3A:25-39 to 3A:25-50

LEGISLATIVE HISTORY CHECKLIST

(Probate--Disclaimer of transfers by will, intestate succession or under powers of testamentary appointment)

NJSA 3A:25-39 to 3A:25-50

LAWS OF 1979 CHAPTER 484

Bill No. A19

Sponsor(s) Burstein and Bate

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes xx Amendments during passage denoted by asterisks

Date of Passage: Assembly April 20, 1978

Senate Nov. 29, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	~~No~~
Committee Statement: Assembly	Yes	~~No~~
Senate	Yes	~~No~~
Fiscal Note	~~Yes~~	No
Veto Message	~~Yes~~	No
Message on signing	Yes	~~No~~
Following were printed.		
Reports	~~Yes~~	No
Hearings	~~Yes~~	No

Mentioned in statements:

Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (§2-801 of Uniform Probate Code--attached).

9/1/78 EJ

(over)

Earlier proposed legislation:

A1699 (1976-77)
S1325, A3138 (1974-75)

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 19

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning disclaimers of transfers by will, intestate succession or under powers of a testamentary appointment, and supplementing Title 3A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

a. A "present interest" is one to take effect in immediate possession, use or enjoyment without the intervention of a preceding estate or interest or without being dependent upon the happening of any event or thing.

b. A "future interest" is one to take effect in possession, use or enjoyment dependent upon the termination of an intervening estate or interest or the happening of any event or thing.

c. An "heir" means a person, including the surviving spouse, entitled under the statutes of intestate succession to the property of a decedent.

d. A "devisee" means any person designated in a will to receive a devise, but does not mean a trustee or trust designated in a will to receive a devise.

e. A "devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

2. Any person who is a devisee or beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, including a person succeeding to a disclaimed interest, or an heir may disclaim in whole

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

or in part the right of succession to any property or interest therein, including a future interest, by filing a disclaimer under this act. **A disclaimer may be of a fractional share***, expressed as either a percentage or dollar amount,*** or any limited interest or estate.**

3. The instrument disclaiming shall be in writing, signed and acknowledged by the person disclaiming, and shall (1) describe the property or interest disclaimed, *and if real property, the municipality and county wherein the real property is situated* (2) declare the disclaimer and extent thereof.

4. A disclaimer on behalf of a decedent, minor or mentally-incompetent person may be made by the personal representative of the decedent or the guardian of the estate of the minor or mentally-incompetent person. Such disclaimer shall not be effective unless, prior thereto, the personal representative or guardian has been authorized to disclaim by the court having jurisdiction of the estate of the decedent, minor or mentally-incompetent person, after finding that it is advisable and will not materially prejudice the rights of creditors, devisees, heirs or beneficiaries of the decedent, the minor or mentally-incompetent person or his creditors, as the case may be.

5. a. The instrument disclaiming a present interest shall be filed not later than 9 months after the death of the decedent or of the donee of the power.

b. The instrument disclaiming a future interest shall be filed not later than 9 months after the happening of the event which determines the taker's right to possession, use or enjoyment of the property or interest.

c. The time within which a disclaimer shall be filed may be extended by the court for reasonable cause, and on notice to such persons and in such manner as the court may direct.

6. a. The disclaimer shall be filed in the office of the surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power. A copy of such disclaimer shall also be delivered in person or mailed by registered or certified mail to any personal representative, other fiduciary of the decedent or donee of the power **or to the holder of the legal title to which the interest relates**.

[b. If real property or any interest therein is disclaimed, a copy of such disclaimer shall be filed in the office of the clerk or register of deeds and mortgages of the county in which the real property is situated.]

b. If real property or any interest therein is disclaimed, the surrogate or clerk of the superior court, as the case may be, shall forthwith forward a copy of the disclaimer for filing in the office of the clerk or register of deeds and mortgages of the county in which the real property is situated. Each county clerk or register of deeds and mortgages shall provide a book to be entitled "Disclaimers", so arranged that he may record therein:

(1) The name of the disclaimant;

(2) The name of the decedent or the name of the donee of the power of appointment;

(3) The location of the property;

(4) The file number of the county clerk's office or the office of register of deeds and mortgages indorsed upon each disclaimer filed;

(5) The date of filing the disclaimer.

*The county clerk or the register of deeds and mortgages shall maintain in said record an alphabetical index of the names of all disclaimants stated in any disclaimer file, and also keep in his office for public inspection, all disclaimers so filed therein.**

7. Unless the decedent or donee of the power has otherwise provided, the property or interest disclaimed devolves ***(a) as to a present interest,*** as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power***[. 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 or the donee of the power.]*** ***, *and (b) as to a future interest as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest indefeasibly vested.*** A disclaimer relates back for all purposes to the date of death of the decedent or the donee of the power.

8. The right of a person to disclaim property or any interest therein is barred if the property or interest is seized under judicial process issued against the person before the expiration of the period in which he is permitted to disclaim; or if before the expiration of the period in which he is permitted to disclaim, the person (1) accepts or exercises control as beneficial owner over all or any part of such property or interest; or (2) voluntarily transfers or encumbers or contracts to transfer or encumber all or any part of such property or interest; or (3) disclaims or attempts to disclaim all or any part of such property or interest in fraud of his creditors as set forth in the Uniform Fraudulent

Conveyance Law (R. S. 25:2-7 et seq.); or (4) executes a written waiver of the right to disclaim.

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

10. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

11. This act does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

12. An interest in property existing on the effective date of this act as to which, if a present interest, the time for filing 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 within 9 months after the effective date of this act.

