen in being at the time of commencement of the suit, when there is, either at law or in equity, a vested remainder liable to open and let in afterborn children, or to open and let in members of any class;

(d) Any person who alone or with others has, either at law or in equity, a base, qualified, conditional or limited fee, or any other qualified, limited or determinable freehold estate, or any freehold estate which is subject or liable to be terminated or defeated by the vesting of any executory interest or executory devise or by the happening or nonhappening of any condition, limitation or event, or to whom an executory interest or executory devise of a freehold estate, not following an estate in fee simple, is granted or devised;

(e) Any trustee whose estate or interest is such that he might have filed such bill had he held such estate or in his own right; and also any beneficiary of any such trust. Any beneficiary of any such trust whose estate or interest is such that he might have filed such bill, if such estate or interest were a legal estate or interest; and also the trustee of any such trust;

(f) Any purchaser or assignee, at law or in equity, from any person of any estate or interest which would entitle such latter person to file such bill had he not sold or assigned such estate or interest;

(g) A married woman, as if she were feme sole, if otherwise entitled to file such bill;

(h) The guardian of any infant, or the committee of any insane person or convict, if such infant or insane person or convict would, but for such infancy, insanity or conviction, be entitled to file such bill.

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§36-2-3. Parties to such suit.

All persons in being who have any vested, contingent, or executory estate or interest, either at law or in equity, in such personal property, land, timber, oil, gas, coal, or other minerals to be sold, leased, or otherwise conveyed, shall be made parties even though any of such persons should be infant, insane, or convict, and if any such person shall be an infant, having a guardian, such guardian shall also be made a party, and if any such person shall be an insane person or convict as aforesaid, having a regularly appointed committee, such committee shall be made a party; and when a bill is filed by the guardian of such infant, or the committee of such insane person or convict, such infant or insane person or convict shall also be made defendant: Provided, however, That the joinder of any person having only a contingent or executory estate or interest may be dispensed with where the person not joined is virtually represented by any other party or parties to the suit; and where such virtual representation exists no order or decree or sale or lease made thereunder shall be deemed erroneous or void because of such nonjoinder.

WV Legislature

§36-2-4. Order of publication.

An order of publication may be entered and summons may be served against nonresident defendants in like manner and with like force and effect as in other cases, and where it is stated in the bill and affidavit is made of the fact that there are interested persons whose names are unknown, or of the fact that it is not known whether there are any other persons interested, such persons, if any, may be made parties defendant by the general description of parties unknown, and an order of publication may be entered and proceedings had as in other cases of parties unknown.

WV Legislature

§36-2-5. Guardian ad litem.

When a defendant in any suit brought under the provisions of this article is an infant or insane person, a guardian ad litem shall be appointed as provided by section ten, article four, chapter fifty-six of this code, and shall be governed by the provisions of said section, and when a defendant is a convict, a guardian ad litem shall be appointed by the court, who shall have the same rights and duties as those of a guardian ad litem for an infant or insane person: Provided, That no guardian ad litem need be appointed for parties unknown, though they be infant, insane or convict.

WV Legislature

§36-2-6. Contents of bill.

The bill shall describe the property sought to be sold or leased with reasonable certainty, and set forth the names of all persons interested in such property, together with their respective estates or interests, either vested, contingent or executory, so far as is known by the plaintiff. The bill shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale or lease. The bill shall be verified by the oath of the plaintiff or one of the plaintiffs.

WV Legislature

§36-2-7. Evidence.

Evidence may be taken as in other suits in chancery, or the court may hear the evidence in open court. If heard in open court, the court may, and on the motion of any party shall, require the evidence to be taken down in shorthand by a stenographer, and transcribed, and certify such evidence and make the same part of the record in the cause, in the same manner and within the same time as bills of exceptions are now certified and made part of the record: Provided, however, That no exceptions need be taken to any ruling of the court.

WV Legislature

§36-2-8. When sale or lease may be made.

If it be clearly shown by the pleadings and proof that the interest of the person filing such bill will be promoted by the sale, lease or other conveyance of the property, and the court shall be of the opinion that the interests of no other person or persons in the property will be materially injured or prejudiced by such sale, lease, or other conveyance, the court may, with the consent of all persons in being having any vested estate or vested interest in such property, except in certain cases provided for in section nine of this article, in which case such consent shall not be necessary, decree the sale, lease, or mining lease of such property, or of any interest in such property, in such manner and on such terms, and in such parcels, as may be deemed beneficial to all persons interested: Provided, That where any party having a vested estate or vested interest is an infant, or insane, or convict, the guardian of such infant, whether testamentary or appointed by a county court or the clerk thereof, or the committee of such insane person or convict, may consent for such infant or insane person or convict, as the case may be; and any married woman having an interest in the property may consent without the consent of her husband: Provided further, That the consent of no person having a merely contingent or executory estate or interest shall be necessary in order to enable the court to decree such sale, even though such person having such contingent or executory estate or interest is a necessary party to such suit: And provided further, That the consent of no holder of any lien or encumbrance created since the twenty-second day of May, nineteen hundred and eleven, shall be necessary to any sale, lease, mining lease, or other conveyance made under the provisions of this article: And provided further, That if any person in being having any vested interest in such property shall not consent to such sale, lease, mining lease or other conveyance, the court may nevertheless decree such sale, lease, mining lease or other conveyance, to be made subject to the interest of such person in being so refusing to consent.

WV Legislature

§36-2-9. Sale or lease of timber, oil, gas, coal or other minerals.

If the property sought to be sold or leased under the provisions of this article is gas, oil, or other volatile or fugitive substance, and it shall clearly appear that such substance is being, or in danger of being, withdrawn or drained away through other lands and so wasted and lost, to the injury of any person who has any interest in such substance; or if the property to be sold or leased is timber, and it shall clearly appear that such timber is ripe and will decay or deteriorate if not cut within a short time, or that, because of the fact that the timber upon neighboring lands is being cut or is about to be cut, and that, if the timber sought to be conveyed is not cut at the same time as, or in connection with, the timber upon such neighboring lands, it will be difficult and less profitable to sell or convey it at any other time, and that, on account of these circumstances, such timber will probably deteriorate in value unless it is sold or leased immediately; or if the property to be sold or leased is coal, or other mineral of fixed location, and it shall clearly appear that, because of the fact that the coal or other mineral under the surrounding or adjoining lands is being mined or is about to be mined, and that if the coal or other mineral sought to be sold or leased is not mined or produced at the same time as, or in connection with, the coal or other mineral under the surrounding lands, it will be difficult and less profitable to mine or produce it at any other time, and that on account of these circumstances such coal or other mineral will probably deteriorate in value unless it is sold or leased immediately; then, although any person in being having a vested estate or vested interest in such oil, gas, or other volatile or fugitive substance, or in the lands in which the same are contained, or in such timber, coal, or other minerals, does not consent as aforesaid, the court may decree the sale or lease of such property, notwithstanding the provisions of the preceding section of this article: Provided, That no conveyance or lease of the timber, oil, gas, coal, or other minerals mentioned in this section, made by an owner in fee simple absolute, before the creation of the estates mentioned in section one of this article, shall be divested by any proceeding under this article: Provided further, That the consent of no holder of any lien or encumbrance created since the twenty-second day of May, nineteen hundred and eleven, shall be necessary to any sale, lease, or mining lease, or any decree thereof under this article.

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§36-2-10. Execution of decree by commissioner.

If such sale, lease, mining lease or other conveyance shall be decreed, the court shall appoint a special commissioner or special commissioners to make the same. The special commissioner or commissioners before making any such sale, lease, mining lease or other conveyance, shall in open court enter into bond, with approved security in such penalty as the court shall prescribe, conditioned for the faithful application of the proceeds of the sale, lease or mining lease, which may come into his or their hands, which bond shall be payable to the state, and the court may thereafter order a new or additional bond, with other security, to be given, if deemed necessary. Such sale, lease, mining lease or other conveyance may be decreed to be made upon such terms as the court shall direct, and at either public or private sale or leasing, and shall be subject to confirmation by the court and be reported for such confirmation. If any such sale be made on credit, a lien shall be retained on the property sold and such other security as the court may direct shall be taken to secure the deferred purchase money.

WV Legislature

§36-2-11. Title of purchaser.

Where a sale, lease, mining lease or other conveyance is decreed under the provisions of this article, the title of the purchaser to such interest as was decreed to be conveyed to him shall be indefeasible by any party to the suit, or by any person who was virtually represented according to the provisions of section three of this article by any party to the suit, or by any person who was not in being at the time the suit was commenced. And if a sale, lease, mining lease or other conveyance made under such a decree shall be confirmed, although such decree be afterwards reversed or set aside, the title of the purchaser or lessee shall not be affected thereby; but all subsequent orders and decrees shall affect only the proceeds of sale, or the reversion subject to such lease, or mining lease, together with the proceeds, rents and royalties of the lease or mining lease. All sales, leases and mining leases shall be free and acquit of all liens and encumbrances created since the twenty-second day of May, nineteen hundred and eleven, and inchoate dower, held by any party to the suit; but such liens and encumbrances, and consummate dower, when it shall vest, shall attach to the estate or interest of any person in the proceeds of sale, or in the reversion subject to any such lease or mining lease, or other conveyance, together with the proceeds, rents and royalties accruing from such lease or mining lease, to the same extent that such liens, encumbrances and dower attached or would have attached to his estate or interest in the property if no sale, lease or mining lease had been made. And after the confirmation of any such sale, lease or mining lease, the court, with or without an order of reference, may ascertain and fix the priority of any such liens and encumbrances, and assign consummate dower when the same shall vest.

WV Legislature

§36-2-12. Disposition of proceeds.

The proceeds of sale, and the reversion subject to any such lease or mining lease, together with the proceeds, rents, and royalties accruing from any such lease or mining lease, shall, in all respects, be substituted for and stand in the place of the property sold or leased as regards the ownership and enjoyment thereof, and all persons shall have the same estates or interests, vested, contingent, or executory, in such proceeds of sale, or in the reversion subject to any such lease or mining lease, together with the proceeds, rents and royalties accruing from any such lease or mining lease, as they had or would have had in the property sold or leased. And the proceeds of sale shall be invested and the proceeds, rentals and royalties accruing from such lease or mining lease shall be invested or applied, and the principal and income of any such investment shall be applied under the direction of the court, for the use and benefit of the persons having any such estate or interest, vested, contingent or executory, in accordance with, and to the extent to which they are entitled by virtue of, their respective estates and interests, vested, contingent or executory. From any one in whose hands the proceeds of sale, or the proceeds, rents and royalties accruing from any such lease or mining lease shall be placed or come, the court shall take ample security, and from time to time require additional security, if necessary; and the court shall make all proper orders and decrees for the faithful application of the funds and for the management and preservation of any property or securities in which the same may be invested, for the protection of the rights of all persons having any estate or interest, whether vested, contingent or executory.

WV Legislature

§36-2-12a. Summary proceedings for sale or lease; petition.

In addition to the proceedings authorized by the first section of this article, any person having any interest mentioned in section two of this article in the personal property, land, timber, oil, gas, coal or other minerals sought to be sold, leased or otherwise conveyed, may apply by petition, in a summary way, to the circuit court, or to any court of concurrent jurisdiction with the circuit court, of the county in which the estate proposed to be sold, leased or otherwise conveyed, or some part thereof, may be. Such petitions shall describe the property sought to be sold, leased or otherwise conveyed with reasonable certainty and shall set forth the names of all persons interested in such property, together with their respective interests or estates, either vested, contingent or executory, so far as is known by the plaintiff. Such petition shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale, lease or other conveyance of such property. The petition shall be verified by the oath of the plaintiff or one of the plaintiffs, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, That in the case of nonresident defendants, or unknown or unascertainable parties, or both, an order of publication may be entered, on proper affidavit as in any other chancery proceeding, requiring publication of such notice with respect to any nonresident defendants, or any unknown or unascertainable parties, or both, who may have or claim any interest or estate in such property, as a Class III 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 in which the property or the greater part of the property concerned is situate. Such published notice, with the certificate of publication, when filed with the record in said proceedings, shall be and constitute valid and sufficient notice herein. All other provisions of this article not inconsistent herewith shall apply to and implement the procedures provided in this section.

WV Legislature

§36-2-13. Remedies herein provided cumulative.

This article and the rights and remedies herein provided for shall be cumulative and in addition to other existing rights.

WV Legislature

§36-3-1. Seal not necessary in conveyances of land.

The affixing of a seal, or any symbol or word intended to have the effect of a seal, shall not be necessary to give validity to any deed, trust deed, mortgage, or other conveyance of an estate of inheritance or freehold in land, or any estate of any duration therein.

WV Legislature

§36-3-2. Covenant on unsealed conveyances or contracts.

An action of covenant may be maintained on any written conveyance or lease which, under the provisions of section one, article one of this chapter, must be by deed, and which has been executed since the twenty-sixth day of July, nineteen hundred and twenty-one, for the breach of any covenant or warranty or other agreement therein contained, whether such instrument be sealed or unsealed, and every estoppel which would have been created by such writing, if sealed, shall be created by it, though it be unsealed. Such action of covenant may also be maintained upon any contract or agreement for the conveyance of any interest in land, which interest, if conveyed, would be required, by said section one, article one of this chapter, to be conveyed by deed.

WV Legislature

§36-3-3. Other effects of seal.

The affixing of a seal, or any symbol or word intended to have the effect of a seal, to any instrument conveying or agreeing to convey land, or any interest whatever in land, shall not give to such instrument any additional force or effect, either by way of importing a consideration or in any other manner whatsoever, either at law, or in equity, than such instrument would have if it were unsealed.

WV Legislature

§36-3-4. Distinctions between various kinds of deeds abolished.

All distinctions in legal effect between deeds of grant, deeds of bargain and sale, deeds of lease and release, and deeds of covenant to stand seized, are hereby abolished. Any instrument which shows on its face a present intent to pass the title to, or any interest, present or future, in real property, shall, if properly executed and delivered, be given effect according to its manifest intent. No instrument purporting to convey land, or any interest therein, shall fail of effect merely for lack of conformity with the language of sections five, six, seven, eight or nine of this article.

WV Legislature

§36-3-5. Form of deed.

A deed may be made in the following form, or to the same effect: "This deed made the ..... day of ....., in the year ....., between (here insert names of parties), witnesseth: That in consideration of (here state the consideration), the said ..... grants unto the said ..... all, etc. (Here describe the property, and insert covenants or any other provisions.) Witness the following signature."

WV Legislature

§36-3-5a. Easement and right-of-way; description of property; exception for certain public utility facilities and mineral leases.

(a) Any deed or instrument that initially grants or reserves an easement or right-of-way shall describe the easement or right-of-way by any of the following:

(1) Metes and bounds;

(2) Specification of centerline: Provided, That any deed or instrument, executed on or after September 1, 2013, that initially grants or reserves an easement or right-of-way using the centerline method must also include the width;

(3) Station and offset; or

(4) Reference to an attached drawing or plat which may not require a survey or instrument based on the use of the global positioning system which may not require a survey.

(b) Oil and gas, gas storage and mineral leases shall not be required to describe the easement, but shall describe the land on which the easement or right-of-way will be situate by source of title or reference to a tax map and parcel, recorded deed, recorded lease, plat or survey sufficient to reasonably identify and locate the property on which the easement or right-of-way is situate: Provided, That the easement or right-of-way is not invalid because of the failure of the easement or right-of-way to meet the requirements of this subsection or subsection (a) above.

(c) This section does not apply to the construction of a service extension from a main distribution system of a public utility when the service extension is located entirely on, below or above the property to which the utility service is to be provided.

(d) The clerk of the county commission of any county in which an easement or right-of-way is recorded pursuant to this section may only accept for recordation a document that complies with this section and that otherwise complies with the requirements of article one, chapter thirty-nine of this code, without need for a survey or certification under section two-a, article one, chapter thirty-nine of this code.

WV Legislature

§36-3-6. Necessity of consideration in deed of real property.

If a deed of real property is in other respects valid, it shall not fail for want of a payment of consideration, or the recital of a consideration in the deed. No resulting or other trust in favor of the grantor in such deed shall arise from the mere fact that no consideration was paid or recited, if no trust was in fact intended. The foregoing provisions of this section shall not affect in any manner the right of any party to the deed, or any other person, to have such conveyance set aside for fraud, or because of any other circumstance which would render such conveyance invalid as to such person.

