

D R A F T
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Uniform Disclaimers of Property Act (199_)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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SECTION 1. DEFINITIONS. In this Act:

(1) "Disclaimable interest" includes property, the right to receive or control property, a power of appointment, a fiduciary power, the survivorship interest in joint property, and the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to a joint tenant, if the joint tenancy was created by act of a deceased joint tenant, and the survivor did not join in creating the joint tenancy.

(2) "Fiduciary" includes an agent acting under a written power of attorney, conservator, guardian if no conservator has been appointed, guardian ad litem, personal representative, trustee, probate court acting through a protective order under the [Uniform Probate Code], and temporary, successor, or foreign fiduciary.

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

(4) "Governing instrument" means any instrument, the provable terms of any oral contract, and any other arrangement under which property devolves or a property or contract right is created. The term includes a deed, will, trust, insurance or

annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(5) "Joint property" means real or personal property that is owned by two or more persons under circumstances that entitle one or more to the whole of the property on the death of the other or others.

(6) "Person" means an individual or an organization. The term does not include a government, governmental subdivision, agency, or instrumentality; or public corporation.

(7) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(8) "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, with additions thereto, wherever and however created. The term includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts,

conservatorships, personal representatives, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

SECTION 2. WHO MAY DISCLAIM.

(a) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest so long as the disclaimable interest was not retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest, but a future interest in joint property is not such an interest.

(b) 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.

(c) A fiduciary may disclaim a disclaimable interest only to the extent the disclaimer is consistent with the fiduciary's fiduciary duty.

SECTION 3. EXTENT OF DISCLAIMER.

(a) A disclaimable interest may be disclaimed in whole or in

part, as to a fractional or percentage share, or as to any limited interest or estate.

(b) The right to disclaim a disclaimable interest exists notwithstanding a spendthrift provision or any restriction or limitation on the right to disclaim contained in a governing instrument, other than a power of attorney.

SECTION 4. TIME OF DISCLAIMER.

(a) Except as otherwise provided in subsections (c), (d), and (e), if the disclaimed interest arises under a will or testamentary trust or by the law of intestacy, the disclaimer must be delivered after the death of the owner of the property. The disclaimer must be delivered to the personal representative of the deceased owner's estate if the disclaimed interest arises under a will or by the laws of intestacy, the trustee of the testamentary trust if the disclaimed interest arises under a testamentary trust, or if a trustee of a testamentary trust has not been appointed, the personal representative of the estate of the deceased owner.

(b) Except as otherwise 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 date on which the maker of the governing instrument no longer has power to revoke it or to

transfer to himself or herself or another the entire legal and equitable ownership of the interest. A disclaimer must be delivered:

(1) if the disclaimer is made by a beneficiary of a trust, to the trustee;

(2) if the disclaimer is made by a donee with respect to a gift from a donor, to the donor of the gift;

(3) if the disclaimer is made by a beneficiary under a beneficiary designation, to the payor.

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

(1) The disclaimer by an appointee must be delivered to the donee of the power, the personal representative of the donee's estate, or the fiduciary under the instrument that created the power. The disclaimer must be delivered after the exercise of the power.

(2) A disclaimer by a taker in default of exercise of the power of appointment must be delivered to the donee of the power or to the fiduciary under the instrument which created the power. The disclaimer by a taker in default may be delivered before or after the lapse or release of the power.

(d) If a disclaimed interest arises out of joint property, the disclaimer must be delivered after creation of the joint ownership to each person entitled to the disclaimed interest in

the event of a disclaimer.

(e) A fiduciary power may be disclaimed at any time. A disclaimer must be delivered to the person who established the instrument giving rise to the power or:

(1) if the fiduciary is a personal representative, to all of 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 of 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, to the principal's presumptive heirs at law.

(f) If delivery is to be made to a fiduciary and a fiduciary is not then serving, the disclaimer must be delivered by filing the disclaimer with the [probate] court having jurisdiction to entertain proceedings to appoint or qualify the fiduciary. If a fiduciary cannot be located, delivery of the disclaimer shall be made by filing the disclaimer with the [court having jurisdiction over the fiduciary].

(g) A copy of a disclaimer must be filed in any [probate] court in which proceedings are pending concerning the disclaimed interest, or in the [court that would have jurisdiction if proceedings were commenced]. If the disclaimed interest is otherwise required or permitted by law to be recorded, titled or registered, the disclaimer may be so recorded, titled or registered, but failure to record shall not affect validity of the disclaimer as between the parties.