13. This act shall take effect immediately.

8. The right of a person to disclaim property or any interest therein is barred if the property or interest is seized under judicial process issued against the person before the expiration of the period in which he is permitted to disclaim; or if before the expiration of the period in which he is permitted to disclaim, the person (1) accepts or exercises control as beneficial owner over all or any part of such property or interest; or (2) voluntarily transfers or encumbers or contracts to transfer or encumber all or any part of such property or interest; or (3) disclaims or attempts to disclaim all or any part of such property or interest in fraud of his creditors as set forth in the Uniform Fraudulent Conveyance Law (R. S. 25:2–7 et seq.); or (4) executes a written waiver of the right to disclaim.

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

10. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

11. This act does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

12. An interest in property existing on the effective date of this act as to which, if a present interest, the time for filing 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 within 9 months after the effective date of this act.

13. This act shall take effect immediately.

STATEMENT

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency after study and consideration of the provisions of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act drafted by the National Conference of Commissioners on Uniform State Laws and the laws presently in effect or proposed in the states of New York, California and Pennsylvania.

New Jersey does not have a statute authorizing disclaimers and the law in this State is based upon common law principles relating thereto.

A19 (1979)

This bill will correct historical limitations that exist under New Jersey law and will provide clear procedures for accomplishing a disclaimer.

Under our existing case law, only gifts under a will can be renounced or disclaimed. An heir succeeding to an intestate succession is not permittted to disclaim or renounce. Under this bill an heir succeeding to an intestate interest will be in the same position as that of a devisee under a will and will be permitted to disclaim or renounce the intestate succession.

As provided in the bill, a "present interest" and a "future interest" which are defined may be disclaimed.

The bill further prescribes the form of the disclaimer instrument, the time within which it must be filed, where the instrument shall be filed and delivery of copies to interested persons. The time within which a disclaimer shall be filed may be extended by the court for a reasonable cause.

As provided in section 4 of the bill, a disclaimer on behalf of a decedent, minor or mentally-incompetent person may be made by a personal representative of the decedent or the guardian of the estate of the minor or mentally-incompetent person. Such disclaimer shall not be effective without authorization of the court having jurisdiction over the estate of the decedent, minor or mentally-incompetent person upon a finding that it will not materially prejudice the rights of those classes of persons therein described.

Section 8 of the bill sets forth the grounds for barring a person's right to disclaim. A disclaimer or written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming by, through or under him.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 19

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1978

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency after study and consideration of the provisions of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act drafted by the National Conference of Commissioners on Uniform State Laws and the laws presently in effect or proposed in the states of New York, California and Pennsylvania.

New Jersey does not have a statute authorizing disclaimers and the law in this State is based upon common law principles relating thereto.

The committee amendments provide a specific procedure for the filing of disclaimers, which will provide a uniform procedure for such filing throughout the State.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 19

STATE OF NEW JERSEY

DATED: JUNE 25, 1979

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency after study and consideration of the provisions of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act drafted by the National Conference of Commissioners on Uniform State Laws and the laws presently in effect or proposed in the states of New York, California and Pennsylvania.

New Jersey does not have a statute authorizing disclaimers and the law in this State is based upon common law principles relating thereto.

The bill establishes a specific procedure for the filing of disclaimers which will provide a uniform procedure for such filing throughout the State.

By committee amendment, the bill was changed to permit a disclaimer of a fractional share or any limited interest or estate and to clarify the language relating to the time at which the disclaimer of a present or future interest in property takes effect.

The committee also wanted clearly stated that the definitions of "present interest" and "future interest" contained in the bill are not intended to apply for the purposes of transfer inheritance taxation.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FEBRUARY 28, 1980

FOR FURTHER INFORMATION

KATHRYN FOSETTE

Governor Brendan Byrne today signed eleven bills, all sponsored by Assemblyman Albert Burstein (D-Bergen), which constitute the final portion of New Jersey's probate reform package.

"The signing of these last eleven bills marks the culmination of a seven year effort to update New Jersey's probate law, making it one of the most modern and enlightened codes in the nation," said Byrne.

The first part of the probate reform program, also sponsored by Assemblyman Burstein, was enacted in 1977. The final step will be the reorganization of Title 3A, which contains the probate law, to make any necessary technical and minor substantive changes. This process should be completed by the end of the year.

Byrne said that in preparing the probate reform package, his staff and the legislature worked closely with the Committee of Real Property, Probate and Trust Law of the New Jersey State Bar Association.

He commended the efforts of Assemblyman Burstein, attorneys Alfred C. Clapp, Richard F. Lert and Harrison Durand of the New Jersey State Bar Association, and Maurice Gold of Legislative Services, "as well as the many other people whose talents contributed to this major revision of the New Jersey probate law."

These are the bills the Governor signed today:

A-18, which helps prevent the disinheritance of a husband or wife by allowing the surviving spouse to elect to take one-third of the deceased person's augmented estate.

Under prior law, New Jersey was one of the few states that allowed husbands and wives to disinherit each other.

An augmented estate is defined in the bill as being the deceased person's estate, minus administration and funeral costs, plus various kinds of property transfers made by the decedent and other types of interests.

The independent wealth of the surviving husband or wife is credited against the elective share, as is any property the surviving spouse received from the deceased person. Only the balance, if any, may be collected from the elective share.

- more -

A-8, which revises the New Jersey law governing the appointments, duties, rights and obligations of guardians for minors or mental incompetents.

The bill modernizes the definition of a mental incompetent to mean a person impaired by mental illness or mental deficiency or by a physical illness or disability, chronic use of drugs, chronic alcoholism or other cause "to the extent that he lacks sufficient capacity to govern himself or mange his affairs."

The bill sets forth rules and guidelines governing the powers and duties of the guardian of a minor or of a minor's estate and the powers of the courts in such cases.

A-6, which permits a sum of up to $5,000 per year from an estate to be paid to or on behalf of a minor beneficiary without the necessity of formally appointing a guardian of the estate in certain cases.

The money, which can be paid to the parent, legal guardian of the minor, adult who has custody of the child and with whom he resides, or a financial institution, must be applied to the "support and educational needs of the minor."

