

ENGROSSED

Senate Bill No. 675

(By Senators Palumbo, Wills, Browning, Fanning, Foster, Jenkins,
Kirkendoll, Klempa, Minard, Snyder, Unger, Williams and Barnes)

[Originating in the Committee on the Judiciary;
reported February 27, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-16-8, §37-16-9 and §37-16-10, all relating to the creation of a transfer on death deed; defining terms; setting requirements for an affidavit of transfer on death deed; detailing transfer on death; requiring verification of the affidavit; requiring that the affidavit be recorded; proclaiming that no consideration is necessary for a transfer on death; permitting revocation; providing that transfer only occurs to the named transferee; creating provisions for trustees of trusts in transfers on death; stating certain requirements for finalizing the transfer on death; setting certain standards, characteristics and ramifications for transfer on death

1 designation affidavits; and creating a misdemeanor offense for
2 knowingly and intentionally making a false statement in an
3 affidavit required by this article.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §37-16-1, §37-16-2,
7 §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-16-8, §37-16-
8 9 and §37-16-10, all to read as follows:

9 **ARTICLE 16. TRANSFER ON DEATH DEED.**

10 **§37-16-1. Definitions.**

11 As used in this article, unless the context clearly indicates
12 otherwise:

13 (1) "Survivorship tenancy" means an ownership of real property
14 or any interest in real property by two or more persons that is
15 created by executing a deed pursuant to West Virginia law;

16 (2) "Survivorship tenant" means one of the owners of real
17 property or any interest in real property in a survivorship
18 tenancy;

19 (3) "Transfer on death designation affidavit" or "affidavit"
20 means an affidavit executed under this article; and

21 (4) "Transfer on death beneficiary" or "transfer on death
22 beneficiaries" means the beneficiary or beneficiaries designated in
23 a transfer on death designation affidavit.

24 **§37-16-2. Transfer on death beneficiary affidavit.**

1 (a) Any individual who, under West Virginia Code or the common
2 law of this state, owns real property or any interest in real
3 property as a sole owner, as a tenant in common, or as a
4 survivorship tenant, may designate the entire interest, or any
5 specified part that is less than the entire interest, in that real
6 property as transferable on death to a designated beneficiary or
7 beneficiaries by executing, together with the individual's spouse,
8 if any, a transfer on death designation affidavit consistent with
9 the requirements of this article. The designation of a transfer on
10 death beneficiary has no effect on the present ownership of real
11 property, and a person designated as a transfer on death
12 beneficiary has no interest in the real property until the death of
13 the owner of the interest.

14 (b) Any transfer on death of real property or of an interest
15 in real property that results from a transfer on death designation
16 affidavit designating a transfer on death beneficiary is not
17 testamentary. That transfer on death shall supersede any attempted
18 testate or intestate transfer of that real property or interest in
19 real property. If the affidavit is executed, pursuant to this
20 article, by an individual together with the individual's spouse, if
21 any, the rights of the spouse are subordinate to the vesting of
22 title to the interest in the real property in the transfer on death
23 beneficiary or beneficiaries designated under this article.

24 (c) A fee simple title or any fractional interest in a fee

1 simple title may be subjected to a transfer on death designation
2 affidavit. The affidavit shall include, at a minimum:

3 (1) A description of the real property the title to which is
4 affected by the affidavit and a reference to an instrument of
5 record containing that description;

6 (2) A statement designating one or more persons, identified by
7 name, as transfer on death beneficiary or beneficiaries;

8 (3) A statement by the individual executing the affidavit that
9 the individual is the person appearing on the record of the real
10 property as the owner of the real property or interest in the real
11 property at the time of the recording of the affidavit and the
12 marital status of that owner. If the owner is married, the
13 affidavit shall include a statement by the owner's spouse stating
14 that the spouse's rights are subordinate to the vesting of title to
15 the real property or interest in the real property in the transfer
16 on death beneficiary or beneficiaries designated in the affidavit;
17 and

18 (4) If less than the entire interest in the real property is
19 to be transferred on death under the affidavit, a statement of the
20 specific interest or part of the interest in the real property that
21 is to be so transferred.

22 (5) A statement by the individual executing the affidavit that
23 all beneficiaries and contingent beneficiaries, if any, have been
24 notified that the affidavit will be filed and that if they do not

1 act pursuant to this article to finalize the transfer before the
2 filing of the appraisement of the estate, West Virginia Form ET
3 6.01, then the interest of the deceased owner may be distributed as
4 part of the probate estate of the deceased owner of the interest
5 and the beneficiaries may lose all right to the property.