WV Legislature

§36-3-7. Effect of words of release in a deed.

Whenever, in any deed, there shall be used the words "The said grantor releases to the said grantee all his claims upon the said lands," or words of like import, such deed shall be construed as if it set forth that the grantor or releasor hath remised, released, and forever quitted claim and by these presents doth remise, release, and forever quit claim unto the grantee or releasee, his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted or released, or intended so to be.

WV Legislature

§36-3-8. Form of lease.

A deed of lease may be made in the following form or to the same effect: This deed, made the ..... day of ....., in the year ....., between (here insert the names of the parties), witnesseth: That the said ..... demises unto the said ....., his personal representatives and assigns, all, etc., (here describe the property), from the ..... day of

....., for the term of ....., thence ensuing, the said

..... (the lessee) paying to the said .....

(the lessor) therefor, during the said term, the rent of (here state the rent and mode of payment, and insert covenants, conditions, or any other provisions). Witness the following signature.

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§36-3-9. Form of deed by sheriff or special commissioner.

The deed of a sheriff or special commissioner for real estate sold under the decree, judgment or order of a court may be made in the following form, or to the same effect: This deed, made this ..... day of ....., between A .....

B ....., sheriff of the county of ..... (or special commissioner, as the case may be) of the first part, and C ..... D ....., of the second part, witnesseth: That whereas, the said sheriff (or commissioner) in pursuance of the authority vested in him by a decree (judgment, or order, as the case may be) of the circuit court of the county of ....., made on the ..... day of ....., in a suit in chancery (or an action at law, or otherwise, as the case may be) therein pending, in which E ..... F ..... was plaintiff, and G ..... H ..... was defendant, did sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree (judgment or order) at which sale the said C .....

D ..... became the purchaser for the sum of .....

dollars. And whereas, the said court by a subsequent decree (or order) made in the case on the ..... day of ....., confirmed the said sale and directed a deed for the said real estate to be made to the said C ..... D ....., by the said sheriff (or commissioner). Now, therefore, this deed witnesseth: That the said A ..... B ....., sheriff (or special commissioner) as aforesaid, doth grant unto the said

C ..... D ....., a certain parcel of real estate situated in the county of ....., and bounded and described as follows (here insert the boundaries, description and quantity, as near as may be). Witness the following signature.

A ..... B ....., sheriff (or special commissioner).

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§36-3-10. Deeds to include buildings, privileges and appurtenances.

Every deed conveying land shall, unless an exception be made therein, be construed to include all buildings, privileges, and appurtenances of every kind belonging to the lands therein embraced.

WV Legislature

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.

(a) *Definitions.* As used in this section, unless the context requires a different meaning:

(1) "Attorney" means any person licensed as an attorney in West Virginia by the West Virginia State Bar.

(2) "Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

(3) "Local entity" means any county, city, town, municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the State of West Virginia.

(4) "Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where:

(A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

(B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and

(C) The deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number.

(D) An "obvious description error" includes:

(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions;

(ii) An error incorporating an incorrect recorded plat or a deed reference;

(iii) An error in a lot number or designation; or

(iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.

(E) An "obvious description error" does not include:

(i) Missing or improper signatures or acknowledgments; or

(ii) Any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

(5) "Recorded subdivision plat" means a plat that has been prepared by a professional land surveyor licensed pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and recorded in the

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clerk's office of the circuit court for the jurisdiction where the property is located.

(6) "Title insurance" has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this code.

(7) "Title insurance company" means the company that issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

(b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. A correction of an obvious description error shall not be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit, notice of the intent to record the corrective affidavit, of each party's right to object to the corrective affidavit, and a copy of the corrective affidavit shall be served upon:

(1) All parties to the deed, deed of trust, or mortgage, including the current owner of the property;

(2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if possible;

(3) To the title insurance company, if known;

(4) To the adjoining property owners;

(5) To the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction;

(6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the county, city, or town attorney for the local entity, if any, and if there is no such attorney, then to the chief executive for the local entity. For the purposes of this section, the term "party" includes any local entity that is a signatory; and

(7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the Attorney General and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

(d) The notice and a copy of the corrective affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that:

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(1) Is admitted to record in the office of the clerk of the county commission of the county in which the property is situate and where the deed, deed of trust, or mortgage needing correction was recorded;

(2) Is contained in the deed, deed of trust, or mortgage needing correction;

(3) Has been provided to the attorney who prepared the deed, deed of trust, or mortgage as a forwarding address; or

(4) Has been established with reasonable certainty by other means and to all other persons and entities to whom notice is required to be given.

(e) If no written objection is received from any party disputing the facts recited in the corrective affidavit or objecting to its recordation within 30 days after personal service, or receipt of confirmation of delivery of the notice and copy of the corrective affidavit, the attorney may record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound by the terms of the corrective affidavit.

(f) The corrective affidavit shall:

(1) Be notarized;

(2) Contain a statement that no objection was received from any party within the specified time period;

(3) Confirm that a copy of the notice was sent to all the parties; and,

(4) Contain the attorney’s West Virginia State Bar number.

(g) A corrective affidavit recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded.

(h) A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

(i) The clerk shall record the corrective affidavit in the deed book or other book in which deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the corrective affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit. A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts stated in the corrective affidavit.

(j) Costs associated with the recording of a corrective affidavit pursuant to this section shall

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be paid by the party that records the corrective affidavit.

(k) Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to the recordation, including reasonable attorney fees and costs.

(l) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.

(m) A corrective affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This corrective affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the names of ..... (grantor(s)) whose addresses are ..... and ..... (grantee(s)), whose addresses are ..... The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a West Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which ..... purchased real estate from ....., as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number ....; or in which real estate was encumbered, as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number .....

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

.....

.....

5. That the correct property description should read:

.....

.....

6. That this corrective affidavit is given pursuant to West Virginia Code §36-3-11 to correct the property description in the aforementioned deed, deed of trust, or mortgage, and such description shall be as stated in paragraph 5 above upon recordation of this corrective

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affidavit in the office of the clerk of the county commission of ..... County, West Virginia.

7. That notice of the intent to record this corrective affidavit and a copy of this corrective affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this corrective affidavit was received within the applicable period of time as set forth in West Virginia Code §36-3-1.

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This ..... day of ....., 20...., by

.....

Notary Public

My Commission expires .....

Notary Registration Number: .....

(n) Notice under this section may be made in the following form, or to the same effect:

Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or mortgage described in the corrective affidavit, a copy of which is attached to this notice, as follows:

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1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or mortgage recorded as part of your real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

.....

(Address)

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

WV Legislature

§36-4-1. Effect of covenant in a deed.

When the words "the said ..... covenants," are used in a deed, such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself his heirs, personal representatives and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives and assigns.

WV Legislature

§36-4-2. General warranty.

A covenant by a grantor in a deed, "that he will warrant generally the property hereby conveyed," or a covenant of like import, or the use of the words "with general warranty" in a deed, shall have the same effect as if the grantor had covenanted that he his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever.

WV Legislature

§36-4-3. Special warranty.

A covenant by a grantor in a deed "that he will warrant specially the property hereby conveyed," or a covenant of like import, or the use of the words "with special warranty" in a deed, shall have the same effect as if the grantor had covenanted that he his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming by, through, or under him

WV Legislature

§36-4-4. Right to convey.

A covenant by a grantor in a deed for land, "that he has the right to convey the said land to the grantee," or a covenant of like import, shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority to convey the said land, with all the buildings thereon, and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed, or intended so to be by the deed, and according to its true intent.

WV Legislature

§36-4-5. Quiet possession.

A covenant by a grantor in a deed "that the grantee shall have quiet possession of the said land," or a covenant of like import, shall have as much effect as if he had covenanted that the grantee, his heirs, personal representatives, and assigns, might at any and all times thereafter, peaceably and quietly enter upon, and have, hold and enjoy, the land conveyed by the deed, or intended so to be, with all the buildings thereon, and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any lawful eviction, interruption, suit, claim or demand whatever.

WV Legislature

§36-4-6. Freedom from encumbrances.

A covenant, by any grantor in a deed, containing the words "free from all encumbrances," or a covenant of like import, shall have the same effect as if the grantor had covenanted for himself his heirs and personal representatives, that the premises are freely and absolutely acquitted, exonerated and forever discharged, and the grantee, his heirs and assigns, will be saved harmless and indemnified of, from and against any and every charge and encumbrance whatever.

WV Legislature

§36-4-7. Special covenant against encumbrances.

A covenant by a grantor in a deed, "that he has done no act to encumber the said lands," or a covenant of like import, shall have the same effect as if he had covenanted that he had not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whereby the lands and premises conveyed or intended so to be, or any part thereof, are, or will be, charged, affected, or encumbered in title, estate or otherwise.

WV Legislature

§36-4-8. Further assurances.

A covenant by a grantor in a deed for land "that he will execute such further assurances of the said lands as may be requisite," or a covenant of like import, shall have the same effect as if he covenanted that he the grantor, his heirs or personal representatives, will, at any time, upon any reasonable request, at the expense of the grantee, his heirs or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, unto the grantee, his heirs and assigns, in manner aforesaid, as by the grantee, his heirs or assigns, his or their counsel in the law, shall be reasonably advised, or required.

WV Legislature

§36-4-9. Covenant to pay rents.

In a lease, a covenant by the lessee "to pay the rent," or a covenant of like import, shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or to those entitled under him in the manner therein mentioned.

WV Legislature

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease heretofore executed covering oil and/or gas, as against the owner of such oil and/or gas, or the owner's subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located, in whole or in part, and upon payment of a fee of 50¢ for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in the clerk's office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in the clerk's office the words "enforcement barred by notice."

The word "lessor" includes the original lessor, as well as the original lessor's successors in title to the oil and/or gas involved. The word "lessee" includes the original lessee, the original lessee's assignee properly of record at the time such demand is made, and the original lessee's successors, heirs, or personal representatives. No assignee of such lease

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whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There is a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to July 1, 1979, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators and any other equipment, or both, used in the production of any oil and/or gas from any well or wells on said leasehold estate.

This rebuttable presumption shall not be created in instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption is created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or the owner's subsequent lessee or assignee desires to terminate the right, interest or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section, this presumption may not be utilized except in an action or proceeding by the owner of the oil and/or gas or the owner's lessee or assignee in an action brought in the circuit court for the judicial district in which the oil and/or gas property is partially or wholly located. A certified copy of a final order of the circuit court shall be mailed by the clerk of such court to the chief of the office of oil and gas of the Division of Environmental Protection.

The continuation in force of any such lease after demand for and failure to pay such delay rental or failure to produce and sell, or to produce and use oil and gas for a period of twenty-four months as hereinbefore set forth is deemed by the Legislature to be opposed to public policy against the general welfare. If any part of this section shall be declared unconstitutional such declaration shall not affect any other part thereof.

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§36-4-9b. Release of terminated, expired or canceled oil or natural gas leases.

(a) Unless a different time is required by the lease, within 60 days after the termination, expiration, or cancellation of an oil or natural gas lease, the lessee shall deliver to the lessor, without cost to the lessor, or his or her successors or assigns, a properly executed and notarized release of such lease in recordable form.

(b) If the lessee fails to provide a timely release as required by subsection (a) of this section, the lessor, or his or her successors or assigns, may serve notice of lessee's failure to provide such release. The notice shall be made in good faith and contain the following:

(1) A statement that:

(A) The lease is terminated, expired, or canceled according to its terms, including the date of such termination, expiration, or cancellation;

(B) The lessee has a duty to provide a release pursuant to subsection (a) of this section; and

(C) If the release, or a written dispute to such termination, expiration, or cancellation, is not received by the lessor, or his or her successors or assigns, from the lessee within 60 days from receipt of the notice, the lessor, or his or her successors or assigns, shall have the right to file an affidavit of termination, expiration, or cancellation under subsection (e) of this section;

(2) The name and address of the lessor, or his or her successors or assigns;

(3) A brief description of the land covered by the lease including, but not limited to, the state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying information;

(4) If there is a well on the land covered by the lease, the name or API number of the well, if known to the lessor, or his or her successors or assigns;

(5) If located in a unit, the name of the unit, if known, to the lessor, or his or her successors or assigns; and

(6) The recording information for the lease, or a memorandum of lease, in the public records of the county or counties, along with the execution date of the lease, and the identity of the original lessor and lessee under the lease.

(7) The notice when served shall include a service sheet showing the names and addresses of all persons upon whom the notice has been served.

(c) The notice shall be sent to the following persons as are shown by the lessor's reasonable examination of the public records: (1) Lessee; (2) lessee's assignee; (3) all other lessors; and (4) all other persons who have an interest in the leasehold estate or the oil and natural gas

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leased thereunder. A lessor's inability to afford notice to everyone to whom notice is to be given thereunder does not relieve a lessee of its obligation to respond.

(d) Service of notice under subsections (b) and (c) of this section shall be effected either personally or by certified mail to the recipient's last known business addresses, or, if service cannot reasonably be made by those means, by publication once a week for two weeks in a newspaper of general circulation in the county or counties in which the lands covered by the lease are located.

(e) If, after receiving a notice of termination, expiration, or cancellation under subsections (b), (c), and (d) of this section, a lessee disputes in good faith that the oil or natural gas lease is terminated, expired, or canceled as stated in the notice, the lessee must, not more than 60 days after receipt of the notice, deliver a written dispute of the contents of the notice to the lessor, or his or her successors or assigns, detailing the good-faith basis for such dispute.

(f) A lessor, or his or her successors or assigns, who has served a notice under subsections (b), (c) and (d) of this section, and who fails to receive a timely dispute from a lessee under subsection (e) of this section, may record an affidavit of termination, expiration, or cancellation of an oil or natural gas lease in the office of the county clerk in the county or counties where the lands covered by the lease are situated. The county clerk of each county shall accept all such affidavits and shall enter and record them in the official records of that county and shall index each in the indices under the names, as they appear in the affidavit, of the original lessor, the original lessee, the lessor seeking the release, and the lessee identified in the affidavit.

(g) An affidavit of termination, expiration, or cancellation of an oil or a natural gas lease shall be in the form of an affidavit and contain the following information:

(1) The name and address of the affiant;

(2) The names and addresses of the lessor and lessee;

(3) If located in a unit, the name of the unit, if known to the affiant;

(4) If there is a well on the land, the name or API number of the well, if known to the affiant;

(5) The recording information for the lease, or a memorandum of same, in the public record of the county or counties where the interest is located, along with the execution date of the lease, and the names of the original lessors and lessees under the lease;

(6) A brief recitation of the facts known to the affiant relating to the termination, expiration, or cancellation of the lease, including relevant dates;

(7) A statement that the lessor, or its successors or assigns, complied with his or her duty to serve proper notice to the lessee under subsections (b), (c), and (d) of this section and that the lessee failed to provide a timely challenge to the notice as provided in subsection (e) of

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this section. The lessor's affidavit shall have attached to it a copy of the notice made and served under subsections (b), (c), and (d) of this section including therewith a copy of the service sheet accompanying the notice; and

(8) The notarized signature of the affiant.

(h) A person who files an affidavit under this section shall serve a copy of the same upon all persons to whom notice was required to be given under subsections (b), (c), and (d) of this section in the same manner as notice was required to be served. The filing of an affidavit under this section does not constitute a modification of a lease, nor does it limit, waive, or prejudice any claim or defense of any party to the lease in law or in equity.

(i) A lessor's, or his or her successors or assigns, decision not to use the provisions of this section is not evidence that a lease is still in effect.

WV Legislature

§36-4-9c. Penalties for nonpayment of royalties under the terms of oil and natural gas leases during production from conventional vertical wells.

(a) With regard to conventional vertical oil, natural gas wells, and derivative natural gas liquids only, permitted under §22-6-1 *et seq*. of this code, unless otherwise provided for in writing or unless there is a bona fide dispute between the parties, any lessee or operator of oil, natural gas, or natural gas liquids, or their successors or assigns, who fails to pay a royalty payment for mineral production to a lessor, or their successors and assigns, under the terms of a lease or other agreement within six months after the date payment is due under the terms of the lease or other agreement, shall be liable to such lessor or landowner, or their successors or assigns, in an amount equal to three times the market value of the unpaid royalty for which payment is due.

