COMMENTS

Prefatory Note

This Uniform Act is designed to replace the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act, and the Uniform Disclaimer of Property Interests Act. The most striking change is the omission of any time limit on the right to disclaim. Under federal law, in order for a disclaimer to be recognized for tax purposes (that is, as not resulting in a taxable transfer) it must conform to the requirements under IRC § 2518 which include a nine-month limit on the right to disclaim, measured from the transfer creating the interest. Both federal law and the prior Uniform Acts applied the time limit to present possessory interests in the same way, but differed as to future interests. Under federal law, a future interest, no matter how contingent, must be disclaimed within nine months of its creation. Under the prior Uniform Acts, the limit was nine months “after the event that determines that the taker of the property or interest has become finally ascertained and his interest indefeasibly vested.” This Act does away with the time limit completely, barring the right to disclaim only by the occurrence of one or more of the events listed in Section 9(a). This provision thus magnifies the difference between the property law of disclaimers and the tax law pertaining thereto. Not every disclaimer, however, is made for tax purposes, and this Act allows the greatest possibility flexibility for non-tax qualified disclaimers.

This Act also provides detailed provisions for the disclaimer of powers of appointment and interests created under powers of appointment, the disclaimer of powers and property by fiduciaries, and for the disclaimer of interests in joint property. All these topics were addressed in a rudimentary fashion, if at all, in the prior acts. Developments in the tax law of disclaimers have made more detailed treatment necessary.

Section 1

Fiduciary: The definition of fiduciary includes an agent operating under a power of attorney. Whether or an attorney-in-fact is authorized to disclaim on behalf of his or her principal is a matter of the law of agency as relating to powers of attorney. If the attorney-in-fact does indeed have the power to disclaim the statute governs the use of that power.

Joint Property: The term "joint tenancy" describes a form of concurrent ownership by two or more persons. This Act uses the broader term, "joint property," rather than "joint tenancy," in order to include not only a traditional joint tenancy but also other property that is "held," but may not be "owned," by two or more persons with a right of survivorship. One form of such property is a joint bank account between parties who are not married to each other which, under the laws of many states, is owned by the parties in proportion to their deposits.[See UPC § 6-211(b)] This "holding" concept, as opposed to "owning," may also be true with joint brokerage accounts under the laws of some states. [See IRS. Proposed Reg. § 25.2518-2(c)(iv).]

Person: The definition of person is the definition widely used in uniform acts.

Section 2

Subsection (a): Prior Uniform Acts provided for a disclaimer of "the right of succession to any property or interest therein." This application is continued by the present language referring to "an interest in or right to . . . receive . . . property." The further language referring to "the right to . . .control property" broadens the permissible scope of disclaimers to include any power over property that gives the power-holder a right to control property, whether it be cast in the form of a power of appointment, or a fiduciary's management power over property or discretionary power of distribution over income or corpus.

This subsection also states the essential difference between an assignment of property, which presupposes ownership of the property being assigned, and a disclaimer, which is a refusal to accept the ownership of or right to control the property in question. A disclaimer made prior to a barring event as described in Section 14 relates back for all purposes to the time of the attempted creation of the interest in the disclaimant, and the rights of others are determined as if the disclaimant had never received the same, except as other provisions of state or federal law expressly provide to the contrary. Thus, in the absence of specific state law to the contrary, the disclaimer's relation-back effect will prevent a disclaimant's creditors from reaching the disclaimed property. However, it is possible to make a disclaimer that will be effective for state property law purposes, but which will not be recognized as a "qualified disclaimer" for federal transfer tax purposes because of a failure to meet the requirements of IRC § 2518. Similarly, an otherwise effective disclaimer by or on behalf of one seeking to qualify for Medicaid benefits would not prevent the disclaimed property from being treated as available assets in determining the applicant's eligibility. 42 U.S.C. § 1396p(e).

