

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 195

FISCAL
NOTE

BY SENATOR SYPOLT

[Introduced January 9, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-1-29 of the Code of West Virginia, 1931, as amended, relating
 2 to authorization for a personal representative, trustee, administrator, or executor of a
 3 deceased person’s estate to transfer or amend conservation or preservation easements;
 4 defining the duty of the personal representative, trustee, administrator, or executor; and
 5 establishing conditions for the exercise of the authority to transfer or amend.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

1 (a) Subject to subsection (b) of this section, a personal representative, trustee,
 2 administrator or executor of a decedent or a decedent's estate is hereby granted the authority to:

3 (1) Sell a conservation or preservation easement ~~created prior to the decedent's death~~
 4 under §8A-12-1 *et seq.* of this code or §20-20-1 *et seq.* of this code;

5 (2) Donate a conservation or preservation easement ~~created prior to the decedent's death~~
 6 under §8A-12-1 *et seq.* of this code or §20-20-1 *et seq.* of this code; or

7 (3) Amend a conservation or preservation easement ~~created prior to the decedent's death~~
 8 under §8A-12-1 *et seq.* of this code or §20-20-1 *et seq.* of this code and recorded on the
 9 decedent’s real property ~~in order to obtain the benefit of the estate tax exclusion allowed under~~
 10 ~~§2031(c) of the United States Internal Revenue Code of 1986, as amended~~ as otherwise may be
 11 permitted by applicable law and the conservation or preservation easement.

12 ~~(4) Execute a deed of conservation or preservation easement and related documents~~
 13 ~~when decedent's application to establish and convey an easement was approved by a holder~~
 14 ~~during the nine-month period preceding the date of decedent's death, but the deed of conservation~~
 15 ~~or preservation easement and related documents were not signed by the decedent before his or~~
 16 ~~her death: *Provided*, That before executing these documents, the personal representative, trustee~~
 17 ~~or executor complies with the provisions of subsection (b) of this section; or~~

18 ~~(5) Execute a deed of conservation or preservation easement and related documents~~
19 ~~when decedent's application to establish and convey an easement was submitted to a holder~~
20 ~~before decedent's death but is approved by a holder after the decedent's death: *Provided, That*~~
21 ~~before executing these documents, the personal representative, trustee, administrator or executor~~
22 ~~complies with the provisions of subsection (b) of this section~~

23 (b) The personal representative, trustee, administrator or executor shall ensure that the
24 sale, donation, amendment or transfer of a conservation or preservation easement complies with
25 the following:

26 (1) The proposed sale, donation, transfer or amendment satisfies the requirements set
27 forth in the provisions of §20-12-8a of this code, as applicable to the particular easement;

28 (2) The proposed sale, donation, transfer or amendment is to a qualified conservation
29 organization or holder and the organization or holder agrees to accept the conservation or
30 preservation easement; and

31 (3) The sale, donation, transfer or amendment meets ~~one~~ any of the following conditions:

32 ~~(A) All heirs, beneficiaries and devisees with interests in the real estate affected provide~~
33 ~~written consent; or~~

34 ~~(B) The will or other testamentary instrument directs the personal representative, trustee~~
35 ~~or executor to sell or donate the conservation or preservation easement; or~~

36 (A) In the case of an administrator of a decedent's intestate estate, all heirs with interests
37 in the real estate affected provide written consent; or

38 (B) In the case of a personal representative or executor of a decedent's testate estate, or
39 the trustee of a trust, the will, trust, or other governing instrument authorizes or directs the
40 personal representative, executor, or trustee to transfer and convey an interest in real property,
41 or to sell or donate a conservation or preservation easement; or

42 (C) At the time of the decedent's death, the decedent had a pending application for a sale
43 or donation of a conservation or preservation easement; ~~and such conservation or preservation~~

44 ~~easement was in process of settlement or~~
45 (D) The sale, donation, transfer, or amendment of the conservation or preservation
46 easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the
47 property.

NOTE: The purpose of this bill is to update the powers of a personal representative, trustee, administrator, or executor of a deceased person's estate with respect to the disposition of conservation or preservation easements.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.