

46:2E-1 to 46:2E-13

LEGISLATIVE HISTORY CHECKLIST

WISA 46:2E-1 to 46:2E-13 (Probate--Disclaimer of transfers under nontestamentary trusts--procedures)

LAWS OF 1979 CHAPTER 492

Bill No. A3144

Sponsor(s) Burstein

Date Introduced Feb. 26, 1979

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Law, Public Safety and Defense

Amended during passage Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly May 7, 1979

Senate Nov. 13, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>
Committee Statement:	Assembly	<input checked="" type="checkbox"/>
	Senate	<input checked="" type="checkbox"/>
Fiscal Note	Yes	No
Veto message	Yes	No
Message on signing	Yes	<input checked="" type="checkbox"/>
Following were printed.		
Reports	Yes	No
Hearings	Yes	No

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Uniform Disclaimer of Transfers under Nontestamentary Instruments Act (attached)

Earlier proposed legislation:

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

EJ 2/1/78

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ASSEMBLY, No. 1113

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1979

By Assemblyman BURSTEIN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning disclaimers of transfers under nontestamentary instruments, and supplementing Title 46 of the Revised Statutes.

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

1 1. (New section) As used in this act:

2 a. A "present interest" is one to take effect in immediate posses-
3 sion, use or enjoyment without the intervention of a preceding
4 estate or interest or without being dependent upon the happening
5 of any event or thing.

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

1 2. (New section) Any person who is a grantee, donee, surviving
2 joint tenant, surviving tenant by the entirety, surviving party to a
3 joint deposit account, a P.O.D. account or a trust deposit account,
4 person succeeding to a disclaimed interest, beneficiary under a
5 nontestamentary instrument or contract, appointee under a power
6 of appointment exercised by a nontestamentary instrument, or a
7 beneficiary under an insurance policy, may disclaim in whole or in
8 part the right of transfer to him of any property or interest therein
9 by delivering or filing a written disclaimer under this act. *A
10 disclaimer may be of a fractional share or any limited interest or
11 estate.*

1 3. (New section) A person designated in section 2 upon whom
2 property or interest therein devolves by right of survivorship may
3 disclaim, as a separate interest, the property or interest so devolv-
4 ing upon him by right of survivorship. He may disclaim the entire
5 interest therein if the property or interest therein was created by
6 the decedent or another party and the survivor did not join in
7 creating it.

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

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

1 5. (New section) A disclaimer on behalf of a decedent, minor
2 or mentally-incompetent person may be made by the personal
3 representative of the decedent or the guardian of the estate of the
4 minor or mentally-incompetent person. Such disclaimer shall not
5 be effective unless, prior thereto, the personal representative or
6 guardian has been authorized to disclaim by the court having
7 jurisdiction of the estate of the decedent, minor or mentally-
8 incompetent person, after finding that it is advisable and will not
9 materially prejudice the rights of creditors, devisees, heirs or bene-
10 ficiaries of the decedent, the minor or mentally-incompetent person
11 or his creditors, as the case may be.

1 6. (New section) a. An instrument disclaiming a present interest
2 shall be delivered or filed no later than 9 months after the effective
3 date of the nontestamentary instrument or contract or 9 months
4 after the day on which the taker of such interest attains age 18
5 if that day is more than 9 months after the effective date of the
6 instrument or contract.

7 b. An instrument disclaiming a future interest shall be delivered
8 or filed not later than 9 months after the event determining that
9 the taker of the property or interest is finally ascertained and
10 his interest is indefeasibly vested or 9 months after the day on
11 which the taker of such interest attains age 18 if that day is
12 more than 9 months after that event.

13 c. If the person entitled to disclaim does not have actual knowl-
14 edge of the existence of the interest, the instrument shall be
15 delivered or filed not later than 9 months after he has actual
16 knowledge of the existence of the interest or 9 months after the
17 day on which the person entitled to disclaim attains age 18 if that
18 day is more than 9 months after he has actual knowledge of the
19 existence of the interest.

20 d. The effective date of a revocable instrument or contract is the
21 date on which the maker no longer has power to revoke it or to
22 transfer to himself or another the entire legal and equitable
23 ownership of the interest.

