

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1048

H. P. 874

House of Representatives, March 13, 1975

On motion of Mr. Gauthier of Sanford referred to Committee on Judiciary.  
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Perkins of South Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Establish the Uniform Disclaimer of Property Interests Act.

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Be it enacted by the People of the State of Maine, as follows:

18 MRSA c. 117 is enacted to read:

CHAPTER 117

DISCLAIMER OF PROPERTY INTERESTS

§ 1201. Short title

This chapter may be cited as the "Uniform Disclaimer of Property Interests Act."

§ 1202. Right to disclaim interest in property

A person, or the representative of an incapacitated or protected person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this Act. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. The right to disclaim does not survive the death of the person having it.

§ 1203. Time of disclaimer

1. Testamentary instrument. If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than 6 months after the death of the deceased owner or deceased donee of a power

of appointment and, if of a future interest, not later than 6 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer shall be filed in the probate court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative or other fiduciary of the decedent or donee of the power.

2. Nontestamentary instrument. If a property or interest has developed to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not later than 6 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 6 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the disclaimer shall be delivered or filed not later than 6 months after he has actual knowledge of the existence of interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail to the person who has legal title to or possession of the interest disclaimed.

3. Surviving joint tenant. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy and has not accepted a benefit thereunder.

4. Disclaimer of real property. If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property or interest disclaimed is located.

#### § 1204. Form of disclaimer

The disclaimer shall describe the property or interest disclaimed, declare the disclaimer and extent thereof and be signed by the disclaimant.

#### § 1205. Effect of disclaimer

1. Testamentary instrument. If property or an interest therein devolved to a disclaimant under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the disclaimant had predeceased the decedent or, if the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. Any future interest that

takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedant or the donee of the power. A disclaimer relates back for all purposes to the date of death of the decedent or of the donee.

2. Nontestamentary instrument. If property or an interest therein devolved to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the disclaimant had died before the effective date of the instrument or contract. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

3. Disclaimer. The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.

#### § 1206. Waiver and bar

The right to disclaim property or an interest therein is barred by an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, a written waiver of the right to disclaim, an acceptance of the property or interest or a benefit thereunder, or a sale of the property or interest under judicial sale made before the disclaimer is effected.

#### § 1207. Remedy not exclusive

This Act does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

#### § 1208. Application

An interest in property that exists on the effective date of this Act as to which, if a present interest, the time for filing a disclaimer under this Act has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within 6 months after the effective date of this Act.

#### § 1209. Uniformity of interpretation

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states enacting it.

### STATEMENT OF FACT

The Act codifies the common law right to disclaim certain property interests and expands that right to both testamentary and nontestamentary transfers. It also codifies the disclaiming procedure, time limits, disposition of disclaimed property and effects on others of disclaiming. This Act is a Uniform Act approved by the National Conference of Commissioners on Uniform State Laws.