SECTION 5. FORM OF DISCLAIMER. A disclaimer must be in writing, declare the disclaimer, describe the disclaimed interest, and be signed by the disclaimant or by a fiduciary who represents a person to whom a disclaimable interest devolves.

SECTION 6. MANNER OF DELIVERY. A disclaimer must be delivered:

(1) by personal delivery to the person to whom it is to be delivered or a fiduciary representing that person;

(2) 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;

(3) when sent 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.

SECTION 7. EFFECT OF DISCLAIMER.

(a) A disclaimer acts as a nonacceptance of the disclaimed interest and not a transfer of the disclaimed interest. The disclaimant is treated as never having received the interest.

(b) If a fiduciary disclaims a fiduciary power and the fiduciary has never exercised the power, the fiduciary power ceases to exist as of the effective date of the governing instrument creating the power. If the fiduciary has exercised the power, the fiduciary power ceases to exist as of the date of its last exercise by the fiduciary.

SECTION 8. DISCLAIMER OF TESTAMENTARY INTEREST

(a) Except as provided in Sections 10, 11, and 12, if a disclaimed interest arises under a will, testamentary trust, or the law of intestate succession and the decedent has not provided for another disposition of the disclaimed interest or of 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, and the disclaimant is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate or trust property is to be made under [Part II of the Uniform Probate Code] [the rules determining the size of the shares which pass by representation] or other provision of the governing instrument.

(b) 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 held by the disclaimant which is to take effect at a time certain takes effect at that time and is not accelerated. A disclaimer relates back for all purposes to the date of death of the decedent.

SECTION 9. DISCLAIMER OF NONTESTAMENTARY INTEREST

(a) Except as provided in Sections 10, 11, and 12, 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 or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the interest was 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, and the disclaimant is not treated as having predeceased the effective date of the instrument for the purpose of determining the generation at which the division of the estate or trust property is to be made under [Part II of the Uniform Probate Code] [the rules determining the size of the shares which pass by representation] or other provision of the governing instrument. A disclaimer relates back for all purposes to that date.

(b) 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 interest was to take effect in possession or enjoyment. A future interest that is held by the disclaimant and which takes effect at a time certain takes effect at that time and is not accelerated.

SECTION 10. DISCLAIMER OF INTEREST ARISING OUT OF JOINT PROPERTY. A disclaimer of an interest arising out of joint property relates back for all purposes to the effective date of the governing instrument. If the disclaimant is the only

surviving owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners. If the disclaimant is not the only surviving owner, the disclaimed interest devolves to the surviving joint owners equally, or all to the other surviving owner if there is only one surviving owner.

SECTION 11. DISCLAIMER OF POWER OF APPOINTMENT If a donee of a power of appointment disclaims the power, property subject to the power devolves:

(1) with respect to a power arising out of a will or testamentary instrument, as if the donee died before the decedent, in which case the disclaimer relates back for all purposes to the date of death of the decedent; or

(2) with respect to a power arising from any other governing instrument, as if the donee died before the effective date of that instrument, in which case the disclaimer relates back for all purposes to the effective date of the instrument.

SECTION 12. DISCLAIMER BY TRUSTEE. If all of incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest 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 fewer than all of the 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 an interest in or power over the disclaimed interest.

SECTION 13. DISCLAIMER BINDING. 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. 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 other fiduciaries. A disclaimer of a fiduciary power by all of the incumbent fiduciaries is binding on all successor fiduciaries, except to the extent the disclaimer states otherwise.

SECTION 14. WHEN DISCLAIMER BARRED.

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

- (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 with knowledge that a property right has been conferred;

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

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

(b) The right to disclaim may be barred to the extent provided by other applicable statutory law. A partial bar does not preclude a disclaimant from disclaiming all or any part of the balance of the property if the disclaimant has received a portion of the property and there remains an interest that the disclaimant has not received. An act barring the right to disclaim a present interest in joint property does not bar the right to disclaim any other interest in the property.

SECTION 15. 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 16. TRANSITION RULE. An interest in property existing on the effective date of this [Act] as to which the time for delivering a disclaimer under prior law has not expired if it

is a present interest, or the interest has not become indefeasibly vested or the taker finally ascertained if it is a future interest, may be disclaimed after the effective date of this [Act], and before any event that bars a disclaimer.

SECTION 17. 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 18. REPEAL OF INCONSISTENT STATUTES].