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

1 7. (New section) a. The disclaimer shall be delivered in person
2 or mailed by registered or certified mail to the trustee or other
3 person having legal title to, or possession of, the property or in-
4 terest disclaimed or who is entitled thereto in the event of dis-
4A claimer.

5 b. If real property or any interest therein is disclaimed, a copy
6 of the disclaimer shall be delivered or mailed as provided in sub-
7 section a. hereof, and the original thereof shall be filed in the office
8 of the clerk or register of deeds and mortgages of the county in
9 which the real property is situated. Each county clerk or register
10 of deeds and mortgages shall provide a book to be entitled "Dis-
11 claimers," so arranged that he may record therein:

- 12 (1) The name of the disclaimant;
- 13 (2) The name of the trustee or other person having legal title
14 to, or possession of, the property or interest disclaimed or is
15 entitled thereto in the event of disclaimer or the name of the donee
16 of the power of appointment;
- 17 (3) The location of the property;
- 18 (4) The file number of the county clerk's office or the office of
19 register of deeds and mortgages indorsed upon each disclaimer
20 filed;
- 21 (5) The date of filing the disclaimer.

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

1 8. (New section) Unless the nontestamentary instrument or
2 contract provides for another disposition, the property or interest
3 therein disclaimed shall devolve **(a) as to a present interest,** as
4 if the disclaimant had died before the effective date of the instru-
5 ment or contract*, and *(b) as to a future interest, as if the*
6 *disclaimant had died before the event determining that the taker of*
7 *the property or interest had become finally ascertained and his*
8 *interest indefeasibly vested**. ***[A future interest that is to take**
9 effect in possession or enjoyment at or after the termination of the
10 estate or interest disclaimed takes effect as if the disclaimant had
11 died before the effective date of the instrument or contract.]* A
12 disclaimer relates back for all purposes to that date.

1 9. (New section) The right of a person to disclaim property
2 or any interest therein is barred if the property or interest is
3 seized under judicial process issued against the person before the
4 expiration of the period in which he is permitted to disclaim; or

5 if before the expiration of the period in which he is permitted to
6 disclaim, the person (1) accepts or exercises control as beneficial
7 owner over all or any part of such property or interest; or (2)
8 voluntarily transfers or encumbers or contracts to transfer or
9 encumber all or any part of such property or interest; or (3) dis-
10 claims or attempts to disclaim all or any part of such property or
11 interest in fraud of his creditors as set forth in the Uniform Fraudu-
12 lent Conveyance Law (R. S. 25:2-7 et seq.); or (4) executes a
13 written waiver of the right to disclaim.

1 10. (New section) The disclaimer or the written waiver of the
2 right to disclaim shall be binding upon the disclaimant or person
3 waiving and all persons claiming by, through or under him.

1 11. (New section) The right to disclaim exists notwithstanding
2 any limitation on the interest of the disclaimant in the nature of
3 a spendthrift provision or similar restriction.

1 12. (New section) This act does not abridge the right of a per-
2 son to waive, release, disclaim or renounce property or an interest
3 therein under any other statute.

1 13. (New section) An interest in property existing on the effec-
2 tive date of this act as to which, if a present interest, the time for
3 filing a disclaimer under this act has not expired, or if a future
4 interest, the interest has not become indefeasibly vested or the taker
5 finally ascertained, may be disclaimed within 9 months after the
6 effective date of this act.

1 14. This act shall take effect immediately.

11 interest in fraud of his creditors as set forth in the Uniform Fraudu-
 12 lent Conveyance Law (R. S. 25:2-7 et seq.); or (4) executes a
 13 written waiver of the right to disclaim.

1 10. (New section) The disclaimer or the written waiver of the
 2 right to disclaim shall be binding upon the disclaimant or person
 3 waiving and all persons claiming by, through or under him.

1 11. (New section) The right to disclaim exists notwithstanding
 2 any limitation on the interest of the disclaimant in the nature of
 3 a spendthrift provision or similar restriction.

1 12. (New section) This act does not abridge the right of a per-
 2 son to waive, release, disclaim or renounce property or an interest
 3 therein under any other statute.