This subsection also makes clear that a partial disclaimer may be described in a wide variety of terms. This breadth of description makes possible the full range of tax qualified disclaimers described in Treas. Reg. § 25.2518-3. For example, the legatee of 10x shares of the stock of Y Corporation may disclaim 5x shares; the devisee of Blackacre may disclaim a percentage of Blackacre or a specific number of acres. The legatee may also disclaim the remainder in Blackacre and keep the life estate, but this would not be a tax qualified disclaimer under IRC § 2518 (Treas. Reg. § 25.2518-3(b))

Subsection (b) continues the provision of prior Uniform Acts on this topic.

Subsection (c) sets forth the formal requirements for a disclaimer which corresponds to the requirements of IRC § 2518.

Subsection (d) continues the provision of the prior Uniform Acts. Any impediment a future disclaimer could create to a present delivery of good title could be removed by a waiver of the right to disclaim under this subsection.

Subsection (e) broadens the provisions of prior Uniform Acts to preserve the right to disclaim under any other law.

Section 3

Section 3 governs disclaimers of interests arising by intestacy or created by will except if the disclaimer involves joint property, a power of appointment, is made by a taker in default under a power of appointment, or by a fiduciary.

Paragraph (1) provides a default rule for the passing of the disclaimed interest. The will may provide for the disposition of a disclaimed interest, but if it does not, or if the disclaimer is of an interest arising by intestacy, the interest passes as if the disclaimant had predeceased the decedent. For example, Mother dies, leaving a will, the residuary clause of which gives the residue of her estate to her descendants surviving her by representation. She is survived by a daughter who has two children and a grandchild who is the child of a predeceased son. The surviving child would prefer to have her share of Mother's estate pass to her children. If she disclaims her share of the residue of Mother's estate, her share will pass to her children, just as it would if she had actually predeceased Mother.

There is a difficulty, however. Under the system of distribution among multi-generational classes used in the Uniform Probate Code, § 2-709, division of the property to be distributed begins in the eldest generation in which there are living people. In the example in the previous paragraph, Mother's residuary estate would be divided into two parts, one part passing to the surviving child, the other to the child of the predeceased child. If both children had actually predeceased Mother, each grandchild would receive one-third of the residue. Should the daughter's disclaimer have the effect of altering the distributional pattern of the residue of the estate?

Courts have had little difficulty in answering this question in the negative. They have taken the position that the disclaimer should only allow the passing of what the disclaimant would otherwise have taken to those who would take should the disclaimant have predeceased. (*Welder v. Hitchcock*, 617 S.W.2d 294 (Tex.Civ.App. 1981)). The statute codifies this position by stating that the disclaimer will be ignored for purposes of determining the generational level at which the division of the property is made in order to give effect to a distribution by representation. In the example above, the amount passing by reason of the daughter's disclaimer is one-half the residue of Mother's estate, that part which she would have received had she not disclaimed.

This subparagraph also states that the disclaimer does not affect any other provision of the will. For example, if a beneficiary under a will receives both a specific bequest and a share of the residue, a disclaimer of the specific bequest will not affect the disclaimant's rights in the residue. (If the disclaimant wishes to make a tax qualified disclaimer under IRC §

2518, however, the disclaimant will also have to disclaim his or her share of the disclaimed property which would be part of his or her share of the residue.)

Subparagraph (2) continues the provision of prior Uniform Acts on this subject providing for the acceleration of future interests on the making of the disclaimer. For example, assume that Father's will creates a testamentary trust to pay income to his son for his life, and on his death to pay the remainder to the son's descendants then living, by representation. If the son disclaims his life income interest in the trust, the remainder will immediately become possessory in the son's descendants determined as of Father's death, just as if the son actually had not survived. It is immaterial under the statute that the actual situation at the son's death might be different with different descendants entitled to the remainder. This result is common to all modern disclaimer statutes, and is generally regarded as necessary to provide a clear rule. As such, similar provisions have been rigorously applied (*In re Estate of Gilbert*, 156 Misc.2d 379, 592 N.Y.S.2d 224 (1992)).

