WEST VIRGINIA CODE: §42-3-2

§42-3-2. Augmented estate.

(a) Definitions.

(1) In this section:

(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. The notation of a state documentary fee on a recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in himself or herself or his or her creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) The augmented estate consists of the sum of:

(1) The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead exemption, property exemption and enforceable claims;

(2) The value of the decedent's reclaimable estate. The decedent's reclaimable estate is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

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(i) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment created by the decedent during the marriage and held by the decedent alone if the decedent held that power immediately before his or her death;

(ii) Property, to the extent of the decedent's contribution to it during the marriage, as a percentage of the whole, by which the property is held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, acquired during the marriage of the decedent and the surviving spouse, if the decedent held that interest immediately before his or her death;

(iii) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

(A) Any transfer to the extent that the decedent retained at the time of his or her death the possession or enjoyment of, or right to income from the property;

(B) Any transfer to the extent that, at the time of the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate; or

(C) Any transfer made to a donee within two years before the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed $10,000;

(3) The value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead exemption, exempt property, testate succession or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(4) The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includible in the surviving spouse's reclaimable estate had the spouse predeceased the decedent.

(c) Any transfer is excluded from the decedent's reclaimable estate: (i) To the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise or release; or (ii) if irrevocably made with the written consent or joinder of the surviving spouse. Life insurance, accident insurance, pension, profit sharing, retirement and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate is also excluded.

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(d) Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under paragraph (iii), subdivision (2), subsection (b) of this section is valued as of the time of the transfer. If the terms of more than one of the paragraphs or subparagraphs of subdivision (2), subsection (b) of this section apply, the property is included in the augmented estate under the paragraph or subparagraph that yields the highest value.

(e)(1) Although under this section a payment, item of property or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

Any form of service of notice other than that described in subdivision (2) of this subsection shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice shall indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed.

(3) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party shall not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for any such payment, transfer or deposit with the court, even

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if no probate proceedings have been commenced before such payment, transfer or deposit. The court shall hold the funds or item of property and, upon its determination under subsection (d), section four of this article, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection (a) of said section or, if filed, the demand for an elective share is withdrawn under subsection (c) of said section, the court shall order disbursement to the designated beneficiary. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(4) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(f)(1) A bona fide purchaser who purchases property from a recipient, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this part to return the payment, item or property or benefit nor is liable under this part for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section six of this article.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section six of this article to the person who would have been entitled to it were that section or part of that section not preempted.

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