

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

**Senate Bill No. 3**

(BY SENATORS KIRKENDOLL, COOKMAN, BLAIR,  
FITZSIMMONS, D. HALL, NOHE, WELLS, MILLER, McCABE,  
TUCKER AND M. HALL)

[PASSED MARCH 7, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

**E N R O L L E D**

## **Senate Bill No. 3**

(BY SENATORS KIRKENDOLL, COOKMAN, BLAIR,  
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §36-12-1, §36-12-2, §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8, §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to creating the Uniform Real Property Transfer on Death Act; authorizing the transfer of real property effective at the time of a transferor's death; providing for applicability and nonexclusivity of this method of transferring real property; providing that a transfer on death deed is revocable and nontestamentary; establishing the capacity of transferor; setting forth requirements for a transfer on death deed; providing that transfer on death deed exempt from payment of excise tax on the privilege of transferring real estate; providing that notice, delivery, acceptance or consideration are not required; providing requirements for revocation of deed; setting forth the effect of transfer on death deed during a transferor's life and effect of the deed at transferor's death; providing a disclaimer; providing for liberal construction; providing for uniformity of application and construction; setting forth article's relation to the Electronic Signatures in Global and National Commerce Act; and defining terms.

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

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

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

**§36-12-1. Short Title.**

1        This article may be cited as the Uniform Real Property  
2        Transfer on Death Act.

**§36-12-2. Definitions.**

1        In this article:

2        (1) “Beneficiary” means a person who receives property  
3        under a transfer on death deed.

4        (2) “Contingent beneficiary” means a person designated  
5        in a transfer on death deed to receive property only if a  
6        different person fails to survive the transferor.

7        (3) “Designated beneficiary” means a person designated  
8        to receive property in a transfer on death deed. The term  
9        includes contingent beneficiaries.

10       (4) “Joint owner” means an individual who owns  
11       property concurrently with one or more other individuals  
12       with a right of survivorship.

13 (5) “Person” means an individual, corporation, business  
14 trust, estate, trust, partnership, limited liability company,  
15 association, joint venture, public corporation, government or  
16 governmental subdivision, agency or instrumentality, or any  
17 other legal or commercial entity.

18 (6) “Property” means an interest in real property located  
19 in this state which is transferable on the death of the owner.

20 (7) “Transfer on death deed” means a deed authorized  
21 under this article.

22 (8) “Transferor” means an individual who makes a  
23 transfer on death deed.

**§36-12-3. Applicability.**

1 This article applies to a transfer on death deed made on  
2 or after the effective date of this article, by a transferor dying  
3 on or after the effective date of this article.

**§36-12-4. Nonexclusivity.**

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

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

1 An individual may transfer property to one or more  
2 beneficiaries or contingent beneficiaries effective at the  
3 transferor’s death by a transfer on death deed.

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

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

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

1           A transfer on death deed is nontestamentary.

**§36-12-8. Capacity of transferor.**

1           The capacity required to make or revoke a transfer on  
2 death deed is the same as the capacity required to make a  
3 will.

**§36-12-9. Requirements.**

1           A transfer on death deed:

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

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

7           (3) Must be recorded before the transferor's death in the  
8 office of the clerk of the county commission in the county  
9 where the property is located: *Provided, That,*  
10 notwithstanding section two, article twenty-two, chapter  
11 eleven of this code, a transfer on death deed is exempt from  
12 the payment of excise tax on the privilege of transferring real  
13 estate for the reason that no interest in the property is at the  
14 time of recording being passed to the beneficiary and the  
15 deed remains revocable until the death of the transferor.

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

1           A transfer on death deed is effective without:

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

4 (2) Consideration.

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

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

4 (1) Is one of the following:

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

7 (B) An instrument of revocation that expressly revokes  
8 the deed or part of the deed; or

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

11 (2) Is acknowledged by the transferor after the  
12 acknowledgment of the deed being revoked and recorded  
13 before the transferor's death in the public records in the  
14 office of the clerk of the county commission of the county  
15 where the deed is recorded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Except as otherwise provided in the transfer on death  
2 deed in this article, section six, article one, chapter forty-one

3 of this code, section three, article three, chapter forty-one of  
4 this code, article three, chapter forty-two of this code, section  
5 two, article four, chapter forty-two of this code or article five,  
6 chapter forty-two of this code, on the death of the transferor  
7 the following rules apply to property that is the subject of a  
8 transfer on death deed and owned by the transferor at death:

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

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

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

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

25 (b) Subject to article two, chapter thirty-nine and chapter  
26 thirty-eight of this code, a beneficiary takes the property  
27 subject to all conveyances, encumbrances, assignments,  
28 contracts, mortgages, liens and other interests to which the  
29 property is subject at the transferor's death. For purposes of  
30 this subsection, article two, chapter thirty-nine and chapter  
31 thirty-eight of this code, the recording of the transfer on death  
32 deed is deemed to have occurred at the transferor's death.

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

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

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

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

**§36-12-14. Disclaimer.**

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

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

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

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

**§36-12-16. 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  
3        with respect to its subject matter among the states that enact  
4        it.

**§36-12-17. Relation to Electronic Signatures in Global and National Commerce Act.**

1        This article modifies, limits and supersedes the federal  
2        Electronic Signatures in Global and National Commerce Act,  
3        15 U. S. C. §7001, *et seq.*, but does not modify, limit or  
4        supersede section 101(c) of that act, 15 U. S. C. §7001(c), or  
5        authorize electronic delivery of any of the notices described  
6        in section 103(b) of that act, 15 U. S. C. §7003(b).



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this  
the ..... Day of ....., 2014.

.....  
*Governor*