6 (d) A transfer on death designation affidavit may contain a
7 designation of one or more persons as contingent transfer on death
8 beneficiaries, who shall take the interest of the deceased owner
9 that would otherwise have passed to the transfer on death
10 beneficiary if that named transfer on death beneficiary does not
11 survive the deceased owner or is not in existence on the date of
12 death of the deceased owner. Persons designated as contingent
13 transfer on death beneficiaries shall be identified in the
14 affidavit by name.

15 (e) Any transfer on death beneficiary or contingent transfer
16 on death beneficiary may be a natural or legal person, including,
17 but not limited to, a bank as trustee of a trust, except that if
18 two or more transfer on death beneficiaries are designated as
19 survivorship tenants, all of those beneficiaries shall be natural
20 persons and if two or more contingent transfer on death
21 beneficiaries are designated as survivorship tenants, all of those
22 contingent beneficiaries shall be natural persons. A natural person
23 who is designated a transfer on death beneficiary or contingent
24 transfer on death beneficiary solely in that natural person's

1 capacity as a trustee of a trust is not considered a natural person
2 for purposes of designating the transfer on death beneficiaries or
3 contingent transfer on death beneficiaries as survivorship tenants.

4 (f) The affidavit shall meet all the requirements of this
5 article and be recorded in the office of the clerk of the county
6 commission in the county in which the real property is located,
7 and, when so recorded, the affidavit or a certified copy of the
8 affidavit shall be evidence of the transfer on death beneficiary or
9 beneficiaries so designated in the affidavit insofar as the
10 affidavit affects title to the real property.

11 **§37-16-3. Verification required.**

12 A transfer on death designation affidavit shall be verified
13 before a notary public or any other person authorized to administer
14 oaths.

15 **§37-16-4. Recordation.**

16 The county commission of the county in which a transfer on
17 death designation affidavit is offered for recording shall receive
18 the affidavit and cause it to be recorded in the same manner as
19 deeds are recorded. The county commission shall collect a fee for
20 recording the affidavit in the same amount as the fee for recording
21 deeds. The county commission shall index the affidavit in the name
22 of the owner of record of the real property or interest in the real
23 property who executed the affidavit.

24 In order to be effective, the affidavit shall be recorded with

1 the county commission as described in this article prior to the
2 death of the individual who executed the affidavit.

3 **§37-16-5. Consideration not required; revocation without consent.**

4 A transfer on death designation affidavit need not be
5 supported by consideration and need not be delivered to the
6 transfer on death beneficiary or beneficiaries designated in the
7 affidavit to be effective.

8 The designation in a transfer on death designation affidavit
9 of any transfer on death beneficiary may be revoked or changed at
10 any time, without the consent of that transfer on death
11 beneficiary, by the owner of the interest or by the surviving
12 survivorship tenants of the interest, by executing and recording,
13 prior to the death of the owner of the interest or of the surviving
14 survivorship tenants of the interest, as the case may be, a new
15 transfer on death designation affidavit stating the revocation or
16 change in the designation. The new transfer on death designation
17 affidavit shall automatically supersede and revoke all prior
18 recorded transfer on death designation affidavits with respect to
19 the real property or the interest in real property identified in
20 the new affidavit, provided that the prior recorded affidavit was
21 executed before the later recorded affidavit.

22 **§37-16-6. Transfer at death.**

23 (a) Transfer under a transfer on death designation affidavit
24 must follow this section. First, the type of ownership interest

1 must be evaluated and the affidavit shall be treated as follows:

2 (1) If an individual who owns real property or an interest in
3 real property as a sole owner or as a tenant in common executes a
4 transfer on death designation affidavit, upon the death of that
5 individual, title to the real property or interest in the real
6 property specified in the affidavit vests in the transfer on death
7 beneficiary or beneficiaries designated in the affidavit, subject
8 to the other requirements in this article.

9 (2) If an individual who owns real property or an interest in
10 real property as a survivorship tenant executes a transfer on death
11 designation affidavit, upon the death of that individual or of one
12 but not all of the surviving survivorship tenants, title to the
13 real property or interest in the real property specified in the
14 affidavit vests in the surviving survivorship tenant or tenants.
15 Upon the death of the last surviving survivorship tenant, title to
16 the real property or interest in the real property vests in the
17 transfer on death beneficiary or beneficiaries designated in the
18 last surviving survivorship tenant's affidavit, if any, subject to
19 the other requirements in this article.

