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FOR DISCUSSION ONLY

**UNIFORM DISCLAIMER OF PROPERTY
INTERESTS ACTS (199_)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 14, 1995, Draft

UNIFORM DISCLAIMER OF PROPERTY
INTERESTS ACTS (199_)

Without Prefatory Note and Comments

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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SECTION 1. DEFINITIONS.

In this Act:

(1) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of the authority granted.

(2) "Disclaimable interest" includes property, the right to receive or control property, and a power of appointment. The term does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant, even if the disclaimant created the joint property.

(3) "Effective date of a governing instrument other than a will or testamentary trust" means the date on which a property right vests, or a contract right arises, even though the right is subject to divestment.

(4) "Fiduciary" includes an agent, a conservator, a guardian where no conservator has been appointed, a guardian ad litem, a personal representative including an independent personal representative, a trustee, a probate court acting through a protective order under the [Uniform Probate Code], and a

temporary, successor, or foreign fiduciary.

(5) "Fiduciary power" means a management power relating to the administration or management of assets granted by law to a fiduciary or conferred upon a fiduciary in a governing instrument.

(6) "Governing instrument" means a deed, assignment, bill of sale, will, trust, beneficiary designation, contract, instrument creating or exercising a power of appointment or a power of attorney, or any other instrument under which (i) property devolves or (ii) a property right or contract right is created. The phrase includes the provable terms of an oral contract or arrangement under which property devolves or a property right is created.

(7) "Joint property" means property that is owned by two or more persons with rights of survivorship, and includes a tenancy by the entireties in real property, a tenancy in personal property a joint tenancy, a joint tenancy with rights of survivorship, and a joint life estate with contingent remainder in fee. For purposes of this Act, joint property is deemed to consist of a present interest and a future interest. The future interest is the right of survivorship.

(8) "Person" includes an entity and an individual, other than a fiduciary, an estate, or a trust.

(9) "Property" means anything that may be the subject of ownership. The term includes both real and personal property and an interest in property, including a present interest, a

future interest, a legal interest, an equitable interest, and an interest acquired by intestate or testate succession, succession to a disclaimed interest, lapse or release of a power of appointment, or an interest that may be acquired otherwise under a governing instrument.

(10) "Trust" means (i) a fiduciary relationship with respect to property, subjecting the person who holds title to the property to equitable duties to deal with the property for the benefit of another person and (ii) which arises as a result of a manifestation of an intention to create it. The term includes an express trust, private or charitable, including additions thereto, however created, and a trust created by statute, judgment, or decree under which the trust is to be administered in the manner of an express trust. The term excludes a constructive trust and a resulting trust.

SECTION 2. RIGHT TO DISCLAIM; WHO MAY DISCLAIM.

(a) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest in whole or in part.

(b) A trustee, with respect to the trust as a whole or with respect to any separate trust that is or will be established under the governing instrument, may disclaim a disclaimable interest, in whole or in part, but only to the extent that the governing instrument expressly gives the trustee the right to disclaim.

(c) A fiduciary may disclaim a fiduciary power notwithstanding any restriction or limitation on the right to disclaim contained in the governing instrument.

SECTION 3. EXTENT OF DISCLAIMER.

A disclaimer may be made as to a fractional or percentage share, or any limited interest or estate. Language in a power of attorney granting the agent the authority to do whatever the principal could do, or words of similar effect, includes the authority to disclaim, unless the authority to disclaim is specifically excluded or limited.

SECTION 4. WHEN LIMITATION ON RIGHT TO DISCLAIM EFFECTIVE.

Except for a trust or a power of attorney, the right to disclaim a disclaimable interest exists notwithstanding a spendthrift provision or any restriction or limitation on the right to disclaim contained in the governing instrument.

SECTION 5. TIME OF DISCLAIMER.

(a) **Testamentary Interests**

Except as provided in subsections (c), (d) and (e), if the disclaimed interest arises under a will or testamentary trust, or by the laws of intestacy, the disclaimer must be delivered after the death of the owner of the property and before any event

described in Section 11. The disclaimer must be delivered to (I) the personal representative of the deceased owner's estate if the disclaimed interest arises under a will or by the laws of intestacy, (ii) the trustee of the testamentary trust if the disclaimed interest arises under a testamentary trust, or (iii) if no trustee has been appointed, the personal representative of the deceased owner's estate.

(b) **Nontestamentary Interests**

Except as provided in subsections (c), (d) and (e), if the disclaimed interest arises under a governing instrument other than a will or testamentary trust, the disclaimer must be delivered after the effective date of the governing instrument and before any event described in Section 11. The disclaimer must be delivered as follows:

(1) **Disclaimer by Beneficiary of Trust.** If the disclaimer is made by a beneficiary of a trust, then the disclaimer must be delivered to the trustee.

