WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1015

(By Mr. Brenda + Mr. Harmon) Dated

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Passed February 4, 1982

In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1015
(By Mr. Brenda and Mr. Harman, 33rd Dist.)

[Passed February 4, 1982; in effect ninety days from passage.]

AN ACT to repeal section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter forty-two by adding thereto a new article, designated article six, relating to the uniform disclaimer of property interests act; the right to disclaim interest in property; the time period and procedure for disclaiming; the form of disclaimer; the effect of a disclaimer; certain prohibitions to disclaimer; and application of the article.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter forty-two be amended by adding thereto a new article, designated article six, to read as follows:

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-1. Title.

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

§42-6-2. Right to disclaim interest in property.

A person, or the representative of a deceased, incapacitated
or protected person, to whom any property or interest therein
devolves, by whatever means, may disclaim it in whole or in
part by delivering a written disclaimer under this article. The
right to disclaim exists notwithstanding any limitation on the
interest of the disclaimant in the nature of a spendthrift pro-
vision or similar restriction.

§42-6-3. Time of disclaimer; delivery.

(a) Except as provided in subsection (c) of this section
if the property or interest has devolved to the disclaimant
under a testamentary instrument or by the laws of intestacy,
the disclaimer shall be delivered, as to a present interest, not
later than six months after the death of the deceased owner or
deceased donee of a power of appointment and, as to a future
interest, not later than six months after the event determining
that the taker of the property or interest has become finally
ascertained and his interest is indefeasibly vested. The dis-
claimer shall be delivered in person or mailed by registered or
certified mail to any personal representative, or other fidu-
ciary, of the decedent or the donee of the power, to the holder
of the legal title to which the interest relates or to the person
entitled to the property or interest in the event of disclaimer. A
fully executed and acknowledged copy of the disclaimer shall
be filed and recorded with the probate documents 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.

(b) Except as provided in subsection (c), if the property or
interest has devolved to the disclaimant under a nontesta-
mentary instrument or contract, the disclaimer shall be deliver-
ed as to a present interest, not later than six months after the
effective date of the nontestamentary instrument or contract
and, as to a future interest, not later than six months after the
event determining that the taker of the property or interest
has become finally ascertained and his interest indefeasibly
vested. If the person entitled to disclaim does not have actual
knowledge of the existence of the interest, the disclaimer shall
be delivered not later than six months after he has actual
knowledge of the existence of the interest. The effective date of
a revocable instrument or contract is the date on which the
maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. The disclaimer shall be delivered in person or mailed by registered or certified mail to the person who has legal title to or possession of the interest disclaimed.

(c) In any case, as to a transfer creating an interest in the disclaimant made after the thirty-first day of December, one thousand nine hundred seventy-six, and subject to tax under chapters eleven, twelve or thirteen of the Internal Revenue Code of 1954, as amended, a disclaimer intended as a qualified disclaimer thereunder must specifically so state and must be delivered not later than nine months after the later of the date the transfer is made or the day on which the person disclaiming attains age twenty-one.

(d) A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

(e) If real property or an interest therein is disclaimed, in addition to recording the disclaimer in the county wherein administration is had or commenced, a fully executed and acknowledged copy 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 property or interest disclaimed is located.

§42-6-4. Form of disclaimer.

1 The disclaimer shall (a) describe the property or interest disclaimed, (b) declare the disclaimer and extent thereof, (c) be signed by the disclaimant and (d) be acknowledged in such a manner as would authorize a deed to be admitted to record.

§42-6-5. Effect of disclaimer.

1 (a) If the property or interest devolved to a disclaimant under a testamentary instrument or under the laws of intestacy
and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the disclaimant had predeceased the decedent or, if the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A disclaimer relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be.

(b) If the property or interest devolved to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, (1) it devolves as if the disclaimant had died before the effective date of the instrument or contract; and (2) a future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A disclaimer relates back for all purposes to the effective date of the instrument or contract or the date of the determinative event, as the case may be.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.

§42-6-6. Waiver and bar.

The right to disclaim property or an interest therein is barred by (a) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (b) a written waiver of the right to disclaim, (c) an acceptance of the property or interest or a benefit thereunder or (d) a sale of the property or interest under judicial sale made before the disclaimer is effected.
§42-6-7. Remedy not exclusive.

1 This article does not abridge the right of person to waive,
2 release, disclaim or renounce property or an interest therein
3 under any other statute.

§42-6-8. Application.

1 An interest in property that exists on the effective date
2 of this article as to which, if a present interest, the time for
3 delivering a disclaimer under this article has not expired or,
4 if a future interest, the interest has not become indefeasibly
5 vested or the taker finally ascertained, may be disclaimed
6 within six months after the effective date of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 16th day of February, 1982.

Governor