

1 S.179

2 An act relating to the Uniform Disclaimer of Property Interests Act

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. 14 V.S.A. chapter 129 is added to read:

5 CHAPTER 129. VERMONT DISCLAIMER OF PROPERTY INTERESTS

6 ACT

7 § 4101. SHORT TITLE

8 This chapter may be cited as the “Vermont Uniform Disclaimer of Property
9 Interests Act.”

10 § 4102. DEFINITIONS

11 As used in this chapter:

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

14 (2) “Disclaimed interest” means the interest that would have passed to
15 the disclaimant had the disclaimer not been made.

16 (3) “Disclaimer” means the refusal to accept an interest in or power over
17 property.

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

1 (5) “Jointly held property” means property held in the name of two or
2 more persons under an arrangement in which all holders have concurrent
3 interests and under which the last surviving holder is entitled to the whole of
4 the property.

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

9 (7) “Personal representative” means a duly appointed representative of a
10 probate estate, such as an executor or administrator.

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

16 (9) “Trust” means:

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

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

1 § 4103. SCOPE

2 This chapter applies to disclaimers of any interest in or power over
3 property, whenever created.

4 § 4104. SUPPLEMENTED BY OTHER LAW

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

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

10 § 4105. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN
11 IRREVOCABLE

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

16 (b) Except to the extent a fiduciary's right to disclaim is expressly
17 restricted or limited by another statute of this State or by the instrument
18 creating the fiduciary relationship, a fiduciary may disclaim, in whole or in
19 part, any interest in or power over property, including a power of appointment,
20 whether acting in a personal or representative capacity. A fiduciary may
21 disclaim the interest or power even if its creator imposed a spendthrift

1 provision or similar restriction on transfer or a restriction or limitation on the
2 right to disclaim, or an instrument other than the instrument that created the
3 fiduciary relationship imposed a restriction or limitation on the right to
4 disclaim.

5 (c) To the extent that there is no material conflict of interest, a parent, as
6 defined in 15C V.S.A. § 102(16), can disclaim on behalf of the parent's minor,
7 if a guardian has not been or is not required to be appointed for the child.

8 (d) To be effective, a disclaimer shall be in a writing or other record,
9 declare the disclaimer, describe the interest or power disclaimed, be signed,
10 and be delivered or filed in the manner provided in section 4112 of this title.

11 As used in this subsection:

12 (1) "Record" means information that is inscribed on a tangible medium
13 or that is stored in an electronic or other medium and is retrievable in
14 perceivable form.

15 (2) "Signed" means:

16 (A) by the person making the disclaimer, or by another individual
17 directed by the person making the disclaimer to sign the name of the person
18 making the disclaimer in the presence of the person making the disclaimer and
19 two credible witnesses who shall also sign the record in the presence of all
20 parties hereto; and

1 (B) with present intent to authenticate or adopt a record to:

2 (i) execute or adopt a tangible symbol; or

3 (ii) attach to or logically associate with the record an electronic
4 sound, symbol, or process.

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

8 (f) A disclaimer becomes irrevocable when it is delivered or filed pursuant
9 to section 4112 of this title or when it becomes effective as provided in
10 sections 4107–4111 of this title, whichever occurs later.

11 (g) A disclaimer made under this chapter is not a transfer, assignment, or
12 release.

13 § 4106. DISCLAIMER OF INTEREST IN PROPERTY

14 (a) As used in this section:

15 (1) “Future interest” means an interest that takes effect in possession or
16 enjoyment, if at all, later than the time of its creation.

17 (2) “Time of distribution” means the time when a disclaimed interest
18 would have taken effect in possession or enjoyment.

19 (b) Except for a disclaimer governed by section 4107 or 4108 of this title,
20 the following rules apply to a disclaimer of an interest in property:

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

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

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

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

11 (B) If the disclaimant is an individual, except as otherwise provided
12 in subdivisions (C) and (D) of this subdivision (3), the disclaimed interest
13 passes as if the disclaimant had died immediately before the time of
14 distribution.

15 (C) If by law or under the instrument, the descendants of the
16 disclaimant would share in the disclaimed interest by any method of
17 representation had the disclaimant died before the time of distribution, the
18 disclaimed interest passes only to the descendants of the disclaimant who
19 survive the time of distribution.

20 (D) If the disclaimed interest would pass to the disclaimant's estate
21 had the disclaimant died before the time of distribution, the disclaimed interest

1 instead passes by representation to the descendants of the disclaimant who
2 survive the time of distribution. If no descendant of the disclaimant survives
3 the time of distribution, the disclaimed interest passes to those persons,
4 including the state but excluding the disclaimant, and in such shares as would
5 succeed to the transferor's intestate estate under the intestate succession law of
6 the transferor's domicile had the transferor died at the time of distribution.
7 However, if the transferor's surviving spouse is living but is remarried at the
8 time of distribution, the transferor is deemed to have died unmarried at the
9 time of distribution.

