

Senate Bill No. 159

(By Senators Tucker, Chafin, Nohe, Palumbo,
Sypolt and Wells)

[Introduced February 14, 2013; referred to the Committee on the
Judiciary.]

10 A BILL 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, §36-12-17, §36-12-18 and
15 §36-12-19, all relating to creating the Real Property Transfer
16 on Death Act; authorizing the transfer of real property
17 effective at the time of a transferor's death; providing for
18 applicability and nonexclusivity of this method of
19 transferring real property; providing that a transfer on death
20 deed is revocable and nontestamentary; establishing the
21 capacity of transferor; setting forth requirements; providing
22 that notice, delivery, acceptance and consideration are not
23 required; setting forth the effect of transfer on death deed
24 during a transferor's life; providing disclaimers; providing

1 for liberal construction; providing optional forms; providing
2 for uniformity of application and construction; setting forth
3 the article's relation to Electronic Signatures in Global and
4 National Commerce Act; and defining terms.

5 *Be it enacted by the Legislature of West Virginia:*

6 That the Code of West Virginia, 1931, as amended, be amended
7 by adding thereto a new article, designated §36-12-1, §36-12-2,
8 §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8,
9 §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14,
10 §36-12-15, §36-12-16, §36-12-17, §36-12-18 and §36-12-19, all to
11 read as follows:

12 **ARTICLE 12. REAL PROPERTY TRANSFER ON DEATH ACT.**

13 **§36-12-1. Short Title.**

14 This article may be cited as the "Real Property Transfer on
15 Death Act."

16 **§36-12-2. Definitions.**

17 In this article:

18 (1) "Beneficiary" means a person who receives property under
19 a transfer on death deed.

20 (2) "Contingent beneficiary" means a person designated in a
21 transfer on death deed to receive property only if a different
22 person fails to survive the transferor.

23 (3) "Designated beneficiary" means a person designated to

1 receive property in a transfer on death deed. The term includes
2 contingent beneficiaries.

3 (4) "Joint owner" means an individual who owns property
4 concurrently with one or more other individuals with a right of
5 survivorship. The term includes a joint tenant, owner of community
6 property with a right of survivorship, and tenant by the entirety.
7 The term does not include a tenant in common or owner of community
8 property without a right of 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 before,
22 on or after the effective date of this article, by a transferor
23 dying on or after the effective date of this article.

24 **§36-12-4. Nonexclusivity.**

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

3 **§36-12-5. Transfer on death deed authorized.**

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

7 **§36-12-6. Transfer on death deed revocable.**

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

10 **§36-12-7. Transfer on death deed nontestamentary.**

11 A transfer on death deed is nontestamentary.

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

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

15 **§36-12-9. Requirements.**

16 A transfer on death deed:

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

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

22 (3) Must be recorded before the transferor's death in the
23 public records in the office of the clerk of the county commission

1 of the county where the property is located.

2 **§36-12-10. Notice, delivery, acceptance and consideration not**
3 **required.**

4 A transfer on death deed is effective without:

5 (1) Notice or delivery to or acceptance by the designated
6 beneficiary during the transferor's life; or

7 (2) Consideration.

8 **§36-12-11. Revocation by instrument authorized; revocation by act**
9 **not permitted.**

10 (a) Subject to subsection (b) of this section, an instrument
11 is effective to revoke a recorded transfer on death deed, or any
12 part of it, only if the instrument:

13 (1) Is one of the following:

14 (A) A transfer on death deed that revokes the deed or part of
15 the deed expressly or by inconsistency;

16 (B) An instrument of revocation that expressly revokes the
17 deed or part of the deed; or

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

20 (2) Is acknowledged by the transferor after the acknowledgment
21 of the deed being revoked and recorded before the transferor's
22 death in the public records in the office of the clerk of the
23 county commission of the county where the deed is recorded.

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

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

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

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

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

11 **§36-12-12. Effect of transfer on death deed during transferor's**
12 **life.**

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

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

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

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

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

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

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

3 **§36-12-13. Effect of transfer on death deed at transferor's death.**

4 (a) Except as otherwise provided in the transfer on death deed
5 in this article, section six, article one of this code, chapter
6 forty-one of this code, section three, article three, chapter
7 forty-one of this code, article three, chapter forty-two of this
8 code, section two, article four, chapter forty-two of this code or
9 article five, chapter forty-two of this code, on the death of the
10 transferor the following rules apply to property that is the
11 subject of a transfer on death deed and owned by the transferor at
12 death:

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

16 (2) The interest of a designated beneficiary is contingent on
17 the designated beneficiary surviving the transferor. The interest
18 of a designated beneficiary that fails to survive the transferor
19 lapses.

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

23 (4) If the transferor has identified two or more designated
24 beneficiaries to receive concurrent interests in the property, the

1 share of one which lapses or fails for any reason is transferred to
2 the other, or to the others in proportion to the interest of each
3 in the remaining part of the property held concurrently.

