

A bill for an act
relating to property; enacting the Uniform Disclaimer of Property Interests Act;
proposing coding for new law in Minnesota Statutes, chapter 524; repealing
Minnesota Statutes 2008, sections 501B.86; 525.532.

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

Section 1. [524.2-1101] SHORT TITLE.

Sections 524.2-1101 to 524.2-1116 may be cited as the "Uniform Disclaimer of
Property Interests Act."

Sec. 2. [524.2-1102] DEFINITIONS.

As used in sections 524.2-1101 to 524.2-1116:

(1) "benefactor means the creator of the interest that is subject to a disclaimer;

(2) "beneficiary designation" means an instrument, other than an instrument creating
or amending a trust, naming the beneficiary of:

(i) an annuity or insurance policy;

(ii) an account with a designation for payment on death;

(iii) a security registered in beneficiary form;

(iv) a pension, profit-sharing, retirement, or other employment-related benefit plan;

or

(v) any other nonprobate transfer at death;

(3) "disclaimant" means the person to whom a disclaimed interest or power would
have passed had the disclaimer not been made;

(4) "disclaimed interest" or "power" means the portion of the interest that would
have passed to the disclaimant had the disclaimer not been made;

(5) "disclaimer" means the refusal to accept an interest in or power over property;

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

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

(8) "holder" means a person who has an interest in or power over property;

(9) "insolvent" means that the sum of a person's debts is greater than all of the person's assets at fair valuation. A person is presumed to be "insolvent" if the person is generally not paying debts as they become due. Assets do not include property that has been transferred, concealed, or removed, with intent to hinder, delay, or defraud creditors, or has been transferred in a manner making the transfer voidable. Debts do not include an obligation to the extent it is secured by a valid lien or property of the debtor not included as an asset;

(10) "jointly held property" means property held in the names 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;

(11) "person" means an individual, living, deceased, or unborn, ascertained or unascertained, whether entitled to an interest by right of intestacy or otherwise, corporation, business trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or other commercial entity;

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

(13) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory of 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; and

(14) "trust" means:

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

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

Sec. 3. [524.2-1103] SCOPE.

Sections 524.2-1101 to 524.2-1116 apply to disclaimers of any interest in or power over property, whenever created. Except as provided in section 524.2-1116, sections 524.2-1101 to 524.2-1116 are the exclusive means by which a disclaimer may be made under Minnesota law regardless of whether it is qualified under section 2518 of the Internal Revenue Code of 1986 in effect on January 1, 2010.

Sec. 4. [524.2-1104] TAX-QUALIFIED DISCLAIMER.

Notwithstanding any other provision of sections 524.2-1101 to 524.2-1116, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of section 2518 of the Internal Revenue Code of 1986, as in effect on January 1, 2010, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under sections 524.2-1101 to 524.2-1116.

Sec. 5. [524.2-1105] WHEN DISCLAIMER IS PERMITTED.

A disclaimer may be made at any time unless it is barred under section 524.2-1106.

Sec. 6. [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) 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) 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) A disclaimer of an interest in, or a power over, property which is barred by this section is ineffective.

Sec. 7. [524.2-1107] POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.

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

4.5 (b) With court approval, a fiduciary may disclaim, in whole or in part, any interest in
4.6 or power over property, including a power of appointment when acting in a representative
4.7 capacity. Without court approval, a fiduciary may disclaim, in whole or in part, any interest
4.8 in or power over property, including a power of appointment, if and to the extent that the
4.9 instrument creating the fiduciary relationship explicitly grants the fiduciary the right to
4.10 disclaim. With court approval, a custodial parent may disclaim on behalf of a minor child
4.11 for whom no conservator has been appointed, in whole or in part, any interest in or power
4.12 over property, including a power of appointment, which the minor child is to receive.

4.13 (c) To be effective, a disclaimer must be in writing, declare the writing as a
4.14 disclaimer, describe the interest or power disclaimed, and be signed by the person or
4.15 fiduciary making the disclaimer and acknowledged in the manner provided for deeds of
4.16 real estate to be recorded in this state. In addition, for a disclaimer to be effective, an
4.17 original of the disclaimer must be delivered or filed in the manner provided in section
4.18 524.2-1114.

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

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

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

4.26 **Sec. 8. [524.2-1108] DISCLAIMER OF INTEREST IN PROPERTY.**

4.27 (a) Except for a disclaimer governed by section 524.2-1109 or 524.2-1110, the rules
4.28 in paragraphs (b) to (d) apply to a disclaimer of an interest in property.

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

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

(d) If the instrument does not contain a provision described in paragraph (c), the following rules apply:

(1) if the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created, unless under the governing instrument or other applicable law, the disclaimed interest is contingent on surviving to the time of distribution, in which case the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution. However, if, by law or under the governing 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. For purposes of this paragraph, a disclaimed interest is created at the death of the benefactor or such earlier time, if any, that the benefactor's transfer of the interest is a completed gift for federal gift tax purposes. Also for purposes of this paragraph, a disclaimed interest in an inter vivos trust and other will substitutes that do not lapse with certainty under state law shall pass as if the interest had been created under a will;

(2) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; and

(3) 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 as a result of the disclaimer.

