

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2740**

BY DELEGATES SHOTT, HARSHBARGER AND MANDT

[Originating in the Committee on the Judiciary;

February 4, 2019.]



1 A BILL to amend and reenact §42-1-1 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto two new sections, designated §42-1-11 and §42-1-  
3 12, all relating to inheritance; barring a parent from inheriting from or through a child of the  
4 parent in certain instances; and permitting a child to inherit from a parent in certain  
5 instances.

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

**ARTICLE 1. DESCENT.**

**§42-1-1. General definitions.**

1 Subject to additional definitions contained in the subsequent articles that are applicable to  
2 specific articles, parts or sections, and unless the context otherwise requires in this code:

3 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,  
4 an individual authorized to make decisions concerning another's health care and an individual  
5 authorized to make decisions for another under a natural death act.

6 (2) "Beneficiary" as it relates to a trust beneficiary, includes a person who has any present  
7 or future interest, vested or contingent, and also includes the owner of an interest by assignment  
8 or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust;  
9 as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an account  
10 with POD designation, of a security registered in beneficiary form (TOD) or other nonprobate  
11 transfer at death; and, as it relates to a "beneficiary designated in a governing instrument",  
12 includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary  
13 designation or a person in whose favor a power of attorney or a power held in any individual,  
14 fiduciary or representative capacity is exercised.

15 (3) "Court" means the county commission or branch in this state having jurisdiction in  
16 matters relating to the affairs of decedents.

17 (4) "Conservator" means a person who is appointed by a court to manage the estate of a  
18 protected person.

19                 (5) "Descendant" of an individual means all of his or her descendants of all generations,  
20 with the relationship of parent and child at each generation being determined by the definition of  
21 child and parent contained in this code.

22                 (6) "Devise" when used as a noun, means a testamentary disposition of real or personal  
23 property and, when used as a verb, means to dispose of real or personal property by will.

24                 (7) "Devisee" means a person designated in a will to receive a devise. In the case of a  
25 devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee  
26 is the devisee and the beneficiaries are not devisees.

27                 (8) "Distributee" means any person who has received property of a decedent from his or  
28 her personal representative other than as a creditor or purchaser. A testamentary trustee is a  
29 distributee only to the extent of distributed assets or increment thereto remaining in his or her  
30 hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received  
31 from a personal representative is a distributee of the personal representative. For the purposes  
32 of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will,  
33 to the extent of the devised assets.

34                 (9) "Estate" includes the property of the decedent, trust or other person whose affairs are  
35 subject to this code as originally constituted and as it exists from time to time during  
36 administration.

37                 (10) "Exempt property" means that property of a decedent's estate which is provided for  
38 in section forty-eight, article VI of the Constitution.

39                 (11) "Fiduciary" includes a personal representative, guardian, conservator and trustee.

40                 (12) "Foreign personal representative" means a personal representative appointed by  
41 another jurisdiction.

42                 (13) "Formal proceedings" means proceedings conducted before a judge with notice to  
43 interested persons.

44                 (14) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
45 with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing,  
46 retirement or similar benefit plan, instrument creating or exercising a power of appointment or a  
47 power of attorney or a donative, appointive or nominative instrument of any other type.

48                 (15) "Guardian" means a person who has qualified as a guardian of a minor or  
49 incapacitated person pursuant to testamentary or court appointment, but excludes one who is  
50 merely a guardian ad litem.

51                 (16) "Heirs" means persons, including the surviving spouse and the state, who are entitled  
52 under the statutes of intestate succession to the property of a decedent.

53                 (17) "Informal proceedings" mean those conducted without notice to interested persons  
54 by an officer of the court acting as a registrar for probate of a will or appointment of a personal  
55 representative.

56                 (18) "Interested person" includes heirs, devisees, children, spouses, creditors,  
57 beneficiaries and any others having a property right in or claim against a trust estate or the estate  
58 of a decedent, ward or protected person. It also includes persons having priority for appointment  
59 as personal representative and other fiduciaries representing interested persons. The meaning  
60 as it relates to particular persons may vary from time to time and must be determined according  
61 to the particular purposes of, and matter involved in, any proceeding.

62                 (19) "Issue" of a person means descendant as defined in subdivision (5) of this section.

63                 (20) "Joint tenants with the right of survivorship" and "community property with the right of  
64 survivorship" includes coowners of property held under circumstances that entitle one or more to  
65 the whole of the property on the death of the other or others, but excludes forms of coownership  
66 registration in which the underlying ownership of each party is in proportion to that party's  
67 contribution.

68                 (21) "Lease" includes an oil, gas, or other mineral lease.

