WEST VIRGINIA CODE CHAPTER 41 ARTICLE 1

WV Legislature

§41-1-1. Who may make will and as to what property.

Every person not prohibited by the following section may, by will, dispose of any estate to which he shall be entitled at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative, or next of kin. The power hereby given shall extend to any estate, right, or interest, to which the testator may be entitled at his death, notwithstanding he may become so entitled after the execution of the will.

WV Legislature

§41-1-2. Who may not make will.

No person of unsound mind, or under the age of eighteen years, shall be capable of making a will.

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§41-1-3. Must be in writing; witnesses.

No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each other, but no form of attestation shall be necessary.

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§41-1-4. Execution of power of appointment.

No appointment made by will, in the exercise of any power, shall be valid unless the same be so executed that it would be valid for the disposition of the property to which the power applies, if it belonged to the testator; and every will so executed shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly requires that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

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§41-1-5. Wills of personal estate by soldiers, sailors or nonresidents.

Notwithstanding the two preceding sections, a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this state at the time of his death shall be valid as to his personal property in this state, if it be executed according to the law of the state or country in which he was so domiciled.

WV Legislature

§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.

(a) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, except that the provisions of section three, article three, chapter forty-one do not apply, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

(b) This section applies to all divorces, annulments or remarriages which become effective after June 5, 1992.

WV Legislature

§41-1-7. Revocation generally.

No will or codicil, or any part thereof, shall be revoked, unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling or destroying the same, or the signature thereto, with the intent to revoke.

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§41-1-8. Revival after revocation.

No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and then only to the extent to which an intention to re-revive the same is shown.

WV Legislature

§41-1-9. Effect of subsequent conveyance.

No conveyance or other act subsequent to the execution of a will shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation with respect to such interest in the estate comprised in the will as the testator may have power to dispose of by will at the time of his death.

WV Legislature

§41-1-10. On what wills chapter operates; when re-executed wills deemed to be made.

The validity and effect of wills executed prior to the time this code becomes effective shall be determined by the laws of this state in force at the time of their execution. Every will re-executed, or republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived.

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