Any excess in a given year must be preserved for the future support of the child, and any balance remaining must be delivered to the minor when he reaches the age of 18

A-19, which clarifies the law governing disclaimers of testamentary and inte state transfers.

Clarification of the law was particularly important because of the federal gift tax consequences a beneficiary may face if he makes a disclaimer deemed untimely under the law.

A-20, which abolishes the ancient rights of dower and curtesy. Dower is the right of a surviving wife to possession for the rest of her life of one half the real /estate owned in her husband's name. Curtesy is the corresponding right for surviving husbands.

A-21, which permits the court to authorize, direct or ratify transactions regarding the estate of a minor or mental incompetent in situations where the continuing services of a legal guardian are unnecessary.

A 22, which modernizes the present law governing absent persons.

The bill broadens the definition of an absent person to include "any person who has disappeared or been confined or detained by a foreign power" and eliminates special treatment of war absentees.

A trustee for the absentees property cannot be appointed unless the property is endangered or if it is needed to provide support, care or welfare to the absent person or his dependents.

A-1624, which broadens the powers of fiduciaries to permit them to acquire, dispose of, manage develop, improve, exchange, partition or abandon an estate asset.

A-1625, which makes two technical amendments to the "Prudent Investment Law." This law governs the investment powers of fiduciaries in New Jersey.

A-1626, which is a comprehensive revision of the law governing multiple-party bank accounts.

A-3144, which clarifies and revises the law governing the disclaimer of nontestamentary transfers.

A-3335, which significantly changes the calculation of corpus commissions for trustees and guardians and generally increases the amount of corpus commissions which fiduciaries may take annually without a court order.

A corpus commission is the renumeration a fiduciary receives for his services rendered in administering the principal under his control.

This bill changes the formulation calculating a trustee's corpus commission by providing for increased commissions where the length of service is long.

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(Miami Law's Annotated Master Collection (Estate Probate and related laws))

UNIFORM DISCLAIMER OF TRANSFERS BY WILL, INTESTACY OR APPOINTMENT ACT

1978 ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Illinois	1975, P.A. 79–328	1–1–1976	S.H.A. ch. 110½, § 2–7.
Kansas	1968, c. 367	7–1–1968	K.S.A. 59–2291 to 59–2293.
Kentucky	1974, c. 329	6–21–1974	KRS 394.610 to 394.680.
Maine	1975, c. 311	5–21–1975 *	18 M.R.S.A. §§ 1271 to 1278.
North Carolina	1975, c. 371	10–1–1975	G.S. §§ 31B–1 to 31B–7.
Oregon	1975, c. 480	1–1–1976	ORS 112.650 to 112.667.

* Date of approval.

Historical Note

The Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act was approved by the National Conference of Commissioners on Uniform State Laws in 1973.

General Statutory Notes

Sections 1 to 6 of this Act have been adopted as revised section 2–801 of the Uniform Probate Code via a 1975 technical amendment to the Probate Code. See section 2–801 of the Probate Code and the comments thereto, infra, this supplement.

Illinois. The Illinois Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Kansas. The Kansas Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Maine. L.1973, c. 540, repealed 18 M.R.S.A. §§ 1271 to 1278, which previously constituted the Uniform Disclaimer of Transfers by Will Act, and reenacted said Uniform Act as part of the Maine Probate Code in 18–A M.R.S.A. § 2–801, effective Jan. 1, 1981. While the reenacted Maine Act remains a substantial adoption of the Uniform Act, it now contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

North Carolina. The North Carolina Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Commissioners' Prefatory Note

There are many instances in which, either because of failure to plan effectively or because of unforeseen change of circumstances, transfers at death or gifts impose unexpected expense or hardship upon the recipients. The hardship is particularly acute when the assets are limited.

More efficient utilization of limited resources by the family and other estate planning objectives, which for one reason or another cannot be attained before death, can sometimes be accomplished after death by recourse to the common law right of renunciation, or "disclaimer"—a right which is recognized in virtually every state as holding that a gift under a will cannot be forced upon the legatee if he chooses not to accept it. However, even though the right to disclaim is well established, the common law principles leave much to be desired in the way of completeness and certainty.

Historically, only gifts under a will, i. e., testate successions, could be renounced; for reasons related to feudalism an heir was not permitted to reject his intestate share.

The right to make partial disclaimers has, under common law, depended on whether the gift is severable. If the will gives Blackacre and Whiteacre to A, he can accept Blackacre and renounce Whiteacre, but if the will gives him only Blackacre, he cannot accept half and reject the other half. If the will gives B a $1,000 legacy, he may not, it seems, accept $500 and reject the balance.

DISCLAIMER OF TRANSFERS BY WILL, ETC.

While the basic right has been recognized, the procedure for accomplishing a disclaimer, the time limits for doing so, the disposition of the disclaimed property, and the effect of the disclaimer on the rights of others are often unsettled. Legislation is needed to strip away historical limitations and provide clear procedures.

In some states codifiers have been unwilling to include in a probate code statutes relating to deeds and contractual arrangements such as trusts and insurance. For this reason, companion uniform acts have been proposed, one dealing with transfers at death and the other with inter-vivos transfers. A third act, being an integration of the separate acts, was developed for use in states where the codification system is able to accommodate a single law dealing with both types of transfers and where a single statute is preferred.

The uniform acts are generally similar to legislation developed by the Section on Real Property, Probate and Trust Law of the American Bar Association in 1968 and published in the Summer of 1968 Journal of that Section. The A.B.A. proposed legislation was in turn based upon § 58 of the Model Probate Code (1948) which extended the right of disclaimer to intestate as well as testate succession and permitted partial as well as full disclaimers, and on § 15b of the Illinois Probate Act (1961) which applied the right of disclaimer to future interests and to interests under the exercise of a power of appointment. This latter was dictated by the frequency with which modern-day wills or trust agreements leave property on a life estate (legal or equitable) to a widow, with remainder to the decedent's children. If a child should wish to disclaim his share, the common law has been unclear on when he must renounce and by what method. See Estate of Page, 113 N.J.Super. 582, 274 A.2d 614 (1970). Although many states have legislation reflecting those concerns, the statutes are varied in the coverage and procedures employed, resulting in much confusion and uncertainty.

