

**CONFORMING AMENDMENTS TO UNIFORM
PROBATE CODE TO REFLECT APPROVAL OF
DISCLAIMER OF PROPERTY INTERESTS ACT
(1999)***

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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By

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**CONFORMING AMENDMENTS TO UNIFORM PROBATE CODE TO
REFLECT APPROVAL OF UNIFORM DISCLAIMER OF PROPERTY
INTERESTS ACT (1999)**

SECTION 2-801. ~~Disclaimer of Property Interests~~ [RESERVED].

~~(a) [Right to Disclaim Interest in Property.] A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding (i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction or (ii) any restriction or limitation on the right to disclaim contained in the governing instrument. For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.~~

~~(b) [Time of Disclaimer.] The following rules govern the time when a disclaimer must be filed or delivered:~~

~~(1) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than [nine] months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than [nine] months after the event determining that the taker of the property or interest is finally~~

~~ascertained and his [or her] interest is indefeasibly vested. The disclaimer must be filed in the [probate] court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.~~

~~(2) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than [nine] months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than [nine] months after the event determining that the taker of the property or interest is finally ascertained and his [or her] interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than [nine] months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker 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. The disclaimer or a copy thereof must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.~~

~~(3) A surviving joint tenant [or tenant by the entirety] may disclaim as a separate interest any property or interest therein devolving to him [or her] by right of survivorship. A surviving joint tenant [or tenant by the entirety] may disclaim the entire~~

~~interest in any property or interest therein that is the subject of a joint tenancy [or tenancy by the entireties] devolving to him [or her], if the joint tenancy [or tenancy by the entireties] was created by act of a deceased joint tenant [or tenant by the entireties], the survivor did not join in creating the joint tenancy [or tenancy by the entireties], and has not accepted a benefit under it.~~

~~(4) If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the [Recorder of Deeds] of the county in which the property or interest disclaimed is located.** If Torrens system is in effect, add provisions to comply with local law:~~

~~(e) **[Form of Disclaimer.]** The disclaimer must (i) describe the property or interest disclaimed, (ii) declare the disclaimer and extent thereof, and (iii) be signed by the disclaimant.~~

~~(d) **[Effect of Disclaimer.]** The effects of a disclaimer are:~~

~~(1) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided 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 predeceased the decedent, but if by law or under the testamentary instrument 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 after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.~~

~~(2) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract 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 has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract 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 effective date of the instrument or contract that transferred the disclaimed interest.~~

~~(3) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.~~

~~(e) **[Waiver and Bar.]** The right to disclaim property or an interest therein is barred by (i) an assignment, conveyance, encumbrance, pledge, or transfer of the property~~

~~or interest, or a contract therefor, (ii) a written waiver of the right to disclaim, (iii) an acceptance of the property or interest or a benefit under it or (iv) a sale of the property or interest under judicial sale made before the disclaimer is made.~~

~~(f) **[Remedy Not Exclusive.]** This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.~~

~~(g) **[Application.]** An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within [nine] months after the effective date of this section.~~

~~As amended in 1993.~~

~~For material relating to the 1993 amendment, see Appendix X, infra.~~

ARTICLE 2

PART 11

**UNIFORM DISCLAIMER OF
PROPERTY INTERESTS ACTS (1999)**

SECTION 2-1101. SHORT TITLE. This Part may be cited as the “Uniform Disclaimer of Property Interests Act (1999).”

SECTION 2-1102. DEFINITIONS. In this Part:

(1) “Disclaimant” means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) “Disclaimed interest” means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) “Disclaimer” means the refusal to accept an interest in or power over property.

(4) “Fiduciary” means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) “Jointly held property” means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a State.

(8) “Trust” means:

(A) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

SECTION 2-1103. SCOPE. This Part applies to disclaimers of any interest in or power over property, whenever created.

SECTION 2-1104. PART SUPPLEMENTED BY OTHER LAW.

(a) Unless displaced by a provision of this Part, the principles of law and equity supplement this Part.

(b) This Part does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this Part.

SECTION 2-1105. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.

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

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

(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the

disclaimer, and be delivered or filed in the manner provided in Section 2-1112. In this subsection:

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

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

(A) execute or adopt a tangible symbol; or

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

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

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Section 2-1112 or when it becomes effective as provided in Sections 2-1106 through 2-1111, whichever occurs later.

(f) A disclaimer made under this Part is not a transfer, assignment, or release.

SECTION 2-1106. DISCLAIMER OF INTEREST IN PROPERTY.

(a) In this section:

(1) “Time of distribution” means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) “Future interest” means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) Except for a disclaimer governed by Section 2-1107 or 2-1108, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

SECTION 2-1107. DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

SECTION 2-1108. DISCLAIMER OF INTEREST BY TRUSTEE. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

SECTION 2-1109. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

SECTION 2-1110. DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

SECTION 2-1111. DISCLAIMER OF POWER HELD IN FIDUCIARY

CAPACITY.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

SECTION 2-1112. DELIVERY OR FILING

(a) In this section, “beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (1), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust :

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power ; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent , the disclaimer must be delivered to the principal or the principal's representative.

SECTION 2-1113. WHEN DISCLAIMER BARRED OR LIMITED.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) a judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this Part.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this Part had the disclaimer not been barred.

SECTION 2-1114. TAX QUALIFIED DISCLAIMER. Notwithstanding any other provision of this Part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this Part.

SECTION 2-1115. RECORDING OF DISCLAIMER. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

SECTION 2-1116. APPLICATION TO EXISTING RELATIONSHIPS. Except as otherwise provided in Section 2-1113, an interest in or power over property existing on the effective date of this Part as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after the effective date of this Part.

SECTION 2-1117. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This Part modifies, limits, and

supercedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supercede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).