1 13. (New section) An interest in property existing on the effec-
 2 tive date of this act as to which, if a present interest, the time for
 3 filing a disclaimer under this act has not expired, or if a future
 4 interest, the interest has not become indefeasibly vested or the taker
 5 finally ascertained, may be disclaimed within 9 months after the
 6 effective date of this act.

1 14. This act shall take effect immediately.

STATEMENT

This bill has been prepared by the Division of Law Revision of the Law Revision and Legislative Services Agency after study and consideration of the Provisions of the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act drafted and approved by the National Conference of Commissioners on Uniform State Laws.

The purpose of this bill is to authorize and provide a procedure for disclaiming the succession to real and personal property under nontestamentary instruments such as inter vivos trusts, deeds, insurance policies, multiple party bank accounts, and the like.

New Jersey does not have a statute authorizing and providing a procedure for the disclaimer of transfers under nontestamentary instruments. There is, however, a bill (Assembly Bill No. 19, Official Copy Reprint) presently pending in the Legislature which authorizes and provides a procedure for disclaiming transfers by wills or intestate succession with provisions similar to those set forth in this bill.

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

A3144 (1979)

The bill prescribes the form of the disclaimer instrument, where it shall be filed and the manner of delivery to interested persons.

As provided in section 5 of the bill, a disclaimer on behalf of a decedent, minor or mentally incompetent person may be made by the decedent's personal representative or the guardian of the estate of the minor or mentally incompetent person by authorization of the court having jurisdiction of the estate of the decedent, minor or mentally incompetent person upon finding that the disclaimer will not materially prejudice the rights of those persons described in the section.

Section 6 of the bill prescribes the time within which a disclaimer must be filed or delivered. With respect to a "present interest," the time fixed is 9 months from the effective date of the nontestamentary instrument or contract or 9 months after the date the taker attains the age of 18. With respect to a "future interest," the time limit is 9 months from the event which determines that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested or 9 months after the date the taker attains the age of 18. As some nontestamentary instruments are not recorded or filed so as to become public records, the possibility exists that a disclaimant may not receive actual knowledge of the existence of his interest within the time required, this section treats knowledge as an overriding circumstance in respect to the time period otherwise applicable and the time period begins to run from the time the disclaimant has actual knowledge of the existence of the interest or 9 months after the person attains the age of 18. The section further provides the effective date of a revocable instrument to be the date on which the maker of the instrument no longer has the power to revoke it or transfer the entire legal and equitable ownership of the interest. The time within which a disclaimer shall be filed may be extended by the court for reasonable cause.

The property or interest therein disclaimed devolves as if the disclaimant had died before the effective date of the nontestamentary instrument or contract unless the instrument or contract provides for another disposition.

Section 9 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. 3144

STATE OF NEW JERSEY

DATED: APRIL 26, 1979

The definitions contained in paragraphs 1- a & b are not intended to alter or amend any definition or procedures under N. J. S. A. 54:33 to 37 or 54:38. Otherwise, the statement appended to and printed with the bill adequately explains its provisions.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3144

STATE OF NEW JERSEY

DATED: AUGUST 6, 1979

The statement appended to and printed with the bill adequately explains its provisions as reported with the exception of the amendments which refer to when present and future interests take place. These amendments conform the bill to the latest suggestions of the Uniform Probate Code.

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION:

FEBRUARY 25, 1980

KATHERINE FOLEY

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.

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 remuneration 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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§ 6 DISCLAIMER OF TRANSFERS BY WILL, ETC.

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 trustee-

ing 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, 69 Wis.2d 1, 94 N.W.2d 228 (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 § 1162.

§ 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 § 228.
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 _____

*Source: Un. Form Laws Annotated
Master edition (1979 pocket part)
Estate, Probate, and related laws*

UNIFORM DISCLAIMER OF TRANSFERS UNDER
NONTESTAMENTARY INSTRUMENTS ACT

1978 ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Maine	1975, c. 311	5-21-1975 *	20 M.R.S.A. §§ 1251 to 1258.
North Dakota	1977, c. 427	7-1-1977	NDCC 47-11.1-01 to 47-11.1-08.
Oregon	1975, c. 622	1-1-1976	ORS 105.625 to 105.640.

* Date of approval.