Subparagraph (3) continues yet another provision of Uniform Acts on this subject. As noted in the comments to Section 1 above, the relation back doctrine gives effect to the special nature of the disclaimer as a refusal to accept. Because the disclaimer "relates back" the disclaimant is regarded as never having had an interest in the disclaimed property. Creditors of the disclaimant, therefore, generally have nothing to attach. A disclaimer by an heir against whom there is an outstanding judgment will prevent the creditor from reaching the property the debtor would otherwise inherit. The statute continues the traditional relation back doctrine. Nothing in the statute, however, prevents the legislatures or the courts from limiting the affect of that doctrine in specific situations or generally. See the comments to Section 9 below.

Subparagraph (4) requires delivery by personal delivery, first-class mail or any other method likely to result in receipt of the disclaimer. The requirements relating to the person to whom the disclaimer must be delivered comport with the requirements of Treas. Reg. § 25.2518-2(b)(2) that the disclaimer be delivered "to the transferor of the interest, the transferor's legal representative, the holder of the legal title to the property to which the interest relates, or the person in possession of such property." The last sentence of the subparagraph allows a disclaimer to be made before the decedent's death, but requires its delivery after death in order for it to be effective. This provision, which clarifies existing law, gives a presumptive heir or devisee under a will greater latitude in meeting the nine-month time limit for tax-qualified disclaimers under IRC § 2518.

Section 4

Section 4 adapts the provisions of Section 3 for disclaimers of interests arising under instruments other than wills. The principal difference is the use of the effective date of the instrument as the measuring point for the effect of the disclaimer rather than the inapplicable "death of the decedent." For example, Mother may create a revocable inter vivos trust as a will substitute. Disclaimers of interests created under that trust would relate back to and disclaimants would be considered to predecease the effective date, which is the date of Mother’s death, at which time she may no longer revoke the trust. If the disclaimant is the beneficiary of a life insurance contract, the effective date would be the death of the insured/owner. Similarly, the beneficiary of an IRA who disclaims would be treated as predeceasing the owner’s death, unless, of course, the owner of the IRA had made an irrevocable beneficiary designation at any earlier time, which time would be the effective date.

Section 5

Section 5 greatly expands on the treatment of disclaimers of joint property in prior Uniform Acts on this subject. Since the previous Uniform Acts were drafted, the law regarding tax qualified disclaimers of joint property interests has been clarified. Courts have repeatedly held that a surviving joint tenant may disclaim that portion of the jointly held property to which the survivor succeeds by operation of law on the death of the other joint tenant so long as the joint tenancy was severable during the life of the joint tenants (*Kennedy v. Commissioner*, 804 F.2d 1332 (7th Cir 1986), *McDonald v. Commissioner*, 853 F.2d 1494 (9th Cir 1988), *Dancy v. Commissioner*, 872 F.2d 84 (4th Cir 1989).) On August 21, 1996 the Service published REG-208215-91 announcing proposed amendments of the Regulations under IRC § 2518 to reflect the decisions regarding disclaimers of joint property interests.

The various forms of ownership in which "joint property", as defined in Section 1, can be held include common law joint tenancies and any statutory variation thereof that preserves the right of survivorship. The common law was unsettled whether a surviving joint tenant had any right to renounce his interest in jointly-owned property and if so to what extent. See Casner, Estate Planning, 5th Ed. §10.7. Specifically, if A and B owned real estate or securities as joint tenants with right of survivorship and A died, the problem was whether B might disclaim what was given to him originally upon creation of the estate, or, if not, whether he could nevertheless reject the incremental portion derived through the right of survivorship. There was also a question of whether a joint bank account should be treated differently from jointly-owned securities or real estate for the purpose of disclaimer.