(2) **Disclaimer by Donee of Gift.** If the disclaimer is made by a donee with respect to a gift from a living donor, then the disclaimer must be delivered to the donor of the gift.

(3) **Disclaimer by a Beneficiary under a Beneficiary Designation.** If the disclaimer is made by a beneficiary under a beneficiary designation, then the disclaimer

must be delivered to the payor.

(4) **Disclaimer by a Trustee with Respect to a Separate Trust.** If the disclaimer is made by a trustee with respect to a separate trust that is or will be established under the governing instrument, then the disclaimer must be delivered to any other incumbent trustee of that trust who has not disclaimed or all the beneficiaries of that trust who are then living and whose whereabouts are known or reasonably ascertainable.

(c) **Powers of Appointment.** If the disclaimed interest is subject to, or arises under, an exercise, release, or lapse of a power of appointment, the following rules govern:

(1) **Disclaimer by Appointee.** The disclaimer by an appointee must be delivered to the donee, the personal representative of the donee's estate, or the fiduciary under the instrument which created the power of appointment. The disclaimer by an appointee must be delivered after the exercise of the power of appointment by the donee and before any event described in Section 11.

(2) **Disclaimer by Taker in Default.** The disclaimer by a taker in default must be delivered to the donee, the fiduciary under the instrument which created the power of appointment, or any one of the persons entitled to the property in the event of a disclaimer. The disclaimer by a taker in default

may be delivered before or after the lapse or release of the power of appointment and it must be delivered before any event described in Section 11.

(d) **Joint Property.**

If the disclaimed interest arises out of joint property, the disclaimer must be delivered after creation of the joint ownership and before any event described in Section 11, to the person who created the joint property, a remaining owner who has not disclaimed, or the person entitled to the disclaimed interest in the event of a disclaimer. The barring of the right to disclaim a present interest under Section 11 does not bar the right to disclaim the future interest.

(e) **Fiduciary Powers.**

A fiduciary power may be disclaimed at any time, before or after exercise. The disclaimer must be delivered to the person who established the instrument which gave rise to the power or to the following:

(1) If the fiduciary is a personal representative, to all the devisees under the will who are then living and whose whereabouts are known or reasonably ascertainable

(2) If the fiduciary is a trustee, to any other incumbent trustee who has not disclaimed the power or all the beneficiaries of the trust who are then living and whose

whereabouts are known or reasonably ascertainable,

(3) If the fiduciary is a guardian or conservator, to the interested parties, or

(4) If the fiduciary is an agent to the principal, or if the principal is legally incapacitated, the principal's presumptive heirs at law .

SECTION 6. FORM OF DISCLAIMER.

(a) The disclaimer must (i) be in writing, (ii) declare the disclaimer, (iii) describe the disclaimed interest, (iv) be signed by the disclaimant, and (v) be delivered as provided in Section 5.

(b) A disclaimer of a disclaimable interest by a fiduciary who represents a person to whom a disclaimable interest devolves on behalf of that person must be signed by all incumbent fiduciaries.

(c) A disclaimer of a disclaimable interest by a trustee may be signed by less than all incumbent trustees, unless the governing instrument requires otherwise.

(d) A disclaimer of a fiduciary power by a fiduciary may be signed by less than all incumbent fiduciaries.

SECTION 7. MANNER OF DELIVERY.

A disclaimer must be delivered :

(i) by personally handing it to the person to whom it is to be delivered or a fiduciary representing that person,

(ii) by enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to whom it is to be delivered or a fiduciary representing that person, and depositing the envelope and its contents in the United States mail,

(iii) by any other means which is reasonably likely to accomplish delivery to the person who is to receive the disclaimer or a fiduciary representing that person; or

(iv) if delivery is to be made to a fiduciary and no fiduciary is then serving, delivery of the disclaimer by filing the disclaimer with the [probate] court which has jurisdiction to entertain proceedings to appoint or qualify the fiduciary. If the fiduciary cannot be located, delivery of the disclaimer shall be made by filing the disclaimer with the [court which has jurisdiction over the fiduciary].

SECTION 8. FILING AND RECORDING.

A copy of a disclaimer shall be filed in any [probate] court where proceedings are pending concerning the disclaimed interest, or in the [court which would have jurisdiction if proceedings were commenced]. If the disclaimed interest pertains to real property, a copy of the disclaimer may be recorded in [the office of the register of deeds of the county in which the property is located].