(b) The provisions of subsection (a) of this section shall apply to all royalty payment disputes filed with a court of competent jurisdiction on or after July 1, 2025.

(c) Non-exclusive jurisdiction and venue are proper in the county in which the subject well and leasehold is located.

(d) The prevailing party may be awarded reasonable attorney's fees and costs in addition to and not withstanding any other rights, remedies, and penalties otherwise provided by law.

WV Legislature

§36-4-10. Covenant to pay taxes.

A covenant by the lessee in a lease "to pay the taxes," or a covenant of like import, shall have the effect of a covenant that all taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under him Provided, however, That no assessment for a permanent local improvement, such as paving the street or sidewalk, or other such improvement, and no tax levied upon the income of the lessor derived from such leased premises, shall be chargeable to the lessee, unless it is expressly so provided in the lease.

WV Legislature

§36-4-11. Covenant against assignment.

In a lease, a covenant by the lessee "that he will not assign or sublet without leave," or a covenant of like import, shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, set over, or sublet, the premises, or any part thereof, to any person, without the consent in writing of the lessor, his representatives or assigns.

WV Legislature

§36-4-12. Covenant for repairs.

In a lease, a covenant by the lessee "that he will leave the premises in good repair," or a covenant of like import, shall, subject to the provisions of the following section, have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded up unto the lessor, his representatives or assigns, in good and substantial repair and condition, reasonable wear and tear excepted.

WV Legislature

§36-4-13. Effect of destruction of buildings.

No covenant or promise by a lessee that he will leave the premises in good repair shall have the effect, if the buildings or other structures are destroyed by fire or otherwise, in whole or part, without fault or negligence on his part, of binding him to erect such buildings again, or to pay for the same or any part thereof, unless there be other words showing it to be the intent of the parties that he should be so bound.

WV Legislature

§36-4-14. Covenant for quiet enjoyment.

A covenant by a lessor, "for the lessee's quiet enjoyment of his term," or a covenant of like import, shall have the same effect as a covenant that the lessee, his personal representatives and lawful assigns, paying the rent reserved, and performing his or their covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person whatever.

WV Legislature

§36-4-15. Covenant for reentry for default of lessee.

If in a lease it be provided that "the lessor may reenter for default in the payment of rent or for the breach of covenants," or if the lease contains words of like import, such words shall have the effect of an agreement that if the rent reserved, or any part thereof, be unpaid on or after the day specified in the deed for the payment thereof, or if any of the other covenants on the part of the lessee, his personal representatives or assigns, be broken, then, in either of such cases, the lessor, or those entitled in his place, at any time afterwards, into and upon the demised premises, or any part thereof, in the name of the whole, may reenter and the same again have, repossess and enjoy, as of his or their former estate.

WV Legislature

§36-4-16. Covenants shall run with land.

Each of the covenants hereinbefore mentioned in this article, as well as the covenant of seisin, when used in a conveyance of land, delivered after the date when this code shall take effect, shall be considered as a covenant running with the land, whether such covenants have heretofore been so considered or not, unless a contrary intent shall be apparent from the conveyance.

WV Legislature

§36-4-17. Construction of covenants.

The legal scope and effect of the covenants mentioned in this article, and the person or persons by and against whom such covenants may be enforced, shall be determined according to the rules of law applicable to such cases, and the plain intent and meaning of the parties.

WV Legislature

§36-4-18. Recorded disclaimer of unlawful restrictions.

The clerk of the county commission shall execute, record and post in a prominent place in the county record room a document that disclaims the validity and enforceability of certain restrictions and covenants in deeds. The document shall contain a disclaimer in substantially the following form:

"Except as provided in section eight, article eleven-a, chapter five of the Code of West Virginia, it is the law of this state that certain covenants or restrictions that are based on race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin are invalid and unenforceable. If an invalid covenant or restriction is contained in a document that is recorded in this county, the invalid covenant or restriction is void notwithstanding its recordation."

WV Legislature

§36-4-19. Solar energy covenants unenforceable; penalty.

(a) It is the policy of the state to promote and encourage the residential and commercial use of solar energy systems and to remove obstacles thereto to promote energy efficiency and pollution reduction. Therefore, any covenant, restriction, or condition contained in any governing document of a housing association executed or recorded after the effective date of this section that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable: Provided, That a housing association may, by vote of its members, establish or remove a restriction that prohibits or restricts the installation or use of a solar energy system.

(b) For the purposes of this section:

(1) "Solar energy system" means a system affixed to a building or buildings that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy; and

(2) "reasonable restriction" means those restrictions that do not effectually result in a prohibition of their use by eliminating the system's energy conservation benefits or economic practicality.

(c) This section does not apply to provisions that impose reasonable restrictions on solar energy systems including restrictions for historical preservation, architectural significance, religious or cultural importance to a given community. Nothing in this section precludes the regulation of solar energy systems by state and local authorities which may establish land use, health and safety standards. Nothing in this section precludes housing associations from restricting or limiting the installation of solar energy systems installed in common areas and common structures.

WV Legislature

§36-5-1. Release or disclaimer of general power of appointment.

Any general power, whether exercisable by will, by deed, by will or deed, or otherwise, to appoint property, whether real or personal or both, may be released or disclaimed by the person or persons having such power, with or without consideration, wholly or partially. Any such power may be released or disclaimed with respect to the whole or any part of the property subject thereto; and any such power may also be released or disclaimed in such manner as to reduce, limit, or restrict the persons or objects, or classes of persons or objects, to or among any one or more of whom, but no others, the property subject to such power may be appointed by an exercise thereof, as fully as the creator of such power himself could have so reduced, limited or restricted the same and with like effect as if he had.

WV Legislature

§36-5-2. Method of effecting release or disclaimer of power of appointment.

Any release or disclaimer mentioned in section one of this article may be effected by a written instrument signed and acknowledged as a deed by the person or persons having the general power to appoint mentioned in that section; and such instrument may be delivered by filing it for record in the office of the clerk of the county court of the county wherein the will, deed or other instrument creating such power is recorded. Such clerk shall record such instrument of release or disclaimer as a deed is recorded, index it, and note a reference to the record thereof on the margin of the record of the will, deed or other instrument creating such power.

WV Legislature

§36-5-3. Release or disclaimer of other than general power of appointment.

Any other power than a general one, whether exercisable by will, by deed, by will or deed, or otherwise, to appoint property, real or personal or both, may be released or disclaimed to the extent that a release or disclaimer thereof would not be contrary to any manifest intent or purpose of the creator of such power expressly set forth in the will, deed or other instrument creating such power; and to the extent so releasable or disclaimable it may be released or disclaimed in like manner as above provided in this article for the release or disclaimer of a general power of appointment, and with like effect.

WV Legislature

§36-5-4. Validity of release or disclaimer of power of appointment heretofore made.

Any release or disclaimer of a general or other releasable or disclaimable power of appointment heretofore made in conformity with the provisions of the foregoing sections of this article shall be as valid, binding and effective as if hereafter so made.

WV Legislature

§36-5-5. Other methods of release or disclaimer of power of appointment not affected.

Nothing in this article contained shall affect the validity of any release or disclaimer of any power of appointment heretofore or hereafter lawfully effected in any other form or manner.

WV Legislature

§36-6-1.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-2.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-3.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-4.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-5.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-6.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-7.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-8.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-9.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-10.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-11.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-12.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-13.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-14.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-15.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-16.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-6-17.

Repealed.

Acts, 2000 Reg. Sess., Ch. 273.

WV Legislature

§36-7-1. Definitions.

In this article:

(1) "Adult" means an individual who has attained the age of twenty-one years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means any circuit court.

(6) "Custodial property" means (i) any interest in property transferred to a custodian under this article and (ii) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under section nine or a successor or substitute custodian designated under section eighteen of this article.

(8) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means the personal representative or conservator of an individual.

(10) "Member of the minor's family" means the minor's parent, step-parent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization or other legal entity.

(13) "Personal representative" means an executor, administrator, successor, personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under section nine of this article.

WV Legislature

(16) "Transferor" means a person who makes a transfer under this article.

(17) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

WV Legislature

§36-7-2. Scope and jurisdiction.

(a) This article applies to a transfer that refers to this article in the designation under subsection (a), section nine, by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this article is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

WV Legislature

§36-7-3. Nomination of custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words:"As custodian for _____ (name of minor) under the Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subsection (a), section nine of this article.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section nine of this article. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section nine of this article.

WV Legislature

§36-7-4. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section nine of this article.

WV Legislature

§36-7-5. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to section nine of this article to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section three of this article to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under section three of this article or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection (a), section nine of this article.

WV Legislature

§36-7-6. Other transfer by fiduciary.

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section nine of this article in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section nine of this article.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument and (iii) the transfer is authorized by the court if it exceeds $10,000 in value.

WV Legislature

§36-7-7. Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to section five or six of this article who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section nine of this article.

(b) If a person having the right to do so under section three of this article has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under section three of this article, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

WV Legislature

§36-7-8. Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

WV Legislature

§36-7-9. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made whenever:

(1) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

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(i) Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(7) An interest in any property not described in subdivisions (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraph (ii), subdivision (1) and subdivision (7) of subsection (a):

"TRANSFER UNDER THE (NAME OF ENACTING STATE) UNIFORM

TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of Custodian), as Custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act, the following: (Insert a description of the custodial property sufficient to identify it).

Dated: _____

_____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the West Virginia Uniform Transfers to Minors Act.

Dated: _____

_____"

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

WV Legislature

§36-7-10. Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

WV Legislature

§36-7-11. Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this article is not affected by:

(1) Failure of the transferor to comply with subsection (c), section nine concerning possession and control;

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection (a), section nine; or

(3) Death or incapacity of a person nominated under section three or designated under section nine as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to section nine is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this article and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this article.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this article.

WV Legislature

§36-7-12. Care of custodial property.

(a) A custodian shall:

(1) Take control of custodial property;

(2) Register or record title to custodial property if appropriate; and

(3) Collect, hold, manage, invest and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words:"As a custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

WV Legislature

§36-7-13. Powers of custodian.

(a) A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of section twelve of this article.

WV Legislature

§36-7-14. Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

WV Legislature

§36-7-15. Custodian's expenses, compensation, and bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section four of this article, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in subsection (f), section eighteen of this article, a custodian need not give a bond.

WV Legislature

§36-7-16. Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this article for, any act of the purported custodian;

(3) The validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

WV Legislature

§36-7-17. Liability to third persons.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

WV Legislature

§36-7-18. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

(a) A person nominated under section three of this article or designated under section nine of this article as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under section three of this article, the person who made the nomination may nominate a substitute custodian under section three of this article; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection (a), section nine. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section four as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section an adult member of the minor's family, a conservator of the minor or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c), of this section or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of fourteen years may petition the court to remove the

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custodian for cause and to designate a successor custodian other than a transferor under section four or to require the custodian to give appropriate bond.

WV Legislature

§36-7-19. Accounting by and determination of liability of custodian.

(a) A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section seventeen to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under subsection (f), section eighteen of this article, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

WV Legislature

§36-7-20. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under section four or five of this article;

(2) The minor's attainment of majority under the laws of this state other than this article with respect to custodial property transferred under sections six or seven of this article; or

(3) The minor's death.

WV Legislature

§36-7-21. Applicability.

This article applies to a transfer within the scope of section two made after its effective date if:

(1) The transfer purports to have been made under the West Virginia Uniform Gifts to Minors Act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this article is necessary to validate the transfer.

WV Legislature

§36-7-22. Effect on existing custodianships.

(a) Any transfer of custodial property as now defined in this article made before the effective date of this article is validated notwithstanding that there was no specific authority in the West Virginia Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This article applies to all transfers made before the effective date of this article in a manner and form prescribed in the West Virginia Uniform Gifts to Minors Act, except insofar as the application impairs Constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this article.

(c) Sections one and twenty with respect to the age of a minor for whom custodial property is held under this article do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen after June 9, 1972 and before July 1, 1986.

WV Legislature

§36-7-23. 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.

WV Legislature

§36-7-24. Short title.

This article may be cited as the "West Virginia Uniform Transfers to Minors Act."

WV Legislature

§36-8-1. Definitions.

As used in this article:

“Administrator” means the State Treasurer.

“Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

“Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

“Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic mail” means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

“Financial organization” means a savings and loan association, bank, banking organization, or credit union.

“Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

“Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers’ compensation insurance.

“Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and non-fissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

“Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

For the acquisition and retention of a mineral lease, including bonuses, royalties,

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compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

"Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

"Owner" means a person who has a legal or equitable interest in property subject to this article or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

"Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Property" means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

Money, virtual currency, check, draft, warrant for payment issued by the State of West Virginia, deposit, interest, or dividend;

Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

Stock or other evidence of ownership of an interest in a business association or financial organization;

A bond, debenture, note, or other evidence of indebtedness;

Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

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An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“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.

“United States savings bond” means property, tangible or intangible, in the form of a savings bond issued by the United States Treasury whether in paper form, electronic or paperless form, along with the proceeds thereof.

“Utility” means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas as defined in §24-1-2 of this code.

“Virtual currency” means a digital representation of value, including cryptocurrency, used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(A) The software or protocols governing the transfer of the digital representation of value;

(B) Game-related digital content; or

(C) A loyalty card or gift card.

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§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, three years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency, or

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instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the State of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state Municipal Bond Commission, for the payment of a note, bond, debenture, or other evidence or indebtedness, three years after the principal maturity date, or if such note, bond, debenture, or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture, or other evidence of indebtedness;

(17) Any virtual currency held or owing by any banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity, three years after the owner's last indication of interest in the property; and

(18) All other property, three years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

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(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account;

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions; and

(5) For demand, savings and time deposits held by a financial organization, any indication of the owner's interest in any demand, savings and time deposit held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

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§36-8-2a. Escheat of United States savings bonds.

(a) Notwithstanding any other section of this article or any other section of this code to the contrary, United States savings bonds held or owing in this state by any person, or issued, or owed, in the course of a holder's business, by a state or other government, governmental subdivision, agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in the state if:

(1) The last known address of the owner of the United States savings bond is in this state; and

(2) The United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity.

(b) United States savings bonds which are presumed abandoned under §36-8-2a(a) of this code, including bonds in the possession of the administrator, and those lost, stolen or destroyed bonds registered to persons with last known addresses in this state, shall, upon satisfaction by the administrator of the requirements of §36-8-2a(c) through (e) of this code, escheat to the State of West Virginia one year after such bonds are presumed abandoned, and all property rights and legal title to, and ownership of, the United States savings bonds or proceeds from the bonds, including all rights, powers and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the State of West Virginia, subject only to the provisions of §36-8-15 and §36-8-16 of this code.

(c) After the expiration of the one-year period prescribed in §36-8-2a(b) of this code, if no claim has been filed pursuant to the provisions of §36-8-15 and §36-8-16 of this code for such United States savings bonds, but before such savings bonds escheat to the State of West Virginia, a civil action must be commenced by the administrator in the circuit court of Kanawha County, or in any other court of competent jurisdiction, for a determination that such United States savings bonds shall escheat to the State of West Virginia.

(d) The administrator shall make service by publication of the civil action in accordance with Rule 4(e) of the West Virginia Rules of Civil Procedure.

(e) Any person claiming ownership, including all persons claiming rights, powers and privileges of survivorship and any co-owner or beneficiary, or his or her agent, may appear and defend his or her rights to the subject bond or bonds, and if the court is satisfied that the claimant is entitled to the bond or bonds, the court may award judgment in the claimant's favor. If no person files a claim or appears at the hearing to substantiate a claim, or if the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the administrator has substantially complied with this section, shall enter a judgment that the subject United States savings bonds have escheated to the State of West Virginia, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall

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vest solely in the State of West Virginia.

(f) Upon being awarded a judgment that the United States savings bond or bonds have escheated to the State of West Virginia, the administrator shall redeem such United States savings bonds. Upon recovery of the proceeds of any United States savings bonds, the administrator shall first pay all costs incident to the collection and recovery of such proceeds from the proceeds of such United States savings bonds and shall thereafter promptly deposit the remaining balance of such proceeds into the Unclaimed Property Fund pursuant to §36-8-13 of this code.

