

SB484

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** 484

(By Senator Snyder, et al)

**PASSED** March 9, 2002

**In Effect** July 1, 2002. ~~██████████~~

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 484**

(SENATORS SNYDER, CALDWELL, FANNING, MINARD,  
UNGER AND MINEAR, *original sponsors*)

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[Passed March 9, 2002; to take effect July 1, 2002.]

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AN ACT to amend and reenact article six, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the uniform disclaimer of property interests act.

*Be it enacted by the Legislature of West Virginia:*

That article six, 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:

**ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.**

**§42-6-1. Short title.**

- 1 This article may be cited as the "Uniform Disclaimer of
- 2 Property Interests Act".

§42-6-2. Definitions.

1 In this article:

2 (1) "Disclaimant" means the person to whom a dis-  
3 claimed interest or power would have passed had the  
4 disclaimer not been made.

5 (2) "Disclaimed interest" means the interest that would  
6 have passed to the disclaimant had the disclaimer not been  
7 made.

8 (3) "Disclaimer" means the refusal to accept an interest  
9 in or power over property.

10 (4) "Fiduciary" means a personal representative, trustee,  
11 agent acting under a power of attorney or other person  
12 authorized to act as a fiduciary with respect to the prop-  
13 erty of another person.

14 (5) "Jointly held property with right of survivorship"  
15 means property held in the name of two or more persons  
16 under an arrangement in which all holders have concur-  
17 rent interests and under which the last surviving holder is  
18 entitled to the whole of the property.

19 (6) "Person" means an individual, corporation, business  
20 trust, estate, trust, partnership, limited liability company,  
21 association, joint venture, government; governmental  
22 subdivision, agency or instrumentality; public corporation  
23 or any other legal or commercial entity.

24 (7) "State" means a state of the United States, the  
25 District of Columbia, Puerto Rico, the United States  
26 Virgin Islands or any territory or insular possession  
27 subject to the jurisdiction of the United States. The term  
28 includes an Indian tribe or band, or Alaskan native village,  
29 recognized by federal law or formally acknowledged by a  
30 state.

31 (8) "Trust" means:

32 (A) An express trust, charitable or noncharitable, with  
33 additions thereto, whenever and however created; and

34 (B) A trust created pursuant to a statute, judgment or  
35 decree which requires the trust to be administered in the  
36 manner of an express trust.

**§42-6-3. Scope.**

1 This article applies to disclaimers of any interest in or  
2 power over property whenever created.

**§42-6-4. Article supplemented by other law.**

1 (a) Unless displaced by a provision of this article, the  
2 principles of law and equity supplement this article.

3 (b) This article does not limit any right of a person to  
4 waive, release, disclaim or renounce an interest in or  
5 power over property under a law other than this article.

**§42-6-5. Power to disclaim; general requirements; when irrevocable.**

1 (a) A person may disclaim, in whole or part, any interest  
2 in or power over property, including a power of appoint-  
3 ment. A person may disclaim the interest or power even if  
4 its creator imposed a spendthrift provision or similar  
5 restriction on transfer or a restriction or limitation on the  
6 right to disclaim.

7 (b) Except to the extent a fiduciary's right to disclaim is  
8 expressly restricted or limited by another statute of this  
9 state or by the instrument creating the fiduciary relation-  
10 ship, a fiduciary may disclaim, in whole or part, any  
11 interest in or power over property, including a power of  
12 appointment, whether acting in a personal or representa-  
13 tive capacity. A fiduciary may disclaim the interest or  
14 power even if its creator imposed a spendthrift provision  
15 or similar restriction on transfer or a restriction or limita-  
16 tion on the right to disclaim, or an instrument other than

17 the instrument that created the fiduciary relationship  
18 imposed a restriction or limitation on the right to disclaim.

19 (c) To be effective, a disclaimer must be in writing,  
20 declare the disclaimer, describe the interest or power  
21 disclaimed, be signed by the person making the disclaimer,  
22 be acknowledged in such a manner as would authorize a  
23 deed to be admitted of record and be delivered or filed in  
24 the manner provided in section twelve of this article.

25 (d) A partial disclaimer may be expressed as a fraction,  
26 percentage, monetary amount, term of years, limitation of  
27 a power or any other interest or estate in the property.

