

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**SECOND ENGROSSMENT**

## **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, when there is only one beneficiary designated,  
11 is contingent on the designated beneficiary surviving the transferor. The interest of a designated  
12 beneficiary that fails to survive the transferor, when there is only one beneficiary designated,  
13 lapses.

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

18 (4) If the transferor has identified two or more designated beneficiaries to receive  
19 concurrent interests in the property, the share of one which lapses or fails for any reason is  
20 transferred to the other, or to the others in proportion to the interest of each in the remaining part of

21 the property held concurrently as tenants in common or with right of survivorship if the deed  
22 specifies joint tenancy with the right of survivorship.

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

29 (c) If a transferor is a joint owner with other joint owners with right of survivorship and is:

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

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

33 (d) If a transferor is an owner with other owners as tenants in common, the transfer on  
34 death deed is only effective as to the interest in the property which was held by the transferor.

35 (e) A transfer on death deed transfers property without covenant or warranty of title even if  
36 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.