

D R A F T

FOR APPROVAL

**AMENDMENTS TO  
UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT  
(1999)**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-ELEVENTH YEAR  
TUCSON, ARIZONA  
JULY 26 - AUGUST 2, 2002

**AMENDMENTS TO  
UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT  
(1999)**

*WITH PREFATORY NOTE AND PROPOSED COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**AMENDMENTS TO  
UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT (1999)**

**TABLE OF CONTENTS**

SECTION 5. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE. ....	1
SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ....	4
SECTION <del>17</del> <u>18</u> . UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	5
SECTION <del>18</del> <u>19</u> . SEVERABILITY CLAUSE. ....	5
SECTION <del>19</del> <u>20</u> . EFFECTIVE DATE. ....	5
SECTION <del>20</del> <u>21</u> . REPEALS. ....	5

**AMENDMENTS TO**  
**UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT (1999)**

1       The Uniform Disclaimers of Property Interests Act (1999) does not comply with the  
2 subsequently developed Conference policy on the response to the Electronic Signatures in Global  
3 and National Commerce Act of 2000 (15 U.S.C. Section 7001, et seq.) (E-Sign). States which  
4 enact the Disclaimers Act subsequent to E-Sign will be preempted by E-Sign. The following  
5 amendments amend the Disclaimers Act to comply with Conference policy and to avoid  
6 preemption by E-Sign. Section 5(c) of the Disclaimers Act is amended to add a definition of  
7 “signed.” A new Section 17 adds the Conference’s standard E-Sign provision. Identical E-Sign  
8 provisions are included in the proposed amendments to the Uniform Probate Code, also being  
9 considered at the 2002 annual meeting, that will incorporate the Disclaimers Act into that Code  
10 as Article II, Part 11.

11  
12  
13  
14       **Amendment 1. Amend Section 5 as follows:**

15       **SECTION 5. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN**  
16  
17 **IRREVOCABLE.**

18       (a) A person may disclaim, in whole or part, any interest in or power over property,  
19 including a power of appointment. A person may disclaim the interest or power even if its  
20 creator imposed a spendthrift provision or similar restriction on transfer or a restriction or  
21 limitation on the right to disclaim.

22       (b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by  
23 another statute of this State or by the instrument creating the fiduciary relationship, a fiduciary  
24 may disclaim, in whole or part, any interest in or power over property, including a power of  
25 appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim  
26 the interest or power even if its creator imposed a spendthrift provision or similar restriction on  
27 transfer or a restriction or limitation on the right to disclaim, or an instrument other than the

1 instrument that created the fiduciary relationship imposed a restriction or limitation on the right  
2 to disclaim.

3 (c) To be effective, a disclaimer must be in a writing or other record, declare the  
4 disclaimer, describe the interest or power disclaimed, be signed by the person making the  
5 disclaimer, and be delivered or filed in the manner provided in Section 12. In this subsection;

6 (1) “record” means information that is inscribed on a tangible medium or that is  
7 stored in an electronic or other medium and is retrievable in perceivable form;

8 (2) “signed” means, with present intent to authenticate or adopt a record, to:

9 (A) execute or adopt a tangible symbol; or

10 (B) attach to or logically associate with the record an electronic sound, symbol, or  
11 process.

12 (d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount,  
13 term of years, limitation of a power, or any other interest or estate in the property.

14 (e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Section 12  
15 or when it becomes effective as provided in Sections 6 through 11, whichever occurs later.

16 (f) A disclaimer made under this [Act] is not a transfer, assignment, or release.

17 **Comment**

18 Subsections (a) and (b) give both persons (as defined in Section 1(6)) and fiduciaries (as  
19 defined in Section 1(4)) a broad power to disclaim both interests in and powers over property. In  
20 both instances, the ability to disclaim interests is comprehensive; it does not matter whether the  
21 disclaimed interest is vested, either in interest or in possession. For example, Father’s will  
22 creates a testamentary trust which is to pay income to his descendants and after the running of the  
23 traditional perpetuities period is to terminate and be distributed to his descendants then living by  
24 representation. If at any time there are no descendants, the trust is to terminate and be distributed  
25 to collateral relatives. At the time of Father’s death he has many descendants and the possibility  
26 of his line dying out and the collateral relatives taking under the trust is remote in the extreme.  
27 Nevertheless, under the Act the collateral relatives may disclaim their contingent remainders. (In

1 order to make a qualified disclaimer for tax purposes, however, they must disclaim them within 9  
2 months of Father’s death.) Every sort of power may also be disclaimed.  
3

4 Subsection (a) continues the provisions of current law by making ineffective any attempt  
5 to limit the right to disclaim which the creator of an interest or non-fiduciary power seeks to  
6 impose on a person. This provision follows from the principle behind all disclaimers – no one  
7 can be forced to accept property – and extends that principle to powers over property.  
8

9 This Act also gives fiduciaries broad powers to disclaim both interests and powers. A  
10 fiduciary who may also be a beneficiary of the fiduciary arrangement may disclaim in either  
11 capacity. For example, a trustee who is also one of several beneficiaries of a trust may have the  
12 power to invade trust principal for the beneficiaries. The trustee may disclaim the power as  
13 trustee under Section 11 or may disclaim as a holder of a power of appointment under Section 9.  
14 Subsection (b) also gives fiduciaries the right to disclaim in spite of spendthrift or similar  
15 restrictions given, but subjects that right to a restriction applicable only to fiduciaries. As a  
16 policy matter, the creator of a trust or other arrangement creating a fiduciary relationship should  
17 be able to prevent a fiduciary accepting office under the arrangement from altering the  
18 parameters of the relationship. This reasoning also applies to fiduciary relationship created by  
19 statute such as those governing conservatorships and guardianships. Subsection (b) therefore  
20 does not override express restrictions on disclaimers contained in the instrument creating the  
21 fiduciary relationship or in other statutes of the State.  
22

