

Summary of sections of the draft of the Uniform Disclaimer of Property Interests Acts which are not to be read line-by-line

Section 4(2)-(7)

Paragraphs (2)-(4) are parallel to Section 3(2)-(4). The principal difference is the use of the effective date of the instrument as the point at which the nature of the disclaimed interest is established. In the testate or intestate situation governed by Section 3, all interests are created at the death of the decedent. Section 4, however, deals with interests that can be created during life. While the creator of the interest has the power to revoke those interests, they are all future interests. For example, if X creates a revocable lifetime trust, reserving all the income to him or herself (a typical probate substitute) and limiting principal distributions during the creator's lifetime to distributions to the creator, all the interests created in others are future interests. If not subject to a condition precedent (such as survival to the death of the creator) they are vested subject to divestment by the exercise of the power to revoke. The equivalent to the death of the decedent for revocable interests, therefore, is the time when the interest is irrevocable and its nature set. Section 4(2)-(4) then dispose of the interest exactly as do the equivalent paragraphs of Section 3, passing the interest to the descendants of the disclaimant who survive the effect date (equivalent, once again, to the date of the decedent's death) in the case of a present interest and to those who survive the date of distribution in the case of a future interest.

Paragraphs(5)-(7) govern delivery of the disclaimer. If the interest disclaimed was created by other than a trust or a beneficiary designation, the disclaimer is delivered to the transferor. A disclaimer of an interest in a trust must be made to the trustee, but if no trustee is then serving, it is to be filed with the court having jurisdiction to appoint or qualify the trustee. If the disclaimer is made before the effective date of the instrument, delivery must be made to the creator of a revocable trust or to the transferor of the interest disclaimed. Finally, a disclaimer of an interest created by beneficiary designation must be made to the transferor if the disclaimer is made before the effective date and, if made after the effective date, to the person obligated to make payment of the interest. For example, a disclaimer of death benefits under a life insurance policy made after the death of the insured must be delivered to the insurance company.

Section 6 Disclaimer of Powers Not Held in a Fiduciary Capacity

The rules of this section apply to the disclaimer of powers not held in a fiduciary capacity usually referred to as powers of appointment. The disclaimer of an unexercised power is effective as of the date of the decedent's death if the power is created by will and as of the effective date of the instrument if created by any other instrument. A power which has been exercised can be disclaimed, and the disclaimer is effective immediately after the date of last exercise, thus eliminating the power for the future. In either case, the power ceases to exist as of the effective date of the disclaimer.

Paragraph (4) creates rules for the delivery of the disclaimer by reference to the delivery

requirements of Sections 3 and 4 which apply according to what sort of instrument created the disclaimed power. For these purposes the power is treated as if it were an interest in property and delivery is made accordingly.

Section 7. Disclaimer by Appointee, Object or Take in Default of Power of Appointment.

An appointee of a power of appointment receives property or an interest in property through the exercise of the power. Paragraph (1) makes a disclaimer by an appointee effective as of the power's exercise, defined as the death of the power holder if the power is exercised by will or as the effective date of the instrument other than a will which exercises the power.

An object of a power is a person to whom an appointment can be made. A taker in default of a power takes property subject to the power if the power is not exercised. These persons are selected by the person creating the power. Paragraph (2) makes a disclaimer by these persons effective as of the creation of the power of which they are objects or takers in default, defined as the death of the creator of the power if the power is created by will or as the effective date of the instrument other than a will which creates the power.

An interest created in a appointee is like any other interest given to a person. The effect of a disclaimer of an interest by an appointee is governed by the paragraphs of Sections 3 and 4 which govern the effect of disclaimers of interests created by will (Section 3) and by instruments other than wills (Section 4). Which section applies depends on whether the interest disclaimed was created by exercise of a power by will or by another type of instrument. The cross references make reference to paragraphs (2), (3), and (4) of each section because the disclaimed interest can be a present or a future interest. A disclaimer of a power created in an appointee is governed by the provisions of Section 6 which govern disclaimers of powers.

An interest held by an object or taker in default of a power is by definition a future interest. The effect of disclaimers by those persons, therefore, is governed by paragraphs (3) and (4) of Sections 3 and 4 which refer to disclaimers of future interests. Again, Section 3 or 4 will apply depending on the sort of instrument by which the power is created.

The delivery provisions of paragraph (5) make a distinction between disclaimers by objects and takers in default and disclaimers by appointees. Disclaimers by objects or takers in default must be made either to the holder of the power (whose action will appoint among the objects and whose inaction will allow the takers in default to take) or to the fiduciary acting under the instrument that created the power. A disclaimer by an appointee must be made to the representative of the holder's estate or to the fiduciary acting under the instrument that created the power. If no fiduciary is in office and the disclaimer is to be delivered to the fiduciary, delivery is accomplished by filing the disclaimer with the court having jurisdiction to appoint or qualify the fiduciary.

Section 11. Recording of Disclaimer

This section allows a disclaimer to be added to the appropriate official records of transactions if documents transferring an interest in or power over property subject to a disclaimer are required or allowed to be added to such records. Failure to record a disclaimer, however, does not effect its validity as to the disclaimant or those who take by reason of the disclaimer.