

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

## **Senate Bill 447**

BY SENATOR SYPOLT

[Introduced February 1, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-1-29 of the Code of West Virginia, 1931, as amended, relating  
 2 to transferring and amending conservation or preservation easements by a personal  
 3 representative, trustee, administrator, or executor of a deceased person or the person's  
 4 estate; distinguishing between easements created prior to or after the death of the person;  
 5 eliminating the authority to execute deeds of easement; and recognizing transfers and  
 6 amendments authorized through court proceedings.

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

**ARTICLE 1. PERSONAL REPRESENTATIVES.**

**§44-1-29. Authority of personal representative concerning conservation and preservation easements.**

1 (a) A personal representative, trustee, administrator, or executor of a decedent or a  
 2 decedent's estate is hereby granted the authority to:

3 (1) Sell a conservation or preservation easement created ~~prior to~~ after the decedent's  
 4 death under §8A-12-1 *et seq.* or §20-12-1 *et seq.* of this code;

5 (2) Donate a conservation or preservation easement created ~~prior to~~ after the decedent's  
 6 death under §8A-12-1 *et seq.* or §20-12-1 *et seq.* of this code; or

7 (3) Amend a conservation or preservation easement created prior to the decedent's death  
 8 under §8A-12-1 *et seq.* or §20-12-1 *et seq.* of this code and recorded on the decedent's real  
 9 property in order to obtain the benefit of the estate tax exclusion allowed under Section 2031(c)  
 10 of the United States Internal Revenue Code of 1986, as amended.

11 ~~(4) Execute a deed of conservation or preservation easement and related documents~~  
 12 ~~when decedent's application to establish and convey an easement was approved by a holder~~  
 13 ~~during the nine-month period preceding the date of decedent's death, but the deed of conservation~~  
 14 ~~or preservation easement and related documents were not signed by the decedent before his or~~  
 15 ~~her death: *Provided*, That before executing these documents, the personal representative, trustee~~  
 16 ~~or executor complies with the provisions of subsection (b) of this section; or~~

17 ~~(5) Execute a deed of conservation or preservation easement and related documents~~  
18 ~~when decedent's application to establish and convey an easement was submitted to a holder~~  
19 ~~before decedent's death but is approved by a holder after the decedent's death: *Provided*, That~~  
20 ~~before executing these documents, the personal representative, trustee, administrator or executor~~  
21 ~~complies with the provisions of subsection (b) of this section~~

22 (b) The personal representative, trustee, administrator, or executor shall ensure that the  
23 sale, donation, amendment or transfer of a conservation or preservation easement complies with  
24 the following:

25 (1) The proposed sale, donation, transfer, or amendment satisfies the requirements set  
26 forth in the provisions of §8A-12-1 *et seq.* or §20-12-1 *et seq.* of this code, as applicable to the  
27 particular easement;

28 (2) The proposed sale, donation, transfer, or amendment is to a qualified conservation  
29 organization or holder and the organization or holder agrees to accept the conservation or  
30 preservation easement; and

31 (3) The sale, donation, transfer, or amendment meets one of the following conditions:

32 (A) All heirs, beneficiaries, and devisees with interests in the real estate affected provide  
33 written consent; or

34 (B) The will or other testamentary instrument directs the personal representative, trustee,  
35 or executor to sell or donate the conservation or preservation easement; ~~or~~

36 (C) At the time of the decedent's death, the decedent had a pending application for a sale  
37 or donation of a conservation or preservation easement; ~~and such conservation or preservation~~  
38 ~~easement was in process of settlement or~~

39 (D) The sale, donation, transfer, or amendment of the conservation or preservation  
40 easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the  
41 property.

NOTE: The purpose of this bill is to update powers of a personal representative, trustee, administrator, or executor of a deceased person's estate with respect to the disposition of conservation or preservation easements.

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