SECTION 9. EFFECT OF DISCLAIMER.

(a) A disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the disclaimed interest. The disclaimant is treated as never having received the disclaimed interest.

(b) **Testamentary Interest.** Except as provided in subsections (d), (e), (f) and (g), if a disclaimed interest arises under a will, testamentary trust, or the laws of intestacy, and the decedent has not provided for (i) another disposition of that interest should it be disclaimed, or (ii) disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. However, if by law, or under the will or testamentary trust, the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent.

A future interest that takes effect in possession or enjoyment upon the termination of the disclaimed interest, takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and which takes effect at a time certain is not accelerated and takes effect at

the time certain. A disclaimer relates back for all purposes to the date of death of the decedent.

(c) **Nontestamentary Interest.** Except as provided in subsections (d), (e), (f) and (g), if the disclaimed interest arises under a governing instrument other than a will or testamentary trust, and the governing instrument does not provide for another disposition of that interest should it be disclaimed or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. However, if by law or under the governing instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date.

A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. A future interest that is held by the disclaimant and which takes effect at a time certain is not accelerated and takes

effect at the time certain.

(d) **Joint Property.** If the disclaimed interest arises out of joint property created by a testamentary or nontestamentary governing instrument:

(1) **Sole Surviving Owner.** If the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners; or

(2) **Multiple Surviving Owners.** If the disclaimant is not the only living owner, the disclaimed interest devolves to the living joint owners equally, or all to the other living owner, if there is only one living owner.

(3) A disclaimer of an interest arising out of joint property created by a testamentary or nontestamentary governing instrument relates back for all purposes to the effective date of the governing instrument.

(e) **Powers of Appointment.** If the donee of a power of appointment disclaims the power of appointment, the property that is subject to the power of appointment devolves (i) as if the donee died before the decedent, if the power of appointment arises out of a will or testamentary instrument and the disclaimer relates back for all purposes to the date of death of the decedent, or (ii) as if the disclaimant died before the effective date of a governing instrument other than a will or testamentary trust and the disclaimer relates back for all purposes to that

date.

(f) **Disclaimer by Trustee.** If all incumbent trustees disclaim a disclaimable interest, and the governing instrument does not provide for another disposition of the disclaimed interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the trust with respect to which the disclaimer was made never existed. If less than all incumbent trustees disclaim a disclaimable interest, and the governing instrument does not provide for another disposition of the disclaimed interest under those circumstances, the trustee who disclaims is treated as never having had any interest in or power over the disclaimed interest.

(g) **Fiduciary Power.** If a fiduciary disclaims a fiduciary power, the fiduciary power ceases to exist as of the effective date of the disclaimer.

SECTION 10. DISCLAIMER BINDING.

The disclaimer, or the written waiver of the right to disclaim, is binding upon the disclaimant or person waiving the right to disclaim and all persons claiming through or under him or her.

A disclaimer of a fiduciary power by one of multiple incumbent fiduciaries is binding only on the fiduciary who

disclaims, and is not binding on the other incumbent fiduciaries or on successor fiduciaries. A disclaimer of a fiduciary power by all incumbent fiduciaries is binding on all successor fiduciaries, unless the disclaimer states otherwise.

SECTION 11. WHEN DISCLAIMER BARRED.

(a) The right to disclaim property is barred by any of the following events which occurs after the event giving rise to the right to disclaim and before the disclaimer is perfected:

(1) an assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract therefor,

(2) a written waiver of the right to disclaim,

(3) an acceptance of the disclaimed interest or a benefit thereunder after actual knowledge that a property right has been conferred,

(4) a sale of the property under judicial sale, or

(5) the expiration of the permitted applicable perpetuities period.

(b) The right to disclaim may be barred to the extent provided by other applicable statutory law. A partial bar shall not preclude the disclaimant from disclaiming all or any part of the balance of the property where the disclaimant has received a portion of the property and there still remains an interest which the disclaimant is yet to receive. An act that bars the right to

disclaim a present interest in joint property does not bar the right to disclaim a future interest in joint property.

SECTION 12. EXCLUSIVENESS OF REMEDY.

The common law right of disclaimer or renunciation is abolished. This Act does not abridge the right of a person to waive, release, disclaim or renounce property or an interest in property under any other statute.

SECTION 13. APPLICATION.

An interest in property that exists on the effective date of this Act as to which, if a present interest, the time for delivering a disclaimer under this Act has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed after the effective date of this Act, and before any event described in Section 11.

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 14. REPEAL OF PRIOR INCONSISTENT STATUTES].