WEST VIRGINIA CODE CHAPTER 42 ARTICLE 1

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§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 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

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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 that party's contribution.

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

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(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.

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

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(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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§42-1-2. Intestate estate.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this code, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

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§42-1-3. Share of spouse.

The intestate share of a decedent's surviving spouse is:

(a) The entire intestate estate if:

(1) No descendant of the decedent survives the decedent; or

(2) All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(b) Three fifths of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(c) One half of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

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§42-1-3a. Share of heirs other than surviving spouse.

Any part of the intestate estate not passing to the decedent's surviving spouse under section three of this article, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(a) To the decedent's descendants by representation;

(b) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(c) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but, if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

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§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.

An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of a decedent or of an individual who would otherwise be an heir, or the times of death of both, cannot be determined, and it is not established that the individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under section three-c of this article.

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§42-1-3c. No taker.

If there is no taker under the provisions of this article, the intestate estate passes to the state. Any real property shall pass to the State Auditor. Any personal property shall pass to the State Treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the General Revenue Fund.

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§42-1-3d. Representation.

(a) In this section:

(1) "Deceased descendant," "deceased parent," or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section three-b of this article.

(2) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section three-b of this article.

(b) If, under section three-a of this article, a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are: (i) Surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(c) If, under section three-a of this article, a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are: (i) Surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allotted a share and their surviving descendants had predeceased the decedent.

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§42-1-3e. Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

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§42-1-3f. Afterborn heirs.

An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

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§42-1-3g. Advancements.

(a) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent's contemporaneous writing or the heir's written acknowledgement otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of subsection (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

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§42-1-4. Alienage.

No individual is disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

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§42-1-5. From whom children born out of wedlock inherit.

(a) Children born out of wedlock shall be capable of inheriting and transmitting inheritance on the part of their mother and father.

(b) Prior to the death of the father, paternity shall be established by:

(1) Acknowledgment that he is the child's father;

(2) Adjudication on the merits pursuant to the provisions of article twenty-four, chapter forty-eight of this code; or

(3) By order of a court of competent jurisdiction issued in another state.

(c) After the death of the father, paternity shall be established if, after a hearing on the merits, the court shall find, by clear and convincing evidence, that the man is the father of the child. The civil action shall be filed in the family court of the county where the administration of the decedent's estate has been filed or could be filed:

(1) Within six months of the date of the final order of the county commission admitting the decedent's will to probate or commencing intestate administration of the estate; or

(2) If none of the above apply, within six months from the date of decedent's death.

(d) Any putative child who at the time of the decedent's death is under the age of eighteen years, a convict or a mentally incapacitated person may file such civil action within six months after he or she becomes of age or the disability ceases.

(e) The provisions of this section do not apply where the putative child has been lawfully adopted by another man and stands to inherit property or assets through his adopted father.

(f) The provisions of this section do not apply where the father or putative father has expressly disinherited the child in a provision of his will.

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§42-1-6. Legitimation by marriage.

If a man, having had a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, shall be deemed legitimate.

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§42-1-7. Issue legitimate though marriage null.

The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate.

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§42-1-8. Posthumous children to take.

Any child in the womb of its mother at, and which may be born after, the death of the intestate, shall be capable of taking by inheritance in the same manner as if such child were in being at the time of such death.

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§42-1-9. Establishment and recordation of descent.

Where any person having title to an estate of inheritance in real estate within this state has died intestate, or testate, without having devised his real estate, his heirs, or any of them, or any person deriving title from or through such heirs, or any of them, may at any time within twenty years after the death of such person present to the circuit court of the county where such real estate, or any part thereof, is situated, a petition, under oath, describing such real estate, setting forth the interest or share of the petitioner and of each other heir of the decedent in such real estate, and praying for a decree establishing the right of inheritance thereto, and that all the heirs of the decedent, and other parties in interest may be summoned to show cause why the prayer of the petition should not be granted. There shall also be set out in the petition and be made parties, the heirs or devisees of any person who inherited from the decedent but who has died before the proceeding is instituted, and any purchasers or successors in title from such a person, and any holders of liens on the whole property or on the share of any person interested in the property. Upon the presentation of such petition a rule to show cause, returnable within such time as the court shall direct, shall be issued accordingly, except in a case where all the interested parties unite in such petition or appear and waive service of the rule. Guardians ad litem for all infants, convicts in confinement and insane persons, who may be parties to such proceeding, shall be appointed and attend, and nonresident persons may be proceeded against by order of publication, as in other cases, upon the return of the rule to show cause the circuit court shall hear the allegations and proofs of the parties and determine all the issues raised. The petitioner shall establish the fact of the decedent's death; the place of his residence at the time of his death; his will or intestacy, either generally, or as to the real estate in question; the heirs entitled to inherit the real estate in question; the name, age, residence and relationship to the decedent, of each; and the interest or share of each heir or other person in such real estate. The court, when these facts are established, shall make a decree describing the real estate, and declaring that the right of inheritance thereto has been established to the court's satisfaction, in accordance with the facts which shall be recited in the decree, and that at the death of the testator or intestate certain persons, who shall be named in the decree, were entitled to take the property in certain proportions, which shall also be set out in the decree. A certified copy of such decree shall be recorded in the office of the clerk of the county court of the county or counties in which such real estate is situated, in the record of deeds, and indexed in the general index of deeds in the name of the decedent as if grantor, and in the name of each heir as if grantee, and the fees for such recording and indexing shall be the same as for deeds. From the time when such copy is so recorded, the decree, or the record thereof, shall be conclusive evidence of the facts so declared to be established thereby against all parties to such proceeding.

An appeal from such decree shall lie to the Supreme Court of Appeals as in other cases, and any person under disability or proceeded against by publication and not appearing may have the matter reheard as in other cases.

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§42-1-10. Individuals related to decedent through two lines.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

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§42-1-11. When a parent may not inherit from a child.

(a) A parent is barred from inheriting from or through a child of the parent if: (1) The parent's parental rights were terminated by court order and the parent-child relationship has not been judicially reestablished; or (2) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under the law of this state other than this article on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

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§42-1-12. When a child may inherit from a parent who has been barred from inheritance.

If a parent is barred from inheriting under the provisions of W.Va. Code §42-1-11, the child may still inherit from or through the barred parent as long as a parent-child relationship does not exist between the child as an adoptee with another person as the adoptee's adoptive parent.

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