69           (22) "Letters" includes letters testamentary, letters of guardianship, letters of  
70 administration and letters of conservatorship.

71           (23) "Minor" means a person who is under 18 years of age.

72           (24) "Mortgage" means any deed of trust, conveyance, agreement, or arrangement in  
73 which property is encumbered or used as security.

74           (25) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction  
75 at the time of his or her death.

76           (26) "Parent" includes any person entitled to take, or who would be entitled to take if the  
77 child died without a will, as a parent under this code by intestate succession from the child whose  
78 relationship is in question and excludes any person who is only a stepparent, foster parent, or  
79 grandparent. However, a parent is barred from inheriting from or through a child of the parent  
80 pursuant to the provisions of §42-1-11 of this code.

81           (27) "Payor" means a trustee, insurer, business entity, employer, government,  
82 governmental agency or subdivision or any other person authorized or obligated by law or a  
83 governing instrument to make payments.

84           (28) "Person" means an individual or an organization.

85           (29) "Personal representative" includes executor, administrator, successor personal  
86 representative, special administrator, and persons who perform substantially the same function  
87 under the law governing their status. "General personal representative" excludes special  
88 administrator.

89           (30) "Petition" means a written request to the court for an order after notice.

90           (31) "Proceeding" includes action at law and suit in equity.

91           (32) "Property" includes both real and personal property or any interest therein and means  
92 anything that may be the subject of ownership.

93           (33) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of  
94 indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in

95 payments out of production under such a title or lease, collateral trust certificate, transferable  
96 share, voting trust certificate or, in general, any interest or instrument commonly known as a  
97 security or any certificate of interest or participation, any temporary or interim certificate, receipt  
98 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the  
99 foregoing.

100 (34) "Settlement" in reference to a decedent's estate, includes the full process of  
101 administration, distribution, and closing.

102 (35) "State" means a state of the United States, the District of Columbia, the  
103 Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of  
104 the United States.

105 (36) "Successor personal representative" means a personal representative, other than a  
106 special administrator, who is appointed to succeed a previously appointed personal  
107 representative.

108 (37) "Successors" means persons, other than creditors, who are entitled to property of a  
109 decedent under his or her will or this code.

110 (38) "Survive" means that an individual has neither predeceased an event, including the  
111 death of another individual, nor is deemed to have predeceased an event. The term includes its  
112 derivatives, such as "survives", "survived", "survivor", and "surviving".

113 (39) "Surviving spouse" means the person to whom the decedent was married at the time  
114 of the decedent's death.

115 (40) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

116 (41) "Testator" includes an individual of either sex.

117 (42) "Trust" includes an express trust, private or charitable, with additions thereto,  
118 wherever and however created. The term also includes a trust created or determined by judgment  
119 or decree under which the trust is to be administered in the manner of an express trust. The term  
120 excludes other constructive trusts and excludes resulting trusts, conservatorships, personal

121 representatives and custodial arrangements, including that relating to gifts or transfers to minors,  
122 dealing with special custodial situations, business trusts providing for certificates to be issued to  
123 beneficiaries.

124 (43) "Trustee" includes an original, additional or successor trustee, whether or not  
125 appointed or confirmed by court.

126 (44) "Will" includes codicil and any testamentary instrument that merely appoints an  
127 executor, revokes or revises another will, nominates a guardian or expressly excludes or limits  
128 the right of an individual or class to succeed to property of the decedent passing by intestate  
129 succession.

**§42-1-11. When a parent may not inherit from a child.**

1 (a) A parent is barred from inheriting from or through a child of the parent if: (1) The  
2 parent's parental rights were terminated by court order and the parent-child relationship has not  
3 been judicially reestablished; or (2) the child died before reaching 18 years of age and there is  
4 clear and convincing evidence that immediately before the child's death the parental rights of the  
5 parent could have been terminated under the law of this state other than this article on the basis  
6 of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward  
7 the child.

8 (b) For the purpose of intestate succession from or through the deceased child, a parent  
9 who is barred from inheriting under this section is treated as if the parent predeceased the child.

**§42-1-12. When a child may inherit from a parent whose parental rights have been  
terminated.**

1 If a parent is barred from inheriting under the provisions of W.Va. Code §42-1-11, the child  
2 may still inherit from or through the barred parent as long as a parent-child relationship does not  
3 exist between the child as an adoptee with another person as the adoptee's adoptive parent.

NOTE: The purpose of this bill is to bar a parent from inheriting from a child if the parent's parental rights were terminated by court order and the parent-child relationship has not been judicially reestablished, or if the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under the law of this state for nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

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