4 (b) Subject to article two, chapter thirty-nine and chapter
5 thirty-eight of this code, a beneficiary takes the property subject
6 to all conveyances, encumbrances, assignments, contracts,
7 mortgages, liens, and other interests to which the property is
8 subject at the transferor's death. For purposes of this subsection,
9 article two, chapter thirty-nine and chapter thirty-eight of this
10 code, the recording of the transfer on death deed is deemed to have
11 occurred at the transferor's death.

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

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

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

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

21 **§36-12-14. Disclaimer.**

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

1 **§36-12-15. Prior transfer on death liberally construed.**

2 (a) Any transfer on death deed properly recorded in an office
3 of the clerk of a county commission before the effective date of
4 this article containing language that shows a clear intent to
5 designate a transfer on death beneficiary shall be liberally
6 construed to do so.

7 (b) Any survivorship clause in a deed properly recorded before
8 the effective date of this article in an office of the clerk of a
9 county commission that attempts to create a right of survivorship
10 tenancy, which survivorship tenancy otherwise fails, but otherwise
11 is an effective deed, and shows a clear intent to designate a
12 beneficiary to receive the property upon death of one or more
13 cotenants by survivorship shall be liberally construed to be an
14 effective transfer on death deed governed by this article.

15 **§36-12-16. Optional form of transfer on death deed.**

16 The following form may be used to create a transfer on death
17 deed. The other sections of this article govern the effect of this
18 or any other instrument used to create a transfer on death deed:

19 (Front of form)

20 REVOCABLE TRANSFER ON DEATH DEED

21 NOTICE TO OWNER

22 You should carefully read all information on the other side of
23 this form. *You May Want to Consult a Lawyer Before Using This Form.*

24 This form must be recorded before your death, or it will not

1 be effective.

2 IDENTIFYING INFORMATION

3 Owner or Owners Making This Deed:

4 _____
5 Printed name Mailing address

6

7 _____
8 Printed name Mailing address

9

10 Legal description of the property:

11 _____

12 PRIMARY BENEFICIARY

13 I designate the following beneficiary if the beneficiary
14 survives me.

15 _____
16 Printed name Mailing address, if available

17 ALTERNATE BENEFICIARY - Optional

18 If my primary beneficiary does not survive me, I designate the
19 following alternate beneficiary if that beneficiary survives me.

20 _____
21 Printed name Mailing address, if available

22

23 TRANSFER ON DEATH

24 At my death, I transfer my interest in the described property
25 to the beneficiaries as designated above.

26 Before my death, I have the right to revoke this deed.

27 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

1 WITNESS the following signature(s):

2 _____
3 _____
4

5 ACKNOWLEDGMENT

6 STATE OF _____,

7 COUNTY OF _____, ss:

8 I, _____, Notary Public in and for
9 the County and State aforesaid, do hereby certify that
10 _____ and _____, whose
11 names are signed to the foregoing writing bearing the ____ day of
12 ____, 2____, have this day acknowledged the same before me in my
13 said County and State.

14 Given under my hand (and notarial seal) this ____ day of
15 _____, 2____.

16 My commission expires _____.

17

18 _____
19 Notary Public
20

21 (Back of form)

22 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

23

24 *What does the Transfer on Death (TOD) deed do?* When you die,
25 this deed transfers the described property, subject to any liens or

1 mortgages (or other encumbrances) on the property at your death.
2 Probate is not required. The TOD deed has no effect until you die.
3 You can revoke it at any time. You are also free to transfer the
4 property to someone else during your lifetime. If you do not own
5 any interest in the property when you die, this deed will have no
6 effect.

7 *How do I make a TOD deed?* Complete this form. Have it
8 acknowledged before a notary public or other individual authorized
9 by law to take acknowledgments. Record the form in each county
10 where any part of the property is located. The form has no effect
11 unless it is acknowledged and recorded before your death.

12 *Is the "legal description" of the property necessary?* Yes.

13 *How do I find the "legal description" of the property?* This
14 information may be on the deed you received when you became an
15 owner of the property. This information may also be available in
16 the office of the clerk of the county commission for the county
17 where the property is located. If you are not absolutely sure,
18 consult a lawyer.

19 *Can I change my mind before I record the TOD deed?* Yes. If
20 you have not yet recorded the deed and want to change your mind,
21 simply tear up or otherwise destroy the deed.

22 *How do I "record" the TOD deed?* Take the completed and
23 acknowledged form to the office of the clerk of the county
24 commission of the county where the property is located. Follow the

1 instructions given by the county clerk to make the form part of the
2 official property records. If the property is in more than one
3 county, you should record the deed in each county.

4 *Can I later revoke the TOD deed if I change my mind?* Yes. You
5 can revoke the TOD deed. No one, including the beneficiaries, can
6 prevent you from revoking the deed.