The general rule at common law was embodied in the concept of dual ownership expressed by the phrase "per my et per tout". On the one hand, each tenant was seised "per my" or by the moiety or undivided fractional share which would be all he would receive upon severance. On the other hand, he also initially held "per tout," or the entire property and the right to enjoy the entire estate. Powell on Real Property, ¶617(2). It is possible to argue that a disclaimer of the survivor's original undivided interest comes too late at the death of the first tenant because an acquiescence in the establishment of the tenancy is in effect an acceptance of the interest which cannot be shed except by transfer. Casner, op. cit., p. 22. But if the survivor was not apprised of the creation of the tenancy and did nothing before the death of the first tenant to show his acquiescence, he should be able to reject both the original and the accretive portions. Casner, op. cit., p. 22.

Even where the survivor has acquiesced in the establishment of the estate, it can be argued that, even in the absence of a specific statute, the accretive portion derived through survivorship should stand differently from the original interest and that the accretion should be subject to disclaimer for the reason that it is contingent, uncertain and (except as to tenancies by the entirety) defeasible until the death of the first tenant like a legacy under a will or a beneficial designation under an insurance policy. Barring conduct indicative of acceptance he should be able to reject the interest if he so elects, with like effect.

The position taken by this Act follows that taken in UDTUNIA and UPC Section 2-801 and confers the right of disclaimer upon a surviving joint holder (which includes "joint tenant") and, consistent with the general bar provisions of Section 9, leave to the particular circumstances whether he may disclaim all of the interest or only the accretive part and the effect of knowledge of the existence of the tenancy or other form of ownership, acceptance of benefits, and the like. The possible implication in UDTUNIA that in the case of a joint tenancy (as opposed to a joint bank account) an interest "devolves" to the surviving joint tenant upon the death of the first, when as stated above he was vested upon creation of the estate, has been eliminated by the inclusion of the formula set forth in subsection (a). Because of the desire to create a scheme whereby, under certain circumstances the entire interest may be disclaimed (subsection (c)) the Drafting Committee chose not to follow the example of the Michigan statute which presumes the existence of a present and a future estate. In Michigan the right of survivorship is deemed a future estate for the purpose of disclaimer.

Joint bank accounts are largely, if not always, creatures of statute (e.g. UPC Section 6-101 et seq.) with basis in contract rather than the laws of succession. It has been held that a joint bank account may properly be made the subject of a disclaimer, particularly if the survivor was not aware of the existence of the account. *Hershey, Ex'r'x. v. Bowers*, 708 Oh.St.2d 4, 218 N.E.2d 455 (Ohio 1966). In many states, the statutes state that a joint account belongs to the joint tenants in proportion to their contributions to the account. For instance, if A and B are joint tenants of an account to which A made all the contributions, A can withdraw the entire amount in the account without B’s consent and B can take nothing without A’s consent. Therefore, for tax purposes, B could disclaim the *entire* joint account on the death of A. The IRS has gone so far as to recognize a disclaimer of a survivorship interest in tenancy by the entirety accounts governed by the general rule for joint accounts (TAM 9612002, 9521001 [both applying Pennsylvania law]). While there appears to be no authority on point, it would seem that in the hypothetical just given, A could disclaim nothing on the death of B since B’s death does not mean anything passes to A given the law of joint accounts. (In TAM 9612002, the ruling states that the spouses each made one-half the contributions to the account; TAM 9521001 says nothing about the source of contributions.) The Proposed Regulations, § 25.2518-2(c)(4)(iv) recognize the special rules applicable to joint bank accounts and allow the disclaimer by a survivor of that part of the account contributed by the decedent and bars the disclaimer of that part of the account attributable to the survivor's contributions. Subsection (b) recognizes this situation by allowing the survivor to disclaim what the decedent owned, what the decedent could have removed from the account without the consent of the other joint tenant.

