

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.

This article may be cited as the Uniform Real Property Transfer

on Death Act.

§36-12-2. Definitions.

In this article:

(1) "Beneficiary" means a person who receives property under a transfer on death deed.

(2) "Contingent beneficiary" means a person designated in a transfer on death deed to receive property only if a different person fails to survive the transferor.

(3) "Designated beneficiary" means a person designated to receive property in a transfer on death deed. The term includes contingent beneficiaries.

(4) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(6) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(7) "Transfer on death deed" means a deed authorized under this article.

(8) "Transferor" means an individual who makes a transfer on death deed.

§36-12-3. Applicability.

This article applies to a transfer on death deed made on or after the effective date of this article, by a transferor dying on or after the effective date of this article.

§36-12-4. Nonexclusivity.

This article does not affect any method of transferring property otherwise permitted under the law of this state.

§36-12-5. Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries or contingent beneficiaries effective at the transferor's death by a transfer on death deed.

§36-12-6. Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§36-12-7. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

§36-12-8. Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

§36-12-9. Requirements.

A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this section, must contain the essential elements and formalities of a properly recordable *inter vivos* deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) Must be recorded before the transferor's death in the office of the clerk of the county commission in the county where the property is located: *Provided*, That, notwithstanding section two, article twenty-two, chapter eleven of this code, a transfer on death deed is exempt from the payment of excise tax on the privilege of transferring real estate for the reason that no interest in the property is at the time of recording being passed to the beneficiary and the deed remains revocable until the death of the transferor.

§36-12-10. Notice, delivery, acceptance and consideration not required.

A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated

beneficiary during the transferor's life; or

(2) Consideration.

§36-12-11. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

(C) An *inter vivos* deed that expressly revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the clerk of the county commission of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to

the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an *inter vivos* transfer of the property.

§36-12-12. Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

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

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

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

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

§36-12-13. Effect of transfer on death deed at transferor's death.

(a) Except as otherwise provided in the transfer on death deed in this article, section six, article one, chapter forty-one of this code, section three, article three, chapter forty-one of this code, article three, chapter forty-two of this code, section two, article four, chapter forty-two of this code or article five, chapter forty-two of this code, on the death of the transferor the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to article two, chapter thirty-nine and chapter thirty-eight of this code, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor's death. For purposes of this subsection, article two, chapter thirty-nine and chapter thirty-eight of this code, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

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

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

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

(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§36-12-14. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by article six, chapter forty-two of this code.

§36-12-15. Prior transfer on death liberally construed.

(a) Any transfer on death deed properly recorded in an office of the clerk of a county commission before the effective date of this article containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so.

(b) Any survivorship clause in a deed properly recorded before the effective date of this article in an office of the clerk of a county commission that attempts to create a right of survivorship tenancy, which survivorship tenancy otherwise fails, but otherwise is an effective deed, and shows a clear intent to designate a beneficiary to receive the property upon death of one or more cotenants by survivorship shall be liberally construed to be an effective transfer on death deed governed by this article.

§36-12-16. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**§36-12-17. Relation to Electronic Signatures in Global and National
Commerce Act.**

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001, *et seq.*, but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. §7001(c) or authorize electronic delivery of any of the notices described 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.