28 (e) A disclaimer becomes irrevocable when it is deliv-  
29 ered, filed or recorded pursuant to the provisions of  
30 section twelve of this article or when it becomes effective  
31 as provided in sections six through eleven, inclusive, of  
32 this article, whichever occurs later.

33 (f) A disclaimer made under this article is not a transfer,  
34 assignment or release and relates back for all purposes to  
35 the time the disclaimer takes effect pursuant to the  
36 provisions of section six of this article.

**§42-6-6. Disclaimer of interest property.**

1 (a) In this section:

2 (1) "Time of distribution" means the time when a  
3 disclaimed interest would have taken effect in possession  
4 or enjoyment.

5 (2) "Future interest" means an interest that takes effect  
6 in possession or enjoyment, if at all, later than the time of  
7 its creation.

8 (b) Except for a disclaimer governed by section seven or  
9 eight of this article, the following rules apply to a dis-  
10 claimer of an interest in property:

11 (1) The disclaimer takes effect as of the time the instru-  
12 ment creating the interest becomes irrevocable or, if the

13 interest arose under the law of intestate succession, as of  
14 the time of the intestate's death.

15 (2) The disclaimed interest passes according to any  
16 provision in the instrument creating the interest providing  
17 for the disposition of the interest, should it be disclaimed,  
18 or of disclaimed interests in general.

19 (3) If the instrument does not contain a provision  
20 described in subdivision (2) of this subsection, the follow-  
21 ing rules apply:

22 (A) If the disclaimant is an individual, the disclaimed  
23 interest passes as if the disclaimant had died immediately  
24 before the time of distribution. However, if, by law or  
25 under the instrument, the descendants of the disclaimant  
26 would share in the disclaimed interest by any method of  
27 representation had the disclaimant died before the time of  
28 distribution, the disclaimed interest passes only to the  
29 descendants of the disclaimant who survive the time of  
30 distribution.

31 (B) If the disclaimant is not an individual, the disclaimed  
32 interest passes as if the disclaimant did not exist.

33 (4) Upon the disclaimer of a preceding interest, a future  
34 interest held by a person other than the disclaimant takes  
35 effect as if the disclaimant had died or ceased to exist  
36 immediately before the time of distribution, but a future  
37 interest held by the disclaimant is not accelerated in  
38 possession or enjoyment.

**§42-6-7. Disclaimer of right of survivorship in jointly held  
property with right of survivorship.**

1 (a) Upon the death of a holder of jointly held property  
2 with right of survivorship, a surviving holder may dis-  
3 claim, in whole or part, the greater of:

4 (1) A fractional share of the property determined by  
5 dividing the number one by the number of joint holders

6 alive immediately before the death of the holder to whose  
7 death the disclaimer relates; or

8 (2) All of the property except that part of the value of the  
9 entire interest attributable to the contribution furnished  
10 by the disclaimant.

11 (b) A disclaimer under subsection (a) of this section takes  
12 effect as of the death of the holder of jointly held property  
13 to whose death the disclaimer relates.

14 (c) An interest in jointly held property with right of  
15 survivorship disclaimed by a surviving holder of the  
16 property passes as if the disclaimant predeceased the  
17 holder to whose death the disclaimer relates.

**§42-6-8. Disclaimer of interest by trustee.**

1 If a trustee disclaims an interest in property that other-  
2 wise would have become trust property, the interest does  
3 not become trust property.

**§42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.**

1 If a holder disclaims a power of appointment or other  
2 power not held in a fiduciary capacity, the following rules  
3 apply:

4 (1) If the holder has not exercised the power, the dis-  
5 claimer takes effect as of the time the instrument creating  
6 the power becomes irrevocable.

7 (2) If the holder has exercised the power and the dis-  
8 claimer is of a power other than a presently exercisable  
9 general power of appointment, the disclaimer takes effect  
10 immediately after the last exercise of the power.

11 (3) The instrument creating the power is construed as if  
12 the power expired when the disclaimer became effective.

**§42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.**

1 (a) A disclaimer of an interest in property by an ap-  
2 pointee of a power of appointment takes effect as of the  
3 time the instrument by which the holder exercises the  
4 power becomes irrevocable.