The disposition of disclaimed property has been one of the more difficult problems presented in legislation on disclaimers. The approach taken in the Acts is to *analogize disclaimer to lapse* and dispose of the renounced interest as if the disclaimant had *predeceased* the testator in the case of a disclaimer of a present interest and as if the disclaimant had predeceased the termination of the preceding interest in the case of a disclaimer of a future interest.

As respects the time for making disclaimer, the common law imposed only a requirement of reasonableness. The Conference concluded that a specific period had merit and suggests 9 months. The longer the time allowed, the greater the risk of conduct inconsistent with rejection of the gift and indicative of implied acceptance; the shorter the time allowed, the greater the risk of not having full information for intelligent action. See Broadhag v. U. S., 319 F.Supp. 747 (S.D. W.Va.1970).

The Acts codify the doctrine of "relation back", which has the effect of preventing a succession from becoming operative in favor of the disclaimant. They also declare that the relation back shall be "for all purposes" which would include creditors and taxing authorities, and it has been so held under similar statutes. Estate of Hansen, 109 Ill.App.2d 283, 248 N.E.2d 709.

The Acts specifically state that a limitation in the nature of a spendthrift provision or similar restriction will not affect the right to disclaim.

The Tax Reform Act of 1976 introduced into the Internal Revenue Code the concept of a "qualified disclaimer" by the addition of Section 2518, and, for transfers creating an interest in a disclaimant made after 1976, the requirements of that Section must be met in order for a disclaimed interest to be treated as never having been transferred to the disclaimant for Federal estate, gift and generation-skipping tax purposes. As to the manner of making disclaimer, the Acts are consistent with the new Federal requirements. As to the time for making disclaimer, the Acts incorporate the time requirements of Section 2518 only for disclaimers which are subject to that Section and which specifically state that they are intended to qualify thereunder; the preexisting (and generally more liberal) time requirements have been retained for disclaimers not subject to that Section or not intended to qualify thereunder.

UNIFORM DISCLAIMER OF TRANSFERS BY WILL, INTESTACY OR APPOINTMENT ACT

Be it enacted .....

§ 1. [Right to Disclaim Succession]

A person, or the representative of a deceased, incapacitated, or protected person, who is an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest, by delivering a written disclaimer under this Act. A disclaimer may be of a fractional share or any limited interest or estate. The instrument shall (1) describe the property or interest disclaimed, (2) declare the disclaimer and extent thereof, and (3) be signed by the disclaimant.

Commissioners' Comment

Who May Disclaim: At common law it was settled that the taker of property under a will had the right to accept or reject a legacy or devise (per Abbott, C. J. in Townson v. Tickell, 3 B. & Ald. 3, 136, 106 Eng.Rep. 575, 576). The same rule prevails in the United States (Peter v. Peter, 343 Ill. 493, 175 N.E. 846 (1931), 75 A.L.R. 890). It is said that no one can make another an owner of an estate against his consent by devising it to him. See, for example, People v. Flanagin, 331 Ill. 203, 162 N.E. 848 (1928), 60 A.L.R. 305:

> "The law is clear that a legatee or devisee is under no obligation to accept a testamentary gift . . . and he may renounce the gift, by which act the estate will descend to the heir or pass in some other direction under the will . . . ."

Under the rule permitting the disclaimer of testate successions, the disclaimed interest related back to the date of the testator's death so that the interest did not vest in the grantee but remained in the original owner as if the will had never been executed (People v. Flanagin, supra).

Unlike the devisee or legatee, an heir had no common law power to prevent passage of title to himself by disclaimer. "An heir at law is the only person in whom the law of England vests property, whether he will or not," declares Williams on Real Property, and adds, "No disclaimer that he may make will have any effect, though, of course, he may as soon as he pleases dispose of the property by ordinary conveyance." (Williams on Law of Real Property 73 [2d Am.Ed.1857]. See also 6 Page on Wills [Bowe-Parker Revision] Section 49.1.)

The difference between testate and intestate successions in respect to the right to disclaim, has produced a number of illogical and undesirable consequences. An heir who sought to reject his inheritance was subjected to the Federal gift tax on the theory that since he could not prevent the passage of title to himself, any act done to rid himself of the interest necessarily involved a transfer subject to gift tax liability [Hardenberg v. Com'r, 198 F. 2d 63 (8th Cir.) cert. denied, 344 U.S. 863, 73 S.Ct. 45, 97 L.Ed.2d 650 (1952), aff'g 17 T.C. 166 (1951); Maxwell v. Com'r, 17 T.C. 1589 (1952). See Lauritzen, Only God Can Make an Heir, 48 N.W.L.Rev. 568; Annotation 179 A.L.R. 435]. On the other hand, a legatee or devisee who rejected a legacy or devise under a will incurred no such tax consequences [Brown v. Routzahn, 63 F.2d 914 (6th Cir.), cert. denied, 290 U.S. 641, 54 S.Ct. 80, 78 L.Ed. 557 (1933)].

Section 1 places an heir on the same basis as a devisee or legatee and provides that he and others upon whom successions may devolve, have the full right to disclaim in whole or in part the passage of property to them, with the same legal consequences applying in all such cases.

Successive disclaimers are permitted by the express inclusion of "person succeeding to a disclaimed interest" among those who may disclaim.

