

Senate Bill No. 675

(By Senators Palumbo, Wills, Browning,
Fanning, Foster, Jenkins, Kirkendoll, Klempa,
Minard, Snyder, Unger, Williams and Barnes)

[Originating in the Committee on the Judiciary;
reported February 27, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-16-8, §37-16-9 and §37-16-10, all relating to the creation of a transfer on death deed; defining terms; setting requirements for an affidavit of transfer on death deed; detailing transfer on death; requiring verification of the affidavit; requiring that the affidavit be recorded; proclaiming that no consideration is necessary for a transfer on death; permitting revocation; providing that transfer only occurs to the named transferee; creating provisions for trustees of trusts in transfers on death; stating certain requirements for finalizing the transfer on

death; setting certain standards, characteristics and ramifications for transfer on death designation affidavits; and creating a misdemeanor offense for knowingly and intentionally making a false statement in an affidavit required by this article.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-16-8, §37-16-9 and §37-16-10, all to read as follows:

ARTICLE 16. TRANSFER ON DEATH DEED.

§37-16-1. Definitions.

1 As used in this article, unless the context clearly indi-
2 cates otherwise:

3 (1) “Survivorship tenancy” means an ownership of real
4 property or any interest in real property by two or more
5 persons that is created by executing a deed pursuant to West
6 Virginia law;

7 (2) “Survivorship tenant” means one of the owners of
8 real property or any interest in real property in a
9 survivorship tenancy;

10 (3) “Transfer on death designation affidavit” or “affida-
11 vit” means an affidavit executed under this article; and

12 (4) “Transfer on death beneficiary” or “transfer on death
13 beneficiaries” means the beneficiary or beneficiaries desig-
14 nated in a transfer on death designation affidavit.

§37-16-2. Transfer on death beneficiary affidavit.

1 (a) Any individual who, under West Virginia Code or the
2 common law of this state, owns real property or any interest
3 in real property as a sole owner, as a tenant in common, or as
4 a survivorship tenant, may designate the entire interest, or
5 any specified part that is less than the entire interest, in that
6 real property as transferable on death to a designated
7 beneficiary or beneficiaries by executing, together with the
8 individual’s spouse, if any, a transfer on death designation
9 affidavit consistent with the requirements of this article. The
10 designation of a transfer on death beneficiary has no effect
11 on the present ownership of real property, and a person
12 designated as a transfer on death beneficiary has no interest
13 in the real property until the death of the owner of the
14 interest.

15 (b) Any transfer on death of real property or of an
16 interest in real property that results from a transfer on death
17 designation affidavit designating a transfer on death benefi-
18 ciary is not testamentary. That transfer on death shall

19 supersede any attempted testate or intestate transfer of that
20 real property or interest in real property. If the affidavit is
21 executed, pursuant to this article, by an individual together
22 with the individual's spouse, if any, the rights of the spouse
23 are subordinate to the vesting of title to the interest in the
24 real property in the transfer on death beneficiary or benefi-
25 ciaries designated under this article. The execution and
26 recording of a transfer on death designation affidavit shall
27 be effective to bar the vesting of any rights of dower in a
28 subsequent spouse of the owner of the real property who
29 executed that affidavit unless the affidavit is revoked or
30 changed.

31 (c) A fee simple title or any fractional interest in a fee
32 simple title may be subjected to a transfer on death designa-
33 tion affidavit. The affidavit shall include, at a minimum:

34 (1) A description of the real property the title to which is
35 affected by the affidavit and a reference to an instrument of
36 record containing that description;

37 (2) A statement designating one or more persons, identi-
38 fied by name, as transfer on death beneficiary or beneficia-
39 ries;

40 (3) A statement by the individual executing the affidavit
41 that the individual is the person appearing on the record of
42 the real property as the owner of the real property or interest
43 in the real property at the time of the recording of the
44 affidavit and the marital status of that owner. If the owner
45 is married, the affidavit shall include a statement by the
46 owner's spouse stating that the spouse's rights are subordi-
47 nate to the vesting of title to the real property or interest in
48 the real property in the transfer on death beneficiary or
49 beneficiaries designated in the affidavit; and

50 (4) If less than the entire interest in the real property is
51 to be transferred on death under the affidavit, a statement of
52 the specific interest or part of the interest in the real prop-
53 erty that is to be so transferred.

