WEST VIRGINIA CODE CHAPTER 42

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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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§42-2-1.

Repealed.

Acts, 1992 Reg. Sess., Ch. 75.

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§42-2-2.

Repealed.

Acts, 1992 Reg. Sess., Ch. 75.

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§42-3-1. Right to elective share.

(a) The surviving spouse of a decedent who dies domiciled in this state has a right of election, against either the will or the intestate share, under the limitations and conditions stated in this part, to take the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other | The elective-share percentage is:

Less than 1 year | Supplemental Amount Only

1 year but less than 2 years | 3% of the augmented estate.

2 years but less than 3 years | 6% of the augmented estate.

3 years but less than 4 years | 9% of the augmented estate.

4 years but less than 5 years | 12% of the augmented estate.

5 years but less than 6 years | 15% of the augmented estate.

6 years but less than 7 years | 18% of the augmented estate.

7 years but less than 8 years | 21% of the augmented estate.

8 years but less than 9 years | 24% of the augmented estate.

9 years but less than 10 years | 27% of the augmented estate.

10 years but less than 11 years | 30% of the augmented estate.

11 years but less than 12 years | 34% of the augmented estate.

12 years but less than 13 years | 38% of the augmented estate.

13 years but less than 14 years | 42% of the augmented estate.

14 years but less than 15 years | 46% of the augmented estate.

15 years or more | 50% of the augmented estate.

(b) If the sum of the amounts described in subdivisions (3) and (4), subsection (b), section two of this article, and subdivisions (1) and (3), subsection (a), section six of this article, and that part of the elective-share amount payable from the decedent's probate and reclaimable

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estates under subsections (b) and (c), section six of this article, is less than $25,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $25,000, minus the sum of the amounts described in said sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections (b) and (c), section six of this article.

(c) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

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§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:

(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

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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.

(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

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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 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

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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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§42-3-3. Right of election personal to surviving spouse.

(a) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection (a), section four of this article. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.

(b) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under subsections (b) and (c), section six of this article and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(1) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need;

(2) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination;

(3) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse, or, if there was no residuary clause or no will of that predeceased spouse, to the persons and in such shares as would succeed to that predeceased spouse's intestate estate as if that predeceased spouse died immediately after the surviving spouse.

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§42-3-3a. Waiver of right to elect; other rights.

(a) The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) He or she did not execute the waiver voluntarily; or

(2) The waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share by each spouse in the property of the other and renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

WV Legislature

§42-3-4. Proceeding for elective share; time limit.

(a) Except as provided in subsection (b) of this section, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must serve a copy of the petition for the elective share on, and must give written notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests may be adversely affected by the taking of the elective share. The decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, against whom the spouse chooses to proceed under subsection (d) of this section, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, in the hands of those persons against whom the spouse chooses to proceed under subsection (d) of this section, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, but is excluded for the purpose of satisfying the elective share amount and the supplemental elective share amount under subsections (b) and (c), section six of this article, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section six of this article. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under section two of this article had relief been secured against all persons subject to contribution.

WV Legislature

(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

WV Legislature

§42-3-5.

Repealed.

Acts, 1993 Reg. Sess., Ch. 169.

WV Legislature

§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

(a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:

(1) Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession;

(2) Amounts included in the augmented estate under subdivision (3), subsection (b), section two of this article;

(3) Amounts included in the augmented estate which would have passed to the spouse but were disclaimed; and

(4) Amounts included in the augmented estate under subdivision (4), subsection (b), section two of this article up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section one of this article appropriate to the length of time the spouse and the decedent were married to each other.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate other than amounts irrevocably transferred within two years before the decedent's death are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(c) If, after the application of subsections (a) and (b) of this section, the elective share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(d) Only original recipients of the reclaimable estate described in subdivision (2), subsection (b), section two of this article, and the donees of the recipients of the reclaimable estate to the extent the original recipients or their donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or supplemental elective-share amount. A person liable to make contribution may

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choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which he or she is liable.

WV Legislature

§42-3-7. Entitlement of spouse; premarital will.

(a) If a testator's surviving spouse married the testator after the testator executed his or her will, the surviving spouse is entitled to receive, as an intestate share no less than the value of the share of the estate he or she would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised or passes to a descendant of such a child, unless:

(1) It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift to a descendant of such a child, abate.

WV Legislature

§42-4-1.

Repealed.

Acts, 1992 Reg. Sess., Ch. 75.

WV Legislature

§42-4-2. Homicide bars acquisition of estate or insurance money.

(a) A person who has been convicted of feloniously killing another, or of conspiracy in the killing of another, may not take or acquire any money or property, real or personal, or interest in the money or property, from the one killed or conspired against, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money or the property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the one killed or conspired against, unless by some rule of law or equity the money or the property would pass to some other person or persons.

(b) A person who has been convicted of an offense causing the death of an incapacitated adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, or convicted of a similar provision of law of another state or the United States, may not take or acquire any money or property, real or personal, or interest in the money or property, from the victim decedent, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money or the property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the decedent, unless by law the money or the property would pass to some other person or persons.