Beneficiary: The term beneficiary is used in a broad sense to include any person entitled, but for his disclaimer, to possess or enjoy an equitable or legal interest, present or future, in the property or interest, including a power to consume, appoint, or apply it for any purpose or to enforce the transfer in any respect. A donee of a power of appointment is embraced within the term and may disclaim the power in whole or in part. The right to disclaim a power of appointment is in addition to any right to release or reduce the power under any other statute or common law.

Section 1 extends the right to disclaim to the representative of an incapacitated or protected person. This accords with the general rule that the probate or surrogate court in the exercise of its traditional jurisdiction over the person and estate of a minor or incompetent may authorize or direct the guardian, conservator or committee to exercise the right on behalf of his ward when it is in the ward's interest to do so. Davis v. Mather, 309 Ill. 284, 141 N.E. 209 (1923).

Section 1 also extends the right to disclaim to the representative of a decedent. The right to disclaim was often viewed as personal to the one entitled to exercise it and as dying with him, but the prevailing view now is that the representative of a deceased person may exercise his right to disclaim, and the Act adopts that position. [Rolin v. C.I.R., 588 F.2d 368 (2d Cir. 1978); Estate of Hoenig, 66 T.C. 471 (1976).] Whether a disclaimer by the representative of a decedent must be approved by the probate court is not specifically dealt with in the Act. Cf. Uniform Probate Code, Section 3-711.

Although Section 2 extends the time limitation for a minor to make a qualified disclaimer until 9 months after his reaching age 21, the Act generally makes no provision for an extension of time to disclaim or other relief from a strict observance of the statutory requirements for disclaimer, and the time limitations for expressing the right of disclaimer apply to persons deceased or under disability as well as to others.

What May be Disclaimed: Section 1 specifies that the "succession" to any property, real or personal or interest therein, may be disclaimed, and it is immaterial whether it derives by way of will, intestacy, exercise of a power of appointment or disclaimer. It would include the right to renounce any survivorship interest in the community in a community property state. Cf. U. S. v. Mitchell, 403 U.S. 190, 91 S.Ct. 1753, 29 L.Ed.2d 406 (1971), rev'g 430 F.2d 1 (5th Cir. 1970), aff'g 51 T.C. 641 (1969).

Future Interests: Section 1 contemplates the disclaimer of future interests by reference to "beneficiary under a testamentary instrument" and "appointee under a power of appointment." The time for making such a disclaimer is dealt within Section 2.

Partial Disclaimer: The status of partial disclaimers has been uncertain in many states. The result has often turned on whether the gift is "severable" or constitutes a "single, aggregate" gift [Oglesby v. Springfield Marine Bank, 395 Ill. 37, 69 N.E.2d 269 (1946); Brown v. Routzahn, supra]. Section 1 makes it clear that a partial, as well as a total, disclaimer is permitted and that a partial disclaimer includes not only a disclaimer of a fractional share but also a disclaimer of any limited interest or estate. A part of the incidents of ownership of property may be disclaimed. For example, if a fee is devised, the devisee may disclaim all but a life estate.

Discretionary administrative and investment powers under a trust have been held to constitute a "severable" interest and subject to partial disclaimer. Estate of Harry C. Jaecker, 58 T.C. 166 (1972). A partial disclaimer of a power of appointment includes the possibility of reducing or limiting the power as to amount, objects or conditions.

Method of Disclaiming: In many states no satisfactory case law has existed as to the form and manner of making disclaimers of devises or legacies under wills. See Annotation 93 A.L.R.2d 8—What Constitutes or Establishes Beneficiary's Acceptance of Renunciation of Bequest or Devise. Because certainty of rights and the expeditious administration of estates makes definiteness desirable in this area, Section 1 requires a disclaimer to (i) describe the property or interest disclaimed; (ii) declare the disclaimer and the extent thereof; and (iii) be signed by the disclaimant.

Library References

Descent and Distribution ⇐72.
Wills ⇐719.

C.J.S. Descent and Distribution § 64.
C.J.S. Wills § 1152.

§ 2. [Time of Disclaimer—Delivery]

(a) An instrument disclaiming a present interest shall be delivered not later than [9] months after the death of the decedent or the donee of the power. An instrument disclaiming a future interest shall be delivered not later than [9] months after the event that determines that the taker of the property or interest has become finally ascertained and his interest indefeasibly vested. However, in either case, as to a transfer creating an interest in the disclaimant made after December 31, 1976, and subject to tax under chapter 11, 12, or 13 of the Internal Revenue Code of 1954, as amended, a disclaimer intended as a qualified disclaimer thereunder must specifically so state and must be delivered not later than 9 months after the later of the date the transfer is made or the day on which the person disclaiming attains age 21.

(b) The disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary, of the decedent or the donee of the power or to the holder of the legal title to which the interest relates. A copy of the disclaimer may be filed in the [probate] court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. 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 real estate is situated.*

* If Torrens system is in effect, add provisions to comply with local law.

Commissioners' Comment

Time for Making Disclaimer: At common law, no specific time evolved within which disclaimer had to be made. The only requirement was that it be within a "reasonable" time (In re Wilson's Estate, 298 N.Y. 398, 83 N.E.2d 852 (1949); Ewing v. Rountree, 228 F. Supp. 137 (D.C.Tenn.1964)). As a result, divergent holdings were reached by the courts (Brown v. Routzahn, 63 F.2d 914 (6th Cir.), cert. denied, 290 U.S. 641, 54 S.Ct. 60, 78 L.Ed. 557 (1933)). Section 2 fixes a definite time for making a disclaimer but also fixes an alternative time for making a qualified disclaimer under Federal tax law. In the case of a present interest passing by reason of the death of a decedent, the time period prescribed follows the pattern of the Federal estate tax law which fixes the time for filing estate tax returns in terms of the decedent's death. The time allowed should overlast the time for filing claims and contesting the will and enable the executor or administrator to know with certainty who the takers of the estate will be. On the other hand, it should not be so long as to work against an early determination of the acceptance or rejection of succession to an estate, or to increase the risk of inadvertent acceptance of the benefits of the property, creating an estoppel. In the case of future interests the disclaimer period should run from the time the takers of the interest are finally ascertained and their interests indefeasibly fixed both in quantity and in quality (Seifner v. Weiler, 171 S.W.2d 617 (Mo., 1943), except where the intention to effect a qualified disclaimer under Federal tax law requires otherwise). For the consequence of selecting too short a period, see Broadhag v. U. S., 319 F.Supp. 747 (S.D.W.Va., 1970) involving a 2-month period fixed by West Virginia law.