54 (d) A transfer on death designation affidavit may contain
55 a designation of one or more persons as contingent transfer
56 on death beneficiaries, who shall take the interest of the
57 deceased owner that would otherwise have passed to the
58 transfer on death beneficiary if that named transfer on death
59 beneficiary does not survive the deceased owner or is not in
60 existence on the date of death of the deceased owner. Persons

61 designated as contingent transfer on death beneficiaries shall
62 be identified in the affidavit by name.

63 (e) Any transfer on death beneficiary or contingent
64 transfer on death beneficiary may be a natural or legal
65 person, including, but not limited to, a bank as trustee of a
66 trust, except that if two or more transfer on death beneficia-
67 ries are designated as survivorship tenants, all of those
68 beneficiaries shall be natural persons and if two or more
69 contingent transfer on death beneficiaries are designated as
70 survivorship tenants, all of those contingent beneficiaries
71 shall be natural persons. A natural person who is designated
72 a transfer on death beneficiary or contingent transfer on
73 death beneficiary solely in that natural person's capacity as
74 a trustee of a trust is not considered a natural person for
75 purposes of designating the transfer on death beneficiaries
76 or contingent transfer on death beneficiaries as survivorship
77 tenants.

78 (f) The affidavit shall meet all the requirements of this
79 article and be recorded in the office of the clerk of the county
80 commission in the county in which the real property is
81 located, and, when so recorded, the affidavit or a certified
82 copy of the affidavit shall be evidence of the transfer on

83 death beneficiary or beneficiaries so designated in the
84 affidavit insofar as the affidavit affects title to the real
85 property.

§37-16-3. Verification required.

1 A transfer on death designation affidavit shall be verified
2 before a notary public or any other person authorized to
3 administer oaths.

§37-16-4. Recordation.

1 The county commission of the county in which a transfer
2 on death designation affidavit is offered for recording shall
3 receive the affidavit and cause it to be recorded in the same
4 manner as deeds are recorded. The county commission shall
5 collect a fee for recording the affidavit in the same amount
6 as the fee for recording deeds. The county commission shall
7 index the affidavit in the name of the owner of record of the
8 real property or interest in the real property who executed
9 the affidavit.

10 In order to be effective, the affidavit shall be recorded
11 with the county commission as described in this article prior
12 to the death of the individual who executed the affidavit.

§37-16-5. Consideration not required; revocation without consent.

1 A transfer on death designation affidavit need not be
2 supported by consideration and need not be delivered to the
3 transfer on death beneficiary or beneficiaries designated in
4 the affidavit to be effective.

5 The designation in a transfer on death designation
6 affidavit of any transfer on death beneficiary may be revoked
7 or changed at any time, without the consent of that transfer
8 on death beneficiary, by the owner of the interest or by the
9 surviving survivorship tenants of the interest, by executing
10 and recording, prior to the death of the owner of the interest
11 or of the surviving survivorship tenants of the interest, as the
12 case may be, a new transfer on death designation affidavit
13 stating the revocation or change in the designation. The new
14 transfer on death designation affidavit shall automatically
15 supersede and revoke all prior recorded transfer on death
16 designation affidavits with respect to the real property or the
17 interest in real property identified in the new affidavit,
18 provided that the prior recorded affidavit was executed
19 before the later recorded affidavit.

§37-16-6. Transfer at death.

1 (a) Transfer under a transfer on death designation
2 affidavit must follow this section. First, the type of owner-

3 ship interest must be evaluated and the affidavit shall be
4 treated as follows:

5 (1) If an individual who owns real property or an interest
6 in real property as a sole owner or as a tenant in common
7 executes a transfer on death designation affidavit, upon the
8 death of that individual, title to the real property or interest
9 in the real property specified in the affidavit vests in the
10 transfer on death beneficiary or beneficiaries designated in
11 the affidavit, subject to the other requirements in this article.

