WEST VIRGINIA CODE: §42-1-1

§42-1-1. General definitions.

Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts or sections, and unless the context otherwise requires in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an individual authorized to make decisions for another under a natural death act.

(2) "Beneficiary" as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an account with POD designation, of a security registered in beneficiary form (TOD) or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised.

(3) "Court" means the county commission or branch in this state having jurisdiction in matters relating to the affairs of decedents.

(4) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(5) "Descendant" of an individual means all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(6) "Devise" when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(7) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(8) "Distributee" means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee

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to whom assets are transferred by will, to the extent of the devised assets.

(9) "Estate" includes the property of the decedent, trust or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(10) "Exempt property" means that property of a decedent's estate which is provided for in section forty-eight, article VI of the Constitution.

(11) "Fiduciary" includes a personal representative, guardian, conservator and trustee.

(12) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(13) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(14) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a donative, appointive or nominative instrument of any other type.

(15) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(16) "Heirs" means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(17) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(18) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(19) "Issue" of a person means descendant as defined in subdivision (5) of this section.

(20) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to

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that party's contribution.

(21) "Lease" includes an oil, gas or other mineral lease.

(22) "Letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

(23) "Minor" means a person who is under 18 years of age.

(24) "Mortgage" means any deed of trust, conveyance, agreement or arrangement in which property is encumbered or used as security.

(25) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(26) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent. However, a parent is barred from inheriting from or through a child of the parent pursuant to the provisions of §42-1-11 of this code.

(27) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments.

(28) "Person" means an individual or an organization.

(29) "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(30) "Petition" means a written request to the court for an order after notice.

(31) "Proceeding" includes action at law and suit in equity.

(32) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(33) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

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(34) "Settlement" in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(35) "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.

(36) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(37) "Successors" means persons, other than creditors, who are entitled to property of a decedent under his or her will or this code.

(38) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event. The term includes its derivatives, such as "survives", "survived", "survivor" and "surviving".

(39) "Surviving spouse" means the person to whom the decedent was married at the time of the decedent's death.

(40) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(41) "Testator" includes an individual of either sex.

(42) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives and custodial arrangements, including that relating to gifts or transfers to minors, dealing with special custodial situations, business trusts providing for certificates to be issued to beneficiaries.

(43) "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

(44) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

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