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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4312

(By Mr. Speaker, Mr. Kiss, and Delegates Jenkins,
Staton, Varner, Trump and Dalton)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4312

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
JENKINS, STATON, VARNER, TRUMP AND DALTON)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the recording of memoranda of trust with the clerk of the county commission; and specifying requirements for memoranda of trust.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-4a. Memorandum of trust; requirements; recordation.

- 1 (a) A memorandum of trust that satisfies both of the
- 2 following requirements may be presented for recordation
- 3 in the office of the clerk of the county commission of any
- 4 county in which real property that is subject to the trust is
- 5 located:

6 (1) The memorandum shall be executed by the
7 currently acting trustee or trustees of the trust, and, if
8 living, by the settlor or settlors, personally, or by a duly
9 appointed attorney-in-fact or conservator of the settlor or
10 settlors, and shall be acknowledged in the manner a deed
11 must be acknowledged in order to be recorded.

12 (2) The memorandum shall contain at least the
13 following information with respect to the trust:

14 (i) The existence of the trust and the date of the trust;

15 (ii) The names and mailing addresses of the settlor or
16 settlors and of the currently acting trustee or trustees of
17 the trust, the names and mailing addresses of any
18 successor trustee or trustees, and the circumstances under
19 which any successor trustee or trustees will assume trust
20 powers;

21 (iii) The revocability or irrevocability of the trust; and

22 (iv) A verbatim recitation of the trust powers specified
23 in the trust relative to the acquisition, sale, disposition, or
24 encumbering of real property by the trustee or trustees or
25 the conveyance or disposition of real property by the
26 trustee or trustees and any restrictions upon those powers,
27 or a statement that the trust powers include at least all
28 those trust powers contained in section three, article five-a,
29 chapter forty-four of this code as they existed at the date
30 of the execution of the trust.

31 (b) A memorandum of trust may also set forth the
32 substance or actual text of any or all of the provisions of
33 the trust.


34 (c) A memorandum of trust that satisfies the
35 provisions of this section constitutes notice only of the
36 information contained therein.

37 (d) Upon the presentation of a memorandum of trust
38 that satisfies the provisions of this section and the payment
39 of the requisite fee, the clerk shall record the
40 memorandum of trust with the records of deeds and list it
41 in the grantor index under the name of the settlor or

42 settlors and in the grantee index under the names of the
43 then-acting trustee or trustees.

44 (e) Nothing herein shall be construed or deemed to
45 require recordation of any original trust agreement or
46 other governing instrument which establishes the trust
47 identified in the memorandum of trust.

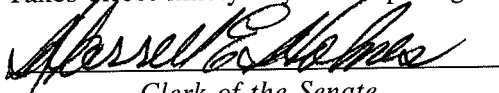
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

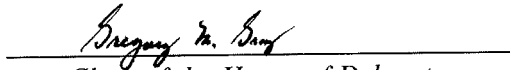

Chairman Senate Committee

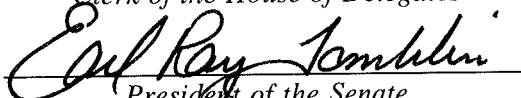

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

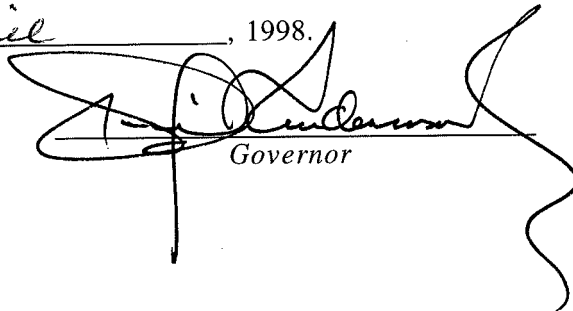

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:40 pm