(g) Notwithstanding any other section of this article or any other section of this code to the contrary, any person making a claim for a United States savings bond escheated to the State of West Virginia under this section, or for the proceeds of such bond, may file a claim with the administrator pursuant to §36-8-15 of this code. Upon receipt of sufficient proof of the validity of such person's claim, the administrator may, in his or her sole discretion, pay such claim less any expenses and costs which have been incurred by the state in securing full title and ownership of such property by escheat. If payment has been made to any claimant, no action thereafter may be maintained by any other claimant against the state or any officer thereof, for, or on account of, such funds.

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§36-8-3. Contents of safe deposit box or other safekeeping depository.

Tangible personal property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

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§36-8-4. Rules for taking custody.

Except as otherwise provided in this article or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) The last known address of the person entitled to the property is in this state; or

(ii) The holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(6) The transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

WV Legislature

§36-8-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

WV Legislature

§36-8-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

WV Legislature

§36-8-7. Report of abandoned property.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(3) An aggregated amount of items valued under $50 each;

(4) In the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) The date, if any, on which the property became payable, demandable or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) Other information that the administrator by rule prescribes as necessary for the administration of this article.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1, of each year and cover the twelve months next preceding July 1, of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to this article, if:

(1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) The claim of the apparent owner is not barred by a statute of limitations; and

WV Legislature

(3) The value of the property is $50 or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e) of this section.

WV Legislature

§36-8-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by §36-8-7 of this code, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 120 days after filing the report required by §36-8-7 of this code.

(b) If the property reported to the administrator is a security or security entitlement under article eight of the uniform commercial code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article eight of the uniform commercial code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to article eight, section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with section 10 of this article.

(e) If the property reported is virtual currency, the holder shall liquidate the virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator. The owner shall have no recourse against either the holder or the administrator for any gain in value after liquidation.

WV Legislature

§36-8-9. Notice and publication of lists of abandoned property.

(a) Publication of bulletin. —

(1) The administrator shall publish a bulletin no later than November 30 of each year, listing the names of the apparent owners of up to 15,000 properties recently paid or delivered to the administrator. The bulletin must be published in a newspaper of general circulation in each county of this state. The bulletin must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The bulletin must contain:

(A) The name of each person appearing to be the owner of the property listed, as set forth in the report filed by the holder;

(B) The municipality in which the last known address or location of each person appearing to be the owner of the listed property is located, if an address or location is set forth in the report filed by the holder;

(C) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(D) A statement that information about unclaimed property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(2) The administrator is not required to include any property in the bulletin described in this subsection that has a total value of less than $50 or any property that is a traveler's check, money order, or similar instrument.

(b) Exception to bulletin requirement. —

(1) The administrator is not required to publish the bulletin described in subsection (a) of this section in a county if the administrator makes a determination that the bulletin is not a cost-effective method of promoting awareness of unclaimed property in that county. The determination shall be based on the cost to publish the bulletin in the county and the following criteria:

(A) The population of the county;

(B) Relevant geographic or demographic characteristics of the county;

(C) Residents' access to Internet within the county;

(D) Available data on the circulation and readership of newspapers within the county;

(E) The existence of alternative media outlets to newspapers in the county, through which

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the administrator may more effectively promote awareness of unclaimed property; and

(F) County-specific data collected by the administrator in previous years concerning the most effective methods of promoting awareness of unclaimed property within the county.

(2) During each year in which the administrator does not publish the bulletin described in subsection (a) of this subsection in a county, pursuant to subdivision (1) of this subsection, the administrator shall publish an advertisement in a newspaper of general circulation in the county by November 30 of that year. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property and must contain:

(A) A statement notifying the reader that the administrator holds unclaimed property and that the reader might be entitled to claim unclaimed property in the administrator's custody;

(B) A brief description of the types of property that are commonly held by the administrator;

(C) Instructions for accessing the searchable database of unclaimed property on the administrator's website; and

(D) Instructions for requesting information regarding unclaimed property from the administrator by telephone or by mail.

(c) Online database. — The administrator shall maintain a database on the administrator's website that is accessible by the public and electronically searchable which contains the names reported to the administrator of all apparent owners for whom property is being held by the administrator: *Provided*, That the administrator is not required to include in the database the name or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

WV Legislature

§36-8-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: *Provided*, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under §36-8-19(a) of this code.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of

WV Legislature

the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges in an amount not to exceed $150. The administrator shall reimburse the holder after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.

WV Legislature

§36-8-11. Crediting of dividends, interest and increments to owner's account.

(a) If property other than money is delivered to the administrator under this article, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money only as provided in this subsection:

(1) If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of four percent per year or any lesser rate the property earned at the time the property was delivered to the administrator.

(2) If the property is any property other than an interest bearing demand, savings or time deposit, the administrator shall pay the owner four percent per year on the market value of the property at the time it was delivered to the administrator or any lesser annualized rate of income or gain the property earned from the time the property was delivered to the administrator to the time the owner established a claim to the property.

(3) In no event shall the administrator be required to pay the owner any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the administrator.

(b) Nothing in this section shall be construed to entitle an owner to interest on property which did not realize or accrue income or gain at the time it was delivered to the administrator.

WV Legislature

§36-8-12. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this article before the end of the three-year period is entitled to the proceeds of the sale of the securities less any deduction for expenses of sale. A person making a claim under this article after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this article takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

WV Legislature

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property, and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under §36-8-12 of this code. The administrator may invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments, or the Investment Management Board, and all earnings shall accrue to the fund and are available for expenditure in accordance with the article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including, without limitation, the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator may transfer the sum of $1 million from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund, until an actuary certifies there are sufficient funds to satisfy all obligations and administrative expenses of the Jumpstart Savings Program.

(e) Subject to a liquidity determination and cash availability, effective July 1, 2022, the unclaimed property administrator may transfer an amount in any fiscal year from the Unclaimed Property Trust Fund to the Military Authority Reimbursable Expenditure Fund: *Provided*, That the aggregate amount that may be transferred under this subsection may not

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exceed $10,000,000.

(f) Subject to cash availability, on or before July 15, 2024, the unclaimed property administrator may transfer up to $8 million from the Unclaimed Property Trust Fund to the West Virginia Veterans' Home Loan Mortgage Fund, as provided in §31-18F-5 of this code.

(g) After transferring any money required by subsections (e) and (f) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

WV Legislature

§36-8-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under this article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this state under subdivision (6), section four of this article and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under subdivision (7), section four of this article, and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

WV Legislature

§36-8-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section 16 of this article.

(c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

(d) The administrator may waive the requirement in subsection (a) and may pay or deliver property directly to a person who does not file a claim if:

(1) The person receiving the property or payment is shown to be the apparent owner included on a report filed pursuant to this act;

(2) The administrator reasonably believes the person is entitled to receive the property or payment; and

(3) The property has a value of less than $5,000.

WV Legislature

§36-8-16. Action to establish claim.

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

WV Legislature

§36-8-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under this article which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this article.

WV Legislature

§36-8-18. Destruction or disposition of property having no

substantial commercial value; immunity from

liability.

If the administrator determines after investigation that property delivered under this article has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

WV Legislature

§36-8-19. Periods of limitation.

(a) The expiration, before or after the effective date of this article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this article.

(b) An action or proceeding may not be maintained by the administrator to enforce this article in regard to the reporting, delivery or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

WV Legislature

§36-8-20. Requests for reports and examination of records.

(a) The administrator, or the administrator's designated agent, may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this article, describe property not previously reported or as to which the administrator has made inquiry and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, or the administrator's designated agent, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this article. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under this article. The administrator may contract with any other person to conduct the examination on behalf of the administrator. However, this subsection shall not be construed to grant the administrator the right to examine the records of a national banking association to an extent greater than permitted by applicable federal law, nor shall this subsection permit the records of any bank chartered or incorporated under the laws of any state to be subject to examination to an extent greater than the examination permitted of the records of a national banking association under applicable federal law.

(c) The administrator, or the administrator's agent, at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator, or the administrator's agent, has given the notice required by subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) Used by the administrator or the administrator's attorney in the course of an action to collect unclaimed property or otherwise enforce this article;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government or any other governmental subdivision, agency or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

WV Legislature

(e) If an examination of the records of a person results in the disclosure of property reportable under this article, the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of this article, a holder does not maintain the records required by section twenty-one of this article and the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

WV Legislature

§36-8-21. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under section seven of this article shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues or provides to others for sale or issue in this state, traveler's checks, money orders or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

WV Legislature

§36-8-22. Enforcement.

The administrator may maintain an action in this or another state to enforce this article. The court may award reasonable attorney's fees to the prevailing party.

WV Legislature

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section twenty of this article. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(c) At the request of another state, the administrator's attorney may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The administrator may request that the Attorney General of another state or another attorney commence an action in the other state on behalf of the administrator. The administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this article. The administrator may agree to pay expenses and attorney's fees based, in whole or in part, on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this article.

WV Legislature

§36-8-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by this article shall pay to the administrator interest at the annual rate of twelve percent on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by this article, or fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of $200 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of $5,000.

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of $1,000 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of $1,000 for each day from the date a report under this article was due, up to a maximum of $25,000, plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

WV Legislature

§36-8-25. Records of abandoned property.

Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law, or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of the West Virginia Freedom of Information Act, Chapter 29B of this code: *Provided*, That nothing in this section prevents the administrator from disclosing the monetary value of an unclaimed property or the general nature or type of said property to any person that the administrator reasonably believes to be the apparent owner of said property or a person entitled to claim the property on the apparent owner's behalf.

WV Legislature

§36-8-26. Foreign transactions.

This article does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

WV Legislature

§36-8-27. Transitional provisions.

(a) An initial report filed under this article for property that was not required to be reported before the effective date of this article but which is subject to this article must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this article as if this article had been in effect during that period.

(b) This article does not relieve a holder of a duty that arose before the effective date of this article to report, pay or deliver property. Except as otherwise provided in subsection (b), section nineteen of this article, a holder who did not comply with the law in effect before the effective date of this article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

WV Legislature

§36-8-28. Rules.

On or before July 1, 1997, the administrator shall promulgate emergency legislative rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The administrator shall propose legislative rules for promulgation in accordance with the requirements of the Secretary of State and the provisions of chapter twenty-nine-a of this code to otherwise effectuate the purposes of this article.

WV Legislature

§36-8-29. 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.

WV Legislature

§36-8-30. Short title.

This article may be cited as the "Uniform Unclaimed Property Act".

WV Legislature

§36-8-31. Severability clause.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

WV Legislature

§36-8-32. Effective date.

This article shall take effect on July 1, 1997.

WV Legislature

§36-8-33. Report by administrator.

(a) Not later than six months after the end of the state's fiscal year, the administrator shall compile and publish a report on the West Virginia Treasury website. The report must contain the following information about property deemed unclaimed for the preceding fiscal year for the state:

(1) The total amount and value of all property paid or delivered under this act to the administrator, separated into:

(A) The portion voluntarily paid or delivered; and

(B) The portion delivered as the result of an examination under the act.

(2) The total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this act.

(b) The report required under subsection (a) of this section is a public record and is subject to disclosure pursuant to the West Virginia Freedom of Information Act, Chapter 29B of this code.

WV Legislature

§36-8A-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

(a) "Chief executive" means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency.

(b) "Item" means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

(c) "Law-enforcement agency" means any duly authorized state, county or municipal organization of the State of West Virginia employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy Regional Recreation Authority nor any state institution of higher education is a law-enforcement agency.

(d) "Nonprofit organization" means: (i) Any nonprofit charitable organization; or (ii) any agency of the State of West Virginia the purpose of which is to provide health, recreational or educational services to citizens of the State of West Virginia.

(e) "Stolen property" means any tangible personal property, including cash and coins, which is confiscated by or otherwise comes into the custody of a law-enforcement agency during the course of a criminal investigation or the performance of any other authorized law-enforcement activity, whether or not the property was or can be proven to have been stolen.

(f) "Treasurer" means the State Treasurer or his or her authorized designee for purposes of the administration of this article.

(g) "Unclaimed stolen property" is stolen property:

(1) Which has been held by a law-enforcement agency for at least six months, during which time the rightful owner has not claimed it;

(2) For which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner; and

(3) Which the chief executive determines to have no evidentiary value.

WV Legislature

§36-8A-2. Unclaimed stolen property reports.

(a) On or before September 1, of each year, each law-enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the Treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

(b) An unclaimed stolen property report shall include the following information with respect to all unclaimed stolen property in the possession of the law-enforcement agency filing it:

(1) A description of each item, including a serial number, if applicable;

(2) An estimated value for each item;

(3) Whether any nonprofit organization has requested that any item be donated to it and whether any nonprofit organization might be considered to receive the item as a donation;

(4) Whether the law-enforcement agency could use the item for any legitimate and authorized law enforcement or educational purpose;

(5) The chief executive's recommendation for the disposition of each item; and

(6) If any unclaimed stolen property in the law-enforcement agency's possession consists of firearms or ammunition, a description of the best efforts used by the chief executive to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner prior to its disposition by public auction or as otherwise required by section five of this article.

WV Legislature

§36-8A-3. Treasurer's response to unclaimed stolen property report.

Within thirty days of the receipt of an unclaimed stolen property report, the Treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report, the Treasurer shall either require that it be delivered to the Treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law-enforcement agency to use it for any legitimate and authorized law enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, or to use it for any legitimate and authorized law enforcement or educational purpose. However, the Treasurer may not authorize the law-enforcement agency to donate any firearms or ammunition. The sale of any firearms or ammunition by the law enforcement agency must be at a public sale to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license. If the Treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the Treasurer's office, the Treasurer shall have the authority to require that the item be delivered to the Treasurer.

WV Legislature

§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

(a) Within ninety days of receipt of the treasurer's response required by section three of this article, the law-enforcement agency shall dispose of all items identified in the treasurer's response in the manner set forth in this section.

(b) If the treasurer's report requires the law-enforcement agency to deliver any item to the treasurer, the chief executive shall cause the item to be so delivered. Within three years after receiving the item from the law-enforcement agency, the treasurer shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the treasurer affords the most favorable market for the property. The treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the bid to be insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this subsection must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(c) If the treasurer's response authorizes the law-enforcement agency to sell any item at a public sale, the chief executive shall retain an auctioneer licensed by the State of West Virginia to conduct the sale. The costs or fees incurred will be paid from a fund generated from revenues gained by the sale of such property. The licensed auctioneer shall sell the item to the highest bidder at a location which in the judgment of the chief executive affords the most favorable market for the items. A sale under this subsection must be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold. The chief executive shall retain the proceeds of any public sale under this subsection for the use of the law-enforcement agency.

(d) If the treasurer's response authorizes the law-enforcement agency to donate any item to a nonprofit organization, the chief executive shall cause the item to be so donated.

(e) If the treasurer's report authorizes the law-enforcement agency to use any item for any legitimate and authorized law-enforcement or educational purpose, the chief executive shall cause the item to be used for that purpose. However, if the law-enforcement agency ever discontinues its use of the item, it must again report the item to the treasurer as provided in section two of this article.

(f) If the treasurer's response authorizes the law-enforcement agency either to sell any item at a public sale, to donate it to a nonprofit organization or to use it for any legitimate and authorized law-enforcement or educational purpose, the chief executive may cause the item either to be sold, donated or used as provided in this section. However, the chief executive shall first attempt to donate the item as provided in subsection (d) of this section or to use it as provided in subsection (e) of this section before selling it at a public sale as provided in subsection (c) of this section.

WV Legislature

§36-8A-5. Regarding the disposition of firearms in state custody.

(a) Except as provided in section three of this article, subject to the duty to return firearms to innocent owners pursuant to subsection (b) of this section, all firearms, as defined in section two, article seven, chapter sixty-one of this code, that are forfeited or abandoned to any law-enforcement agency of this state or a political subdivision of this state, including the West Virginia Division of Natural Resources, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be transferred to the State Treasurer for disposal as provided in this section.

