

Senate Bill No. 3

(By Senators Kirkendoll, Cookman, Blair,
Fitzsimmons, D. Hall, Nohe, Wells, Miller, McCabe,
Tucker and M. Hall)

[Introduced January 8, 2014;
referred to the Committee on the Judiciary.]

A BILL 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, notwithstanding
10 section two, article twenty-two, chapter eleven of this code,
11 a transfer on death deed is exempt from the payment of
12 excise tax on the privilege of transferring real estate for the
13 reason that no interest in the property is at the time of
14 recording being passed to the beneficiary and the deed
15 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
2 not:

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

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

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

- 11 (4) Affect the transferor's or designated beneficiary's
12 eligibility for any form of public assistance;
- 13 (5) Create a legal or equitable interest in favor of the
14 designated beneficiary; or
- 15 (6) Subject the property to claims or process of a creditor
16 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
32 death deed is deemed to have occurred at the transferor's
33 death.

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

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

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

41 (d) A transfer on death deed transfers property without
42 covenant or warranty of title even if the deed contains a
43 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
5 shall 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
8 clerk of a county commission that attempts to create a right
9 of survivorship tenancy, which survivorship tenancy
10 otherwise fails, but otherwise is an effective deed, and shows
11 a clear intent to designate a beneficiary to receive the
12 property upon death of one or more cotenants by
13 survivorship shall be liberally construed to be an effective
14 transfer on death deed 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).

(NOTE: The purpose of this bill is to create 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. At Least nineteen states (Arizona, Arkansas, Colorado, Hawaii, Illinois, Indiana, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Virginia and Wisconsin) and the District of Columbia have enacted legislation authorizing transfer on death deeds.

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.)