20 (b) Transfer then occurs as follows and subject to the
21 following conditions:

22 (1) An interest of a deceased owner shall be transferred to
23 the transfer on death beneficiaries who are identified in the
24 affidavit by name and who survive the deceased owner or that are in

1 existence on the date of the deceased owner's death. If there is a
2 designation of more than one transfer on death beneficiary, the
3 beneficiaries shall take title to the interest in equal shares as
4 tenants in common, unless the deceased owner has specifically
5 designated other than equal shares or has designated that the
6 beneficiaries take title as survivorship tenants.

7 (2) If a transfer on death beneficiary does not survive the
8 deceased owner or is not in existence on the date of the deceased
9 owner's death, and the deceased owner has designated one or more
10 persons as contingent transfer on death beneficiaries, the
11 designated contingent transfer on death beneficiaries shall take
12 the same interest that would have passed to the transfer on death
13 beneficiary had that transfer on death beneficiary survived the
14 deceased owner or been in existence on the date of the deceased
15 owner's death.

16 (3) If none of the designated transfer on death beneficiaries
17 survives the deceased owner or is in existence on the date of the
18 deceased owner's death and no contingent transfer on death
19 beneficiaries have been designated or have survived the deceased
20 owner, or are in existence on the date of death of the deceased
21 owner, the interest of the deceased owner shall be distributed as
22 part of the probate estate of the deceased owner of the interest.

23 (4) If there are two or more transfer on death beneficiaries
24 and the deceased owner has designated that title to the interest in

1 the real property be taken by those beneficiaries as survivorship
2 tenants, no designated contingent transfer on death beneficiaries
3 shall take title to the interest unless none of the transfer on
4 death beneficiaries survives the deceased owner on the date of
5 death of the deceased owner.

6 (5) If the owners hold title to the interest in a survivorship
7 tenancy, the death of all except the last survivorship tenant
8 automatically terminates and nullifies any transfer on death
9 beneficiary designations made solely by the deceased survivorship
10 tenant or tenants without joinder by the last surviving
11 survivorship tenant. The termination or nullification of any
12 transfer on death beneficiary designations is effective as of the
13 date of death of a deceased survivorship tenant. No affirmative act
14 of revocation is required of the last surviving survivorship tenant
15 for the termination or nullification of the transfer on death
16 beneficiary designations to occur. If the last surviving
17 survivorship tenant dies with no transfer on death beneficiary
18 designation, the entire interest of that last surviving
19 survivorship tenant shall be distributed as part of the last
20 surviving survivorship tenant's probate estate.

21 (6) A transfer on death beneficiary takes only the interest
22 that the deceased owner or owners of the interest held on the date
23 of death, subject to all encumbrances, reservations, exceptions and
24 any previously created life estate or other similar estate in land.

1 No rights of any lien holder, including, but not limited to, any
2 deed of trust, judgment creditor or mechanic's lien holder, shall
3 be affected by the designation of a transfer on death beneficiary.
4 If any lien holder takes action to enforce the lien, by foreclosure
5 or otherwise through a court proceeding, it is not necessary to
6 join any transfer on death beneficiary whose interest has not
7 vested as a party defendant in the action, unless the transfer on
8 death beneficiary has another interest in the real property.

9 (c) Upon the death of an individual who executed a transfer on
10 death affidavit, the transfer of a deceased owner's real property
11 or interest in real property as designated in a transfer on death
12 affidavit shall be recorded by presenting to the clerk of the
13 county commission of the county in which the real property is
14 located and filing with that county an affidavit of confirmation
15 executed by any transfer on death beneficiary to whom the transfer
16 is made. The affidavit of confirmation shall be filed no later
17 than the filing of the appraisal of the estate, West Virginia
18 Form ET 6.01. If the affidavit of confirmation is not filed before
19 the filing of the appraisal of the state, West Virginia Form ET
20 6.01, then the executor or administrator of the estate shall send
21 notice to the then-living named beneficiaries or contingent
22 beneficiaries, if any, by certified mail stating that they have
23 thirty days from the date of postage to file an affidavit of
24 confirmation or the interest will be distributed as part of the

