

1 **ENROLLED**

2 **Senate Bill No. 3**

3 (BY SENATORS KIRKENDOLL, COOKMAN, BLAIR,
4 FITZSIMMONS, D. HALL, NOHE, WELLS, MILLER, MCCABE, TUCKER AND M. HALL)

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6 [Passed March 7, 2014; in effect ninety days from passage.]
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10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 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,
14 §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to
15 creating Uniform Real Property Transfer on Death Act;
16 authorizing transfer of real property effective at time of
17 transferor's death; providing for applicability and
18 nonexclusivity of this method of transferring real property;
19 providing that transfer on death deed is revocable and
20 nontestamentary; establishing capacity of transferor; setting
21 forth requirements for transfer on death deed; providing that
22 transfer on death deed exempt from payment of excise tax on
23 privilege of transferring real estate; providing that notice,

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

1 transfer on death deed to receive property only if a different
2 person fails to survive the transferor.

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

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

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

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

16 (7) "Transfer on death deed" means a deed authorized under
17 this article.

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

20 **§36-12-3. Applicability.**

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

1 **§36-12-4. Nonexclusivity.**

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

4 **§36-12-5. Transfer on death deed authorized.**

5 An individual may transfer property to one or more
6 beneficiaries or contingent beneficiaries effective at the
7 transferor's death by a transfer on death deed.

8 **§36-12-6. Transfer on death deed revocable.**

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

11 **§36-12-7. Transfer on death deed nontestamentary.**

12 A transfer on death deed is nontestamentary.

13 **§36-12-8. Capacity of transferor.**

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

16 **§36-12-9. Requirements.**

17 A transfer on death deed:

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

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

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

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

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

9 (b) If a transfer on death deed is made by more than one
10 transferor:

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

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

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

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

19 **§36-12-12. Effect of transfer on death deed during transferor's**
20 **life.**

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

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

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

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

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

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

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

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

13 (a) Except as otherwise provided in the transfer on death deed
14 in this article, section six, article one, chapter forty-one of
15 this code, section three, article three, chapter forty-one of this
16 code, article three, chapter forty-two of this code, section two,
17 article four, chapter forty-two of this code or article five,
18 chapter forty-two of this code, on the death of the transferor the
19 following rules apply to property that is the subject of a transfer
20 on death deed and owned by the transferor at death:

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

1 (2) The interest of a designated beneficiary is contingent on
2 the designated beneficiary surviving the transferor. The interest
3 of a designated beneficiary that fails to survive the transferor
4 lapses.

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

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

13 (b) Subject to article two, chapter thirty-nine and chapter
14 thirty-eight of this code, a beneficiary takes the property subject
15 to all conveyances, encumbrances, assignments, contracts,
16 mortgages, liens and other interests to which the property is
17 subject at the transferor's death. For purposes of this subsection,
18 article two, chapter thirty-nine and chapter thirty-eight of this
19 code, the recording of the transfer on death deed is deemed to have
20 occurred at the transferor's death.

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

22 (1) Survived by one or more other joint owners, the property
23 that is the subject of a transfer on death deed belongs to the

1 surviving joint owner or owners with right of survivorship; or

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

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

7 **§36-12-14. Disclaimer.**

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

11 **§36-12-15. Prior transfer on death liberally construed.**

12 (a) Any transfer on death deed properly recorded in an office
13 of the clerk of a county commission before the effective date of
14 this article containing language that shows a clear intent to
15 designate a transfer on death beneficiary shall be liberally
16 construed to do so.

17 (b) Any survivorship clause in a deed properly recorded before
18 the effective date of this article in an office of the clerk of a
19 county commission that attempts to create a right of survivorship
20 tenancy, which survivorship tenancy otherwise fails, but otherwise
21 is an effective deed, and shows a clear intent to designate a
22 beneficiary to receive the property upon death of one or more
23 cotenants by survivorship shall be liberally construed to be an

