

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 159**

4 (By Senators Tucker, Chafin, Nohe, Palumbo,  
5 Sypolt and Wells)

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported March 12, 2013.]  
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11  
12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §36-12-1, §36-12-2,  
14 §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8,  
15 §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13,  
16 §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to  
17 creating the Uniform Real Property Transfer on Death Act;  
18 authorizing the transfer of real property effective at the  
19 time of a transferor's death; providing for applicability and  
20 nonexclusivity of this method of transferring real property;  
21 providing that a transfer on death deed is revocable and  
22 nontestamentary; establishing the capacity of transferor;  
23 setting forth requirements for a transfer of death deed;  
24 providing that transfer of death deed exempt from payment of  
25 excise tax on the privilege of transferring real estate;  
26 providing that notice, delivery, acceptance or consideration

1 are not required; providing requirements for revocation of  
2 deed; setting forth the effect of transfer on death deed  
3 during a transferor's life and effect of the deed at  
4 transferor's death; providing for disclaimer; providing for  
5 liberal construction; providing for uniformity of application  
6 and construction; setting forth the article's relation to the  
7 Electronic Signatures in Global and National Commerce Act; and  
8 defining terms.

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

10 That the Code of West Virginia, 1931, as amended, be amended  
11 by adding thereto a new article, designated §36-12-1, §36-12-2,  
12 §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8,  
13 §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14,  
14 §36-12-15, §36-12-16 and §36-12-17, all to read as follows:

15 **ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.**

16 **§36-12-1. Short Title.**

17 This article may be cited as the Uniform Real Property  
18 Transfer on Death Act.

19 **§36-12-2. Definitions.**

20 In this article:

21 (1) "Beneficiary" means a person who receives property under  
22 a transfer on death deed.

23 (2) "Contingent beneficiary" means a person designated in a  
24 transfer on death deed to receive property only if a different  
25 person fails to survive the transferor.

1           (3) "Designated beneficiary" means a person designated to  
2 receive property in a transfer on death deed. The term includes  
3 contingent beneficiaries.

4           (4) "Joint owner" means an individual who owns property  
5 concurrently with one or more other individuals with a right of  
6 survivorship.

7           (5) "Person" means an individual, corporation, business trust,  
8 estate, trust, partnership, limited liability company, association,  
9 joint venture, public corporation, government or governmental  
10 subdivision, agency or instrumentality, or any other legal or  
11 commercial entity.

12           (6) "Property" means an interest in real property located in  
13 this state which is transferable on the death of the owner.

14           (7) "Transfer on death deed" means a deed authorized under  
15 this article.

16           (8) "Transferor" means an individual who makes a transfer on  
17 death deed.

18 **§36-12-3. Applicability.**

19           This article applies to a transfer on death deed made on or  
20 after the effective date of this article, by a transferor dying on  
21 or after the effective date of this article.

22 **§36-12-4. Nonexclusivity.**

23           This article does not affect any method of transferring  
24 property otherwise permitted under the law of this state.

25 **§36-12-5. Transfer on death deed authorized.**

1 An individual may transfer property to one or more  
2 beneficiaries or contingent beneficiaries effective at the  
3 transferor's death by a transfer on death deed.

4 **§36-12-6. Transfer on death deed revocable.**

5 A transfer on death deed is revocable even if the deed or  
6 another instrument contains a contrary provision.

7 **§36-12-7. Transfer on death deed nontestamentary.**

8 A transfer on death deed is nontestamentary.

9 **§36-12-8. Capacity of transferor.**

10 The capacity required to make or revoke a transfer on death  
11 deed is the same as the capacity required to make a will.

12 **§36-12-9. Requirements.**

13 A transfer on death deed:

14 (1) Except as otherwise provided in subdivision (2) of this  
15 section, must contain the essential elements and formalities of a  
16 properly recordable *inter vivos* deed;

17 (2) Must state that the transfer to the designated beneficiary  
18 is to occur at the transferor's death; and

19 (3) Must be recorded before the transferor's death in the  
20 office of the clerk of the county commission in the county where  
21 the property is located: *Provided, That,* notwithstanding section  
22 two, article twenty-two, chapter eleven of this code, a transfer on  
23 death deed is exempt from the payment of excise tax on the  
24 privilege of transferring real estate for the reason that no  
25 interest in the property is at the time of recording being passed

1 to the beneficiary and the deed remains revocable until the death  
2 of the transferor.

3 **§36-12-10. Notice, delivery, acceptance and consideration not**  
4 **required.**

5 A transfer on death deed is effective without:

6 (1) Notice or delivery to or acceptance by the designated  
7 beneficiary during the transferor's life; or

8 (2) Consideration.

9 **§36-12-11. Revocation by instrument authorized; revocation by act**  
10 **not permitted.**

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

14 (1) Is one of the following:

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

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

19 (C) An *inter vivos* deed that expressly revokes the transfer on  
20 death deed or part of the deed; and

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

25 (b) If a transfer on death deed is made by more than one

1 transferor:

2 (1) Revocation by a transferor does not affect the deed as to  
3 the interest of another transferor; and

4 (2) A deed of joint owners is revoked only if it is revoked by  
5 all of the living joint owners.

