

D R A F T
FOR DISCUSSION ONLY
(1/10/97)

Uniform Disclaimers of Property Act (199_)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the National Conference of Commissioners on Uniform State Law. They do not necessarily reflect the views of the Committee, Reporters or Commissioner. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated final law.

DRAFTING COMMITTEE ON THE UNIFORM DISCLAIMER OF PROPERTY ACT

HIROSHI SAKAI, 902 City Financial Tower, 201 Merchant St., Honolulu, Hawaii, 96813, Chair

OWEN L. ANDERSON, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, Oklahoma 73019

WILLIAM R. BREETZ, Jr., 22nd floor, City Place 1, 185 Asylum St., Hartford, Connecticut 06103

MARY P. DEVINE, Virginia Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, Virginia 23219

JOHN GOODE, 11009 Ashburn Road , Richmond, Virginia 23235

J. RODNEY JOHNSON, University of Richmond, School of Law, Richmond, Virginia 23173

CHARLES F. KEELER, 1135 14th Street, Cody, Wyoming 82414

MARILYN E. PHELAN, Texas Tech University, School of Law, 18th and Hartford, Lubbock Texas 79409

WILLIAM P. LaPIANA, New York Law School, 57 Worth Street, New York, New York 10013 (reporter)

ADVISORS

REVIEW COMMITTEE

Copies of this Act and copies of all Uniform and model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
676 North St. Clair Street, Suite 1700
Chicago, Illinois 60611
312/915/0195

Uniform Disclaimer of Property Interests Acts (199__)

	<u>Page</u>
Section 1. Definitions.	5
Section 2. Disclaimer; General Provisions.	5
Section 3. Disclaimer of Interest Arising by Intestacy or Created by Will.	6
Section 4. Disclaimer of Interest Arising Under Instrument other than Will.	8
Section 5. Disclaimer of Joint Property.	9
Section 6. Disclaimer of Power of Appointment.	10
Section 7. Disclaimer by Appointee or Taker in Default of Power of Appointment..	11
Section 8. Disclaimer by Fiduciary	12
Section 9. When Disclaimer Barred.	13
Section 10. Optional Recording of Disclaimer	13
Section 11. Existing Interests	14

Section 12.	Uniformity of Application and Construction	14
[Section 13.	Repeal of Inconsistent Statutes]	14

SECTION 1. DEFINITIONS. In this Act:

(1) "Fiduciary" includes a personal representative, [conservator, guardian if no conservator has been appointed], trustee, and agent acting under the authority of a power of attorney.

(2) "Joint property" includes a joint tenancy, joint account in a financial institution, [tenancy by the entirety] [community property with right of survivorship], and other property held by or in the name of two or more persons under circumstances that entitle the last survivor of them to the whole of the property on the death of the other or others.

(3) "Person" means an individual, corporation, estate, trust, fiduciary, partnership, limited liability company, association, joint venture, or any legal or commercial entity.

SECTION 2. DISCLAIMER; GENERAL PROVISIONS

(a) A person may disclaim an interest in or right to control or receive property, in whole or in part, by delivering or filing a written disclaimer as provided in this [Act]. A disclaimer is a refusal to accept an interest in or right to control or receive

property and is not a transfer. A partial disclaimer may be expressed as a fraction, percentage, dollar amount, or any other interest or estate.

(b) The right to disclaim exists notwithstanding (I) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction or (ii) any restriction or limitation on the right to disclaim contained in the instrument.

(c) A disclaimer must be in writing, declare the disclaimer, describe the interest or right disclaimed, and be signed by the disclaimant.

(d) A disclaimer, or the written waiver of a right to disclaim, is binding upon the disclaimant or person waiving the right to disclaim and all persons claiming through or under either of them.

(e) This [Act] does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in or right to property under any other law.