In the case of future interests it should be noted that the person need not wait until the occurrence of the determinative event before filing a disclaimer, but may do so at any time after the death of the decedent or donee, so long as it is made "not later than" the prescribed period.

Federal Tax Implications: Disclaimers have significance under the Federal gift, estate and generation-skipping laws. Section 2511(a) of the Internal Revenue Code imposes a gift tax upon the transfer of property by gift whether the transfer is in trust or otherwise and whether the gift is direct or indirect. The Treasury regulations under that Section state that where local law gives the beneficiary, heir or next-of-kin an unqualified right to refuse to accept ownership of property transferred from a decedent, whether by will or by intestacy, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a "reasonable time" after knowledge of the existence of the transfer.

A "reasonable time" for gift tax purposes is not defined in the Code or regulations for a transfer creating an interest in a disclaimant before 1977. For

those transfers it has been held that the courts will look to the law of the states in determining the question, (Brown v. Routzahn, 63 F.2d 914 (6th Cir.) cert. denied, 290 U.S. 641, 54 S.Ct. 60, 78 L.Ed. 557 (1933)), not conclusively, but as relevant and having probative value (Keinath v. C. I. R., 480 F.2d 57 (8th Cir., 1973), rev'g 58 T.C. 352 (1972)), and that an unequivocal disclaimer made within 6 months of the determinative event is made within a "reasonable time." It has been held that as regards future interests, the "reasonable time" period runs from the termination of the preceding estate or interest, and not from the time the transfer was made (Keinath v. C. I. R., supra; contra, Jewett v. C. I. R., 70 T.C. 430 (1978); Halbach v. C. I. R., 71 T.C. 141 (1978)).

However, for transfers creating an interest in a disclaimant after 1976, a disclaimer must constitute a "qualified disclaimer" under Section 2518 of the Internal Revenue Code to be effective for Federal gift, estate and generation-skipping tax purposes. That Section requires a disclaimer to be delivered not later than 9 months after "the date on which the transfer creating an interest in such person is made", the transfer being considered made when treated as a transfer for tax purposes. Thus, if T dies in 1980 and his will leaves his estate to A for life, remainder to B if he survives A, a "qualified" disclaimer by B would apparently have to be made within 9 months of the death of T. The Act incorporates the time requirements of Section 2518 only if T dies after 1976 and B intends his disclaimer to be effective for Federal tax purposes. The Act permits a disclaimer by B within 9 months after the death of A to be effective for property law purposes even though it may not be effective for Federal tax purposes.

As to a transfer creating an interest in a disclaimant after 1976, the Act seeks to be no *more* restrictive than Federal law and thus additionally allows a disclaimer intended as a qualified disclaimer to be made within 9 months after the disclaimant reaches age 21.

Delivery of Disclaimer: Section 2 requires a disclaimer to be delivered in person or by registered or certified mail to the personal representative or other fiduciary of the decedent or donee of the power or to the holder of legal title to the disclaimed property. The delivery requirements of the Act comport with the requirements under Internal Revenue Code Section 2518. A copy of the disclaimer may also be filed in the court where the deceased owner or deceased donee's estate is being, or could be, probated.

If real property or an interest therein is involved, a copy of the disclaimer may also be recorded in the office of the recorder of deeds or other appropriate office in the county in which the real estate is situated. If the Torrens system is in effect, appropriate provisions should be added to comply with local law.

Action in Adopting Jurisdictions

Variations from Official Text:
Kentucky. In subsec. (c), substitutes "district court" for "probate court" and "county clerk" for "Recorder of Deeds".

Library References

Descent and Distribution ⇐72.
Wills ⇐719.
C.J.S. Descent and Distribution § 64.
C.J.S. Wills § 1152.

§ 3. [Effect of Disclaimer]

Unless the decedent or donee of the power has provided for another disposition, the property or interest disclaimed devolves (1) as to a present interest, as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power; and (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the decedent, or of the donee of the power, or the determinative event, as the case may be.

Commissioners' Comment

Devolution of Disclaimed Property: When a beneficiary disclaims his interest under a will, the question arises as to what happens to the rejected inter-

est. In People v. Flanagin, 331 Ill. 263, 162 N.E. 848 (1928), 60 A.L.R. 305, the court, quoting the New York case of Burritt v. Silliman, 13 N.Y. 93 (1855) said that the disclaimed property will "descend to the heir or pass in some other direction under the will." From this, it may be assumed that the court meant that if the decedent left no will, the renounced interest passed according to the rules of descent, but if he left a will, it passed according to its terms.

It has been generally thought that devolution in the case of disclaimer should be the same as in the case of lapse, which is controlled by sections of the probate law. Section 3 of the Act takes that approach. It provides that unless the will of the decedent or the donee of the power has otherwise provided, the disclaimed interest devolves as if the disclaimant had predeceased the decedent or the donee of the power in the case of a disclaimer of a present interest or the event which determines that his interest is vested in the case of a disclaimer of a future interest. In every case the disclaimer relates back to the date of the death of the decedent or of the donee or to the determinative event, as the case may be. The provision that the disclaimer "relates back", codifies the rule that a renunciation of a devise or legacy relates to the date of death of the decedent or donee and prevents the succession from becoming operative in favor of the disclaimant. See In re Wilson's Estate, 298 N.Y. 398, 83 N.E.2d 952 (1949). Also, Bouse, for use of Grace v. Hull, 168 Md. 1, 176 A. 645 (1935).