Sec. 9. [524.2-1109] DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

(a) Upon the death of a holder of jointly held property:

(1) if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a portion of the property attributable to the deceased holder's contributions without the consent of any other holder, another holder may disclaim, in whole or in part, a fractional share of that portion of the property attributable to the deceased holder's contributions determined by dividing the number one by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates; and

(2) for all other jointly held property, another holder may disclaim, in whole or in part, a fraction of the whole of the property the numerator of which is one and the denominator of which is the product of the number of joint holders alive immediately

before the death of the holder to whose death the disclaimer relates multiplied by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

(b) A disclaimer under paragraph (a) 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 disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 10. [524.2-1110] DISCLAIMER OF INTEREST BY TRUSTEE.

If a trustee having the power to disclaim under the instrument creating the fiduciary relationship or pursuant to court order disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 11. [524.2-1111] DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN A 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, the disclaimer takes effect immediately after the last exercise of the power; and

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

Sec. 12. [524.2-1112] 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.

Sec. 13. [524.2-1113] 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:

(1) the disclaimer so provides; and

(2) the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 14. [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 with 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 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. 15. **[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 in the office of the county recorder 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. 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. 16. **[524.2-1116] APPLICATION TO EXISTING RELATIONSHIPS.**

Except as otherwise provided in section 524.2-1106, an 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.

Sec. 17. **REPEALER.**

Minnesota Statutes 2008, sections 501B.86; and 525.532, are repealed.

Sec. 18. **EFFECTIVE DATE.**

Sections 1 to 17 are effective January 1, 2010.

**501B.86 DISCLAIMER OF INTERESTS PASSING BY DEED, ASSIGNMENT,
UNDER CERTAIN NONTESTAMENTARY INSTRUMENTS, OR UNDER CERTAIN
POWERS OF APPOINTMENT.**

Subdivision 1. **Definitions.** As used in this section, unless otherwise clearly required by the context:

- (a) "beneficiary" means a person entitled, but for the person's disclaimer, to take an interest:
 - (1) as grantee;
 - (2) as donee;
 - (3) under an assignment or instrument of conveyance or transfer;
 - (4) by succession to a disclaimed interest, other than by will, intestate succession, or through the exercise or nonexercise of a testamentary power of appointment;
 - (5) as beneficiary of an inter vivos trust or insurance contract;
 - (6) pursuant to the exercise or nonexercise of a nontestamentary power of appointment;
 - (7) as donee of a power of appointment created by a nontestamentary instrument; or
 - (8) otherwise under a nontestamentary instrument;
- (b) "interest" means:
 - (1) the whole of any property, real or personal, legal or equitable;
 - (2) a fractional part, share, particular portion, or specific assets of property;
 - (3) an estate in property;
 - (4) a power to appoint, consume, apply, or expend property; or
 - (5) any other right, power, privilege, or immunity relating to property; and
- (c) "disclaimer" means a written instrument that declines, refuses, releases, or disclaims an interest that would otherwise be succeeded to by a beneficiary, if the instrument defines the nature and extent of the interest disclaimed and is signed, witnessed, and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. **Who may disclaim.** A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares, portions, or assets, by filing a disclaimer in court in the manner provided in this section. A guardian or conservator of the estate of a minor or an incapacitated person under sections 524.5-101 to 524.5-502, the Uniform Guardianship and Protective Proceedings Act, or the personal representative of the estate of a deceased beneficiary may execute and file a disclaimer on behalf of the beneficiary if that representative considers it not detrimental to the best interests of the beneficiary and in the best interests of those interested in the beneficiary's estate and of those who take the beneficiary's interest by virtue of the disclaimer. The representative may file the disclaimer with or without a court order within the time specified in subdivision 3. A beneficiary may file a disclaimer by an attorney or attorney-in-fact.

Subd. 3. **Filing deadline.** A disclaimer under subdivision 2 may be filed at any time after the creation of the interest, but it must be filed within nine months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or the disclaimant's interest has not then become indefeasibly fixed both in quality and in quantity, the disclaimer must be filed not later than nine months after the event that would cause the disclaimant to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. **Effective date.** (a) A disclaimer under subdivision 2 is effective on being filed in a district court of the state of Minnesota. A copy of the disclaimer must be delivered or mailed to the trustee of a trust in which the interest disclaimed exists or to any other person who has legal title to, or possession of, the property in which the interest disclaimed exists. The trustee or person is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer.

(b) If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the court administrator of the district court where the disclaimer has been filed, must also be filed with the county recorder or with the registrar of titles, as appropriate, in the county or counties where the real estate is situated. The filed disclaimer is notice to all persons after the time of filing. If title to the real estate has not been registered under chapter 508, the disclaimer or certified copy must be filed with the county recorder. If title to the real estate has been registered under chapter 508, the disclaimer or certified copy must be filed with the registrar of titles.

