

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3499

BY DELEGATES FAST, PETITTO, WARNER, LUCAS, C. PRITT,

COOPER AND STEELE

[Passed March 10, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §36-12-11 of the Code of West Virginia, as amended, and to
2 amend and reenact §36-12-13 of said code, all relating to transfer on death deeds; and
3 specifically clarifying that an inter vivos transfer of a piece of real property that is the
4 subject of a transfer on death deed causes the transfer on death deed to be revoked, with
5 or without express language of revocation; and permitting transfer on death deeds to
6 specify that the possessory interest conveyed can, if so provided in the language of the
7 deed, transfer a joint tenancy with right of survivorship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

§36-12-11. Revocation by instrument authorized; revocation by act not permitted.

1 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded
2 transfer on death deed, or any part of it, if the instrument:

3 (1) Is one of the following:

4 (A) A transfer on death deed that revokes the deed or part of the deed expressly or by
5 inconsistency;

6 (B) An instrument of revocation that expressly revokes the deed or part of the deed; or

7 (C) As to property that was described in a transfer on death deed made by a transferor
8 and previously recorded, an inter vivos deed made by the same transferor that conveys the same
9 real estate, or part thereof, whether or not the inter vivos deed expressly revokes the transfer on
10 death deed, or part of the deed; and

11 (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked
12 and recorded before the transferor's death in the public records in the office of the clerk of the
13 county commission of the county where the deed is recorded.

14 (b) If a transfer on death deed is made by more than one transferor revocation by a
15 transferor does not affect the deed as to the interest of another transferor; and a deed of joint
16 owners is revoked only if it is revoked by all of the living joint owners.

17 (c) After a transfer on death deed is recorded it may not be revoked by a revocatory act
18 on the deed.

19 (d) This section does not limit the effect of an *inter vivos* transfer of the property.

36-12-13. Effect of transfer on death deed at transferor's death

1 (a) Except as otherwise provided in the transfer on death deed in this article, §41-1-6 of
2 this code, §41-3-3 of this code, §42-3-1, *et seq.* of this code, §42-§4-2 of this code, or §42-5-1, *et*
3 *seq.* of this code, on the death of the transferor the following rules apply to property that is the
4 subject of a transfer on death deed and owned by the transferor at death:

5 (1) Subject to subdivision (2) of this subsection, the interest in the property is transferred
6 to the designated beneficiary in accordance with the deed.

7 (2) The interest of a designated beneficiary, when there is only one beneficiary designated,
8 is contingent on the designated beneficiary surviving the transferor. The interest of a designated
9 beneficiary that fails to survive the transferor, when there is only one beneficiary designated,
10 lapses.

11 (3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the
12 beneficiaries in equal and undivided shares, unless the deed specifies otherwise, as tenants in
13 common or with right of survivorship if the deed specifies joint tenancy with right of survivorship.

14 (4) If the transferor has identified two or more designated beneficiaries to receive
15 concurrent interests in the property, the share of one which lapses or fails for any reason is
16 transferred to the other, or to the others in proportion to the interest of each in the remaining part
17 of the property held concurrently as tenants in common or with right of survivorship if the deed
18 specifies joint tenancy with the right of survivorship.

19 (b) Subject to §39-2-1, *et seq.*, and §38-1-1, *et seq.* of this code, a beneficiary takes the
20 property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens
21 and other interests to which the property is subject at the transferor's death. For purposes of this

22 subsection, §39-2-1, *et seq.*, and §38-1-1, *et seq.* of this code, the recording of the transfer on
23 death deed is deemed to have occurred at the transferor's death.

24 (c) If a transferor is a joint owner with other joint owners with right of survivorship and is:

25 (1) Survived by one or more other joint owners, the property that is the subject of a transfer
26 on death deed belongs to the surviving joint owner or owners with right of survivorship; or

27 (2) The last surviving joint owner, the transfer on death deed is effective.

28 (d) If a transferor is an owner with other owners as tenants in common, the transfer on
29 death deed is only effective as to the interest in the property which was held by the transferor.

30 (e) A transfer on death deed transfers property without covenant or warranty of title even
31 if the deed contains a contrary provision.

32 (f) The amendments to this section, enacted during the 2023 regular session of the
33 Legislature, shall apply only to transfer on death deeds recorded after the effective date of this
34 section.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor