

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Originating**

## **Senate Bill 702**

BY SENATORS TRUMP, FERNS, GAUNCH, KIRKENDOLL,  
BEACH, ASHLEY, KARNES, LEONHARDT, ROMANO,  
PALUMBO, WILLIAMS, CLINE, SNYDER, MAYNARD AND  
CARMICHAEL

[Originating in the Committee on the Judiciary;

Reported on February 28, 2016]

1 A BILL to amend and reenact §44-8-1 of the Code of West Virginia, 1931, as amended, relating  
2 to providing that, in instances where real estate, or an interest therein, is devised to be  
3 sold and the proceeds thereof distributed, title to said real estate passes to those  
4 individuals entitled to receive the proceeds of sale if the personal representative of the  
5 estate does not do so within five years of the closing of an estate.

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

1 That §44-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
2 to read as follows:

**ARTICLE 8. REAL ESTATE OF DECEDENTS.**

**§44-8-1. Sale, conveyance and management of decedent's real estate; powers of executor  
and administrator with will annexed.**

1 Real estate devised to be sold shall, if no person other than the executor be appointed for  
2 the purpose, be sold and conveyed by the executor and the proceeds of sale, or the rents and  
3 profits of any real estate which the executor is authorized by the will to receive, shall be received  
4 by the executor who qualifies, or by his or her successor. If none qualify, or the one qualifying  
5 shall die, resign or be removed before the trust is executed or completed, the administrator with  
6 the will annexed shall sell or convey the lands so devised to be sold, and receive the proceeds of  
7 sale, or the rents and profits aforesaid, as an executor might have done: Provided, That if the  
8 executor shall not, within five years of the closing of the estate of the testator, sell any real estate  
9 devised to be sold, title thereto shall pass to the individuals entitled to receive the proceeds  
10 thereof, in such proportions as they are entitled to receive said proceeds, in the absence of any  
11 contrary testamentary intent.

12 When any will heretofore or hereafter executed gives to the executor named therein the  
13 power to sell the testator's real estate, which has not been theretofore specifically devised therein,  
14 the executor may sell any such real estate unless otherwise provided in said will. If such will  
15 directs the sale of testator's real estate but names no executor, or names an executor and the

16 executor dies, resigns or becomes incapable of acting, and an administrator with the will annexed  
17 is appointed, the administrator with the will annexed may sell such real estate as aforesaid.

18           Nothing in this section shall be deemed or construed so as to invalidate any conveyance  
19 made prior to the effective date of the amendments thereto adopted by the Legislature at its  
20 regular session held in the year ~~one thousand nine hundred eighty-seven~~ 1987.

NOTE: The purpose of this bill is to clarify that, in instances where a testator has devised certain real estate to be sold, and the proceeds distributed to certain recipients, title to the real estate passes to the named distributees if the executor does not sell the real estate within five years of the closing of an estate (such as in the case of an executor being unaware of the testator's ownership in a real property interest), in the absence of any contrary intent.

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