Historical Note

The Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act was approved by the National Conference of Commissioners on Uniform State Laws in 1978.

General Statutory Notes

Maine, L.1979, c. 540, repealed 18 M.R.S.A. §§ 1251 to 1258, which previously constituted the Uniform Disclaimer of Transfers Under Nontestamentary Instruments 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.

Commissioners' Prefatory Note

See Prefatory Note under the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, supra, this supplement.

UNIFORM DISCLAIMER OF TRANSFERS UNDER
NONTESTAMENTARY INSTRUMENTS ACT

Sec.

1. Right to Disclaim Transfers.
2. Time of Disclaimer—Delivery.
3. Effect of Disclaimer.
4. Waiver and Bar.
5. Exclusiveness of Remedy.
6. Application.

Sec.

7. Uniformity of Application and Construction.
8. Short Title.
9. Repeal.
10. Time of Taking Effect.

Be it enacted

§ 1. [Right to Disclaim Transfers]

A person, or the representative of a deceased, incapacitated or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to him of any property or interest therein by delivering a written disclaimer under this Act. A disclaimer may be of a fractional share or of any limited interest or estate. A surviving joint tenant [tenant by the entireties] may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant [tenant by the entireties] may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy [tenancy by the entireties] devolving to him, if the joint tenancy was created by the act of a deceased joint tenant [tenant by the entireties] and if the survivor did not join in creating the joint tenancy [tenancy by the entireties]. The disclaimer shall (1) describe the property or interest therein disclaimed, (2) declare the disclaimer and extent thereof, and (3) be signed by the disclaimant.

Commissioners' Comment

Section 1 and the following sections are intended to provide a procedure for disclaiming the succession to real and personal property passing under instruments such as inter vivos trusts, deeds, insurance policies, and the like. The approach and structure of the sections are the same as the corresponding sections in the Will, Intestacy and Appointment Act (herein referred to as the "testamentary Act"). However, in lieu of succession to property, it refers to the right to property.

Beneficiary: The scope of the term "beneficiary" is discussed under Section 1 of the testamentary Act.

Insurance Contracts: While it is generally said that the relationship between an insurance company and its policyholder is purely contractual, it has nevertheless been held that a life insurance policy is property, being a chose in action for the payment of money. *Hawley v. Aetna Life Ins. Co.*, 214 Ill. App. 424, aff'd 291 Ill. 28, 125 N.E. 707. The interest of a beneficiary designated by the insured who retains the right to change the designation is like that of a legatee under a will, only an expectancy until the insured's death. *Estate of Cohen*, 23 Ill.App.2d 411, 163 N.E.2d 533. It therefore appears that a beneficiary under an insurance policy, in which the right to change the beneficiary has been reserved to the insured, should be able to disclaim in whole or in part his right to the proceeds on the death of the insured the same as a legatee under a will and with like effect, upon compliance with the statutory conditions. The same principles would apply to an annuity contract for the benefit of a third person.

Joint Tenancy: The common law is unsettled whether a surviving joint tenant has any right to renounce his interest in jointly-owned property and if so to what extent. See *Casner, Estate Planning*, 1972 Supp. p. 402, n. 3a. Specifically, if A and B own real estate or securities as joint tenants with right of survivorship and A dies, the problem is whether B may disclaim what was given to him originally upon the creation of the estate, or, if not, whether he can nevertheless reject the incremental portion derived through the right of survivorship. There is also a question of whether a joint bank account stands

differently from jointly-owned securities or real estate for the purpose of disclaimer.

The general rule is that a joint tenant becomes vested with an equal undivided interest in the property immediately upon the creation of the estate. *Kane v. Johnson*, 397 Ill. 112, 73 N.E.2d 321 (a joint tenancy is a present estate in all the joint tenants). It is possible to argue that a disclaimer of the survivor's original undivided interest comes too late at the death of the first tenant because an acquiescence in the initial establishment of the tenancy is in effect an acceptance of the interest which cannot be shed except by transfer. *Casner, op. cit.*, n. 34. But if the survivor was not apprised of the creation of the tenancy and did nothing before the death of the first tenant to show his acquiescence, he should be able to reject both the original and the accretive portions. *Casner, op. cit.*, n. 34.