Subsection (c) addresses joint tenancies that are really testamentary substitutes. For example, A creates a joint tenancy in shares of stock with B, providing all the consideration. A probably intends the account to be a testamentary substitute rather than a true joint tenancy and B under the law of many jurisdictions would have no right to any of the property before A's death. B should then be able to disclaim the entire account on A's death. B's disclaimer might not be a tax qualified disclaimer or be tax qualified only in part, depending the rights of A and B on severance of the tenancy.

Subsection (d) provides that the disclaimer relates back to the death of the latest to die of the joint tenants.

Section 6

Section 6: Section 2(a) defines "disclaimable interest" as the "right to receive *or control* property". In that a power of appointment relates to the disposition of the property subject to the power it falls within this definition. This was not specifically addressed in the prior uniform acts. The practical effect of this type of disclaimer is as if the disclaimed power never existed. For example, the disclaimer could be of a portion of the power such as disclaiming the power to appoint one's self, while retaining the right to appoint to others.

Section 6(b) *mandates* delivery of notice of the disclaimer to party who has legal title to the property subject to the power.

Section 7

Section 7: This Section is the corollary to Section 6 only as to the procedural matters referred to. The substantive effect of the disclaimer is governed by other Sections. Subsection (a) simply recognizes the fact that there is no appointee to disclaim until the power is exercised. Subsection (b), on the other hand allows an identifiable taker in default to disclaim at any time. In both situations delivery of the disclaimer is mandated. Reference to the donee's personal representative is omitted from Subsection (b) because the power, being personal, will normally lapse upon the death of the donee unless the donor has provided for a successor donee.

Section 8

The Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act ("1978 Act") allowed for disclaimer by "... an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, or appointee under a power of appointment." This was an extension of the common law rule which allowed for disclaimer by a devisee or legatee, but not an heir. The 1990 amendments to section 2-801 of the UPC further extended the right to disclaim to a decedent through his personal representative. In recognizing the disclaimer by fiduciary, this section conforms to the UPC and extends that rationale to analogous situations. A trustee who disclaims property that would, if accepted into the trust, otherwise belong to a beneficiary is acting in much the same way as a personal representative of a decedent who disclaims for the beneficiaries. As with other actions taken by another in a fiduciary capacity, the disclaimer will be subject to the fiduciary's general duty of care.

It is difficult for a trustee to disclaim powers, whether granted by law or by the governing instrument, or property passing to the trust. Attempts by trustees to make tax qualified disclaimers have been rebuffed by the IRS on the ground that such disclaimers are not allowed by state statute and are ineffective without statutory sanction since they involved a repudiation of the trust. (Rev. Rul. 90-110, 1990-2 CB 209, PRLs 8527009, 8549004) On the other hand, a disclaimer by a trust beneficiary is possible. (*See* PRL 8543009 where a disclaimer by son of his interest in the trustee's power to make discretionary distributions of principal to him allowed the trust to qualify for the marital deduction.) The Tax Court agreed in Estate of Bennett v. Commissioner, 100 TC 43 (1993), citing the direct authority of Matter of Witz, 95 Misc.2d 36, 406 N.Y.S.2d 671 (Sur.Ct. 1978) in which the Surrogate wrote: "The trustee's purported disclaimer [of the power to invade principal] annexed to the petition is a nullity. Testator imposed an obligation upon the trustee which the fiduciary could not disclaim without renouncing his right to letters of trusteeship." (95 Misc.2d at 40, 406 N.Y.S.2d at 673).

There is contrary authority, however. In Estate of Ware v. Commissioner, 480 F.2d 444 (7th Cir. 1973) the court found that the Illinois Termination of Powers Act was broad enough to allow a trustee to "release" a power to accumulate trust income. In Cleaveland v. U.S., 62 A.F.T.R.2d 88-5992, 88-1 USTC ¶ 13,766 (C.D.Ill. 1988) the court held that a disclaimer by a trustee of the power to invade principal of a testamentary trust for the education of the decedent's children was a valid disclaimer and made the trust eligible for the marital deduction. This Act makes it clear that trustees may disclaim power.

