

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
03/09/2011	443	Introduction and first reading Referred to Judiciary and Public Safety

1.1

A bill for an act

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relating to probate; changing, updating, and clarifying certain provisions of the

1.3

Uniform Disclaimer of Property Interests Act; amending Minnesota Statutes

1.4

2010, sections 524.2-1103; 524.2-1104; 524.2-1106; 524.2-1107; 524.2-1114;

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524.2-1115; 524.2-1116.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2010, section 524.2-1103, is amended to read:

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524.2-1103 SCOPE.

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Sections ~~524.2-1101 to 524.2-1116~~ apply to disclaimers of any interest in or power

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~~over property, whenever created. Except as provided in section 524.2-1116, sections~~

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524.2-1101 to 524.2-1116 are the exclusive means by which a disclaimer may be made

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under Minnesota law regardless of whether it is qualified under section 2518 of the

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Internal Revenue Code of 1986 ~~in effect on January 1, 2010~~ as defined in section 291.005,

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subdivision 1, clause 3.

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Sec. 2. Minnesota Statutes 2010, section 524.2-1104, is amended to read:

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524.2-1104 TAX-QUALIFIED DISCLAIMER.

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Notwithstanding any other provision of this chapter, other than section 524.2-1106,

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if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated

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pursuant to the provisions of section 2518 of the Internal Revenue Code of 1986, as ~~in~~

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~~effect on January 1, 2010~~ defined in section 291.005, subdivision 1, clause 3, as never

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having been transferred to the disclaimant, then the disclaimer or transfer is effective as a

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disclaimer under sections 524.2-1101 to 524.2-1116.

Sec. 3. Minnesota Statutes 2010, section 524.2-1106, is amended to read:

524.2-1106 WHEN DISCLAIMER IS 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 portion of the interest sought to be disclaimed;

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

(3) the portion of the interest sought to be disclaimed is sold pursuant to a judicial sale; or

(4) the disclaimant is insolvent when the disclaimer becomes irrevocable.

(c) Acceptance of a distribution from a trust shall constitute acceptance of only that portion of the beneficial interest in that trust that has been distributed, and shall not constitute acceptance or bar disclaimer of that portion of the beneficial interest in the trust that has not yet been distributed.

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

~~(d)~~ (e) A disclaimer, in whole or in 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)~~ (f) A disclaimer of an interest in, or a power over, property which is barred by this section is ineffective.

Sec. 4. Minnesota Statutes 2010, section 524.2-1107, is amended to read:

524.2-1107 POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.

(a) A person may disclaim, in whole or in 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) With court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment when acting in a representative capacity. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the fiduciary the right to disclaim. With court approval, a custodial parent may disclaim on behalf of a minor child

for whom no conservator has been appointed, in whole or in part, any interest in or power over property, including a power of appointment, which the minor child is to receive.

(c) To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person or fiduciary making the disclaimer and acknowledged in the manner provided for deeds of real estate to be recorded in this state. In addition, for a disclaimer to be effective, an original of the disclaimer must be delivered or filed in the manner provided in section 524.2-1114.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, specific property, term of years, portion of a beneficial interest in or right to distributions from a trust, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when the disclaimer is delivered or filed pursuant to section 524.2-1114 or it becomes effective as provided in sections 524.2-1108 to 524.2-1113, whichever occurs later.

(f) A disclaimer made under sections 524.2-1101 to 524.2-1116 is not a transfer, assignment, or release.

Sec. 5. Minnesota Statutes 2010, section 524.2-1114, is amended to read:

524.2-1114 DELIVERY OR FILING.

(a) Subject to paragraphs (b) to (l), delivery of a disclaimer may be effective by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail is deemed to have been delivered on the date it is postmarked. Delivery by any other method is effective upon receipt by the person to whom the disclaimer is to be delivered under this section.

(b) In the case of a disclaimer 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) the disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration would be proper.

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

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

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration of the decedent's estate would be proper.

(d) In the case of a disclaimer of an interest in an inter vivos trust:

(1) the disclaimer must be delivered to the trustee serving when the disclaimer is delivered;

(2) if no trustee is then serving, it must be filed with the clerk of the court in any county where the filing of a notice of trust would be proper; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the person with the power to revoke the revocable trust or the transferor of the interest or to such person's legal representative.

(e) In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

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

(g) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes or, if such person cannot reasonably be located by the disclaimant, the disclaimer must be delivered as provided in paragraph (b).

(h) 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, the disclaimer must be delivered to:

(1) the holder of the power; or

(2) the fiduciary acting under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, the disclaimer must be delivered to:

(1) the holder of the power or the personal representative of the holder's estate; or

(2) the fiduciary under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(j) 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 paragraph (b), (c), or (d) as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power exercisable by an agent, other than a power exercisable by a fiduciary over a trust or estate, the disclaimer must be delivered to the principal or the principal's representative.

(l) Notwithstanding paragraph (a), delivery of a disclaimer of an interest in or relating to real estate shall be presumed upon the recording of the disclaimer in the office of the ~~clerk of the court~~ county recorder or registrar of titles of the county or counties where the real estate is located.

(m) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred under section 524.2-1106, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.

Sec. 6. Minnesota Statutes 2010, section 524.2-1115, is amended to read:

524.2-1115 RECORDING OF DISCLAIMER RELATING TO REAL ESTATE.

(a) A disclaimer of an interest in or relating to real estate does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real estate to which the disclaimer relates and unless the disclaimer is ~~filed for recording~~ recorded in the office of the county recorder or registrar of titles in the county or counties where the real estate is located.

(b) An effective disclaimer meeting the requirements of paragraph (a) constitutes constructive notice to all persons from the time of ~~filing~~ recording. Failure to record the 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.

Sec. 7. Minnesota Statutes 2010, section 524.2-1116, is amended to read:

524.2-1116 APPLICATION TO EXISTING RELATIONSHIPS.

~~Except as otherwise provided in section 524.2-1106, an Sections 524.2-1101 to 524.2-1116 apply to disclaimers of any interest in or power over property existing on January 1, 2010, as to which the time for delivering or filing a disclaimer under laws superseded by sections 524.2-1101 to 524.2-1116 has not expired, may be disclaimed after January 1, 2010 whenever created.~~