
WEST VIRGINIA CODE CHAPTER 41
ARTICLE 3

WV Legislature

§41-3-1. When will takes effect.

A will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

WV Legislature

§41-3-2. When advancement deemed satisfaction of devise or bequest.

A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person, contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to have been so intended.

WV Legislature

§41-3-3. Death of devisee or legatee before testator.

If a devisee or legatee die before the testator, or be dead at the time of making of the will, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof be made or required by the will. And if the devise or bequest be made to two or more persons jointly, and one or more of them die without issue, or be dead at the time of the making of the will, the part of the estate so devised or bequeathed to him or them shall not go to the other joint devisees or legatees, but shall, in the case of a devise, descend and pass to the heirs at law, and, in the case of a bequest, go and pass to the personal representative, of the testator, as if he had died intestate, unless the will otherwise provides.

§41-3-4. Failure or invalidity of devise or bequest.

Unless a contrary intention shall appear by the will, such real or personal estate, or interest therein, as shall be comprised in any devise or bequest in such will, which devise or bequest shall fail or be void, or be otherwise incapable of taking effect, shall, if the estate be real estate, be included in the residuary devise, or, if the estate be personal estate, in the residuary bequest, if any residuary devise or bequest be contained in such will, and, in the absence of such residuary devise or bequest, shall pass as in case of intestacy. However, when a devise or bequest shall be included in a residuary clause of the will, which devise or bequest shall fail or be void or be otherwise incapable of taking effect, it shall not pass as in case of intestacy but shall pass to the remaining residuary devisees or legatees or devisee or legatee, if any there be, in proportion to their respective shares or interests in the residue.

§41-3-5. Construction of devises in general terms.

A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

§41-3-6. Operation of devise or bequest as exercise of power of appointment.

A devise or bequest shall extend to any real or personal estate which the testator has power to appoint as he may think proper, and to which it would apply if the estate were his own property, and shall be construed to operate as an exercise of such power with respect to such property unless a contrary intention shall appear by the will of said testator, or unless:

- (a) The instrument creating said power of appointment (whether said instrument was executed before or after the effective date of this section) provides that such power must be specifically referred to and expressly exercised; and
- (b) The instrument creating said power of appointment contains a provision disposing of said real or personal estate in the event of the failure of the donee of the power to so exercise said power.

§41-3-7. Courts of equity may construe wills.

Notwithstanding any other provision of law, and notwithstanding there is no other ground of equity jurisdiction, courts possessing general equity powers shall have and take jurisdiction of a suit to construe an ambiguous will at the suit of the executor, or administrator with the will annexed, or of any beneficiary thereunder whose interests are affected by a construction of the ambiguous provision.

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§41-3-8. Testamentary additions to trusts.

(a) A will may validly devise or bequeath property to the trustee of a trust established or to be established: (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or (ii) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, or concurrently with the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

§41-3-9. Effect on existing wills.

Sections eight, nine, ten and eleven of this article apply to a will of a testator who dies after the effective date of this legislation.

WV Legislature

§41-3-10. Uniformity of application and construction.

Sections eight through eleven 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 legislation among states enacting it.

WV Legislature

§41-3-11. Short title.

Sections eight through eleven of this article may be cited as the "Uniform Testamentary Additions to Trusts-Uniform Act (1991)".

WV Legislature