

Act Summary

This Uniform Disclaimer of Property Interests Act (UDPIA) updates and replaces three earlier Uniform Acts from 1978. It is the most comprehensive disclaimer statute ever written and is designed to allow every sort of disclaimer, including those that are useful for tax planning purposes. A disclaimer is simply a declaration by a person entitled to property that the interest in that property is renounced or extinguished as if the interest had never been granted. Disclaimers are used to reallocate interests in estates, trusts and other kinds of property holdings in which benefits may be allocated at death. This Act makes it clearer that trustees and other fiduciaries may use disclaimers, that powers of appointment may be disclaimed, and that unfair distributions of interests are avoided when disclaimers are used.

There are many reasons why every state should adopt the Uniform Disclaimer of Property Interests Act: UDPIA removes the nine-month time limit for disclaimers set in the earlier Uniform Acts. The elimination of all mention of time limits will clearly signal to the practitioner that the requirements for a tax qualified disclaimer are set by different law, thus removing the current trap for disclaimers of future interests.

UDPIA expands the prior definition of disclaimer to include a broader range of property such as a power of appointment or a fiduciary's management power over property.

UDPIA provides clearer instructions for when a disclaimer is delivered and under what circumstances it becomes effective.

UDPIA clarifies the results of refusing property or powers through a disclaimer.

UDPIA creates rules for several types of disclaimers that have not been explicitly addressed in prior Uniform Acts, such as disclaimers for jointly held property. Recent changes in the law of qualified disclaimers of jointly held property make fuller treatment of such disclaimers necessary.

UDPIA treats the issue of disclaimers of a power of appointment and a taker in default or permissible appointee, particularly the issue of when the interest can be disclaimed.

UDPIA provides rules for the disclaimer of powers held in a fiduciary capacity, including a right to remove and replace a trustee or a trustee's power to make decision.

UDPIA specifically allows a partial disclaimer of an interest in property or a power over property and gives the disclaimant wide latitude in describing the portion disclaimed.

UDPIA clarifies that the disclaimed interest passes without direction by the disclaimant, a requirement for tax qualification.

UDPIA acknowledges current technology the ability to make a disclaimer through electronic means.

The Uniform Disclaimer of Property Interests Act makes important changes and updates to the law of disclaimers to better reflect the current use of this estate planning tool. It should be uniformly enacted in every jurisdiction as soon as possible.