5 (b) A disclaimer of an interest in property by an object or  
6 taker in default of an exercise of a power of appointment  
7 takes effect as of the time the instrument creating the  
8 power becomes irrevocable.

**§42-6-11. Disclaimer of power held in fiduciary capacity.**

1 (a) If a fiduciary disclaims a power held in a fiduciary  
2 capacity which has not been exercised, the disclaimer  
3 takes effect as of the time the instrument creating the  
4 power becomes irrevocable.

5 (b) If a fiduciary disclaims a power held in a fiduciary  
6 capacity which has been exercised, the disclaimer takes  
7 effect immediately after the last exercise of the power.

8 (c) A disclaimer under this section is effective as to  
9 another fiduciary if the disclaimer so provides and the  
10 fiduciary disclaiming has the authority to bind the estate,  
11 trust or other person for whom the fiduciary is acting.

**§42-6-12. Delivery of disclaimer.**

1 (a) In this section, "beneficiary designation" means an  
2 instrument, other than an instrument creating a trust,  
3 naming the beneficiary of:

4 (1) An annuity or insurance policy;

5 (2) An account with a designation for payment on death;

6 (3) A security registered in beneficiary form;

7 (4) A pension, profit-sharing, retirement or other  
8 employment-related benefit plan; or

9 (5) Any other nonprobate transfer at death.



10 (b) Subject to subsections (c) through (l), inclusive, of  
11 this section, delivery of a disclaimer may be effected by  
12 personal delivery, first-class mail or any other method  
13 likely to result in its receipt.

14 (c) In the case of an interest created under the law of  
15 intestate succession or an interest created by will, other  
16 than an interest in a testamentary trust:

17 (1) A disclaimer must be delivered to the personal  
18 representative of the decedent's estate; or

19 (2) If no personal representative is then serving, it must  
20 be filed in the office of the clerk of the county commission  
21 of the county in which proceedings for the administration  
22 of the estate of the deceased owner or deceased donee of  
23 the power have been commenced.

24 (d) In the case of an interest in a testamentary trust:

25 (1) A disclaimer must be delivered to the trustee then  
26 serving or, if no trustee is then serving, to the personal  
27 representative of the decedent's estate; or

28 (2) If no trustee is then serving, it must be filed in the  
29 office of the clerk of the county commission of the county  
30 in which proceedings for the administration of the estate  
31 of the deceased owner or deceased donee of the power have  
32 been commenced.

33 (e) In the case of an interest in an inter vivos trust:

34 (1) A disclaimer must be delivered to the trustee then  
35 serving;

36 (2) If no trustee is then serving, it must be filed in the  
37 office of the clerk of the county commission of the county  
38 having in rem jurisdiction over the corpus of the trust; or

39 (3) If the disclaimer is made before the time the instru-  
40 ment creating the trust becomes irrevocable, it must be  
41 delivered to the settlor of a revocable trust or the trans-  
42 feror of the interest.

43 (f) In the case of an interest created by a beneficiary  
44 designation made before the time the designation becomes  
45 irrevocable, a disclaimer must be delivered to the person  
46 making the beneficiary designation.

47 (g) In the case of an interest created by a beneficiary  
48 designation made after the time the designation becomes  
49 irrevocable, a disclaimer must be delivered to the person  
50 obligated to distribute the interest.

51 (h) In the case of a disclaimer by a surviving holder of  
52 jointly held property with right of survivorship, the  
53 disclaimer must be delivered to the person to whom the  
54 disclaimed interest passes.

55 (i) In the case of a disclaimer by an object or taker in  
56 default of exercise of a power of appointment at any time  
57 after the power was created:

58 (1) The disclaimer must be delivered to the holder of the  
59 power or to the fiduciary acting under the instrument that  
60 created the power; or

61 (2) If no fiduciary is then serving, it must be filed in the  
62 office of the clerk of the county commission of the county  
63 having in rem jurisdiction over the assets subject to the  
64 power of appointment.

65 (j) In the case of a disclaimer by an appointee of a  
66 nonfiduciary power of appointment:

67 (1) The disclaimer must be delivered to the holder, the  
68 personal representative of the holder's estate or to the  
69 fiduciary under the instrument that created the power; or

70 (2) If no fiduciary is then serving, it must be filed in the  
71 office of the clerk of the county commission of the county  
72 having in rem jurisdiction over assets subject to the power  
73 of appointment.

