

**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 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.

**History:** 1989 c 340 art 1 s 70; 2008 c 277 art 1 s 89