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

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

10 **§36-12-12. Effect of transfer on death deed during transferor's**  
11 **life.**

12 During a transferor's life, a transfer on death deed does not:

13 (1) Affect an interest or right of the transferor or any other  
14 owner, including the right to transfer or encumber the property;

15 (2) Affect an interest or right of a transferee, even if the  
16 transferee has actual or constructive notice of the deed;

17 (3) Affect an interest or right of a secured or unsecured  
18 creditor or future creditor of the transferor even if the creditor  
19 has actual or constructive notice of the deed;

20 (4) Affect the transferor's or designated beneficiary's  
21 eligibility for any form of public assistance;

22 (5) Create a legal or equitable interest in favor of the  
23 designated beneficiary; or

24 (6) Subject the property to claims or process of a creditor of  
25 the designated beneficiary.

1 **§36-12-13. Effect of transfer on death deed at transferor's death.**

2 (a) Except as otherwise provided in the transfer on death deed  
3 in this article, section six, article one of this code, chapter  
4 forty-one of this code, section three, article three, chapter  
5 forty-one of this code, article three, chapter forty-two of this  
6 code, section two, article four, chapter forty-two of this code or  
7 article five, chapter forty-two of this code, on the death of the  
8 transferor the following rules apply to property that is the  
9 subject of a transfer on death deed and owned by the transferor at  
10 death:

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

14 (2) The interest of a designated beneficiary is contingent on  
15 the designated beneficiary surviving the transferor. The interest  
16 of a designated beneficiary that fails to survive the transferor  
17 lapses.

18 (3) Subject to subdivision (4) of this subsection, concurrent  
19 interests are transferred to the beneficiaries in equal and  
20 undivided shares with no right of survivorship.

21 (4) If the transferor has identified two or more designated  
22 beneficiaries to receive concurrent interests in the property, the  
23 share of one which lapses or fails for any reason is transferred to  
24 the other, or to the others in proportion to the interest of each  
25 in the remaining part of the property held concurrently.

26 (b) Subject to article two, chapter thirty-nine and chapter

1 thirty-eight of this code, a beneficiary takes the property subject  
2 to all conveyances, encumbrances, assignments, contracts,  
3 mortgages, liens and other interests to which the property is  
4 subject at the transferor's death. For purposes of this subsection,  
5 article two, chapter thirty-nine and chapter thirty-eight of this  
6 code, the recording of the transfer on death deed is deemed to have  
7 occurred at the transferor's death.

8 (c) If a transferor is a joint owner and is:

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

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

14 (d) A transfer on death deed transfers property without  
15 covenant or warranty of title even if the deed contains a contrary  
16 provision.

17 **§36-12-14. Disclaimer.**

18 A beneficiary may disclaim all or part of the beneficiary's  
19 interest as provided by article six, chapter forty-two of this  
20 code.

21 **§36-12-15. Prior transfer on death liberally construed.**

22 (a) Any transfer on death deed properly recorded in an office  
23 of the clerk of a county commission before the effective date of  
24 this article containing language that shows a clear intent to  
25 designate a transfer on death beneficiary shall be liberally  
26 construed to do so.



1 (b) Any survivorship clause in a deed properly recorded before  
2 the effective date of this article in an office of the clerk of a  
3 county commission that attempts to create a right of survivorship  
4 tenancy, which survivorship tenancy otherwise fails, but otherwise  
5 is an effective deed, and shows a clear intent to designate a  
6 beneficiary to receive the property upon death of one or more  
7 cotenants by survivorship shall be liberally construed to be an  
8 effective transfer on death deed governed by this article.

9 **§36-12-16. Uniformity of application and construction.**

10 In applying and construing this uniform act, consideration  
11 must be given to the need to promote uniformity of the law with  
12 respect to its subject matter among the states that enact it.

13 **§36-12-17. Relation to Electronic Signatures in Global and**  
14 **National Commerce Act.**

15 This article modifies, limits and supersedes the federal  
16 Electronic Signatures in Global and National Commerce Act, 15 U. S.  
17 C. §7001, et seq., but does not modify, limit or supersede section  
18 101(c) of that act, 15 U. S. C. §7001(c) or authorize electronic  
19 delivery of any of the notices described in section 103(b) of that  
20 act, 15 U. S. C. §7003(b).

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(NOTE: The bill creates the Real Property Transfer on Death Act. The bill enables an owner of real property to pass the property simply and directly to a beneficiary upon the owner's death without probate. The bill permits real property to be transferred by operation of law by means of a recorded transfer on death deed. The bill permits, on an owner's death, the property to

pass to the beneficiary, much like the survivorship feature of joint tenancy. The bill also provides that the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. Thirteen states have enacted legislation authorizing a transfer on death deed: Missouri, Kansas, Ohio, New Mexico, Arizona, Nevada, Colorado, Arkansas, Wisconsin, Montana, Oklahoma, Minnesota and Indiana.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Commission on Interstate Cooperation.)