Even where the survivor has acquiesced in the establishment of the estate, it would seem that the accretive portion derived through survivorship should stand differently from the original interest and that the accretion should be subject to disclaimer for the reason that it is contingent, uncertain and defeasible until the death of the first tenant like a legacy under a will or a beneficial designation under an insurance policy. Barring conduct indicative of acceptance he should be able to reject the interest if he so elects, with like effect.

Joint bank accounts are largely, if not always, creatures of statute with basis in contract rather than in the laws of succession. Nevertheless, it has been held that a joint bank account may properly be made the subject of disclaimer, particularly if the survivor was not aware of the existence of the account. *Hershey, Ex'r's v. Bowers*, 708 Ohio St.2d 4, 218 N.E.2d 455.

The position taken by the Act is to confer the right of disclaimer upon a surviving joint tenant and leave to the particular circumstances whether he may disclaim all of the interest or only the accretive part and the effect of knowledge of the existence of the tenancy, acceptance of benefits, and the like.

Action in Adopting Jurisdictions

Variations from Official Text:

North Dakota. Omits bracketed material relating to tenancy by the entirety.

Oregon. Inserts references to tenant by the entirety and tenancy by the entirety following references to joint tenant and joint tenancy, wherever appearing.

Library References

Abandonment § 2.
Deeds § 178 to 183.
Gifts § 21.
Release § 2, 4.

C.J.S. Abandonment § 1.
C.J.S. Deeds §§ 173 to 178.
C.J.S. Gifts § 103 et seq.
C.J.S. Release §§ 2, 22, 23.

§ 2. [Time of Disclaimer—Delivery]

(a) An instrument disclaiming (1) a present interest shall be delivered no later than [9] months after the effective date of the nontestamentary instrument or contract; and (2) a future interest shall be delivered not later than [9] months after the event determining that the taker of the property or interest has become finally ascertained and his interest indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument of disclaimer shall be delivered not later than [9] months after he has actual knowledge 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 another the entire legal and equitable ownership of the interest. However, 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 the trustee or other person having legal title to, or possession of, the property or interest disclaimed or who is entitled thereto in the event of disclaimer. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record 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.

Action in Adopting Jurisdictions

Variations from Official Text:

North Dakota. In subsec. (b), omits reference to certified mail.

Commissioners' Comment

This section is similar to Section 2 of the testamentary Act except for the reference to the effective date of the instrument, rather than the death of the decedent or donee of the power, as the beginning time for the disclaimer period. In regard to future interests the reference is to the event which determines that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.

Nontestamentary instruments sometimes may not be recorded or become public documents, and the possibility is real that the persons entitled to disclaim may not receive actual knowledge

of the existence of their interest within the required time. Therefore, the section treats lack of knowledge as an overriding circumstance in respect to the time period otherwise applicable.

As under Section 2 of the testamentary Act, a disclaimer subject to the new Federal tax disclaimer rules and intended to qualify thereunder must comply with those rules. However, a disclaimer which is not intended to, and does not, comply with those rules can still be given effect for property law purposes if it meets the requirements of Section 2. In order to be as permissive as the new Federal rules, the

§ 2 DISCLAIMER OF TRANSFERS—NONTESTAMENTARY

Act allows a person to make a disclaimer which would be effective for Federal tax purposes within 9 months of the date he reaches age 21.

Library References

Abandonment ↪4.
Release ↪1.

C.J.S. Abandonment §§ 3, 5.
C.J.S. Release § 1 et seq.

§ 3. [Effect of Disclaimer]

Unless the testamentary instrument or contract provides for another disposition, the property or interest therein disclaimed devolves (1) as to a present interest as if the disclaimant had died before the effective date of the instrument or contract; 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 is indefeasibly vested; and the disclaimer shall relate back for all purposes to the effective date of the instrument or contract or the date of the determinative event, as the case may be.

Commissioners' Comment

This section parallels the provisions of the corresponding section in the testamentary Act except for the reference to the "effective date of the instrument" instead of the death of the decedent or donee of power.

Comments made with respect to the corresponding section of the companion Act are applicable to this section.