SECTION 3. DISCLAIMER OF INTEREST ARISING BY INTESTACY OR CREATED BY WILL

Except as to disclaimers governed by Sections 5, 6, 7, or 8, the following rules apply to a disclaimer of an interest arising under the law of intestate succession or created by will, including an interest in a testamentary trust:

(1) If the decedent has not provided for another disposition of the disclaimed interest or of disclaimed or failed interests in general, the disclaimed interest passes as if the disclaimant had predeceased the decedent. However, for the purpose of determining the generation at which the division of the estate or trust property is to be made under [Part 7 of Article II of the Uniform Probate Code] [the rules determining the size of the shares which pass by representation] or for determining the application of any other provision of the will, the disclaimant is not treated as having predeceased the decedent

(2) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest, except when held by the disclaimant, takes effect as if the disclaimant had predeceased the decedent. A future interest held by the disclaimant is not accelerated.

(3) The disclaimer relates back for all purposes to the date of death of the decedent;

(4) A disclaimer must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt. The disclaimer of an interest in a testamentary trust must be delivered to the trustee. The disclaimer of an interest arising under the law of intestate succession or created by a will, including an interest in a testamentary trust for which no trustee is in office, must be delivered to the personal representative of the decedent's estate, or if no personal

representative is serving, by filing it with the court having jurisdiction to appoint or qualify the personal representative. A disclaimer made prior to the decedent's death is not effective unless delivered after the decedent's death.

SECTION 4. DISCLAIMER OF INTEREST ARISING UNDER INSTRUMENT OTHER THAN WILL.

Except as otherwise provided in Sections 5, 6, 7, or 8, if the disclaimed interest is created by an instrument other than a will, the following rules apply:

(1) if the instrument does not provide for another disposition of the interest or of disclaimed or failed interests in general, the disclaimed interest passes as if the disclaimant had died before the effective date of the instrument. However, for the purpose of determining the generation at which the division of the estate or trust property is to be made under [Part 7 of Article II of the Uniform Probate Code] [the rules determining the size of the shares which pass by representation] or for determining the application of any other provision of the instrument the disclaimant is not treated as having predeceased the effective date of the instrument. The effective date of the instrument is the date on which the maker no long has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest;

(2) The disclaimer affects only the provision of the

instrument under which the disclaimed interest was created;

(3) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest, except when held by the disclaimant, takes effect as if the disclaimant had died before the effective date of the instrument. A future interest that is held by the disclaimant is not accelerated;

(4) The disclaimer relates back for all purposes to the effective date of the instrument;

(5) The disclaimer must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt. A disclaimer of an interest in an inter vivos trust must be delivered to the trustee, or if no trustee is in office, by filing it with the court having jurisdiction to appoint or qualify the trustee. A disclaimer by a beneficiary of a beneficiary designation must be delivered to the payor. A disclaimer of a gift, other than a gift made by trust or beneficiary designation, must be delivered to the donor. A disclaimer made prior to the effective date of an instrument is not effective unless delivered after the effective date of the instrument.

SECTION 5. DISCLAIMER OF JOINT PROPERTY.

(a) A surviving holder of joint property may disclaim a fractional share of the joint property determined by dividing the

number one by the number of joint holders determined immediately before the death of the latest to die of the joint holders.

(b) To the extent that under the law of this state a deceased joint holder owned more than the fractional share described in subsection (a), a surviving joint holder may disclaim that larger portion in whole or in part.

(c) A surviving holder of joint property may disclaim the entire interest in the joint property if the joint property was created by act of a deceased holder of the joint property and the survivor did not join in creating the joint property.

(d) A disclaimer of an interest in joint property relates back for all purposes to the date of death of the latest to die of the deceased holders of the joint property. If the disclaimant is the only surviving holder, the disclaimed interest passes as part of the estate of the last to die of the other holders of the joint property. If the disclaimant is not the only surviving holder, the disclaimed interest passes to the other surviving holders of the joint property equally, or all to the other surviving holder if there is only one surviving holder.

(e) The disclaimer must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt to each person entitled to the disclaimed interest. A disclaimer made prior to the death of the joint holder to whose death the disclaimer relates is not effective unless delivered after the death.