Acceleration of Future Interests: If a life estate or other future interest is disclaimed, the problem is raised of whether succeeding interests or estates accelerate in possession of enjoyment or whether the disclaimed interest must be marshalled to await the actual happening of the contingency. Section 3 provides that remainder interests are accelerated, the second clause specifically stating that any future interest which is to take effect in possession or enjoyment after the termination of the estate or interest disclaimed, takes effect as if the disclaimant had predeceased the event which determines that the taker has become finally ascertained and his interest indefeasibly vested. Thus, unless the decedent or donor of the power has otherwise provided, if T leaves his estate in trust to pay the income to his son S for life, remainder to his son's children who survive him, and S disclaims with two children then living, the remainder in the children accelerates; the trust terminates and the children receive possession and enjoyment, even though the son may subsequently have other children or one or more of the living children may die during their father's lifetime. The will or instrument of transfer may be drafted to avoid acceleration if desired.

Effect of Death or Disability of Person Entitled to Disclaim: The effect of death of a person entitled to disclaim, including one under disability, is discussed under Section 1. A guardian or conservator of the estate of an incapacitated or protected person may disclaim for the ward. Additionally Section 2 allows a person to make a qualified disclaimer within 9 months after he reaches age 21. Section 3 makes no other provision for an extension of time or for other relief in case of disability from the observance of the statutory requirements for effective disclaimer. With the one exception of a person's making a qualified disclaimer within 9 months after reaching age 21, the intent is that the period for disclaimer applies to a person under disability as well as to others, and includes a court which purports to act on behalf of one under disability in the absence of fraud, misconduct or other unusual circumstances. Pratt v. Baker, 48 Ill.App.2d 442, 199 N.E.2d 307 (1964).

Devolution of Disclaimed Property in Intestacy: Rules of descent in many states follow a uniform stirpital principle of distribution [e. g. Iowa Code Annot. § 633.219; Ill.Rev.Stat. ch. 1101/2, § 2-1; Minn.Stat.Annot. § 525.15]. In such states if X dies intestate survived by a brother, A, and a niece, the daughter of a predeceased brother, B, and if A, who has two sons, disclaims, the disclaimed share descends entirely to A's two sons and the niece does not participate. In other states this is not the rule and when all the takers are of equal degree of kinship, a *per capita* distribution is required [e. g. Mass.Annot.Laws, ch. 190, § 3; Ore. Rev.Stat. ch. 112, § 112.045. *See also*, Uniform Probate Code, § 2-103]. In these jurisdictions, the assumed death of the disclaimant before the decedent raises the question of which rule governs when the disclaimant is the only heir standing in a different degree of kinship. In Matter of Fienga, 75 Misc. 2d 233 (N.Y.), it was held that the manner of distribution is not changed by disclaimer statute and the stirpital principle applicable to different degrees of kinship continues to apply. This is consistent with other situations in which assumed death is not given the same effect as actual death. Thus, under a statute declaring that divorce revokes

any bequest to the former spouse and in such case the will takes effect as if the former spouse predeceased the testator it is held that assumed death is not the equivalent of actual death for purposes of satisfying conditions and limitations in the will. Simes & Smith Law of Future Interests, § 776, p. 2 (2d ed. 1956); Fleming, Divorce as the Equivalent of Death in Satisfying Conditions in Wills, 53 Ill.B.J. 232.

Rights of Creditors and Others: As regards creditors, taxing authorities and others, the provision for "relation back" has the legal effect of preventing a succession from becoming operative in favor of the disclaimant. The relation back is "for all purposes" which would include, among others, for the purpose of rights of creditors, taxing authorities and assertion of dower. It is immaterial that the effect is to avoid the imposition of a higher death tax than would be the case if the interest had been accepted: Rolin v. C. I. R., 568 F.2d 488 (2d Cir. 1978) aff'g 68 T.C. 919 (1977); Estate of Aylsworth, 74 Ill.App.2d 375, 219 N.E.2d 779 (1966) [motive for the disclaimer is immaterial]; People v. Flanagin, 331 Ill. 203, 162 N.E. 848 (1928), 60 A.L.R. 305; Cook v. Dove, 32 Ill.2d 109, 203 N.E. 2d 392 (1965) [upholding for inheritance tax the right of appointees to take by default rather than under the power-holder's exercise of power]; Matter of Wolfe's Estate, 179 N.Y. 599, 72 N.E. 1152 (1904); aff'g 89 App.Div. 249, 83 N.Y.S. 949 (1903); Brown v. Routzahn, 63 F.2d 914 (6th Cir.), cert. denied 290 U.S. 641, 54 S.Ct. 60, 78 L.Ed.2d 557 (1933); In re Stone's Estate, 132 Ia. 136, 109 N.W. 455 (1906); Tax Commission v. Glass, 119 Ohio St. 589, 164 N.E. 425 (1929); U. S. v. McCrackin, 189 F.Supp. 832 (S.D.Ohio 1960).

Similarly, numerous cases have held that a devisee or legatee can disclaim a devise or legacy despite the claims of creditors: Hoecker v. United Bank of Boulder, 476 F.2d 888 (C.A. 10, 1973) aff'g 334 F.Supp. 1080 (D.Colo.1971) (bankruptcy); U. S. v. McCrackin, supra (Federal income tax liens); Schoonover v. Osborne, 193 Ia. 474, 187 N.W. 20 (1922); Bradford v. Calhoun, 120 Tenn. 53, 109 S.W. 502 (1908); Carter v. Carter, 63 N.J.Eq. 726, 53 A. 160 (1902), aff'd 65 N.J.Eq. 796, 55 A.2d 1132; Estate of Hansen, 109 Ill.App.2d 283, 248 N.E.2d 709 (1969) (judgment creditor); 37 Mich. L.Rev. 1168; 43 Yale L.J. 1030; 27 A.L.R. 477; 133 A.L.R. 1428. A creditor is not entitled to notice of the disclaimer (In re Estate of Hansen, 109 Ill.App.2d 283, 248 N.E.2d 709 (1969)).