Subd. 5. **Distribution of disclaimed property.** Unless otherwise provided in the nontestamentary instrument creating the interest with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed must be distributed or otherwise disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that

APPENDIX

Repealed Minnesota Statutes: 09-3307

causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity. The disclaimer relates for all purposes to that date, whether filed before or after the death or other event. Unless the disclaimer provides otherwise, a person disclaiming an interest in a nonresiduary gift under a trust instrument or otherwise is not excluded from sharing in a gift of the residue even though, through lapse, the residue includes the assets disclaimed.

Subd. 6. **Bars to right to disclaim.** The right to disclaim is barred if the beneficiary: (1) is insolvent; (2) assigns or transfers, or contracts to assign or transfer, an interest in the property to be disclaimed; (3) in writing, waives the right to disclaim the succession to an interest in the property; or (4) sells or otherwise disposes of an interest in the property.

Subd. 7. **Effect of restrictions.** The right to disclaim granted by this section exists despite a limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed under this section, or a written waiver of the right to disclaim, is binding on the disclaimant or waiving beneficiary and all parties later claiming by, through, or under the disclaimant or waiving beneficiary, except that a waiving beneficiary may later transfer, assign, or release the waiving beneficiary's interest if it is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is filed in accordance with subdivision 4, the spouse of the disclaimant, if the spouse has consented to the disclaimer in writing, is automatically debarred from the spouse's statutory or common law right or estate by curtesy or in dower or otherwise in the real estate to which the spouse, except for the disclaimer, would have been entitled.

Subd. 8. **Other law.** This section does not abridge the right of a person, apart from this section, under an existing or future statute or rule of law, to disclaim an interest or to assign, convey, release, renounce, or otherwise dispose of an interest.

Subd. 9. **Interests in existence on May 22, 1965.** If an interest existed on May 22, 1965, it may be disclaimed under this section if it had not then become indefeasibly fixed both in quality and quantity or if its taker had not then become finally ascertained.

Subd. 10. **Bank deposits.** The survivor or survivors of a bank deposit held in the names of the decedent and the survivor or survivors may at any time disclaim that interest by authorizing the inclusion of the proceeds of the bank deposit in the inventory and appraisal required by law to be filed by the representative or executor of the estate of the decedent. For purposes of this subdivision, "bank deposit" includes a checking or savings account or time deposit in any financial institution authorized to accept deposits.

525.532 DISCLAIMER OF INTERESTS PASSING BY WILL, INTESTATE SUCCESSION OR UNDER CERTAIN POWERS OF APPOINTMENT.

Subdivision 1. **Definitions.** As used in this section, unless otherwise clearly required by the context:

(a) "Beneficiary" means and includes any person entitled, but for that person's disclaimer, to take an interest: by intestate succession; by devise; by legacy or bequest; by succession to a disclaimed interest by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary trust; pursuant to the exercise or nonexercise of a testamentary power of appointment; as donee of a power of appointment created by testamentary instrument; or otherwise under a testamentary instrument;

(b) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto;

(c) "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. **Right to disclaim.** A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, by filing a disclaimer in court in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if that person deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if living,

APPENDIX

Repealed Minnesota Statutes: 09-3307

of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Subd. 3. **Filing deadline.** Such disclaimer shall be filed at any time after the creation of the interest, but in all events within nine months after the death of the person by whom the interest was created or from whom it would have been received, or, if the disclaimant is not finally ascertained as a beneficiary or the interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than nine months after the event which would cause the disclaimant so to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. **Effectiveness; procedures.** Such disclaimer shall be effective upon being filed in the court in which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then in the court where it would be pending if commenced. A copy of the disclaimer shall be delivered or mailed to the personal representative, trustee or other person having legal title to, or possession of, the property in which the interest disclaimed exists, and no such representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the court administrator of the court wherein the same has been filed, shall be filed in the office of the county recorder or the registrar of titles, as hereinafter provided, in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such filing. If title to such real estate has not been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the county recorder. If title to such real estate has been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the registrar of titles.

Subd. 5. **Descent of disclaimed property.** Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the property in which the interest disclaimed existed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. However, one disclaiming an interest in a nonresiduary gift, devise or bequest shall not be excluded, unless the disclaimer so provides, from sharing in a gift, devise or bequest of the residue even though, through lapse, such residue includes the assets disclaimed. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant.

Subd. 6. **Limitation.** The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before the beneficiary has filed a disclaimer, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Subd. 7. **Spendthrift and similar provisions.** The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this section, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under that person, except that a beneficiary so waiving may thereafter transfer, assign or release the interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of subdivision 4, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any spouse's statutory or common law right or estate by curtesy or in dower or otherwise in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Subd. 8. **Rights under other law.** This section shall not abridge the right of any person, apart from this section, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

APPENDIX

Repealed Minnesota Statutes: 09-3307

Subd. 9. **Interests existing on May 22, 1965.** Any interest which exists on May 22, 1965, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after May 22, 1965, in the manner provided herein.