

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



ENROLLED

HOUSE BILL No. 168

(By Mr. Beneke & Mr. Snyder)



PASSED March 4 1953

In Effect thirty days from Passage



168

ENROLLED
House Bill No. 168

(By MR. BENEKE and MR. SNYDER)

[Passed March 4, 1953; in effect ninety days from passage.]

AN ACT to amend and reenact section nine, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment and recordation of descent.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 9. Establishment and Recordation of Descent.—

2 Where any person having title to an estate of inheritance
3 in real estate within this state has died intestate, or tes-
4 tate, without having devised his real estate, his heirs,
5 or any of them, or any person deriving title from or
6 through such heirs, or any of them, may at any time with-
7 in twenty years after the death of such person present to
8 the circuit court of the county where such real estate, or

9 any part thereof, is situated, a petition, under oath, de-
10 scribing such real estate, setting forth the interest or
11 share of the petitioner and of each other heir of the de-
12 cedent in such real estate, and praying for a decree estab-
13 lishing the right of inheritance thereto, and that all the
14 heirs of the decedent, and other parties in interest may
15 be summoned to show cause why the prayer of the peti-
16 tion should not be granted. There shall also be set out
17 in the petition and be made parties, the heirs or devisees
18 of any person who inherited from the decedent but who
19 has died before the proceeding is instituted, and any pur-
20 chasers or successors in title from such a person, and any
21 holders of liens on the whole property or on the share of
22 any person interested in the property. Upon the presenta-
23 tion of such petition a rule to show cause, returnable with-
24 in such time as the court shall direct, shall be issued
25 accordingly, except in a case where all the interested par-
26 ties unite in such petition or appear and waive service of
27 the rule. Guardians ad litem for all infants, convicts in
28 confinement and insane persons, who may be parties to
29 such proceeding, shall be appointed and attend, and non-

30 resident persons may be proceeded against by order of
31 publication, as in other cases. Upon the return of the
32 rule to show cause the circuit court shall hear the allega-
33 tions and proofs of the parties and determine all the
34 issues raised. The petitioner shall establish the fact of
35 the decedent's death; the place of his residence at the
36 time of his death; his will or intestacy, either generally,
37 or as to the real estate in question; the heirs entitled to
38 inherit the real estate in question; the name, age, resi-
39 dence and relationship to the decedent, of each; and the
40 interest or share of each heir or other person in such real
41 estate. The court, when these facts are established, shall
42 make a decree describing the real estate, and declaring
43 that the right of inheritance thereto has been established
44 to the court's satisfaction, in accordance with the facts
45 which shall be recited in the decree, and that at the death
46 of the testator or intestate certain persons, who shall be
47 named in the decree, were entitled to take the property
48 in certain proportions, which shall also be set out in the
49 decree. A certified copy of such decree shall be recorded
50 in the office of the clerk of the county court of the county

MAR 11 1953
ALMY CLERK

51 or counties in which such real estate is situated, in the
52 record of deeds, and indexed in the general index of deeds
53 in the name of the decedent as if grantor, and in the name
54 of each heir as if grantee, and the fees for such recording
55 and indexing shall be the same as for deeds. From the
56 time when such copy is so recorded, the decree, or the
57 record thereof, shall be conclusive evidence of the facts
58 so declared to be established thereby against all parties
59 to such proceeding.

60 An appeal from such decree shall lie to the supreme
61 court of appeals as in other cases, and any person under
62 disability or proceeded against by publication and not ap-
63 pearing may have the matter reheard as in other cases.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. M. Kenley
Chairman Senate Committee

C. H. Amble
Chairman House Committee

Originated in the House of Delegates

Takes effect *thirty days from* passage.

Howard Meyer
Clerk of the Senate

J. R. Cliff
Clerk of the House of Delegates

Ralph B. Bean
President of the Senate

W. E. Janney
Speaker House of Delegates

The within *approved* this the *11th* day of *March*, 1953.

William C. Marland
Governor



not in the Office of the Secretary of State
of West Virginia
MAR 11 1953
D. PITT O'BRIEN,
SECRETARY OF STATE