(b) Except as provided in section three of this article, within thirty days of the receipt of an unclaimed stolen property report, the State Treasurer shall coordinate best efforts with the reporting law-enforcement agency to transfer the firearms and ammunition to the State Treasurer for disposal as provided in subsection (e).

(c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state, the chief executive of each law-enforcement agency shall use best efforts to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner, and if so, shall return the firearm to its innocent owner, if ascertainable, unless that person is ineligible to receive or possess a firearm under state or federal law.

(d) Upon determination and verification that a lawful owner is unavailable or ineligible to receive or possess a firearm under state or federal law, reporting enforcement agencies may trade the firearms and ammunition to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license, in exchange for new weapons or ammunition, or appropriate the firearms and ammunition for law-enforcement agency use.

(e) Except as provided in subsections (c),(d) and (f) of this section, the State Treasurer shall dispose of the firearms that it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license.

(1) The auctions required by this subsection may occur online on a rolling basis or at live events but in no event may occur less frequently than once every six months.

(2) The State Treasurer shall retain only the net proceeds necessary to cover the costs of administering this section, with any surplus to be transferred to the general fund of the state: Provided, That an agency may be reimbursed for any decommissioned firearms formerly in use by the agency that are sold under this section: Provided, however, That an agency may apply to the State Treasurer for payment of the net proceeds generated by the sale of any property by the State Treasurer pursuant to this section.

(3) Employees of the State Police or of the agency from which the firearms are received are

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not eligible to bid on the firearms at an auction conducted under this section.

(f) The requirements of subsection (d) do not apply to a firearm that the chief executive of the law-enforcement agency or his or her designee certifies is unsafe for use because of wear, damage, age or modification, and any such firearm shall at the discretion of the superintendent be transferred to the State Police forensic laboratory for training or experimental purposes or to a museum or historical society or be destroyed.

(g) The State Treasurer shall keep records of all firearms acquired and disposed of under the provisions of this section, as well as the net proceeds of the sales and the disbursement of such proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.

(h) Any firearm or ammunition subject to forfeiture proceedings which is ordered returned to any law enforcement agency for the purposes of public sale or auction may only be sold or transferred to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq.

WV Legislature

§36-8A-6. Deposit of funds.

(a) The treasurer shall promptly deposit in the General Revenue Fund of this state all proceeds of any public sale of unclaimed stolen property conducted by the treasurer under subsection (b), section four of this article.

(b) Before making a deposit to the credit of the General Revenue Fund, the treasurer may deduct the expenses of the related public sale conducted by the treasurer.

(c) The treasurer may deduct the accumulated expenses incurred in the destruction of unclaimed stolen firearms and ammunition under this article from any deposit made under subsection (a) of this section.

WV Legislature

§36-8A-7. Immunity of law-enforcement agencies.

If a law-enforcement agency delivers, sells or donates any item of unclaimed stolen property in good faith and in accordance with the provisions of this article, the law-enforcement agency and its chief executive, officers and employees involved in the delivery, sale or donation shall be immune from any subsequent claim of a person who purports to be the true owner of the item and who did not claim the item prior to the delivery, sale or donation.

WV Legislature

§36-8A-8. State Treasurer's security personnel authority to carry concealed weapons.

(a) The State Treasurer may allow, consistent with the provisions of this section, security personnel to carry a concealed firearm while performing his or her official duties.

(b) Security personnel employed by the State Treasurer may carry a concealed firearm approved by the State Treasurer solely for purposes of defense of self or others if the individual has:

(1) Obtained the written authorization by the State Treasurer;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 *et seq*. of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy pursuant to §30-29-1 *et seq*. of this code. The individual must thereafter successfully complete an annual firearms qualification equivalent to that required of certified law-enforcement officers pursuant to §30-29-1 *et seq*. of this code. The State Treasurer may reimburse security personnel for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency nor an employee of the state acting in an official capacity, may be held personally liable for an act of security personnel employed by the State Treasurer if the act or omission was done in good faith while the individual was performing official duties or responsibilities under the office of the State Treasurer.

WV Legislature

§36-9-1. Short title.

This article shall be known and may be cited as the "West Virginia time-sharing act."

WV Legislature

§36-9-2. Purposes.

The purposes of this article are to:

(a) Give statutory recognition to real property time- sharing in the state;

(b) Establish procedures for the creation, sale and operation of time-sharing plans; and

(c) Require every time-sharing plan offered for sale or created and existing in this state to be subjected to the provisions of this article.

WV Legislature

§36-9-3. Scope.

(a) This article applies only to time-sharing plans consisting of more than seven time-sharing periods other than condominium fee ownership time-sharing plans, except that sections six, ten, eleven, twelve, thirteen, seventeen, twenty, twenty-one, twenty-three, twenty-four, twenty-five and twenty-six of this article shall apply to all time-sharing plans.

(b) All time-sharing accommodations or facilities which are located outside the state but offered for sale in this state shall be subject to all of the provisions of this article except sections eleven through sixteen and twenty through twenty-two.

(c) Notwithstanding other provisions of this article, either expressed or implied, to the contrary, it is the legislative intent that nothing herein be deemed to alter the existing procedure for the assessment and collection of ad valorem taxes on accommodations or facilities subject to a time-sharing plan.

WV Legislature

§36-9-4. Definitions.

As used in this article:

(a) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals;

(b) "Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity;

(c) "Common expenses" means those expenses properly incurred for the maintenance, operation and repair of all accommodations or facilities, or both, constituting the time-sharing plan;

(d) "Contract" means any agreement conferring the rights and obligations of the time-sharing plan on the purchaser;

(e) "Developer" means the person creating a time-sharing plan;

(f) "Division" means the division of land sales and condominiums in the office of the State Auditor;

(g) "Facilities" means any structure, service, improvement or real property, improved or unimproved, which is made available to the purchasers of a time-sharing plan;

(h) "Managing entity" means the person responsible for operating and maintaining the time-sharing plan;

(i) "Offer to sell,""offer for sale,""offered for sale" or "offer" means solicitation of purchasers, the taking of reservations or any other method whereby a purchaser is offered the opportunity to participate in a time- sharing plan;

(j) "Owners' association" means the association made up of all purchasers of a time-sharing plan who have purchased a fee simple interest in real property;

(k) "Purchaser" means any person who is buying or who has bought a time-share period in a time-sharing plan;

(l) "Seller" means any developer or any other person, or agent or employee thereof, who is offering time-share periods for sale to the public in the ordinary course of business, except a person who has acquired a time-share period for his own occupancy and later offers it for resale;

(m) "Time-share period" means that period of time when a purchaser of a time-sharing plan is entitled to the possession and use of the accommodations or facilities, or both, of a time-

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sharing plan;

(n) "Time-sharing plan" means any arrangement, plan, scheme or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license or right-to-use agreement or by any other means, whereby a purchaser, in exchange for a consideration receives a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years; and

(o) "Time-share unit" means an accommodation or facility of a time-sharing plan which is divided into time-share periods.

WV Legislature

§36-9-5. Contracts for purchase of time-share periods.

No seller of a time-sharing plan shall fail to utilize, and furnish each purchaser of such plan a fully completed copy of, a contract pertaining to such sale, which contract shall include the following information:

(a) The actual date the contract is executed by all parties;

(b) The names and addresses of the seller, the developer and the time-sharing plan;

(c) The total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject, such as reservation, maintenance, management and recreation charges: Provided, That those costs which cannot be specified exactly shall be estimated and the purchaser shall be notified that said costs are subject to change;

(d) The estimated date of availability of each accommodation or facility which is not completed at the time the contract is executed by the seller and purchaser;

(e) A description of the nature and duration of the time-share period being sold, including whether any interest in real property is being conveyed and the specific number of years or months constituting the term of the contract;

(f) Immediately prior to the space reserved in the contract for the signature of the purchaser, in boldfaced and conspicuous type which shall be larger than the type in the remaining text of the contract, substantially the following statements:

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN TEN DAYS FROM THE DATE YOU SIGN THIS CONTRACT, AND UNTIL TEN DAYS AFTER YOU RECEIVE THE PUBLIC OFFERING STATEMENT.

IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (Name of Seller) AT (Address of Seller) . NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

If no interest in real property is being conveyed, the contract shall also contain the following statement:

"YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT";

(g) A statement that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract and the public offering statement;

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(h) A statement that, in the event the purchaser cancels the contract during a ten-day cancellation period, the developer shall refund to the purchaser all payments made under the contract within twenty days after receipt of notice of cancellation;

(i) If no fee interest in real property is being conveyed, a statement that, in the event of any cancellation by the purchaser after the ten-day cancellation periods, the refund shall be the total amount of all payments made by the purchaser under the contract reduced by the proportion of any contract benefits the purchaser actually has received or has had the right to receive under the contract during the time preceding the date when the cancellation becomes effective; and

(j) If the seller is to transfer a fee interest in real property to the purchaser, the seller shall furnish a contract for sale to the purchaser at least ten days before the date of closing.

WV Legislature

§36-9-6. Public offering statement.

Each developer shall file with the division a complete copy of the public offering statement to be used in the sale of the time-share periods. Until the division approves such filing, any contract regarding the sale of the time-sharing plan which is the subject of the public offering statement shall be voidable by the purchaser. The proposed offering statement shall be received, reviewed and monitored in the following manner:

(a) The division shall, upon receiving a public offering statement from a developer, mail the developer an acknowledgment of receipt. The failure of the division to send such acknowledgment shall not, however, relieve the developer from the duty of complying with this section;

(b) Within twenty days after receipt of a public offering statement, the division shall determine whether the proposed public offering statement is adequate to meet the requirements of this section and shall notify the developer by mail that the division has either approved the public offering statement or found specified deficiencies. If the division fails to respond within twenty days, the filing shall be deemed approved. The developer may correct the deficiencies; and, within fifteen days after receipt of materials filed by the developer to correct the deficiencies found by the division, the division shall notify the developer by mail that the division has either approved the filing or found additional specified deficiencies. If the division fails to respond within fifteen days, the filing shall be deemed approved;

(c) Any material change to the public offering statement shall be filed with the division within fifteen days of the change. The division shall approve, or cite for deficiencies, the change within ten days after the date of filing. If the division fails to respond within ten days, the change shall be deemed approved;

(d) Upon filing a public offering statement with the division, a developer shall pay a filing fee of 50¢ for each time-share period which is to be part of the proposed time-sharing plan;

(e) Every public offering statement shall contain the following:

(1) A cover page stating:

(A) The name of the time-sharing plan; and

(B) The following, in conspicuous type:

"THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARE PERIOD. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, CONTRACT DOCUMENTS AND SALES MATERIALS. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECT STATEMENTS OF SELLER REPRESENTATIONS. REFER TO THIS DOCUMENT FOR

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CORRECT REPRESENTATIONS";

(2) A separate index of the contents and exhibits of the public offering statement;

(3) A text, which shall be a summary of the disclosure required by paragraphs five through thirteen and subsection (f), and a cross-reference to the location in the public offering statement of each exhibit;

(4) Exhibits, setting forth in detail the information summarized in the text of the public offering statement;

(5) An explanation of the time-share form of ownership that is being offered;

(6) A general description of the time-sharing plan, including the numbers of time-share units and time-share periods which are a part of the plan;

(7) An explanation of the purchaser's rights of cancellation;

(8) A copy of each executed escrow agreement and, if applicable, any nondisturbance instrument and/or notice to creditors;

(9) An explanation of the status of the title to the real property underlying the time-sharing plan, including a statement of the existence of any lien, defect, judgment or other encumbrance affecting the title to the property;

(10) A description of any judgment against the seller or the managing entity and the status of any pending suit to which the seller or the managing entity is a party, which is material to the time-sharing plan, and any other suit material to the time-sharing plan of which the seller has actual knowledge;

(11) A description of the insurance coverage provided for the benefit of the purchasers;

(12) A statement of whether the time-sharing plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program; and

(13) Any other information that the seller, with the approval of the division, desires to include in the public offering statement.

(f) A public offering statement regarding a time-sharing plan shall contain or fully and accurately disclose the following:

(1) The name and address of the developer and the identity of the chief operating officer or principal directing the creation and sale of the time-sharing plan;

(2) The name and address of the accommodations and facilities;

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(3) The schedule of commencement and completion of all improvements;

(4) The name of any person who will or may have the right to alter, amend or add to the charges to which the purchaser may be subject and the terms and conditions under which such alterations, amendments or additions may be imposed;

(5) The documents, if any, creating the time-sharing plan;

(6) Any contracts or leases to be signed by purchasers;

(7) The identity of the managing entity and the manner, if any, whereby the seller may change the managing entity or its control;

(8) A copy of the rules, regulations, conditions or limitations on the use of the accommodations or facilities available to purchasers;

(9) Any restrictions on the transfer of any time-share period; and

(10) A description of the recreational and other facilities of the time-sharing plan.

(g) In addition, a public offering statement regarding any time-sharing plan which transfers fee simple interests in real property shall also contain or fully and accurately disclose the following:

(1) All unusual and material circumstances, features and characteristics of the real property;

(2) An estimated operating budget and a schedule of each purchaser's expenses; and

(3) Any service, maintenance or recreation contracts or leases that may be canceled by the purchasers.

WV Legislature

§36-9-7. Escrow accounts; surety bonds; nondisturbance instruments.

(a) It is a violation of this article for a seller of a time-sharing plan to fail to:

(1) Place one hundred percent of all funds which are received from purchasers of such time-sharing plan in an escrow account during the ten-day cancellation periods provided for by this chapter. The establishment of such an escrow account shall be evidenced by an escrow agreement between the escrow agent and the seller, the provisions of which shall include:

(A) That its purpose is to protect the purchaser's right to a refund if he cancels the contract for the sale of a time- sharing plan within a ten-day cancellation period;

(B) That funds may be disbursed to the seller by the escrow agent from the escrow account only after expiration of the purchasers' ten-day cancellation periods; and

(C) That the escrow agent may release funds to the seller from the escrow account only after receipt of a sworn statement from the seller that no cancellation notice postmarked on a date within the ten-day cancellation period was received from the purchasers whose funds are being released to the seller.

(2) Place fifty percent of the funds received from purchasers, after the ten-day cancellation periods have expired, in an escrow account when a time-sharing plan is being sold which does not convey fee interests in real property:

(A) The establishment of such escrow accounts shall be evidenced by an executed escrow agreement between the escrow agent and the seller, the provisions of which shall include:

(i) That its purpose is to protect the purchaser's right to a refund, at any time the accommodations or facilities of the time-sharing plan are no longer available as provided in the contract entered into by the seller and the purchaser, in an amount representing the purchaser's pro rata share of the moneys escrowed;

(ii) That funds may be disbursed to the seller by the escrow agent from the escrow account periodically in the ratio of the amount of time the purchasers have already used or had the right to use the accommodations or facilities of the time-sharing plan at the time of the disbursement in relation to the total time sold to the purchasers; and

(iii) That the escrow agent may release funds to the seller from the escrow account only after receipt of a statement signed by the purchaser indicating that such purchaser has used or has had the right to use a specific number of days out of the total time period purchased. If a purchaser refuses to sign such a statement when tendered, the seller may submit a sworn statement to the escrow agent that the purchaser used or had the right to use a specific number of days, but that the purchaser refused to sign a statement to that effect.

(B) The seller may elect to terminate use of an escrow account established pursuant to this paragraph if, at a later date, such seller complies with the requirements of subdivision (4) or

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subdivision (5). Any funds remaining in such escrow account at the time a seller elects to terminate its use shall be disbursed to the seller by the escrow agent only when the seller has transmitted to the escrow agent and to each purchaser affected a copy of the surety bond or, if applicable, a nondisturbance instrument or notice to creditors. A sworn statement from the seller that the purchasers have been furnished these required documents shall also be given to the escrow agent and the division before the funds may be released to the seller from the escrow account.