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

14 § 4107. DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY
15 HELD PROPERTY

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

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

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

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

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

9 § 4108. DISCLAIMER OF INTEREST BY TRUSTEE

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

12 § 4109. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER
13 POWER NOT HELD IN FIDUCIARY CAPACITY

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

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

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

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

3 § 4110. DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN
4 DEFAULT OF EXERCISE OF POWER OF APPOINTMENT

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

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

11 § 4111. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY

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

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

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

1 § 4112. DELIVERY OR FILING

2 (a) As used in this section, “beneficiary designation” means an instrument,
3 other than an instrument creating a trust, naming the beneficiary of:

4 (1) an annuity or insurance policy;

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

6 (3) a security registered in beneficiary form;

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

9 (5) any other nonprobate transfer at death, including an enhanced life
10 estate deed created pursuant to 27 V.S.A. chapter 6.

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

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

16 (1) the disclaimer shall be delivered to the personal representative of the
17 decedent’s estate; or

18 (2) if no personal representative is then serving, the disclaimer shall be
19 filed with a court having jurisdiction to appoint the personal representative.

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

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

5 (2) if no personal representative is then serving, the disclaimer shall be
6 filed with a court having jurisdiction to enforce the trust.

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

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

9 (2) if no trustee is then serving, the disclaimer shall be filed with a court
10 having jurisdiction to enforce the trust; or

11 (3) if the disclaimer is made before the time the instrument creating the
12 trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a
13 revocable trust or the transferor of the interest.

14 (f) In the case of an interest created by a beneficiary designation that is
15 disclaimed before the designation becomes irrevocable, the disclaimer shall be
16 delivered to the person making the beneficiary designation.

17 (g) In the case of an interest in personal property created by a beneficiary
18 designation that is disclaimed after the designation becomes irrevocable, the
19 disclaimer shall be delivered to the person obligated to distribute the interest.

1 (h) If real property or an interest in real property is disclaimed, a copy of
2 the disclaimer shall be recorded in the land records of the town in which the
3 property or interest disclaimed is located.

4 (i) In the case of a disclaimer by a surviving holder of jointly held property,
5 the disclaimer shall be delivered to the person to whom the disclaimed interest
6 passes.

7 (j) In the case of a disclaimer by a permissible appointee or taker in default
8 of exercise of a power of appointment at any time after the power was created:

9 (1) the disclaimer shall be delivered to the holder of the power or to the
10 fiduciary acting under the instrument that created the power; or

11 (2) if no fiduciary is then serving, the disclaimer shall be filed with a
12 court having authority to appoint the fiduciary.

13 (k) In the case of a disclaimer by an appointee of a nonfiduciary power of
14 appointment:

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

18 (2) if no fiduciary is then serving, the disclaimer shall be filed with a
19 court having authority to appoint the fiduciary.

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

4 (m) In the case of a disclaimer of a power by an agent, the disclaimer shall
5 be delivered to the principal or the principal's representative.

6 § 4113. WHEN DISCLAIMER BARRED OR LIMITED

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

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

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

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

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

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

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

19 (e) A disclaimer is barred or limited if so provided by law other than this
20 chapter.

1 (f) A disclaimer of a power over property that is barred by this section is
2 ineffective. A disclaimer of an interest in property that is barred by this section
3 takes effect as a transfer of the interest disclaimed to the persons who would
4 have taken the interest under this chapter had the disclaimer not been barred.

5 § 4114. TAX QUALIFIED DISCLAIMER

6 Notwithstanding any other provision of this chapter, if as a result of a
7 disclaimer or transfer the disclaimed or transferred interest is treated pursuant
8 to the provisions of the Internal Revenue Code, as may be amended, or any
9 regulations promulgated under it, as never having been transferred to the
10 disclaimant, then the disclaimer or transfer is effective as a disclaimer under
11 this chapter.

12 § 4115. RECORDING OF DISCLAIMER

13 If an instrument transferring an interest in or power over property subject to
14 a disclaimer is required or permitted by law to be filed, recorded, or registered,
15 then the disclaimer may be so filed, recorded, or registered. Failure to file,
16 record, or register the disclaimer does not affect its validity as between the
17 disclaimant and persons to whom the property interest or power passes by
18 reason of the disclaimer.

19 § 4116. APPLICATION TO EXISTING RELATIONSHIPS

20 Except as otherwise provided in section 4113 of this title, an interest in or
21 power over property existing on the effective date of this chapter as to which

1 the time for delivering or filing a disclaimer under law superseded by this
2 chapter has not expired may be disclaimed after the effective date of this
3 chapter.

4 § 4117. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
5 NATIONAL COMMERCE ACT

6 This chapter modifies, limits, and supersedes the federal Electronic
7 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq.,
8 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.
9 § 7001(c)) or authorize electronic delivery of any of the notices described in
10 Section 103(b) of that act (15 U.S.C. § 7003(b)).

11 § 4118. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

15 Sec. 2. REPEAL

16 14 V.S.A. chapter 83 (Uniform Disclaimer of Property Interests Act) is
17 repealed.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on passage.