74 (k) In the case of a disclaimer by a fiduciary of a power  
75 over a trust or estate, the disclaimer must be delivered as

76 provided in subsection (c), (d) or (e) of this section, as if the  
77 power disclaimed were an interest in property.

78 (l) In the case of a disclaimer of a power by an agent, the  
79 disclaimer must be delivered to the principal or the princi-  
80 pal's representative.

**§42-6-13. When disclaimer barred or limited.**

1 (a) A disclaimer is barred by a written waiver of the  
2 right to disclaim.

3 (b) A disclaimer of an interest in property is barred if  
4 any of the following events occur before the disclaimer  
5 becomes effective:

6 (1) The disclaimant accepts the interest sought to be  
7 disclaimed;

8 (2) The disclaimant voluntarily assigns, conveys, encum-  
9 bers, pledges or transfers the interest sought to be dis-  
10 claimed or contracts to do so; or

11 (3) A judicial sale of the interest sought to be disclaimed  
12 occurs.

13 (c) A disclaimer, in whole or part, of the future exercise  
14 of a power held in a fiduciary capacity is not barred by its  
15 previous exercise.

16 (d) A disclaimer, in whole or part, of the future exercise  
17 of a power not held in a fiduciary capacity is not barred by  
18 its previous exercise unless the power is exercisable in  
19 favor of the disclaimant.

20 (e) A disclaimer of a power over property which is barred  
21 by this section is ineffective as a disclaimer: *Provided*,  
22 That a disclaimer of an interest in property which is  
23 barred by this section takes effect as a transfer or convey-  
24 ance of the interest disclaimed to the persons who would  
25 have taken the interest under this article had the dis-  
26 claimer not been barred.

**§42-6-14. Tax qualified disclaimer.**

1 Notwithstanding any other provision of this article, if as  
2 a result of a disclaimer or transfer the disclaimed or  
3 transferred interest is treated pursuant to the provisions of  
4 Title 26 of the United States Code, as now or hereafter  
5 amended, or any successor statute thereto, and the regula-  
6 tions promulgated thereunder, as never having been  
7 transferred to the disclaimant, then the disclaimer or  
8 transfer is effective as a disclaimer under this article.

**§42-6-15. Recording of disclaimers; failure to record.**

1 (a) A duly executed and acknowledged original or  
2 duplicate of the disclaimer may be recorded with the office  
3 of the clerk of county commission having jurisdiction to  
4 appoint the personal representative of the decedent, in  
5 which the trust is located or the trustee resides, in which  
6 the person making the beneficiary designation resides, in  
7 which the person obligated to distribute the interest  
8 resides or in which any of the property or interest dis-  
9 claimed is located, as the case may be.

10 (b) If real property or an interest therein is disclaimed,  
11 in addition to delivery or filing as provided in section  
12 twelve of this article, a fully executed and acknowledged  
13 original or duplicate of the disclaimer shall be recorded in  
14 the deed books in the office of the clerk of the county  
15 commission of the county in which the real property or  
16 interest therein disclaimed is located.

17 (c) Failure to record a disclaimer does not affect its  
18 validity as between the disclaimant and persons to whom  
19 the property interest or power passes by reason of the  
20 disclaimer.

**§42-6-16. Application to existing relationships.**

1 Except as otherwise provided in section thirteen of this  
2 article, an interest in or power over property existing on  
3 the effective date of this article as to which the time for

4 delivering, filing or recording a disclaimer under law  
5 superseded by this article has not expired may be dis-  
6 claimed after the effective date of this article.

**§42-6-17. Uniformity of application and construction.**

1 In applying and construing this uniform article, consid-  
2 eration must be given to the need to promote uniformity of  
3 the law with respect to its subject matter among states  
4 that enact it.

**§42-6-18. Severability clause.**

1 If any provision of this article or its application to any  
2 person or circumstance is held invalid, the invalidity does  
3 not affect other provisions or applications of this article  
4 which can be given effect without the invalid provision or  
5 application and, to this end, the provisions of this article  
6 are severable.

**§42-6-19. Effective date.**

1 This article takes effect on the first day of July, two  
2 thousand two.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2002.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *3rd*  
Day of *April*, 2002.  
*[Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/02

Time 3:10 pm