

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3499

By Delegates Fast, Petitto, Warner, Lucas, C. Pritt, Cooper,
and Steele

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §36-12-13 of the Code of West Virginia, 1931, as amended, relating
2 to allowing death deeds to specify joint tenancy with right of survivorship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

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

1 (a) Except as otherwise provided in the transfer on death deed in this article, ~~section six,~~
2 ~~article one, chapter forty one of this code~~ §41-1-6 of this code, ~~section three, article three, chapter~~
3 ~~forty one of this code~~ §41-3-3 of this code, ~~article three, chapter forty two of this code~~ §42-3-1, et
4 seq. of this code, ~~section two, article four, chapter forty two of this code~~ §42-4-2 of this code, or
5 ~~article five, chapter forty two of this code~~ §42-5-1, et seq. of this code, on the death of the
6 transferor the following rules apply to property that is the subject of a transfer on death deed and
7 owned by the transferor at death:

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

10 (2) The interest of a designated beneficiary is contingent on the designated beneficiary
11 surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor
12 lapses.

13 (3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the
14 beneficiaries in equal and undivided shares ~~with no right of survivorship~~ as tenants in common or
15 with right of survivorship if the deed specifies joint tenancy with right of survivorship.

16 (4) If the transferor has identified two or more designated beneficiaries to receive
17 concurrent interests in the property, the share of one which lapses or fails for any reason is
18 transferred to the other, or to the others in proportion to the interest of each in the remaining part of
19 the property held concurrently as tenants in common or with right of survivorship if the deed
20 specifies joint tenancy with the right of survivorship.

21 (b) Subject to ~~article two, chapter thirty-nine and chapter thirty-eight of this code~~ §39-2-1, et
22 seq., and §38-1-1, et seq. of this code, a beneficiary takes the property subject to all conveyances,
23 encumbrances, assignments, contracts, mortgages, liens and other interests to which the property
24 is subject at the transferor's death. For purposes of this subsection, article two, chapter thirty-nine
25 and chapter thirty-eight of this code, the recording of the transfer on death deed is deemed to have
26 occurred at the transferor's death.

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

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

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

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

NOTE: The purpose of this bill is to allow death deeds to specify joint tenancy with right of survivorship.

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