Action in Adopting Jurisdictions

Variations from Official Text:

North Dakota. Section reads: "Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed shall devolve as if the disclaimant had died before the effective date of the instrument or contract. 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."

Oregon. Section reads: "Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed shall devolve as if the disclaimant had died before the effective date of the instrument or contract. 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."

Library References

Abandonment ↪7.
Release ↪32.

C.J.S. Abandonment § 9.
C.J.S. Release § 61 et seq.

§ 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 instrument of 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.

DISCLAIMER OF TRANSFERS—NONTESTAMENTARY § 8

Commissioners' Comment

This section parallels the provisions made with respect to it apply equally of the corresponding section of the testamentary Act and the comments to this section.

Library References

Abandonment ↪2.
Release ↪4.

C.J.S. Abandonment § 1.
C.J.S. Release § 23.

§ 5. [Exclusiveness of Remedy]

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

Commissioners' Comment

This section is identical with the corresponding section of the testamentary Act, and the same comments apply.

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

This section parallels the provisions made with respect to it apply equally of the corresponding section of the testamentary Act and the comments to this section.

Action in Adopting Jurisdictions

Variations from Official Text:

North Dakota. Section reads: "An interest in property existing on July 1, 1977, as to which the time for filing a disclaimer under this chapter would

have begun to run were this chapter in effect when the interest was created may be disclaimed within six months after July 1, 1977." Oregon. Omits this section.

Library References

Abandonment ↪2.
Release ↪1.

C.J.S. Abandonment § 1.
C.J.S. Release § 1 et seq.

§ 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 under Nontestamentary Instruments Act.

§ 9 DISCLAIMER OF TRANSFERS—NONTESTAMENTARY

§ 9. [Repeal]

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

§ 10. [Time of Taking Effect]

This Act shall take effect _____.

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Colorado	1973, c. 452	7-1-1973	C.R.S. (73, 15-20-101 to 15-20-111.
Hawaii	1973, c. 132	—	HRS §§ 510-21 to 510-30.
Kentucky	1974, c. 328	6-21-1974	KRS 391.210 to 391.260.
Michigan	1975, P.A. 289	12-10-1975 *	M.C.L.A. §§ 557.261 to 557.271.
Oregon	1973, c. 205	10-5-1973	ORS 112.705 to 112.775.

* Date of approval.

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

§ 3. [Disposition upon Death]

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Omits sentence beginning "With respect to property".
Hawaii. Inserts ", is not included in the decedent's net estate which is subject to the elective share of the surviving spouse," preceding the bracketed material.

Kentucky. Omits bracketed language.
Michigan. Substitutes "and an estate of dower does not exist in the property of the decedent" for bracketed material.
Oregon. Omits bracketed material.

§ 4. [Perfection of Title of Surviving Spouse]

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Inserts "or by a trustee of an inter vivos trust created by the decedent" preceding "title of the surviving spouse" and substitutes "The personal

representative shall have no" for "Neither the personal representative nor the court in which the decedent's estate is being administered has a".

§ 5. [Perfection of Title of Personal Representative, Heir or Devisee]

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Designates Uniform Act text as subsec. (1) and adds subsecs. (2) and (3) as follows:
"(2) Written demand in this section and in section 15-20-105 shall be made by a surviving spouse, the spouse's successor in interest, or the decedent's heirs or devisees not later than six months after the decedent's will has been admitted to probate, or not later than six months after the appointment of an administrator if there is no will, or not later than six months after the decedent's death if the property to which this article applies is held in an inter vivos trust created by the decedent;

and written demand by a creditor of the decedent shall be made not later than six months from the decedent's date of death.
"(3) Written demand in this section and in section 15-20-105 shall be delivered in person or by registered mail to the personal representative. As used in this article, the personal representative may also mean the trustee of an inter vivos trust created by the decedent who has legal title to, or possession of, the property to which this article applies."
Michigan. Makes same minor language changes without affecting substance.

§ 6. [Purchaser for Value or Lender]

Action in Adopting Jurisdictions

Variations from Official Text:

Hawaii. In subsec. (c), adds "with respect to property to which this part applies" at the end thereof.

In subsec. (d), inserts "in property to which this part applies" following "security interest".