The Massachusetts Supreme Judicial Court has gone much farther. McClintock v. Scahill, 403 Mass. 397, 530 N.E. 164 involved a disclaimer by trustees of property pouring over to the trust on the death of one of the grantors. The trustees indicated that the disclaimer of some $415, 000 would decrease the taxes on the decedent's estate by $625,000. (Although the Court does not mention it, because the trust was for the decedent's grandchildren it seems likely that the distribution would have resulted in a direct skip subject to the generation skipping transfer tax and the avoidance of that result accounted for the tax savings.) The court concluded that the trustee could disclaim. The Massachusetts statute allowed "beneficiaries" to disclaim, a definition which clearly included the trust. The question was, who disclaims on behalf of the trust, the beneficiaries (who presumably were minors and perhaps unborns) or the trustee. The trustee does have legal title to the trust property and acts for the trust in dealing with third parties and also has implied powers necessary to carry out the purpose of the trust in addition to the express power contained in the trust instrument. Finally, the statutory definition of beneficiary clearly included those who act on the behalf of others, such as an estate or a corporation. Since no claim was made that the trustee's action violated his fiduciary duty, the court found the disclaimer valid and effective.

Subsection (a) sets for the delivery requirements relating to different sorts of fiduciaries.

Subsection (b) deals with a fiduciary's disclaimer of a power over property. Such powers over property include a right to remove and replace a trustee or a trustee's power to make distributions of income or principal. A trustee who is also a beneficiary may want to disclaim a power to invade principal for himself for tax purposes, a power which could also be disclaimed as a power of appointment. The section refers to fiduciary in the singular. It is possible, of course, for a trust to have two or more co-trustees and an estate to have two or more co-personal representatives. This act leaves the affect of actions of multiple fiduciaries to the general rules in effect in each state relating to multiple fiduciaries. For example, if the general rule is that a majority of trustees can make binding decisions, a disclaimer by two of three co-trustees of a power that has not been exercised will destroy the power unless the third co-trustee follows whatever procedure state law prescribes for disassociating him or herself from the action of the majority. A sole trustee burdened with a power to invade principal for a group of beneficiaries including him or herself who wishes to disclaim the power but yet preserve the possibility of another trustee exercising the power would probably disclaim the invasion power as a power of appointment and then seek the appointment of a disinterested co-trustee to exercise the power. In that way, the possible total destruction of the power under subsection (c) is avoided.

Subsection (c) deals with disclaimer of a right to receive property into a trust, and thus applies only to trustees. (A disclaimer of a right to receive property by a fiduciary acting on behalf of an individual, such as a conservator, guardian, or agent is governed by the section of the statute applicable to the type of interest being disclaimed.) The instrument under which the right to receive the property or disclaim the property was created will generally govern the disposition of the property in the event of a disclaimer. When the instrument does not provide for the property in the event of a disclaimer the property passes as if the trust had never existed. The effect of the actions of co-trustees will depend on the state law governing the action of multiple trustees. The example used in the comments to the Michigan act follows: Grantor establishes Trust No. 1. At grantor's death, the trust property is divided into Trust A and Trust B. If the trustee disclaims any part of all of the property that would be part of Trust A, only trust A is treated as never having existed with respect to that property.

Section 9

The 1978 Act required that an effective disclaimer be made within 9 months of the event giving rise to the right to disclaim (e.g., 9 months from the death of the decedent or donee of a power or the vesting of a future interest). The 9 month period corresponded with the Internal Revenue Code provisions governing qualified tax disclaimers. Under the common law an effective disclaimer had to be made only within a "reasonable" time.

