

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. for
HOUSE BILL No. 2872

(By Delegates Stator + Dawson)



Passed March 6, 1992

In Effect Ninety Days From Passage

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WEST VIRGINIA LEGISLATURE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2872
(By DELEGATES STATON AND DAMRON)

[Passed March 6, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three and four, article fourteen, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article fourteen by adding thereto a new section, designated section five, relating to the substitution of trustees generally; providing for the appointment of a substitute trustee for a trust deed securing a debt or obligation by the party secured by the trust deed, any surety indemnified by such deed, or the assignee or personal representative of such secured party or surety, independent of court action; providing for notice of such substitution by first class mail; recordation of notice; and validation of good faith acts by substitute trustees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SUBSTITUTION OF TRUSTEES; POWERS OF SURVIVING OR REMAINING TRUSTEES.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances; substitution of trustee by party secured by trust deed.

1 (a) When the trustee, or, if there is more than one
2 trustee, one or more of the trustees, in any will, deed
3 or other writing, die or remove beyond the limits of this
4 state, or decline to accept the trust, or having accepted,
5 resign the same, or refuse to act as trustee, or be unable
6 due to physical or mental disability to perform his, her,
7 or their duties under the trust, the circuit court of the
8 county in which such will was admitted to probate, or
9 such deed or other writing is or may be recorded, may,
10 on motion of any party interested, and upon satisfactory
11 evidence of such death, removal, declination, resigna-
12 tion, refusal or inability, appoint a trustee or trustees
13 in the place of the trustee or trustees named in such
14 instrument and so dying, removing, declining, resigning
15 or refusing, or being unable to perform his, her, or their
16 duties under the trust.

17 (b) As an alternative to the method of substitution
18 provided for in subsection (a) of this section, in the case
19 of a trust deed to secure a debt or obligation if the trust
20 deed does not by its terms prescribe a method for
21 substitution, the party secured by the trust deed, or any
22 surety indemnified by the deed, or the assignee or
23 personal representative of any such secured party or
24 surety has the authority, in the event of such death,
25 removal, declination, resignation, refusal or inability as
26 is described in subsection (a), to substitute a trustee or
27 trustees in the place of the trustee or trustees named in
28 such instrument, independent of any court action
29 otherwise required by the provisions of subsection (a).

30 (c) If any such trust, other than a security trust,
31 include real property situate in this state, and the
32 trustee, or, if there be more than one trustee, one or
33 more of the trustees, appointed by or under the will,
34 deed or other writing creating such trust and required
35 under the provisions thereof to act in respect of such real
36 property, be a corporation or association chartered

37 under the laws of any other state or jurisdiction which
 38 is not qualified under the laws of this state to hold
 39 property or transact business in this state, and refuses
 40 or is unable to so qualify, such court may in like manner
 41 appoint an ancillary trustee of such trust to act with
 42 respect to such real property situate in this state
 43 pursuant to, and with all the powers and authorities
 44 granted to the trustee or trustees of such trust by, the
 45 provision of the will, deed or other writing creating such
 46 trust.

**§44-14-2. Procedure for appointment by court or judge;
 appointment by secured party under trust
 deed.**

1 (a) A motion under the provisions of subsection (a) of
 2 the preceding section shall be after ten days' notice to
 3 all persons interested in the execution of the trust other
 4 than the plaintiff in such motion. If any of the parties
 5 on whom such notice is required to be served be under
 6 disability and have no guardian or committee, the court,
 7 judge or clerk shall appoint some discreet and compe-
 8 tent attorney-at-law as guardian ad litem to such person,
 9 on whom notice may be served. If there be such
 10 guardian or committee, the notice shall be served on
 11 him.

12 (b) In the case of a substitution made under subsection
 13 (b) of the preceding section, substituting a trustee or
 14 trustees of a trust deed securing a debt or obligation,
 15 the substitution is effected when the party secured, or
 16 a surety indemnified by the deed, or the assignee or
 17 personal representative of any such secured party or
 18 surety has deposited true copies of the notice of such
 19 substitution in the United States mail, first class postage
 20 prepaid, addressed to the last known addresses of the
 21 grantor or grantors or any other person owing the debt
 22 or obligation, and to the trustee or trustees, and has
 23 presented the original of such notice to the clerk of the
 24 county commission in whose office the trust deed is
 25 recorded, causing such notice to be recorded and
 26 indexed in a general lien book or other such appropriate
 27 book wherein trust deeds or assignments of trust deeds
 28 are recorded. There shall be appended to the notice

29 presented for recordation a certificate by the party
30 making the substitution, certifying that copies of the
31 notice were mailed as required by this subsection, and
32 showing the date of such mailing.

33 (c) It shall not be necessary to give notice under this
34 section to a trustee who has removed from the state,
35 declined to accept the trust, refused to act as trustee,
36 or has resigned, nor to the personal representative of one
37 who has died.

**§44-14-3. Remaining trustees, or personal representative
of sole or surviving trustee, may execute
trust.**

1 The personal representative of a sole or surviving
2 trustee, or if there be more than one trustee, and one
3 or more of them die, resign, or remove from the state,
4 or decline to accept the trust, or refuse to act as such
5 trustee or trustees, the remaining trustee or trustees,
6 may execute the trust, or so much thereof as remained
7 unexecuted at the death, removal, declination, resigna-
8 tion, or refusal aforesaid (whether the trust subject be
9 real or personal property), unless the instrument
10 creating the trust directs otherwise, or some other
11 trustee be appointed for the purpose pursuant to the
12 provisions of this article.

**§44-14-4. Powers and responsibilities of substituted or
remaining trustee.**

1 Any trustee or trustees appointed under authority of
2 this article, if he, she, or they accept, or the personal
3 representative of a sole or surviving trustee, or the
4 surviving or remaining trustee, who has power to
5 execute any trust or the remainder of any trust under
6 authority of this article, shall be vested with all the
7 estates, rights and powers, and charged with all the
8 duties and responsibilities, of the trustee or trustees
9 named in the trust instrument.

**§44-14-5. Validation of good faith acts by substitute
trustees.**

1 This section is enacted to prevent or redress problems
2 which might be caused by the improper appointment of

3 substitute trustees under a trust deed to secure a debt
4 or obligation who in good faith performed their acts as
5 trustees in substantial compliance with the provisions of
6 article one, chapter thirty-eight of this code. With
7 respect to acts performed by such trustees in good faith
8 and in substantial compliance with the statutory law of
9 this state and the terms of their trust deed the otherwise
10 lawful acts of a substitute trustee performed prior to the
11 effective date of this section shall be conclusively
12 presumed to be valid, notwithstanding that the method
13 of appointment of such trustee did not comply with the
14 provisions of a prior enactment of this article.

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

Almer Heck
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell E. Adams
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Walter Burdette
President of the Senate

Bob Cole
Speaker of the House of Delegates

The within is approved..... this the *20th*
day of *March*, 1992.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 5/16/92

Time 9:20 am