7 *How do I revoke the TOD deed after it is recorded?* There are
8 three ways to revoke a recorded TOD deed: (1) Complete and
9 acknowledge a revocation form, and record it in each county where
10 the property is located; (2) complete and acknowledge a new TOD
11 deed that disposes of the same property, and record it in each
12 county where the property is located; and (3) transfer the property
13 to someone else during your lifetime by a recorded deed that
14 expressly revokes the TOD deed. You may not revoke the TOD deed by
15 will.

16 *I am being pressured to complete this form. What should I do?*
17 Do not complete this form under pressure. Seek help from a trusted
18 family member, friend or lawyer.

19 *Do I need to tell the beneficiaries about the TOD deed?* No,
20 but it is recommended. Secrecy can cause later complications and
21 might make it easier for others to commit fraud.

22 *I have other questions about this form. What should I do?*
23 This form is designed to fit some but not all situations. If you
24 have other questions, you are encouraged to consult a lawyer.

1 **§36-12-17. Optional form of revocation.**

2 The following form may be used to create an instrument of
3 revocation under this article. The other sections of this article
4 govern the effect of this or any other instrument used to revoke a
5 transfer on death deed.

6 (Front of form)

7 REVOCATION OF TRANSFER ON DEATH DEED

8 NOTICE TO OWNER

9 This revocation must be recorded before you die or it will not
10 be effective. This revocation is effective only as to the interests
11 in the property of owners who sign this revocation.

12 IDENTIFYING INFORMATION

13 Owner or Owners of Property Making This Revocation:

14

15

16

Printed name

Mailing address, if available

17

18

19

Printed name

Mailing address, if available

20

21 Legal description of the property:

22

23 REVOCATION

24 I revoke all my previous transfers of this property by
25 transfer on death deed.

26 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

1 WITNESS the following signature(s):

2 _____
3 _____

4

5 ACKNOWLEDGMENT

6 STATE OF _____,

7 COUNTY OF _____, ss:

8 I, _____, Notary Public in and for
9 the County and State aforesaid, do hereby certify that
10 _____ and _____, whose
11 names are signed to the foregoing writing bearing the ____ day of
12 ____, 2____, have this day acknowledged the same before me in my
13 said County and State.

14 Given under my hand (and notarial seal) this ____ day of
15 _____, 2____.

16 My commission expires _____.

17

18 _____
19 Notary Public
20

21 (Back of form)

22 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

23

24 *How do I use this form to revoke a Transfer on Death (TOD)*
25 *deed? Complete this form. Have it acknowledged before a notary*

1 public or other individual authorized to take acknowledgments.
2 Record the form in the public records in the office of the clerk of
3 the county commission of each county where the property is located.
4 The form must be acknowledged and recorded before your death or it
5 has no effect.

6 *How do I find the "legal description" of the property?* This
7 information may be on the TOD deed. It may also be available in the
8 office of the clerk of the county commission for the county where
9 the property is located. If you are not absolutely sure, consult a
10 lawyer.

11 *How do I "record" the form?* Take the completed and
12 acknowledged form to the office of the clerk of the county
13 commission of the county where the property is located. Follow the
14 instructions given by the county clerk to make the form part of the
15 official property records. If the property is located in more than
16 one county, you should record the form in each of those counties.

17 *I am being pressured to complete this form. What should I do?*
18 Do not complete this form under pressure. Seek help from a trusted
19 family member, friend or lawyer.

20 *I have other questions about this form. What should I do?* This
21 form is designed to fit some but not all situations. If you have
22 other questions, consult a lawyer.

23 **§36-12-18. Uniformity of application and construction.**

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among the states that enact it.

4 **§36-12-19. Relation to Electronic Signatures in Global and**
5 **National Commerce Act.**

6 This article modifies, limits and supersedes the federal
7 Electronic Signatures in Global and National Commerce Act, 15
8 U.S.C. §7001, et seq., but does not modify, limit or supersede
9 Section 101(c) of that act, 15 U.S.C. §7001(c) or authorize
10 electronic delivery of any of the notices described in Section
11 103(b) of that act, 15 U.S.C. §7003(b).

NOTE: The bill creates the Real Property Transfer on Death Act. The bill enables an owner of real property to pass the property simply and directly to a beneficiary upon the owner's death without probate. The bill permits real property to be transferred by operation of law by means of a recorded transfer on death deed. The bill permits, on an owner's death, the property to pass to the beneficiary, much like the survivorship feature of joint tenancy. The bill also provides that the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. Thirteen states have enacted legislation authorizing a transfer on death deed: Missouri, Kansas, Ohio, New Mexico, Arizona, Nevada, Colorado, Arkansas, Wisconsin, Montana, Oklahoma, Minnesota and Indiana.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Commission on Interstate Cooperation.