This act specifically rejects a time requirement for making a disclaimer. Recognizing that disclaimers are used for purposes other than tax avoidance, a disclaimer can be made effectively under the Act so long as the disclaimant is not barred from disclaiming the property or interest or has not waived the right to disclaim. Persons seeking to make tax qualifying disclaimers will continue to have to conform to the requirements of the Internal Revenue Code. Only events occurring after the right to disclaim has arisen will act as a bar. Thus, for example, with regard to joint property, the event giving rise to the right to disclaim is the death of a joint holder, not the creation of the joint interest and any benefit received during the deceased joint tenant's life is ignored. Ministerial acts and post-disclaimer curative acts are similarly to be ignored in determining whether the right to disclaim is barred.

This section lays out a framework for determining when a person will be deemed to have "accepted" the property or interest and will therefore be barred from a later attempt to reject it by disclaimer. The events resulting in a bar to the right to disclaim set forth in this section are identical to those found in the 1978 Act and Section 2-801 of the UPC and are substantially similar to those found in the Michigan Act.. Whether particular activities will be found to constitute an "acceptance" or "receipt of a benefit" as those terms are used in the statutory language will necessarily be determined by the courts based upon the particular facts. (*See Leipham v. Adams*, 77 Wash.App. 827, 894 P.2d 576 (1995); *Matter of Will of Hall,* 318 S.C. 188, 456 S.E.2d 439 (Ct.App. 1995); *Jordan v. Trower,* 208 Ga.App. 552, 431 S.E.2d 160 (1993); *Matter of Gates*, 189 A.D.2d 427, 595 N.Y.S.2d 194 (3d Dept. 1993))

The drafting committee does not contemplate that a mere failure to object to a gift (for example, additions to an existing trust) would alone constitute acceptance of the gift. Failure to object to a known and vested right over along period of time may however create a presumption of acceptance or receipt of a benefit. Proof of an assignment, judicial sale or written waiver will be easier to come by, to establish a bar.

With jointly held property, the extent to which the disclaimer will be recognized as effective will be determined according to state law. For example, with regard to jointly held real estate, the survivor could disclaim up to one-half an interest i.e., the dead joint tenant's interest. With a joint account, if the decedent contributed more than half of the funds, the survivor could disclaim more than half the funds (i.e., the decedent's share) .

This act, unlike the 1978 Act, specifies that "other law" may bar the right to disclaim. In some states, such as Minnesota, insolvency of the disclaimant will invalidate the disclaimer. (M.S.A. § 525.532 (c)(6)) In others a disclaimer by an insolvent debtor is treated as a fraudulent “transfer “. See *Stein v. Brown*, 18 Ohio St.3d 305 (1985); *Pennington v. Bigham*, 512 So.2d 1344 (Ala. 1987). A number of states refuse to recognize a disclaimer used to qualify the disclaimant for Medicaid or other public assistance. See *Hinschberger v. Griggs County Social Services*, 499 N.W.2d 876 (N.D. 1993); *Department of Income Maintenance v. Watts*, 211 Conn. 323 (1989), *Matter of Keuning*, 190 A.D.2d 1033, 593 N.Y.S.2d 653 (4th Dept. 1993), and *Matter of Molloy*, 214 A.D.2d 171, 631 N.Y.S.2d 910 (2nd Dept. 1995). It is also likely that state policies will begin to address the question of disclaimers of real property on which an environmental hazard is located in order to avoid saddling the state, as title holder of last resort, with the resulting liability. These larger policy issues are not addressed in this act and must, therefore, continue to be addressed by the states.

Section 10

Section 10 permits the recordation of a disclaimer of an interest in property ownership of or title to which is the subject of a recording system. This section expands on the corresponding provision of previous Uniform Acts which only referred to permissive recording of a disclaimer of an interest in real property. The provision remains permissive, recognizing that not every disclaimer, even of real property needs recordation. For example, if local practice in respect to devises of real property involves a deed from the executor to the devisee, a disclaimer of a specific devisee’s interest in the real property which results in the passing of the property to the residuary devisee will lead to the executor executing a deed to the residuary devisee and the disclaimer need not be recorded to complete the chain of title.