

**75-2-801 Disclaimer of property interests -- Time -- Form -- Effect -- Waiver and bar -- Remedy not exclusive -- Application.**

- (1) A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding:
  - (a) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or
  - (b) any restriction or limitation on the right to disclaim contained in the governing instrument. For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a person with a disability, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.
- (2) The following rules govern the time when a disclaimer shall be filed or delivered:
  - (a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer shall be filed in the district court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.
  - (b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer shall be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.
  - (c) A surviving joint tenant or 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 or tenant by the entireties may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entireties devolving to the surviving joint tenant or tenant by the entireties, if the joint tenancy or tenancy by the entireties was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit under it.
  - (d) If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the county recorder of the county in which the property or interest disclaimed is located.
- (3) The disclaimer shall:
  - (a) describe the property or interest disclaimed;

- (b) declare the disclaimer and extent thereof; and
  - (c) be signed by the disclaimant.
- (4) The effects of a disclaimer are:
- (a) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed, or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.
  - (b) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.
  - (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 either of them.
- (5) The right to disclaim property or an interest therein is barred by:
- (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;
  - (b) a written waiver of the right to disclaim;
  - (c) an acceptance of the property or interest or a benefit under it; or
  - (d) a sale of the property or interest under judicial sale made before the disclaimer is made.
- (6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.
- (7) An interest in property that exists on July 1, 1998, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after July 1, 1998.

Amended by Chapter 366, 2011 General Session