

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 195**

SENATOR SYPOLT, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 5, 2020]



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 deeds of conservation or preservation  
4 easements; removing authorization to execute deeds of conservation and preservation  
5 easements where a decedent did not sign or complete the deed or easement; defining the  
6 duty of the personal representative, trustee, administrator, or executor; and establishing  
7 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 the requirements and conditions of subsection (b) of this section, a personal  
2 representative, trustee, administrator, or executor of a decedent or a decedent's estate is hereby  
3 granted the authority to:

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

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

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

13 (4) ~~Execute a deed of conservation or preservation easement and related documents~~  
14 ~~when decedent's application to establish and convey an easement was approved by a holder~~  
15 ~~during the nine month period preceding the date of decedent's death, but the deed of~~

16 ~~conservation or preservation easement and related documents were not signed by the decedent~~  
17 ~~before his or her death: *Provided*, That before executing these documents, the personal~~  
18 ~~representative, trustee or executor complies with the provisions of subsection (b) of this section;~~  
19 ~~or~~

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

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

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

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

33 (3) The sale, donation, transfer, or amendment must meet ~~meets~~ one of the following  
34 conditions:

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

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

39 (A) In the case of an administrator of a decedent's intestate estate, all heirs with interests  
40 in the real estate affected provide written consent which shall be recorded with the easement; or

41           (B) In the case of a personal representative or executor of a decedent's testate estate, or  
42 the trustee of a trust, the will, trust, or other governing instrument authorizes or directs the  
43 personal representative, executor, or trustee to sell or donate a conservation or preservation  
44 easement; or

45           ~~(C) At the time of the decedent's death, the decedent had a pending application for a sale~~  
46 ~~or donation of a conservation or preservation easement; and such conservation or preservation~~  
47 ~~easement was in process of settlement or~~

48           (C) The sale, donation, transfer, or amendment of the conservation or preservation  
49 easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the  
50 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.