(3) Place one hundred percent of all funds received from purchasers of such time-sharing plan, after the ten-day cancellation periods have expired, in an escrow account when interests in real property are being sold, whether by means of deeds, agreements for deed or other agreements which will subsequently transfer title to the purchasers. The establishment of such an escrow account shall be evidenced by an executed escrow agreement between the escrow agent and the seller, the provisions of which shall include:

(A) That its purpose is to protect all deposits and payments made by a purchaser toward the purchase price until the deed is transferred to the purchaser or until the purchaser and seller enter into a contract for deed or any other agreement which will subsequently transfer title to the purchaser; and

(B) That funds may be disbursed to the seller by the escrow agent from the escrow account only after title has been delivered to the purchaser or delivered for recording to the clerk of the county commission in the county where the real property underlying the time-sharing plan is located. However, in the case of a time-share period sold by agreement for deed, funds only may be disbursed to the seller after a notice to creditors and, if the property is encumbered by a mortgage, a nondisturbance instrument has been recorded in the public records of the county or counties in which the time-sharing plan is located; or alternatively, after the seller records a notice to creditors and obtains a release of lien for a time-share unit, funds may be disbursed pertaining to the time-share periods within that unit.

(4) In lieu of establishing the escrow account described by subdivision (2), post a surety bond, in the total amount of the contract, with the clerk of the county commission in the county where the time-sharing plan accommodations or facilities are located. Such bond shall be executed by the seller as principal and by a surety company authorized to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the seller with the provisions of both this section and the contract between the seller and the purchaser and shall run to the division for the benefit of any purchaser injured by the seller's violation of this section or failure to perform pursuant to the contract between the seller and the purchaser. The bond may be reduced periodically in the ratio of the amount of time used by purchasers in relation to the total time sold to purchasers.

(5) In lieu of either establishing the escrow account described by subdivision (2) or posting a surety bond described by subdivision (4), provide the purchaser with a nondisturbance instrument or notice to creditors, as follows:

(A) Each purchaser shall be furnished with a copy of a recorded nondisturbance instrument from every lienholder who has a recorded lien against the property upon which the accommodations or facilities to be used by the purchaser are situated. The nondisturbance instrument shall provide that, in the event of foreclosure of such lien, the succeeding owner shall take title to the property subject to the possessory rights of the purchasers;

(B) Each purchaser shall also be furnished with a copy of a recorded instrument which provides to all subsequent creditors of the seller notice of the existence of the time- sharing plan and notice of the rights of purchasers in the time- sharing plan from any claims by subsequent creditors;

(C) However, if the seller owns the real property and any accommodations or facilities constituting the time- sharing plan free and clear of any mortgage, lien or other encumbrance, the seller need only furnish to each purchaser a notice to creditors; and

(D) A copy of any recorded nondisturbance instrument or notice to creditors shall be provided to each purchaser by the seller at the time the contract between them is executed, unless the seller has initially utilized the escrow provisions of subsection (b), in which case the nondisturbance instrument or notice to creditors shall be provided to the purchaser before the seller obtains funds from the escrow agent, as provided in subdivision (2).

(6) Place any fund escrowed pursuant to this section into an escrow account established solely for that purpose with an attorney who is a member of the State Bar; a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter forty-seven of this code. In lieu of the foregoing, with the approval of the division, the funds may be escrowed in an account required by the jurisdiction in which the sale of the time- sharing plan took place. In lieu of any escrows required by this section, the director of the division shall have the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Determination of default and refund of deposits shall be governed by the escrow release provision of this subsection.

(b) An escrow agent holding funds escrowed pursuant to this section may invest such escrowed funds in securities of the United States government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States government. The right to receive the interest generated by any such investments shall be as specified by contract.

(c) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(d) Any seller who intentionally fails to pay all required funds into the escrow accounts required by this section is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

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§36-9-8. Reservation agreements; escrows.

(a) (1) Prior to filing the public offering statement with the division a seller shall not offer a time-sharing plan for sale but may accept reservation deposits upon approval by the division of a fully executed escrow agreement and reservation agreement property filed with the division.

(2) Reservations shall not be taken on a time-sharing plan unless the seller has an ownership interest or leasehold interest, of a duration at least equal to the duration of the proposed time-sharing plan, in the land upon which the time-sharing plan is to be developed.

(b) Each executed reservation agreement shall be signed by the seller and the escrow agent and shall contain the following:

(1) A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit upon either the purchaser's or the seller's written request directed to the escrow agent;

(2) A statement that the escrow agent may not otherwise release moneys unless a contract is signed by the purchaser, authorizing the release of the escrowed reservation deposit as a deposit on the purchase price. Such deposit shall then be subject to the requirements of section seven of this article, relating to escrow accounts, surety bonds and nondisturbance instruments;

(3) A statement of the obligation of the developer to file a public offering statement with the division prior to entering into binding contracts;

(4) A statement of the rights of the purchaser to receive the public offering statement required by this chapter;

(5) The name and address of the escrow agent and a statement that the purchaser may obtain a receipt from the escrow agent upon request; and

(6) A statement that the seller assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for the purchase or that the price represented may be exceeded within a stated amount or percentage or a statement that no assurance is given as to the price in the contract for purchase.

(c) (1) The total amount paid for a reservation shall be deposited into a reservation escrow account.

(2) All funds paid in connection with the reservation of a time-share shall be placed in an escrow account established solely for that purpose with an attorney who is a member of the State Bar; a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter forty-seven of this code. In lieu of the foregoing, with the approval of the

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division, the funds may be deposited into an escrow account required by the jurisdiction in which the sale took place.

(3) The escrow agent may invest the escrowed funds in securities of the United States government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States government. The right to receive the interest generated from any such investments shall be as specified by the reservation agreement.

(4) The escrowed funds shall at all reasonable times be available for withdrawal in full by the escrow agent.

(5) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(d) Any seller who intentionally fails to pay all required funds into the escrow account required by this section is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

WV Legislature

§36-9-9. Cancellation.

No seller shall:

(a) Fail to honor the request of a purchaser to cancel a contract made between the seller and purchaser pertaining to the sale of a time-sharing plan if the request is made as provided in the contract;

(b) Misrepresent in any manner the purchaser's right to cancel;

(c) Fail to refund all payments made by the purchaser under the contract and return all negotiable instruments, other than checks, executed by the purchaser in connection with the contract within twenty days from receipt of the notice of cancellation transmitted to the seller from the purchaser, if the purchaser has received no benefits under the contract; and

(d) Fail to refund all payments made by the purchaser under the contract which exceed a pro rata portion of the total price representing the proportion of any contract benefits actually received by the purchaser during the time preceding the date when cancellation becomes effective, within twenty days from receipt of the purchaser's notice of cancellation, if the purchaser has received benefits under the time-sharing plan.

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§36-9-10. Advertising materials.

(a) All advertising materials shall be filed with the division within ten days of use."Advertising materials" include:

(1) Promotional brochures, pamphlets, advertisements or other materials to be disseminated to the public in connection with the sale of time shares;

(2) Transcripts of radio and television advertisements;

(3) Lodging certificates;

(4) Transcripts of standard verbal sales presentations; and

(5) Any other advertising materials.

(b) No advertising shall:

(1) Misrepresent a fact or create a false or misleading impression regarding the time-sharing plan;

(2) Make a prediction of specific or immediate increases in the price or value of time-share periods;

(3) Contain a statement concerning future price increases by the seller which are nonspecific or not bona fide;

(4) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact;

(5) Describe any improvement to the time-sharing plan that is not required to be built or that is uncompleted unless the improvement is conspicuously labeled as "NEED NOT BE BUILT,""PROPOSED" or "UNDER CONSTRUCTION" with the date or promised completion clearly indicated.

(6) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations or facilities;

(7) Misrepresent the amount or period of time during which the accommodations or facilities will be available to any purchaser;

(8) Misrepresent the nature or extent of any services incident to the time-sharing plan;

(9) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the purchasers' rights, privileges, benefits or obligations under the contract or this chapter; and

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(10) Misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location.

(c) No promotional device, including any sweepstakes, lodging certificate, gift award, premium, discount, drawing or display booth, may be utilized without a disclosure that:

(1) The promotional device is being used for the purpose of soliciting sales of time-share periods; and

(2) The promotional device is being used to obtain the names and addresses of prospective purchasers and that any names and addresses acquired may be used for the purpose of soliciting sales of time-share periods.

(d) When a time-share project uses free offers, gift enterprises, drawings, sweepstakes or discounts as a promotional program, the rules of such promotional program shall be disclosed to the public and shall state:

(1) The name of each time-sharing plan or business entity participating in the program;

(2) The day and year by which all prizes listed or offered will be awarded; and

(3) The method by which all prizes are to be awarded.

(e) At least one of each prize featured in a promotional program shall be awarded by the day and year specified in the promotion. When a promotion promises the award of a certain number of each prize, such number of prizes shall be awarded by the date and year specified in the promotion. A record shall be maintained containing the names and addresses of winners of the prizes and the record shall be made available upon request, to the public, upon payment of reasonable reproduction costs.

(f) The division shall require full disclosure of all pertinent information concerning the use of lodging certificates in a promotional campaign, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The division further may require reasonable assurances that the obligation incurred by a seller or the seller's agent in a lodging certificate program can be met. Such programs are subject to the prior approval of the division.

(g) If at any time the division determines that any advertising fails to meet the requirements of this section, the division may undertake enforcement action under the provisions of section twenty-three of this article.

WV Legislature

§36-9-11. Recordkeeping by seller.

Each seller of a time-sharing plan shall maintain among its business records the following:

(a) A copy of each contract for the sale of a time-share period, which contract has not been canceled. If fee title is being conveyed, the seller is required to retain a copy of the contract only until a deed of conveyance is recorded in the office of the clerk of the county commission in the county wherein the plan is located; and

(b) A list of all salespersons of the seller and their last known addresses. The names and addresses of such salespersons whose employments terminate shall be retained for three years after termination of employment. If the seller has a contract with any entity not owned or controlled by the seller for the sale of the time-sharing plan, that entity shall be responsible for maintaining a record of current employees involved in the sale of the time-sharing plan and a record of any former employees involved in the sale of such plan within the previous three years.

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§36-9-12. Management.

(a) Before the first sale of a time-share period, the developer shall create or provide for a managing entity, which may be the developer, a separate management firm or an owners' association, or some combination thereof.

(b) The managing entity shall act in the capacity of a fiduciary to the purchasers of the time-sharing plan.

(c) The duties of the managing entity shall include, but are not limited to:

(1) Management and maintenance of all accommodations and facilities constituting the time-sharing plan;

(2) Collection of all assessments for common expenses;

(3) Providing each year to all purchasers an itemized annual budget, which shall include all receipts and expenditures;

(4) Maintenance of all books and records concerning the time-sharing plan on the premises of the accommodations or facilities of such plan and making all such books and records reasonably available for inspection by any purchaser or the authorized agent of such purchaser;

(5) Arranging for an annual independent audit to be conducted of all the books and financial records of the time- sharing plan by a certified public accountant in accordance with the standards of the accounting standards board of the American institute of certified public accountants. A copy of the audit shall be forwarded to the officers of the owners' association; or, if no association exists, the owner of each time-share period shall be notified that such audit is available upon request;

(6) Making available for inspection by the division any books and records of the time-sharing plan, upon the request of the division;

(7) Scheduling occupancy of the time-share units, when purchasers are not entitled to use specific time-share periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the time- sharing plan which they have purchased; and

(8) Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities as provided in the contract and as advertised.

(d) Any managing entity, or employee or agent thereof, who willfully misappropriates the property or funds of a time- sharing plan is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years.

WV Legislature

§36-9-13. Discharge of managing entity.

(a) If a fee simple interest in real property is being sold to purchasers of a time-sharing plan, the contract retaining a managing entity shall be automatically renewable every three years, beginning with the third year after the managing entity is first created or provided for the time- sharing plan, unless the purchasers vote to discharge the managing entity. Such a vote shall be conducted by the board of the owners' association. The managing entity shall be discharged if at least sixty-six percent of the purchasers voting, which shall be at least fifty percent of all votes allocated to purchasers, vote to discharge the managing entity.

(b) In the event the managing entity is discharged, the board of the owners' association shall be responsible for obtaining another managing entity.

(c) The managing entity of a condominium time-sharing plan may be discharged in the same manner.

WV Legislature

§36-9-14. Assessment of common expenses.

(a) Until a managing entity is created or provided, the developer shall pay all common expenses.

(b) After the creation or provision of a managing entity, the managing entity shall make an annual assessment against each purchaser for the payment of common expenses, based on the projected annual budget, in the amount specified by the contract between the seller and the purchaser. The seller shall be assessed for the share of common expenses allocated to all time-share periods still owned by the seller at the time such assessment is made, unless the seller guarantees all common expenses of the time- share plan pursuant to the provisions of the contract or until the time control is turned over to the purchasers.

(c) Past-due assessments may bear interest at the legal rate or at some lesser rate established by the managing entity.

(d) Unless otherwise specified in the contract between the seller and the purchaser, any common expenses benefiting fewer than all purchasers shall be assessed only against those purchasers benefited.

(e) Any assessments for common expenses which have not been spent for common expenses during the year for which such assessments were made shall be shown as an item on the annual budget.

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§36-9-15. Liens for overdue assessments; mechanic's liens, insurance.

(a) The managing entity has a lien on a timeshare period for any assessment levied against that timeshare period from the date such assessment becomes due.

(b) The managing entity may bring an action in its name to foreclose a lien for assessments, in the manner a mortgage of real property is foreclosed.

(c) The managing entity may cause a trustee sale of the timeshare estate if the owner is delinquent to the managing entity for more than one year for assessments against the timeshare estate: Provided, That a trustee sale shall be effectuated as provided in section fifteen-a, article nine, chapter thirty-six of this code.

(d) In addition to the remedies in subsections (b) and (c) of this section, the managing entity may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

(e) The lien is effective from the date of recording a claim of lien in the public records of the county or counties in which the accommodations or facilities constituting the timesharing plan are located. The claim of lien shall state the name of the timesharing plan and identify the timeshare period for which the lien is effective, state the name of the purchaser, state the assessment amount due and state the due dates. The lien is effective until satisfied or until barred by law. The claim of lien may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

(f) A judgment in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for the filing of a lien pursuant to the mechanic's lien law against the timeshare unit of any timeshare period owner not expressly consenting to or requesting the labor or materials.

(h) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining insurance to protect the accommodations and facilities of the timesharing plan in an amount equal to the replacement cost of such accommodations and facilities.

(i) Notwithstanding any provision in this article, the lien granted pursuant to this section shall not have priority over any voluntarily granted lien or security interest in the timeshare estate.

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(j) A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

WV Legislature

§36-9-15a. Trustee's sale of timeshare estates.

(a) A managing entity that desires to use a trustee sale shall prepare, execute and acknowledge a notice of trustee sale which shall include the following:

(1) The time and place of sale;

(2) The names of the parties to the deed under which it will be made;

(3) The date of the deed;

(4) The office and book in which it is recorded;

(5) The terms of sale;

(6) The nature and amount of the owner's current delinquency;

(7) The legal description of the owner's timeshare estate;

(8) The name and address of the association or other managing entity; and

(9) The name and address of the trustee designated by the association or managing entity to conduct the trustee sale.

(b) The managing entity shall record the notice of trustee sale with the clerk of the county commission of the county in which the timeshare estate is located and shall mail by certified mail, return receipt requested, a copy of the notice of trustee sale to the owner listed in the notice at the last address for each delinquent timeshare period according to the records of the managing entity, and, to any holder of a lien or security interest against the timeshare estate being sold, other than the state and the managing entity. To the extent the owner is unable to be located, notice under this subsection is satisfied by notice by publication as provided in subsection (c) of this section.

(c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale 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 property is located.

(d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all requirements for the trustee to appear in the chain of title for the timeshare estate in order for the trustee to be entitled to issue a trustee deed on completion of a trustee's sale for the timeshare estate.

(e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days after the managing entity mails the notice of trustee sale pursuant to subsection (b) of this

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section, and publication is made under subsection (c) of this section, the managing entity may cause the trustee to conduct a trustee's sale of the delinquent owner's timeshare estate at public auction.

(f) The trustee's sale may include multiple timeshare estates owned by an owner if the owner is delinquent in payment of assessments for all of the timeshare estates included in the trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple owners if the notice of trustee's sale provides all information required by this section for each owner and timeshare estate and each timeshare estate is sold separately.