12 (2) If an individual who owns real property or an interest
13 in real property as a survivorship tenant executes a transfer
14 on death designation affidavit, upon the death of that
15 individual or of one but not all of the surviving survivorship
16 tenants, title to the real property or interest in the real
17 property specified in the affidavit vests in the surviving
18 survivorship tenant or tenants. Upon the death of the last
19 surviving survivorship tenant, title to the real property or
20 interest in the real property vests in the transfer on death
21 beneficiary or beneficiaries designated in the affidavit,
22 subject to the other requirements in this article.

23 (b) Transfer then occurs as follows and subject to the
24 following conditions:

25 (1) An interest of a deceased owner shall be transferred
26 to the transfer on death beneficiaries who are identified in
27 the affidavit by name and who survive the deceased owner or
28 that are in existence on the date of the deceased owner's
29 death. If there is a designation of more than one transfer on
30 death beneficiary, the beneficiaries shall take title to the
31 interest in equal shares as tenants in common, unless the
32 deceased owner has specifically designated other than equal
33 shares or has designated that the beneficiaries take title as
34 survivorship tenants.

35 (2) If a transfer on death beneficiary does not survive the
36 deceased owner or is not in existence on the date of the
37 deceased owner's death, and the deceased owner has desig-
38 nated one or more persons as contingent transfer on death
39 beneficiaries, the designated contingent transfer on death
40 beneficiaries shall take the same interest that would have
41 passed to the transfer on death beneficiary had that transfer
42 on death beneficiary survived the deceased owner or been in
43 existence on the date of the deceased owner's death.

44 (3) If none of the designated transfer on death beneficia-
45 ries survives the deceased owner or is in existence on the
46 date of the deceased owner's death and no contingent

47 transfer on death beneficiaries have been designated or have
48 survived the deceased owner, or are in existence on the date
49 of death of the deceased owner, the interest of the deceased
50 owner shall be distributed as part of the probate estate of the
51 deceased owner of the interest.

52 (4) If there are two or more transfer on death beneficia-
53 rics and the deceased owner has designated that title to the
54 interest in the real property be taken by those beneficiaries
55 as survivorship tenants, no designated contingent transfer on
56 death beneficiaries shall take title to the interest unless none
57 of the transfer on death beneficiaries survives the deceased
58 owner on the date of death of the deceased owner.

59 (5) If the owners hold title to the interest in a
60 survivorship tenancy, the death of all except the last
61 survivorship tenant automatically terminates and nullifies
62 any transfer on death beneficiary designations made solely
63 by the deceased survivorship tenant or tenants without
64 joinder by the last surviving survivorship tenant. The
65 termination or nullification of any transfer on death benefi-
66 ciary designations is effective as of the date of death of a
67 deceased survivorship tenant. No affirmative act of revoca-
68 tion is required of the last surviving survivorship tenant for

69 the termination or nullification of the transfer on death
70 beneficiary designations to occur. If the last surviving
71 survivorship tenant dies with no transfer on death benefi-
72 ciary designation, the entire interest of that last surviving
73 survivorship tenant shall be distributed as part of the
74 tenant's probate estate.

75 (6) A transfer on death beneficiary takes only the interest
76 that the deceased owner or owners of the interest held on the
77 date of death, subject to all encumbrances, reservations, and
78 exceptions. No rights of any lien holder, including, but not
79 limited to, any deed of trust, judgment creditor or mechanic's
80 lien holder, shall be affected by the designation of a transfer
81 on death beneficiary. If any lien holder takes action to
82 enforce the lien, by foreclosure or otherwise through a court
83 proceeding, it is not necessary to join any transfer on death
84 beneficiary as a party defendant in the action unless the
85 transfer on death beneficiary has another interest in the real
86 property.

