

ESTATES, TRUSTS AND PROBATE LAW SECTION

Steering Committee:

Carol A. Rhees, Co-Chair
Martin J. McNamara, Vice-Chair
Thomas J. Cholis
Thomas J. Egan
Lloyd Leva Plaine
Henry L. Rucker



The District of Columbia Bar

April 14, 1988

Councilmember Wilhelmina Rolark
Council of the District of
Columbia
Room 125
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: District of Columbia Uniform Disclaimer
of Property Interests Act of 1987

Dear Ms. Rolark:

As members of the Steering Committee of the Estates, Trusts and Probate Law Section of the District of Columbia Bar, we are writing to express our support for the District of Columbia Uniform Disclaimer of Property Interests Act of 1987, which has been introduced before the Council.^{1/} As you know, the District of Columbia Code currently contains a very short provision pertaining to disclaimers (D.C. Code § 20-1101). The Uniform Act is more comprehensive and, if enacted, would go far towards answering many currently unanswered questions in the District of Columbia regarding disclaimers. For example, the Uniform Act, unlike the current statutory provision, would address disclaimers of non-probate property, such as insurance proceeds, pension benefits, etc., and would clarify the effect of a spendthrift provision in the governing instrument.

Although we enthusiastically endorse adoption of the Uniform Act in general, we recommend that the Council consider amending the legislation in certain minor respects so as to make it more complete and consistent with existing law. Specifically, we are concerned that the legislation does not:

(1) Specifically provide for disclaimers by personal representatives of deceased persons;

^{1/} The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

Councilmember Wilhelmina Rolark
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(2) Spell out the appropriate procedures where a disclaimer is to be made on behalf of an incapacitated or deceased person;

(3) Require, as under current law, that the disclaimer be filed with the Register of Wills; or

(4) Provide, as current law does, that the creditors of the disclaimant will have no interest in the disclaimed property.

A more detailed description of our proposed changes is attached for your consideration.

With respect to disclaimers on behalf of incapacitated or protected persons (section 2 of the bill), we note that section 21-2055(c) of the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986 authorizes the court, under certain conditions, to "exercise or direct the exercise" of certain powers, including a renunciation or disclaimer of interests. We strongly recommend that the procedures for disclaimers on behalf of incapacitated persons be consistent under the two acts. The Council may therefore wish simply to reference the relevant provision in the Guardianship Act, rather than include a new separate provision in the Disclaimer Act.

Please let us know if we can be of assistance to you or the Council.

Thank you for your consideration.

Sincerely,

Carol A. Rhees
Martin J. McNamara
Thomas J. Cholis
Thomas J. Egan
Lloyd Leva Plaine
Henry L. Rucker

Wilhelmina J. Rolark

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Councilmember Wilhelmina J. Rolark

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Councilmember Wilhelmina J. Rolark introduced the following bill which was referred to the Committee on

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To provide an efficient, expeditious, and certain method by which the intended recipient of property of any kind, by testamentary or inter vivos transfer, may disclaim all or part of the intended recipient's interest in such property.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Uniform Disclaimer of Property Interests Act of 1987".

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Sec. 2. Right to Disclaim Interest in Property.

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(a) A person, or the representative of ~~an incapacitated or~~ ^{a deceased} ~~protected~~ person, to whom any property or interest therein devolves, by whatever means, may disclaim it in whole or in

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INSERT 1:

(b) A personal representative may make a disclaimer on behalf of his decedent without court authorization if the will of the decedent so authorizes him. In the absence of such authorization in a will, a personal representative may make a disclaimer on behalf of his decedent if the Probate Division of the Superior Court of the District of Columbia authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of the decedent's heirs or beneficiaries.

part by delivering a written disclaimer under this act. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

Sec. 3. Time of Disclaimer--Delivery.