SECTION 6. DISCLAIMER OF POWER OF APPOINTMENT

(a) If the holder of a power of appointment disclaims the power, property subject to the power passes:

(1) with respect to a power created by a will, as if the holder had died before the decedent, in which case the disclaimer relates back for all purposes to the date of the decedent's death; or

(2) with respect to a power created by any other instrument, as if the holder had died before the effective date of the instrument, in which case the disclaimer relates back for all purposes to the effective date of the instrument.

(b) The disclaimer must be delivered by personal delivery, first-class mail, or any other means likely to result in its receipt by the person who has legal title to the property subject to the power. If that person is a fiduciary and no fiduciary is serving at the time delivery is to be made, the disclaimer must be filed with the court having jurisdiction to appoint or qualify the fiduciary.

SECTION 7. DISCLAIMER BY APPOINTEE OR TAKER IN DEFAULT OF POWER OF APPOINTMENT

(a) A disclaimer by an appointee of a power of appointment must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt by the holder of the power, the personal representative of the holder's

estate, or the fiduciary under the instrument that created the power. The disclaimer must be delivered after the exercise of the power.

(b) A disclaimer by a taker in default of exercise of a power of appointment must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt by the holder of the power or by the fiduciary acting under the instrument that created the power. The disclaimer may be delivered before or after the lapse or release of the power.

(c) If delivery is to be made to a fiduciary and no fiduciary is in office, the disclaimer must be filed with the court having jurisdiction to appoint or qualify the fiduciary.

SECTION 8. DISCLAIMER BY FIDUCIARY

(a) If a disclaimer is made by a fiduciary, the disclaimer must be delivered by personal delivery, first-class mail, or any other method likely to result in its receipt:

(1) if the fiduciary is a personal representative, by the adult and competent beneficiaries of the estate whose interests are affected by the disclaimer;

(2) if the fiduciary is a trustee, by any co-trustees and by all of the beneficiaries of the trust who are adult and competent and whose interests are affected by the disclaimer;

(3) if the fiduciary is a guardian or conservator, by the court having jurisdiction over the estate of the ward;

(4) if the fiduciary is an agent, by the principal.

(b) A fiduciary may disclaim a power to control property, including the power to invade property, to alter, amend or revoke any instrument under which an estate or trust is held or created, or to terminate any right or interest thereunder, whether or not the power has been exercised. If the fiduciary has not exercised the power, the power ceases to exist as of the effective date of the governing instrument creating the power. If the fiduciary has exercised the power, the power ceases to exist as of the date of its last exercise by the fiduciary.

(c) If a trustee disclaims an interest in property that would otherwise be added to the trust, and the instrument creating the trust does not provide for another disposition of the disclaimed interest or of disclaimed or failed interests in general, the interest passes as if the trust with respect to which the disclaimer was made never existed.

SECTION 9. WHEN DISCLAIMER BARRED.

(a) A right to disclaim is barred by any of the following events occurring after the right to disclaim becomes effective and before the disclaimer is delivered:

(1) an acceptance of the interest sought to be disclaimed;

(2) a voluntary assignment, conveyance, encumbrance, pledge, or transfer of the property to which the right related;

or a contract therefor;

(3) a written waiver of the right to disclaim;

(4) a judicial sale of the property to which the right related; or

(5) the expiration of the period within which the interest disclaimed must vest under the rule against perpetuities.

(b) A right to disclaim may be barred by other law.

SECTION 10. OPTIONAL RECORDING OF DISCLAIMER

If ownership of or title to property an interest in which is the subject of a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. However, failure to file, record or register the disclaimer does not affect the validity of the disclaimer as between the parties to the disclaimer.

SECTION 11. EXISTING INTERESTS. An interest in property existing on the effective date of this [Act] as to which the time for delivering a disclaimer under superseded law has not expired may be disclaimed after the effective date of this [Act], and before any event that bars a disclaimer.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its

general purpose to make uniform the law with respect to the subject of this [Act] among States enacting It.

[SECTION 13. REPEAL OF INCONSISTENT STATUTES].