(g) This section shall not apply to any timeshare property if the timeshare instrument expressly mandates that judicial foreclosure is the sole method for the managing entity to foreclose or liquidate a lien securing payment of assessments due to the managing entity.

(h) When a sale of property is made under any trustee deed, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county commission of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. The clerk of the county commission shall record the same, as provided in section nine, article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant to a trustee deed is placed on record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include in a disclosure form submitted with and made a part of the report of sale the information identified in section eight-a, article one, chapter thirty-eight of this code, to the extent applicable.

(i) If notice is given as provided in this section, no action or proceeding to set aside a trustee sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a timeshare instrument, shall be filed or commenced more than one year from the date of the sale.

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§36-9-16. Transfer of seller's interest to third party.

No seller shall sell, lease, assign, mortgage or otherwise transfer the seller's interest in the accommodations or facilities of a time-sharing plan to a third party, unless:

(a) The third party agrees in writing to honor fully the rights of purchasers of the time-sharing plan to occupy and use the accommodations or facilities;

(b) The third party agrees in writing to honor fully the rights of purchasers of the time-sharing plan to cancel their contracts and receive appropriate refunds, as provided in this article;

(c) The third party agrees in writing to comply with the provisions of this article for as long as the third party continues to sell the time-sharing plan or for as long as purchasers of the time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time;

(d) The third party agrees to assume all obligations of the seller to purchasers; and

(e) Notice is mailed to each purchaser of the time-sharing plan affected thereby within thirty days of the sale, lease, assignment or other transfer.

Persons who hold mortgages on the property constituting a time-sharing plan before the public offering statement of such plan is approved by the division shall not be considered third parties for the purposes of this section.

WV Legislature

§36-9-17. Exchange programs.

(a) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time- share periods among purchasers in either the same time- sharing plan or other time-sharing plans, or both, the seller shall deliver to the purchaser, together with the public offering statement, and prior to the execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program and the purchaser shall certify in writing to the receipt of such written information, which information shall include, but is not limited to, the following:

(1) The name and address of the exchange company;

(2) The names of all officers, directors and shareholders of the exchange company;

(3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller or managing entity for any time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing plan and the nature of the interest;

(4) Unless otherwise stated, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of the time-sharing plan;

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-sharing plan with the exchange program;

(6) A statement that the purchaser's participation in the exchange program is voluntary;

(7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made;

(8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;

(9) A complete and accurate description of all limitations, restrictions or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

(10) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

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(11) Whether and under what circumstances a purchaser, in dealing with the exchange program, may lose the use and occupancy of his time-share period in any properly applied for exchange without his being provided with substitute accommodations by the exchange program;

(12) The fees or range of fees for participation by purchasers in the exchange program, a statement whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made;

(13) The name and address of the site of each accommodation or facility included in the time-sharing plan participating in the exchange program;

(14) The number of the time-share units in each time-sharing plan which are available for occupancy and which qualify for participation in the exchange program expressed within the following numerical groupings: 1-5; 6- 10; 11-20; 21-50 and 51 and over;

(15) The number of currently enrolled purchasers for each time-sharing plan participating in the exchange program, expressed within the following numerical groupings: 1- 100; 101-249; 250-499; 500-999 and 1,000 and over; and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program;

(16) The disposition made by the exchange company of the time-share periods deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting exchanges;

(17) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the accounting standards board of the American institute of certified public accountants and reported on an annual basis beginning no later than July 1, 1984:

(A) The number of purchasers currently enrolled in the exchange program;

(B) The number of accommodations and facilities that have current affiliation agreements with the exchange program;

(C) The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(D) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share period during the year in exchange for a time-share period in any future year; and

(E) The number of exchanges confirmed by the exchange program during the year.

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(18) A statement in boldfaced type to the effect that the percentage described in subparagraph (c), subdivision (17) of this subsection is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices.

(b) Each exchange company offering an exchange program to purchasers in this state shall file the information specified in subsection (a) with the division annually. If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of section twenty-three of this article. No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(c) Only a person who has purchased a time-share period in a time-share unit may participate in an exchange program.

(d) The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this article.

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§36-9-18. License required to sell.

Any seller of a time-sharing plan shall be a licensed real estate salesman, broker, or broker-salesman, pursuant to chapter forty-seven of the code or its successor, and shall be subject to all of the provisions of that article. This section shall not apply to those individuals who are exempt from chapter forty-seven of the code or to those time-sharing plans which are registered with the securities and exchange commission.

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§36-9-19. Purchaser's remedies.

An action for damages or injunctive or declaratory relief for a violation of this article may be brought by any purchaser or association of purchasers against the developer, a seller or the managing entity. The prevailing party in any such action may be entitled to reasonable attorney's fees. Relief under this section does not exclude any other remedies provided by law.

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§36-9-20. Partition.

No action for partition of any time-share unit shall lie, unless otherwise provided for in the contract between the seller and the purchaser.

WV Legislature

§36-9-21. Securities.

Time-sharing plans are not securities under the provisions of this code.

WV Legislature

§36-9-22. Zoning and building.

All laws, ordinances and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of the real estate time- sharing plan property, without regard to the form of ownership.

WV Legislature

§36-9-23. Regulation by division.

The division of land sales and condominiums is hereby created in the office of the State Auditor to administer the provisions of this article. The division has the power and authority to enforce and ensure compliance with the provisions of this article. In performing its duties, the division shall have the following powers and duties:

(a) To aid in the enforcement of this chapter, the division may make necessary public or private investigations within or outside this state to determine whether any person has violated or is about to violate this article;

(b) The division may require or permit any person to file a written statement under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter under investigation;

(c) For the purpose of any investigation under this chapter, the director of the division or any officer or employee designated by the director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the identity, existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance;

(d) The division may prepare and disseminate a prospectus and other information to assist prospective purchasers, sellers and managing entities of time-sharing plans in assessing the rights, privileges and duties pertaining thereto; and

(e) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter has occurred, the division may institute enforcement proceedings in its own name against any developer, exchange program, seller, managing entity, association or other person as follows:

(1) The division may permit any person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby an order, rule or letter of censure or warning, whether formal or informal, may be entered against that person;

(2) The division may issue an order requiring a developer, exchange program, seller, managing entity, association or other person, or other assignees or agents, to cease and desist from an unlawful practice under this article and take such affirmative action as in the judgment of the division will carry out the purposes of this article;

WV Legislature

(3) The division may bring an action in circuit court for declaratory or injunctive relief and for other appropriate relief;

(4) (A) The division may impose a civil penalty against any developer, exchange program, seller, managing entity, association or other person for a violation of this chapter. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $10,000. All accounts collected shall be deposited with the treasurer to the credit of the West Virginia real estate time-sharing trust fund;

(B) If a developer, exchange program, seller or other person fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer, exchange program, seller or other person cease and desist from further operation until such time as the civil penalty is paid; or the division may pursue enforcement of the penalty in a court of competent jurisdiction. If an association or managing entity fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction;

(5) In order to permit the developer, exchange program, seller, managing entity, association or other person an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the civil penalty or the cease and desist order shall not become effective until twenty days after the date of such order; and

(6) Any action commenced by the division shall be brought in the county in which the violation occurred.

WV Legislature

§36-9-24. Annual fee for each time-share period in plan.

On or before July 1, of each year, each managing entity shall collect as a common expense and pay to the division an annual fee of 50¢ for each time- share period within the time-sharing plan.

WV Legislature

§36-9-25. West Virginia real estate time-sharing trust fund.

There is created within the State Treasury the West Virginia real estate time-sharing trust fund to be used for the administration and operation of this article by the division. All funds collected by the division and any amounts paid as fees or penalties under this article shall be deposited in the State Treasury to the credit of the trust fund created by this section.

WV Legislature

§36-9-26. Taxation.

For purposes of local real property taxation, each time-sharing unit, other than an unit operated for time- share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the local assessing officers as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income-producing and investment property. Tax records in a time-share unit shall be in the name of the association or the managing agent.

WV Legislature

§36-10-1. Definitions.

In this article, unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security and a security account.

(10) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

WV Legislature

§36-10-2. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

WV Legislature

§36-10-3. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

WV Legislature

§36-10-4. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

WV Legislature

§36-10-5. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

WV Legislature

§36-10-6. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

WV Legislature

§36-10-7. Ownership of death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

WV Legislature

§36-10-8. Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with section seven of this article and does so in good faith reliance (i) on the registration, (ii) on this article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this article.

(d) The protection provided by this article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

WV Legislature

§36-10-9. Nontestamentary transfer on death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this article and is not testamentary.

(b) This article does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

WV Legislature

§36-10-10. Terms, conditions and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize: (1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr. (2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr. (3) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

WV Legislature

§36-10-11. Short title; rules of construction.

(a) This article shall be known as and may be cited as the Uniform TOD Security Registration Act.

(b) This article shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this article among states enacting it.

(c) Unless displaced by the particular provisions of this article the principles of law and equity supplement its provisions.

WV Legislature

§36-10-12. Application of article.

This article applies to registrations of securities in beneficiary form made before or after its initial enactment, by decedents dying on or after its initial enactment.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§36-11-17. Savings clause.

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

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.

WV Legislature

§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.

WV Legislature

§36-12-4. Nonexclusivity.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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).

WV Legislature

§36-13-1. Short title.

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

WV Legislature

§36-13-2. Definitions.

As used in this article:

"Administrator" means a person authorized by the members of a decentralized unincorporated nonprofit association to fulfill administrative or operational tasks at the direction of the membership.

"Decentralized unincorporated nonprofit association" means an unincorporated nonprofit association that meets the following requirements:

(1) Consists of at least 100 members joined by mutual consent under an agreement, that may be in writing or inferred from conduct, for a common nonprofit purpose;

(2) Has elected to be formed under this act; and

(3) Is not formed under any other law governing the nonprofit association's organization or operation.

"Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency.

"Distributed ledger technology" means a distributed ledger protocol and supporting infrastructure, including blockchain, that uses a distributed, shared and replicated ledger, whether it be public or private, permissioned or permissionless, and that may include the use of digital assets as a medium of electronic exchange.

"Established practices" means the practices used by a decentralized unincorporated nonprofit association without material change during the most recent five years of the association's existence, or if the association has existed for less than five years, during the nonprofit association's entire existence.

"Governing principles" means all agreements and any amendment or restatement of those agreements, including any decentralized unincorporated nonprofit association agreements, consensus formation algorithms, smart contracts or enacted governance proposals, that govern the purpose or operation of a decentralized unincorporated nonprofit association and the rights and obligations of the nonprofit association's members and administrators, whether contained in a record, implied from the nonprofit association's established practices or both.

"Member" means a person who, under the governing principles of a decentralized unincorporated nonprofit association, may participate in the selection of the nonprofit association's administrators or the development of the policies and activities of the nonprofit association.

WV Legislature

"Membership interest" means a member's voting right in a decentralized unincorporated nonprofit association determined by the nonprofit association's governing principles, including as ascertained from decentralized ledger technology on which the nonprofit association relies to determine a member's voting right.

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

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Smart contract" means an automated transaction, as defined in any substantially similar analogue or code, script or programming language relying on distributed ledger technology, including blockchain, which may include facilitating and instructing transfers of an asset, administrating membership interest votes with respect to a decentralized unincorporated nonprofit association or issuing executable instructions for these actions based on the occurrence or nonoccurrence of specified conditions.

"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.

WV Legislature

§36-13-3. Governing law; territorial application.

(a) The law of this state governs any decentralized unincorporated nonprofit association that is formed in this state.

(b) A decentralized unincorporated nonprofit association's governing principles shall identify the jurisdiction in which the decentralized unincorporated nonprofit association is formed.

WV Legislature

§36-13-4. Profits; prohibitions on distributions and dividends; compensation and other permitted payments.

(a) A decentralized unincorporated nonprofit association may engage in profit-making activities, but profits from any activities shall be used in furtherance of, or set aside for, the nonprofit association's common nonprofit purpose.

(b) Except as provided in subsection (c) of this section, a decentralized unincorporated nonprofit association may not make distributions to its members or administrators.

(c) A decentralized unincorporated nonprofit association may:

(1) Pay reasonable compensation or reimburse reasonable expenses to its members, administrators and persons outside the nonprofit association for services rendered, including with respect to the administration and operation of the nonprofit association, which may include the provisions of collateral for the self-insurance of the nonprofit association, voting or participation in the nonprofit association's operations and activities;

(2) Confer benefits on its members and administrators in conformity with its common nonprofit purpose;

(3) Repurchase membership interests to the extent authorized by the nonprofit association's governing principles; and

(4) Make distributions of property to members upon winding up and termination of the decentralized unincorporated nonprofit association to the extent permitted by §36-13-26 of this code.

WV Legislature

§36-13-5. Real and personal property; decentralized unincorporated nonprofit association as beneficiary, legatee, or devisee.

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

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

WV Legislature

§36-13-6. Statement of authority as to real property.

(a) A decentralized unincorporated 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 decentralized unincorporated nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the county clerk in which a transfer of the property will be recorded.

(c) A statement of authority shall set forth:

(1) The name of the decentralized unincorporated 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 out of state address;

(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 decentralized unincorporated 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 shall 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 the statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including cancellation, of a statement of authority shall 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 the real property is in the name of a decentralized unincorporated 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.

WV Legislature

§36-13-7. Liability in tort or contract.

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

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

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

(e) A member, administrator, person authorized to participate in the management of the affairs of the nonprofit association, or person considered as a member by the nonprofit association may assert a claim against the decentralized unincorporated nonprofit association. A decentralized unincorporated nonprofit association may assert a claim against a member, administrator, person authorized to participate in the management of the affairs of the nonprofit association or person considered as a member by the nonprofit association.

WV Legislature

§36-13-8. Capacity to assert and defend; standing.

(a) A decentralized unincorporated 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 decentralized unincorporated nonprofit association may assert a claim on behalf of its members if:

(1) One or more members of the nonprofit association have standing to assert a claim in their own right;

(2) The interests the nonprofit association seeks to protect are germane to its purposes; and

(3) Neither the claim asserted, nor the relief requested requires the participation of a member.

WV Legislature

§36-13-9. Effect of judgment or order.

A judgment or order against a decentralized unincorporated nonprofit association is not by itself a judgment or order against a member or administrator of the nonprofit association.

WV Legislature

§36-13-10. Appointment of agent to receive service of process.

(a) A decentralized unincorporated 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 shall set forth:

(1) The name of the decentralized unincorporated 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 out of state address; and

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

(c) A statement appointing an agent shall be signed and acknowledged by a person authorized to administer the affairs of the decentralized unincorporated nonprofit association. The statement shall 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. Within 10 business days of the resignation, the decentralized unincorporated nonprofit association shall appoint and file a statement appointing a new agent authorized to receive service of process.

(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 an amount as prescribed by the Secretary of State.

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

(f) If the Secretary of State refuses to file a statement appointing an agent, the Secretary of State shall return the statement to the decentralized unincorporated nonprofit association or its representative within 15 days after the statement was received by the Secretary of State, together with a brief, written explanation of the reason for the refusal.

WV Legislature

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

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

WV Legislature

§36-13-12. Claim not abated by change of members, administrators or persons authorized.

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

WV Legislature

§36-13-13. Venue.

(a) For purposes of venue, a decentralized unincorporated nonprofit association is a resident of a county in which:

(1) The decentralized unincorporated nonprofit association has an office;

(2) The decentralized unincorporated nonprofit association conducts its business or activities; or

(3) The agent authorized to receive service of process under §36-13-10 of this code resides.

WV Legislature

§36-13-14. Perpetual existence, dissolution, continuation of existence.

(a) A decentralized unincorporated nonprofit association shall have perpetual existence unless its governing principles otherwise specify.

(b) A decentralized unincorporated nonprofit association may be dissolved by any of the following methods:

(1) If the governing principles of the nonprofit association provide a time or method for dissolution, by that method;

(2) If the governing principles of the nonprofit association do not provide a method for dissolution, by approval of its members in accordance with §36-13-20 of this code;

(3) If membership in the decentralized unincorporated nonprofit association falls below 100 members and the decentralized unincorporated nonprofit association does not meet the requirements of a West Virginia unincorporated nonprofit association under this article; or

(4) By court order.

