

Memo

To: UDPIA Drafting Committee
From: Bill LaPiana
Date: March 10, 1999
Subject: Draft for March meeting

The accompanying draft incorporates the latest suggestions of the style committee and from the Joint Editorial Board of the UPC as well as the results of our meeting last October.

The rules for the disposition of the disclaimed interest in Sections 3 and 4 (paragraph 2 and 3 in each section) have been modified to make it clear that a disclaimed income interest vanishes and that a gift of the disclaimed interest in the event of the of the death of the donee (or other event) overrides the rules of paragraph (3). The goal is to prevent the passing of the disclaimed interest to the descendants of a non-family member. The language parallels that used in the UPC anti-lapse provision. If a will makes a gift to "my friend Jack if he shall survive me and if he shall not, this gift shall pass as part of my residuary estate, Jack's disclaimer means that the gift passes as part of the residue. The comments to Section 3 have also been revised to reflect and the new provisions and to simplify the discussion of its provisions.

The other significant change involves the disclaimer of powers previously exercised. Section 10 (c) and (d) provide separate rules for disclaimers of powers held in a fiduciary capacity and all other powers. Past exercise bars the disclaimer only if the power is not held in a fiduciary capacity and only if it is exercisable in the disclaimant's favor.

Finally, the question of the disclaimer of an expectancy under a will is still with us. The JEB is opposed to such a provision, though the Committee believes that such a disclaimer is appropriate given the possibility of disclaiming an interest under a revocable trust before the trust become irrevocable. I have drafted the following provision to implement this decision, but have not added it to the draft pending our discussion.

SECTION ____ DISCLAIMER OF EXPECTANCY

(a) For purposes of this section, "expectancy" means an interest in property

(1) which would pass to an individual under the law of descent and distribution were a specific individual to die intestate; or

(2) which would pass to an person under a specific will of an individual were the will effective at that individual's death.

(b) The following rules apply to a disclaimer of an expectancy:

(1) The disclaimer is effective as of the death of the decedent.

(2) The effect of the disclaimer is governed by Section 3(2), (3), (4) and (5).

(3) Delivery of the disclaimer must be made to the specific individual to whose intestate estate or specific will the disclaimer relates.