WEST VIRGINIA CODE CHAPTER 42 ARTICLE 6

WV Legislature

§42-6-1. Short title.

This article may be cited as the "Uniform Disclaimer of Property Interests Act".

WV Legislature

§42-6-2. Definitions.

In this article:

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

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

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

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

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

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

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

(8) "Trust" means:

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

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

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§42-6-3. Scope.

This article applies to disclaimers of any interest in or power over property whenever created.

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§42-6-4. Article supplemented by other law.

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

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

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§42-6-5. Power to disclaim; general requirements; when irrevocable.

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

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

(c) To be effective, a disclaimer must be in writing, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, be acknowledged in such a manner as would authorize a deed to be admitted of record and be delivered or filed in the manner provided in section twelve of this article.

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

(e) A disclaimer becomes irrevocable when it is delivered, filed or recorded pursuant to the provisions of section twelve of this article or when it becomes effective as provided in sections six through eleven, inclusive, of this article, whichever occurs later.

(f) A disclaimer made under this article is not a transfer, assignment or release and relates back for all purposes to the time the disclaimer takes effect pursuant to the provisions of section six of this article.

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§42-6-6. Disclaimer of interest property.

(a) In this section:

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

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

(b) Except for a disclaimer governed by section seven or eight of this article, the following rules apply to a disclaimer of an interest in property:

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

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

(3) If the instrument does not contain a provision described in subdivision (2) of this subsection, the following rules apply:

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

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

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

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§42-6-7. Disclaimer of right of survivorship in jointly held property with right of survivorship.

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

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

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

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

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

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§42-6-8. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

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§42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

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

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

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

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§42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.

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

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

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§42-6-11. Disclaimer of power held in fiduciary capacity.

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

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

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

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§42-6-12. Delivery of disclaimer.

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

(1) An annuity or insurance policy;

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

(3) A security registered in beneficiary form;

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

(5) Any other nonprobate transfer at death.

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

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

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

(2) If no personal representative is then serving, it must be filed in the office of the clerk of the county commission 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.

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

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

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission 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.

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

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

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over the corpus of the trust; or

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

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

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

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

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

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

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over the assets subject to the power of appointment.

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

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

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over assets subject to the power of appointment.

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

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

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§42-6-13. When disclaimer barred or limited.

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

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

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

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

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

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

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

(e) A disclaimer of a power over property which is barred by this section is ineffective as a disclaimer: Provided, That a disclaimer of an interest in property which is barred by this section takes effect as a transfer or conveyance of the interest disclaimed to the persons who would have taken the interest under this article had the disclaimer not been barred.

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§42-6-14. Tax qualified disclaimer.

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

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§42-6-15. Recording of disclaimers; failure to record.

(a) A duly executed and acknowledged original or duplicate of the disclaimer may be recorded with the office of the clerk of county commission having jurisdiction to appoint the personal representative of the decedent, in which the trust is located or the trustee resides, in which the person making the beneficiary designation resides, in which the person obligated to distribute the interest resides or in which any of the property or interest disclaimed is located, as the case may be.

(b) If real property or an interest therein is disclaimed, in addition to delivery or filing as provided in section twelve of this article, a fully executed and acknowledged original or duplicate of the disclaimer shall be recorded in the deed books in the office of the clerk of the county commission of the county in which the real property or interest therein disclaimed is located.

(c) Failure to record a disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

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§42-6-16. Application to existing relationships.

Except as otherwise provided in section thirteen of this article, an interest in or power over property existing on the effective date of this article as to which the time for delivering, filing or recording a disclaimer under law superseded by this article has not expired may be disclaimed after the effective date of this article.

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§42-6-17. Uniformity of application and construction.

In applying and construing this uniform article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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§42-6-18. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application and, to this end, the provisions of this article are severable.

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§42-6-19. Effective date.

This article takes effect on July 1, 2002.

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