1 probate estate. If an affidavit of confirmation is not filed
2 within thirty days of the date of postage of the notice required in
3 the preceding sentence, then the interest of the deceased owner
4 shall be distributed as part of the probate estate of the deceased
5 owner of the interest. Any affidavit of confirmation shall be
6 verified before a notary public or other person authorized to
7 administer oaths and shall be accompanied by a certified copy of
8 the death certificate for the deceased owner. The affidavit of
9 confirmation shall contain all of the following information:

10 (1) The name and address of each transfer on death beneficiary
11 who survived the deceased owner or that is in existence on the date
12 of death of the deceased owner. If a named beneficiary was
13 designated as a transfer on death beneficiary solely in that
14 person's capacity as a trustee of a trust and that trustee
15 subsequently has been replaced by a successor trustee, the
16 affidavit of confirmation shall include the name and address of the
17 successor trustee and shall be accompanied by a copy of a recorded
18 successor trustee affidavit;

19 (2) The date of death of the deceased owner;

20 (3) A description of the subject real property or interest in
21 real property; and

22 (4) The name of each transfer on death beneficiary who has not
23 survived the deceased owner or that is not in existence on the date
24 of death of the deceased owner.

1 (d) The affidavit of confirmation shall be accompanied by a
2 certified copy of the death certificate for each transfer on death
3 beneficiary who has not survived the deceased owner.

4 (e) The clerk of the county commission shall make an index
5 reference in the record of deeds to any affidavit of confirmation
6 filed with the county commission pursuant to this section.

7 **§37-16-7. Named beneficiary must survive to be effective.**

8 Upon the death of any individual who owns real property or an
9 interest in real property that is subject to a transfer on death
10 beneficiary designation made under a transfer on death designation
11 affidavit as provided in this article, that real property or
12 interest in real property of the deceased owner shall be
13 transferred to the transfer on death beneficiary or beneficiaries
14 who are identified in the affidavit by name and who survive the
15 deceased owner or that are in existence on the date of death of the
16 deceased owner. If no such beneficiary survives, the real property
17 or interest in real property of the deceased owner shall be
18 transferred to the contingent transfer on death beneficiary or
19 beneficiaries, if any, who are identified in the affidavit by name
20 and who survive the deceased owner or that are in existence on the
21 date of death of the deceased owner. If no beneficiaries or
22 contingent beneficiaries survive the deceased owner, then the
23 interest of the deceased owner shall be distributed as part of the
24 probate estate of the deceased owner of the interest.

1 **§37-16-8. Special beneficiary determination for named trustee.**

2 For purposes of this article, if a natural or legal person
3 designated by name in the affidavit as a transfer on death
4 beneficiary or as a contingent transfer on death beneficiary solely
5 in that person's capacity as a trustee of a trust has died, has
6 resigned or otherwise has been replaced by a successor trustee of
7 the trust on the date of death of the deceased owner, the successor
8 trustee of the trust shall be considered the transfer on death
9 beneficiary or contingent transfer on death beneficiary in
10 existence on the date of death of the deceased owner in full
11 compliance with this article, notwithstanding that the successor
12 trustee is not named as a transfer on death beneficiary or
13 contingent transfer on death beneficiary in the affidavit.

14 **§37-16-9. Liberally construed.**

15 Any transfer on death designation affidavit containing
16 language that shows a clear intent to designate a transfer on death
17 beneficiary shall be liberally construed to do so. Any
18 survivorship clause in a deed recorded before or after the
19 effective date of this statute in an office of the clerk of a
20 county commission that attempts to create a right of survivorship
21 tenancy, but otherwise fails, and shows a clear intent to designate
22 a beneficiary to receive the property upon death of one or more co-
23 tenants by survivorship shall be liberally construed to be an
24 effective affidavit under this statute.

1 The execution and recording of a transfer on death designation
2 affidavit shall be effective to terminate the designation of a
3 transfer on death beneficiary in a transfer on death deed involving
4 the same real property or interest in real property and recorded
5 prior to the effective date of this section.

6 **§37-16-10. Criminal penalties for falsifying an affidavit.**

7 Any person who knowingly and intentionally makes any false
8 statement in any affidavit required by this article is guilty of a
9 misdemeanor, and, upon conviction thereof, shall be fined not more
10 than \$1,000 or confined in jail for not more than one year, or both
11 fined and confined.