87 (c) Upon the death of an individual who executed a
88 transfer on death affidavit, the transfer of a deceased
89 owner's real property or interest in real property as desig-
90 nated in a transfer on death affidavit shall be recorded by

91 presenting to the clerk of the county commission of the
92 county in which the real property is located and filing with
93 that county an affidavit of confirmation executed by any
94 transfer on death beneficiary to whom the transfer is made.
95 The affidavit of confirmation shall be verified before a
96 notary public or other person authorized to administer oaths
97 and shall be accompanied by a certified copy of the death
98 certificate for the deceased owner. The affidavit of confirma-
99 tion shall contain all of the following information:

100 (1) The name and address of each transfer on death
101 beneficiary who survived the deceased owner or that is in
102 existence on the date of death of the deceased owner. If a
103 named beneficiary was designated as a transfer on death
104 beneficiary solely in that person's capacity as a trustee of a
105 trust and that trustee subsequently has been replaced by a
106 successor trustee, the affidavit of confirmation shall include
107 the name and address of the successor trustee and shall be
108 accompanied by a copy of a recorded successor trustee
109 affidavit;

110 (2) The date of death of the deceased owner;

111 (3) A description of the subject real property or interest
112 in real property; and

113 (4) The name of each transfer on death beneficiary who
114 has not survived the deceased owner or that is not in exis-
115 tence on the date of death of the deceased owner.

116 (d) The affidavit of confirmation shall be accompanied by
117 a certified copy of the death certificate for each transfer on
118 death beneficiary who has not survived the deceased owner.

119 (e) The clerk of the county commission shall make an
120 index reference in the record of deeds to any affidavit of
121 confirmation filed with the county commission pursuant to
122 this section.

§37-16-7. Named beneficiary must survive to be effective.

1 Upon the death of any individual who owns real property
2 or an interest in real property that is subject to a transfer on
3 death beneficiary designation made under a transfer on
4 death designation affidavit as provided in this article, that
5 real property or interest in real property of the deceased
6 owner shall be transferred only to the transfer on death
7 beneficiary or beneficiaries who are identified in the affida-
8 vit by name and who survive the deceased owner or that are
9 in existence on the date of death of the deceased owner.

§37-16-8. Special beneficiary determination for named trustee.

1 For purposes of this article, if a natural or legal person
2 designated by name in the affidavit as a transfer on death
3 beneficiary or as a contingent transfer on death beneficiary
4 solely in that person's capacity as a trustee of a trust has
5 died, has resigned or otherwise has been replaced by a
6 successor trustee of the trust on the date of death of the
7 deceased owner, the successor trustee of the trust shall be
8 considered the transfer on death beneficiary or contingent
9 transfer on death beneficiary in existence on the date of
10 death of the deceased owner in full compliance with this
11 article, notwithstanding that the successor trustee is not
12 named as a transfer on death beneficiary or contingent
13 transfer on death beneficiary in the affidavit.

§37-16-9. Liberally construed.

1 Any transfer on death designation affidavit containing
2 language that shows a clear intent to designate a transfer on
3 death beneficiary shall be liberally construed to do so. Any
4 survivorship clause in a deed recorded before or after the
5 effective date of this statute in an office of the clerk of a
6 county commission that attempts to create a right of
7 survivorship tenancy, but otherwise fails, and shows a clear
8 intent to designate a beneficiary to receive the property upon

9 death of one or more co-tenants by survivorship shall be
10 liberally construed to be an effective affidavit under this
11 statute.

12 The execution and recording of a transfer on death
13 designation affidavit shall be effective to terminate the
14 designation of a transfer on death beneficiary in a transfer
15 on death deed involving the same real property or interest in
16 real property and recorded prior to the effective date of this
17 section.

§37-16-10. Criminal penalties for falsifying an affidavit.

1 Any person who knowingly and intentionally makes any
2 false statement in any affidavit required by this article is
3 guilty of a misdemeanor, and, upon conviction thereof, shall
4 be fined not more than \$1,000 or confined in jail for not more
5 than one year, or both fined and confined.