(c) After dissolution, a decentralized unincorporated nonprofit association continues in existence until its activities have been wound up and terminated pursuant to §36-13-26 of this code.

WV Legislature

§36-13-15. Admission, suspension, dismissal or expulsion of members.

(a) A person becomes a member in accordance with the governing principles of the decentralized unincorporated nonprofit association. If there are no applicable governing principles, a person shall be considered a member upon purchase or assumption of ownership of a membership interest and the person shall continue as a member absent the person's suspension, dismissal or expulsion pursuant to subsection (b) of this section, resignation pursuant to §36-13-26 of this code or the nonprofit association's dissolution and wind-up pursuant to §36-13-14 to §36-13-26 of this code.

(b) Subject to the governing principles, a member may be suspended, dismissed or expelled from a decentralized unincorporated nonprofit association. If there are no applicable governing principles, a member may be suspended, dismissed or expelled by approval of its members in accordance with §36-13-20 of this code.

(c) Unless otherwise provided for in the governing principles, suspension, dismissal or expulsion of a member does not relieve the member of any obligation incurred, or commitment made by the member, before the suspension, dismissal or expulsion.

WV Legislature

§36-13-16. Member resignation.

(a) A member may resign as a member of a decentralized unincorporated nonprofit association in accordance with the governing principles of the nonprofit association. If there are no applicable governing principles, a member shall be deemed to have resigned as a member upon the disposal, whether voluntary or involuntary, of all membership interests or other property or instruments that confer upon the person a voting right within the nonprofit association.

(b) Unless otherwise provided for in the governing principles, resignation of a member does not relieve the member of any obligation incurred, or commitment made by the member, before the resignation.

WV Legislature

§36-13-17. Duties of members.

(a) Unless otherwise provided for in the governing principles, a member shall not have any fiduciary duty to a decentralized unincorporated nonprofit association or to any other member of the nonprofit association merely by reason of being a member.

(b) A member acting on behalf of the association shall discharge his or her duties in the best interest of the association.

WV Legislature

§36-13-18. Member has no agency powers.

(a) A member is not an agent of a decentralized unincorporated nonprofit association merely by reason of being a member.

(b) A person's status as a member does not prevent or restrict laws other than this act from imposing liability on a decentralized unincorporated nonprofit association because of the member's conduct.

WV Legislature

§36-13-19. Member interests transferable.

Except as otherwise provided in the decentralized unincorporated nonprofit association's governing principles, a member interest or any right thereunder is freely transferable to another person through conveyance of the membership interest.

WV Legislature

§36-13-20. Approval by members.

(a) Except as otherwise provided in the governing principles, a decentralized unincorporated nonprofit association shall have the approval of the majority of membership interests participating in a vote to:

(1) Suspend, dismiss or expel a member;

(2) Select or dismiss an administrator;

(3) Adopt, amend, or repeal the governing principles;

(4) Sell, lease, exchange or otherwise dispose of the decentralized unincorporated nonprofit association's property;

(5) Dissolve the decentralized unincorporated nonprofit association under §36-13-14 of this code;

(6) Undertake any other act outside the ordinary course of the decentralized unincorporated nonprofit association's activities;

(7) Determine the policy and purpose of the decentralized unincorporated nonprofit association.

(b) A decentralized unincorporated nonprofit association shall have the approval of its members in accordance with its governing principles to perform any acts or exercise a right that the governing principles require to be approved by members.

(c) Unless otherwise provided for in the governing principles, membership interest in a decentralized unincorporated nonprofit association shall be calculated in proportion to a member's voting rights within the nonprofit association.

WV Legislature

§36-13-21. Utilization of distributed ledger technology.

(a) A decentralized unincorporated nonprofit association may provide for its governance, in whole or in part, through distributed ledger technology, including smart contracts.

(b) The governing principles for a decentralized unincorporated nonprofit association may:

(1) Specify whether any distributed ledger technology utilized or enabled by the decentralized unincorporated nonprofit association will be fully immutable or subject to change by the nonprofit association and whether any distributed ledger will be fully or partially public or private, including the extent of a member's access to information;

(2) Adopt voting procedures, which may include smart contracts deployed to distributed ledger technology that provide for the following:

(A) Proposals from members or administrators in the decentralized unincorporated nonprofit association for upgrades, modifications or additions to software systems or protocols;

(B) Other proposed changes to the decentralized unincorporated nonprofit association's governing principles; and

(C) Any other matters of governance or activities within the purpose of the decentralized unincorporated nonprofit association.

WV Legislature

§36-13-22. Consensus formation algorithms and governance process.

In accordance with its governing principles, a decentralized unincorporated nonprofit association may:

(1) Adopt any reasonable algorithmic means for establishing consensus for the validation of records, as well as for establishing requirements, processes and procedures for conducting operations or making organizational decisions with respect to the distributed ledger technology used by the decentralized unincorporated nonprofit association; and

(2) In accordance with any procedure specified pursuant to §36-13-21 of this code, modify the consensus mechanism, as well as the requirements, processes and procedures or substitute a new consensus mechanism, requirements, processes or procedures that comply with this state's law and the governing principles of the nonprofit association.

WV Legislature

§36-13-23. Selection of administrators; rights and duties of administrators.

(a) Unless otherwise provided for in the decentralized unincorporated nonprofit association's governing principles, the members of a nonprofit association may select the nonprofit association's administrators in accordance with §36-13-20 of this code.

(b) If no administrators are selected, none of the members shall be considered administrators for the decentralized unincorporated nonprofit association.

(c) No decentralized unincorporated nonprofit association shall be required to have an administrator, and the rights and duties of all administrators shall be established as part of the authorization of authority to act as an administrator.

(d) If in a record, the governing principles of a decentralized unincorporated nonprofit association may limit or eliminate the liability of an administrator to the nonprofit association or its members for money damages for any action taken, or failure to take any action, as an administrator except liability for:

(1) The amount of financial benefit improperly received by an administrator;

(2) An intentional infliction of harm on the nonprofit association or its members;

(3) An intentional violation of criminal law;

(4) Breach of the duty of loyalty should one exist, unless, following full disclosure of all material facts to the nonprofit association members, the specific act or transaction that would otherwise breach the duty of loyalty is authorized or ratified by approval of the disinterested members pursuant to §36-13-20 of this code; or

(5) Improper distributions.

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§36-13-24. Right to inspect records.

(a) Except as provided by subsection (b), on reasonable notice, a member or administrator of a decentralized unincorporated nonprofit association is entitled to an electronic record of any record maintained by the nonprofit association regarding the nonprofit association's activities, financial condition, and other circumstances, to the extent the information is material to the member's or administrator's rights and duties under the decentralized unincorporated nonprofit association's governing principles or this act.

(b) A decentralized unincorporated nonprofit association is not obligated to provide records requested from a member or administrator if access to the information is contained in a record available to the member or administrator in a medium available to the member, including distributed ledger technology.

(c) A decentralized unincorporated nonprofit association may impose reasonable restrictions on access to and use of information that may be provided under this section, including by designating the information confidential and imposing nondisclosure or other safeguarding obligations on the recipient of the information. In a dispute concerning the reasonableness of a restriction under this subsection, the nonprofit association shall have the burden of proving reasonableness.

(d) A former member or administrator may have access to information to which the former member or administrator was entitled to as a member or administrator if:

(1) The information relates to the period of time during which the former member or administrator was a member or administrator;

(2) The former member or administrator seeks the information in good faith; and

(3) The former member or administrator satisfies the requirements of subsection (a) through (c) of this section with respect to the information.

(e) A decentralized unincorporated nonprofit association shall not be obligated to collect and maintain a list of members or individual member information, including the names or addresses of its members.

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§36-13-25. Indemnification; advancement of expenses.

(a) Unless otherwise provided in its governing principles, a decentralized unincorporated nonprofit association may reimburse a member or administrator for authorized expenses reasonably incurred on behalf of the nonprofit association.

(b) A decentralized unincorporated nonprofit association may indemnify a member or administrator for any debt, obligation or other liability incurred in the course of the member or administrator's activities on behalf of the nonprofit association. To be eligible for indemnification, an administrator shall have complied with the duties stated in §36-13-23 of this code. If in a record, a nonprofit association's governing principles may broaden or limit this right of indemnification.

(c) If a person is made, or threatened to be made, a party in a proceeding based on that person's conduct in the affairs of a decentralized unincorporated nonprofit association, that person is entitled, upon written request to the nonprofit association, including through decentralized ledger technology, to receive payment of or reimbursement by the nonprofit association, of reasonable expenses, including attorney's fees and disbursements, incurred by that person in advance of the final disposition of the proceeding. To be entitled to these payments or advances the person making the request shall make a written affirmation that the person has a good faith belief that the criteria for indemnification in subsection (a) of this section have been satisfied and that the person will repay the amounts paid or reimbursed if it is determined that the criteria for reimbursement have not been satisfied. No payment or reimbursement under this subsection shall be made without prior approval, in a record, of the disinterested members under §36-13-2 of this code.

(d) A decentralized unincorporated nonprofit association may purchase and maintain insurance on behalf of a member or administrator for liability asserted against or incurred by the member or administrator in that capacity, whether or not the nonprofit association would have the power to indemnify or advance expenses to the member or administrator against the same liability under this section.

(e) These rights of reimbursement, indemnification and advancement of expense apply to former members or administrators for activities undertaken on behalf of the decentralized unincorporated nonprofit association while they were members or administrators.

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§36-13-26. Winding up; termination.

(a) A dissolved decentralized unincorporated nonprofit association shall wind up its operations and the nonprofit association shall continue after dissolution only for the purpose of winding up.

(b) In winding up a decentralized unincorporated nonprofit association, the members:

(1) Shall discharge the nonprofit association's debts, obligations and other liabilities, settle and close the nonprofit association's business and distribute any remaining property:

(A) To another entity or person with similar nonprofit purposes, if required by law other than this article;

(B) In accordance with the nonprofit association's governing principles. In the absence of applicable governing principles, to the current members of the nonprofit association in proportion to their membership interests; or

(C) If neither subdivision (A) or (B) of this paragraph applies, in accordance with the law of unclaimed property contained in §36-8-1 *et seq*. of this code.

(2) May:

(A) Authorize an administrator to wind up the nonprofit association in accordance with §36-13-20 of this code. Any administrator so authorized shall owe the nonprofit association a duty of care in the conduct or winding up of the nonprofit to refrain from grossly negligent or reckless conduct, willful or intentional misconduct or a knowing violation of the law;

(B) Preserve the nonprofit association's operations and property as a going concern for a reasonable time;

(C) Prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(D) Transfer the nonprofit association's property;

(E) Settle disputes by mediation or arbitration;

(F) Perform other acts necessary or appropriate to the winding up.

(3) If the members of a nonprofit association do not appoint an administrator or administrators to wind up the nonprofit association, the members shall owe the nonprofit association a duty of care in the conduct or winding up of the nonprofit association's operations to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct or a knowing violation of the law.

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§36-13-27. Mergers.

(a) As used in this section:

(1) "Constituent organization" means an organization that is merged with one or more other organizations and includes the surviving organization;

(2) "Charitable purpose" means any purpose of an organization that has attained exemption under section 501(c)(3) of the Internal Revenue Code or any successor section, or that upon dissolution shall distribute its assets to a public benefit corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code or any successor section;

(3) "Disappearing organization" means a constituent organization that is not the surviving organization;

(4) "Governing statute" means the statute that governs an organization's internal affairs;

(5) "Organization" means a decentralized unincorporated nonprofit association, an unincorporated nonprofit association, a general partnership, including a limited liability partnership, a limited partnership, including a limited liability limited partnership, a limited liability company, a business or statutory trust, a corporation or any other legal or commercial person having a governing statute. The term includes a domestic or foreign organization regardless of whether the organization is organized for profit;

(6) "Organizational document" means the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it or are members of it;

(7) "Surviving organization" means an organization into which one or more other organizations are merged.

(b) A decentralized unincorporated nonprofit association may merge with any organization that is not expressly prohibited by the law.

(c) A merger involving a decentralized unincorporated nonprofit association is subject to the following requirements:

(1) Each of the constituent merging organizations shall comply with its governing law;

(2) Each party to the merger shall approve a plan of merger in accordance with its governing principles. The plan shall be in a record and shall include the following provisions:

(A) The name and form of each organization that is party to the merger;

(B) The name and form of the surviving organization and, if the surviving organization is to

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be created by the merger, a statement to that effect;

(C) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization or other considerations;

(D) If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(E) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

(3) The plan of merger shall be approved by the members of each decentralized unincorporated nonprofit association that is a constituent organization in the merger, subject to §36-13-20 of this code. If a member of a nonprofit association that is party to a merger will have personal liability with respect to an obligation of a constituent or surviving organization, the consent in a record of that member to the plan of merger shall also be obtained;

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan;

(5) Following approval of the plan, a merger under this section shall be effective if:

(A) A constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, the notice has been given and the approval has been obtained; and

(B) The surviving organization is a decentralized unincorporated nonprofit association, as specified in the plan of merger and upon compliance by any constituent organization that is not a nonprofit association with any requirements, including any required filings in the office of the Secretary of State, of the organization's governing statute; or

(C) The surviving organization is not a decentralized unincorporated nonprofit association under the state law governing the surviving organization.

(d) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

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(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) The merger shall not affect the personal liability, if any, of a member, administrator or manager of a constituent association for a debt, liability or obligation of the nonprofit association incurred before the merger is effective; and

(9) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State as agent for service of process for the purpose of enforcing a debt, obligation or other liability under this subsection.

(e) Property held for a charitable purpose under the law of this state by a domestic or foreign organization immediately before a merger under this section becomes effective shall not, as a result of the merger, be diverted from the objects for which it was donated, granted or devised, unless, to the extent required by or pursuant to the law of this state concerning nondiversion of charitable assets, the organization obtains an appropriate order of the attorney general or of the district court in a proceeding for which the attorney general has been given notice specifying the disposition of the property.

(f) A bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a disappearing organization and that takes effect or remains payable after the merger inures to the benefit of the surviving organization. A trust obligation that would govern property if transferred to the disappearing entity applies to property that is instead transferred to the surviving organization under this section.

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§36-13-28. Conversion of entities.

(a) An unincorporated nonprofit association formed under §36-11-1 *et seq*. of this code that meets the requirements of §36-13-2 of this code may elect to be governed by this act by approval of its members. If the unincorporated nonprofit association's governing principles provide a method for approving the election, the election shall be approved by that method. If the governing principles do not provide a method for approving the election, the election shall be approved by a majority of the members of the unincorporated nonprofit association.

(b) An election under subsection (a) of this section takes effect upon approval by the members of the unincorporated nonprofit association. Upon the effective date of the election, the unincorporated nonprofit association shall be governed by this act and shall be a decentralized unincorporated nonprofit association for all purposes of the laws of this state.

(c) A decentralized unincorporated nonprofit association may elect to cease being governed by this act by approval of its members in accordance with §36-13-20 of this code. Upon the effective date of the cessation, the entity shall continue as an unincorporated nonprofit association under §36-11-1 *et seq*. of this code.

(d) A decentralized unincorporated nonprofit association that transitions to an unincorporated nonprofit association under §36-13-14 of this code by reason of its membership falling below one hundred members shall be governed by §36-11-1 *et seq*. of this code from the date of the transition.

(e) An unincorporated nonprofit association that elects to be governed by this act under subsection (a) of this section, or a decentralized unincorporated nonprofit association that ceases to be governed by this act under subsection (c) or (d) of this section, is for all purposes the same entity that existed before the election, cessation or transition. All property owned by, all debts, obligations and other liabilities of, and all actions and proceedings pending by or against the entity shall continue unaffected by the election, cessation or transition. The election, cessation or transition shall not constitute a dissolution of the entity and shall not require the entity to wind up its affairs.

(f) The governing principles of an entity that makes an election under subsection (a) of this section or that ceases to be governed by this act under subsection (c) or (d) of this section shall continue in effect to the extent they are not inconsistent with the law governing the entity after the election, cessation or transition.

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§36-13-29. Supplemental principles of law.

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

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§36-13-30. Rulemaking authority.

The Secretary of State may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code as may be necessary to implement and administer the provisions of this article.

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§36-13-31. Effective date.

This article is effective July 1, 2026.

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