23 Subsection (c) sets forth the formal requirements for a disclaimer. The ~~definition~~  
24 definitions of “record” and “signed” in this subsection ~~is~~ are derived from the Uniform Electronic  
25 Transactions Act § 102. The ~~definition recognizes~~ definitions recognize that a disclaimer may be  
26 prepared in forms other than typewritten pages with a signature in pen. Because of the novelty of  
27 a disclaimer executed in electronic form and the ease with which the term “record” can be  
28 confused with recording of documents, the Act does not use the term “record” in isolation but  
29 refers to “writing or other record.” The delivery requirement is set forth in Section 12.  
30

31 Subsection (d) specifically allows a partial disclaimer of an interest in property or of a  
32 power over property, and gives the disclaimant wide latitude in describing the portion  
33 disclaimed. For example, a residuary beneficiary of an estate may disclaim a fraction or  
34 percentage of the residue or may disclaim specific property included in the residue (all the shares  
35 of X corporation or a specific number of shares). A devisee or donee may disclaim specific  
36 acreage or an undivided fraction or carve out a life estate or remainder from a larger interest in  
37 real or personal property. (It must be noted, however, that a disclaimer by a devisee or donee  
38 which seeks to “carve out” a remainder or life estate is not a “qualified disclaimer” for tax  
39 purposes, Treas. Reg. § 25.2518-3(b).)  
40

41 Subsection (e) makes the disclaimer irrevocable on the later to occur of (i) delivery or  
42 filing or (ii) its becoming effective under the section governing the disclaimer of the particular  
43 power or interest. A disclaimer must be “irrevocable” in order to be a qualified disclaimer for

1 tax purposes. Since a disclaimer under this Act becomes effective at the time significant for tax  
2 purposes, a disclaimer under this Act will always meet the irrevocability requirement for tax  
3 qualification. The interaction of the Act and the requirements for a tax qualified disclaimer can  
4 be illustrated by analyzing a disclaimer of an interest in a revocable lifetime trust.  
5

6 **Example 1.** G creates a revocable lifetime trust which will terminate on G’s death and  
7 distribute the trust property to G’s surviving descendants by representation. G’s son, S,  
8 determines that he would prefer his share of G’s estate to pass to his descendants and  
9 executes a disclaimer of his interest in the revocable trust. The disclaimer is then delivered to  
10 G (*see* Section 12(e)(3)). The disclaimer is not irrevocable at that time, however, because it  
11 will not become effective until G’s death when the trust becomes irrevocable (*see* Section  
12 6(b)(1)). Because the disclaimer will not become irrevocable until it becomes effective at  
13 G’s death, S may recall the disclaimer before G’s death and, if he does so, the disclaimer will  
14 have no effect.  
15

16 Subsection (f) restates the long standing rule that a disclaimer is a true refusal to accept  
17 and not an act by which the disclaimant transfers, assigns, or releases the disclaimed interest.  
18 This subsection states the effect and meaning of the traditional “relation back” doctrine of prior  
19 Acts. It also makes it clear that the disclaimed interest passes without direction by the  
20 disclaimant, a requirement of tax qualification.  
21  
22  
23

24 **Amendment 2: Renumber existing Sections 17, 18, and 19 as Sections 18, 19, and 20 and**  
25 **add a new Section 17 as follows:**  
26

27 **SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
28 **NATIONAL COMMERCE ACT.** This [Act] modifies, limits, and supercedes the federal  
29 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)  
30 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or  
31 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15  
32 U.S.C. Section 7003(b)).

33 **Comment**

34 This Section adopts standard language approved by the Uniform Law Conference that is  
35 intended to preempt application of the federal Electronic Signatures in Global and National  
36 Commerce Act of 2000 (E-Sign) . Section 102(a)(2)(B) of that Act provides that the federal law

1 can be preempted by a later statute of the State that specifically refers to the federal law. Not  
2 subject to preemption by the states are E-Sign's consumer consent provisions (Section 101(c))  
3 and its notice provisions (Section 103(b)), neither of which have substantive impact on the  
4 Disclaimers Act. The effect of this Section is to reaffirm state authority over the formal  
5 requirements for the making of a disclaimer. For these requirements, see Section 5, and,  
6 specifically, Section 5(c), which allow a disclaimer to be made by means of a signed record.  
7  
8  
9

10 **SECTION ~~17~~ 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

11 applying and construing this Uniform Act, consideration must be given to the need to promote  
12 uniformity of the law with respect to its subject matter among States that enact it.  
13

14 **SECTION ~~18~~ 19. SEVERABILITY CLAUSE.** If any provision of this [Act] or its  
15 application to any person or circumstance is held invalid, the invalidity does not affect other  
16 provisions or applications of this [Act] which can be given effect without the invalid provision or  
17 application, and to this end the provisions of this [Act] are severable.  
18

19 **SECTION ~~19~~ 20. EFFECTIVE DATE.** This [Act] takes effect on .....

20  
21 **SECTION ~~20~~ 21. REPEALS.** The following acts and parts of acts are repealed:

- 22 (1) .....
- 23 (2) .....
- 24 (3) .....

25 **Comment**

26 Existing acts dealing with disclaimers are superseded by this Act and should be repealed.  
27 Among such acts are the previous Uniform Acts on this subject (*see* Prefatory Note).  
28