(a) Except as provided in subsection ^s(c) ^{and (d) and section 8,} if the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be delivered, as to a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, as to a future interest, not later than 9 months after the event determining that the taker of the property or interest has become finally ascertained and the taker's interest is indefeasibly vested. The disclaimer shall be delivered in person or mailed by registered or certified mail to ~~any~~ ^{the} personal representative, or other fiduciary, of the decedent or the donee of the power, ^{or, if none,} [^] to the holder of the legal title to which the interest relates, or to the person entitled to the property or interest in the event of disclaimer. A copy of the disclaimer ^{shall} ~~may~~ be filed ^{with the Register of Wills.} ~~in the Superior Court of the District of Columbia.~~

(b) Except as provided in subsection ^s(c) ^{and (d) and section 8,} if the property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered, as to a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, as to future interest, not later

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(c) In the case of property or an interest in property devolving to a minor, the time for making a disclaimer as specified in subsections (a) and (b) shall in no event expire sooner than 9 months after the day on which such person attains age 21.

than 9 months after the event determining that the taker of
the property or interest has become finally ascertained and
the taker's interest indefeasibly vested. If the person
entitled to disclaim does not have actual knowledge of the
existence of the interest, the 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 the
maker or another the entire legal and equitable ownership of
the interest. The disclaimer shall be delivered in person
or mailed by registered or certified mail to the person who
has legal title to or possession of the interest disclaimed.

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(g) In any case, ^{notwithstanding any longer period of time specified in subsection (a) or (b)} 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~~

⁸⁶ Code of 1954, as amended, ^{within the meaning of section 2518} 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. ^{Failure to state that a disclaimer}
^{is intended as a qualified disclaimer shall not render an otherwise qualified}

(2) A surviving joint tenant or tenant by the ^{disclaimer}
entireties may disclaim as a separate interest any property ^{ineffective.}
or interest therein devolving to the tenant 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 tenant, if the

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joint tenancy or tenancy by the entireties was created by act of a deceased joint tenant or tenant by the entireties and the survivor did not join in creating the joint tenancy or tenancy by the entireties.

(f) If real property or an interest therein is disclaimed, a copy of the disclaimer ~~may~~ ^{shall} be recorded in the office of the Recorder of Deeds, or other official keeper of land records where the property is located.

Sec. 4. Form of Disclaimer.

The disclaimer shall (1) describe the property or interest disclaimed, (2) declare the disclaimer and extent thereof, and (3) be signed by the disclaimant.

Sec. 5. Effect of Disclaimer.

(a) If the property or interest devolved to a disclaimant under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the disclaimant had predeceased the decedent or, if the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. Any 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 died before the event determining that the taker of the property or interest had become finally ascertained and the taker's interest is indefeasibly vested. A disclaimer relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case

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may be.

(b) If the property or interest devolved to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, (1) it devolves as if the disclaimant had died before the effective date of the instrument or contract; and (2) 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 event determining that the taker of the property or interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates 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.

(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 the disclaimant.

(d) Creditors of the disclaimant have no interest in the property disclaimed.
Sec. 6. Waiver and Bar.

A disclaimer must be made before the property or an interest therein has been accepted. An ~~the right to disclaim property or an interest therein~~ acceptance may be express or may be inferred from actions of the person entitled to receive an interest in property is barred by (1) an assignment, conveyance, encumbrance, ^{such as} the following: 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 a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the disclaimer is effected.

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Sec. 7. Remedy Not Exclusive.

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.

Sec. 8. Application.

An interest in property that exists 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.

Sec. 9. 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.

Sec. 10. Repeal.

Section 20-1101 of title 20 of the District of Columbia Code is repealed.

Sec. 11. Severability.

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

Sec. 12. Effective Date.

This act shall take effect after a 30-day period of

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Congressional review following approval by the Mayor (or in
the event of veto by the Mayor, action by the Council of the
District of Columbia to override the veto) as provided in
section 602(c)(1) of the District of Columbia
Self-Government and Governmental Reorganization Act,
approved December 24, 1973 (87 Stat. 813; D.C. Code, sec.
1-233(c)(1)).

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