(c) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or incapacitated adult pursuant to section twenty-nine–b, article two, chapter sixty-one of this code, or convicted of a similar provision of law of another state or the United States, may not take or acquire any money or property, real or personal, or any interest in the money or property, from the victim of the offense, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise. The money or the property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the victim, unless by law the money or the property would pass to some other person or persons. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by two persons that would be competent witnesses to a will of the victim, expresses a specific intent to allow the convicted person to inherit or otherwise receive the money, estate or other property of the victim of the offense.

WV Legislature

§42-4-3.

Repealed.

Acts, 1982 Reg. Sess., Ch. 42.

WV Legislature

§42-5-1. No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this article.

WV Legislature

§42-5-2. Beneficiaries of another person's disposition of property.

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

WV Legislature

§42-5-3. Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one half as if one had survived and one half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

WV Legislature

§42-5-4. Insurance policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

WV Legislature

§42-5-5. Article not retroactive.

This article shall not apply to the distribution of the property of a person who has died before it takes effect.

WV Legislature

§42-5-6. Article does not apply if decedent provides otherwise.

This article shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this article.

WV Legislature

§42-5-7. Uniformity of interpretation.

This article shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

WV Legislature

§42-5-8. Short title.

This article may be cited as the Uniform Simultaneous Death Act.

WV Legislature

§42-5-9. Repeal of inconsistent laws.

All laws or parts of laws inconsistent with the provisions of this article are hereby repealed.

WV Legislature

§42-5-10. Severability.

If any of the provisions of this article or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

WV Legislature

§42-6-1. Short title.

This article may be cited as the "Uniform Disclaimer of Property Interests Act".

WV Legislature

§42-6-2. Definitions.

In this article:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property with right of survivorship" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) A trust created pursuant to a statute, judgment or decree which requires the trust to be administered in the manner of an express trust.

WV Legislature

§42-6-3. Scope.

This article applies to disclaimers of any interest in or power over property whenever created.

WV Legislature

§42-6-4. Article supplemented by other law.

(a) Unless displaced by a provision of this article, the principles of law and equity supplement this article.

(b) This article does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than this article.

WV Legislature

§42-6-5. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in writing, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, be acknowledged in such a manner as would authorize a deed to be admitted of record and be delivered or filed in the manner provided in section twelve of this article.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered, filed or recorded pursuant to the provisions of section twelve of this article or when it becomes effective as provided in sections six through eleven, inclusive, of this article, whichever occurs later.

(f) A disclaimer made under this article is not a transfer, assignment or release and relates back for all purposes to the time the disclaimer takes effect pursuant to the provisions of section six of this article.

WV Legislature

§42-6-6. Disclaimer of interest property.

(a) In this section:

(1) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) Except for a disclaimer governed by section seven or eight of this article, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in subdivision (2) of this subsection, the following rules apply:

(A) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

WV Legislature

§42-6-7. Disclaimer of right of survivorship in jointly held property with right of survivorship.

(a) Upon the death of a holder of jointly held property with right of survivorship, a surviving holder may disclaim, in whole or part, the greater of:

(1) A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property with right of survivorship disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

WV Legislature

§42-6-8. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

WV Legislature

§42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

WV Legislature

§42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

WV Legislature

§42-6-11. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

WV Legislature

§42-6-12. Delivery of disclaimer.

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;

(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), inclusive, of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed in the office of the clerk of the county commission of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over the corpus of the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

WV Legislature

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property with right of survivorship, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over the assets subject to the power of appointment.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over assets subject to the power of appointment.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d) or (e) of this section, as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

WV Legislature

§42-6-13. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer of a power over property which is barred by this section is ineffective as a disclaimer: Provided, That a disclaimer of an interest in property which is barred by this section takes effect as a transfer or conveyance of the interest disclaimed to the persons who would have taken the interest under this article had the disclaimer not been barred.

WV Legislature

§42-6-14. Tax qualified disclaimer.

Notwithstanding any other provision of this article, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this article.

WV Legislature

§42-6-15. Recording of disclaimers; failure to record.

(a) A duly executed and acknowledged original or duplicate of the disclaimer may be recorded with the office of the clerk of county commission having jurisdiction to appoint the personal representative of the decedent, in which the trust is located or the trustee resides, in which the person making the beneficiary designation resides, in which the person obligated to distribute the interest resides or in which any of the property or interest disclaimed is located, as the case may be.

(b) If real property or an interest therein is disclaimed, in addition to delivery or filing as provided in section twelve of this article, a fully executed and acknowledged original or duplicate of the disclaimer shall be recorded in the deed books in the office of the clerk of the county commission of the county in which the real property or interest therein disclaimed is located.

(c) Failure to record a disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

WV Legislature

§42-6-16. Application to existing relationships.

Except as otherwise provided in section thirteen of this article, an interest in or power over property existing on the effective date of this article as to which the time for delivering, filing or recording a disclaimer under law superseded by this article has not expired may be disclaimed after the effective date of this article.

WV Legislature

§42-6-17. Uniformity of application and construction.

In applying and construing this uniform article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§42-6-18. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application and, to this end, the provisions of this article are severable.

WV Legislature

§42-6-19. Effective date.

This article takes effect on July 1, 2002.

WV Legislature