Library References

Descent and Distribution ⇐72.
Wills ⇐119.

C.J.S. Descent and Distribution § 64.
C.J.S. Wills § 1152.

§ 4. [Waiver and Bar]

(a) The right to disclaim property or an interest therein is barred by (1) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to disclaim, (3) an acceptance of the property or interest or benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the disclaimer is effected.

(b) The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(c) 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 him.

Commissioners' Comment

Duty to Disclaimer — Waiver — Estoppel: It may be necessary or advisable to sell real estate in a decedent's estate before the expiration of the period permitted for disclaimer. In such case, the possibility of a disclaimer being filed within the period could be a deterrent to sale and delivery of good title. Section 4 expressly authorizes an heir, devisee, legatee or other person entitled to disclaim to indicate in writing his intention to "waive" his right of disclaimer, and thus avoid any delay in the completion of a sale or other disposition of estate assets. The written waiver bars the right of the person subsequently to disclaim the property or interest therein and is binding on persons claiming through or under him.

Similarly, Section 4 provides that various acts of a person entitled to dis-

claim in regard to property or an interest therein, such as making an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, bars the right of the person to disclaim and is binding on all persons claiming through or under him.

Spendthrift Provisions: The existence of a limitation on the interest of an heir, legatee, devisee or other disclaimant in the nature of a spendthrift provision or similar restriction is expressly declared not to affect the right to disclaim. Without this provision, there might be a question as to whether the beneficiary of a spendthrift trust can disclaim under the statute (Griswold, Spendthrift Trust [2d Ed.] Section 524, p. 603). If a person who is under no legal disability wishes to refuse a beneficial interest under a trust, he should not be powerless to make an effective disclaimer even though the intended interest once accepted by him would be inalienable. (Scott on Trusts, Section 337.7, p. 2883, 3d Ed.)

When a beneficial interest is accepted by a beneficiary, he cannot thereafter disclaim or release it (Griswold, supra, Section 534, p. 603 note 48). As to what conduct amounts to an acceptance, see *In re* Wilson's Estate, 298 N.Y. 398, 83 N.E.2d 852 (1949); Perrine v. U. S., 423 F.Supp. 1217 (N.D.Iowa 1976).

Judicial Sale: The section provides that the right to disclaim is barred by a sale of the property or interest under a judicial sale. Judicial sales are ordered in many different types of proceedings, such as foreclosure of mortgage or trust deed, enforcement of lien, partition proceedings and proceedings for the sale of real property of a decedent or ward for certain purposes. Probate laws frequently permit a representative to mortgage or pledge property of the decedent or ward in certain circumstances. Execution sales are made pursuant to a writ to satisfy a money judgment. Section 4 has the effect of providing that the making of a judicial sale for the account of the heir, devisee, or beneficiary bars him from renouncing the property or interest. To be distinguished from a judicial sale is a taking pursuant to eminent domain, which is considered to be a taking of property without the owner's consent and unrelated to his obligations or commitments. The right to disclaim the proceeds of a condemnation action if otherwise timely and in accordance with the Act should not, therefore, be barred under this section.

Library References

Descent and Distribution ⟹72.
Wills ⟹713, 719.

C.J.S. Descent and Distribution § 64.
C.J.S. Wills §§ 1149, 1152.

§ 5. [Exclusiveness of Remedy]

This Act does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

Commissioners' Comment

Section 5 provides that the right to disclaim under the law does not abridge the right of any person to waive, release, disclaim or renounce any property or interest therein under any other statute. The principal statutes to which this provision is pointed are those dealing with spousal renunciations and release of powers.

Being a codification of the common law in regard to the renunciation of the property, the Act is intended to constitute an *exclusive remedy* for the disclaimer of testamentary successions apart from those provided by other statutes, and supplants the common law right to disclaim.

Library References

Action ⟹35.

C.J.S. Actions § 6.

§ 6. [Application]

An interest in property existing 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 within [9] months after the effective date of this Act.

Commissioners' Comment

Section 6 deals with application of the Act to property interests under instruments or in estates in existence on the effective date. If the interest is a present one and the filing time has not expired, the holder is given a full period after enactment within which to disclaim the interest. If the interest is a future one, the holder is given a full period after the interest becomes indefeasibly vested or the takers finally ascertained after enactment in which to disclaim it. If T dies in 1960 transferring his estate to W for life, remainder to such of T's sons as are living at W's death and W dies in 1975, the Act permits a son to disclaim his remainder interest after it ripens even though it arises under an instrument predating the effective date of the Act. The application of statute to pre-existing instruments in like situations finds support in cases such as Will of Allis, 6 Wis.2d 1, 94 N.W.2d 226 (1959), 69 A.L.R.2d 1128.

Library References

Descent and Distribution ⇐6.
Wills ⇐719.

C.J.S. Descent and Distribution § 6.
C.J.S. Wills § 1153.

§ 7. [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.

Commissioners' Comment

Section 7 is a standard provision in all Uniform Acts.

Library References
Statutes ⇐226.
C.J.S. Statutes § 371 et seq.

§ 8. [Short Title]

This Act may be cited as the Uniform Disclaimer of Transfers by Will, Intestacy, or Appointment Act.

§ 9. [Repeal]

The following acts and parts of acts are repealed:
(1)
(2)
(3)

§ 10. [Time of Taking Effect]

This Act shall take effect _____.