WEST VIRGINIA CODE: §44D-4-402

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in a trust instrument, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in §44D-4-408 of this code; or

(C) A trust for a noncharitable purpose, as provided in §44D-4-409 of this code;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with §41-3-8 of this code, a trust is valid regardless of the existence, value, or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in a record during the grantor's lifetime by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

WV Legislature