

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1049

H. P. 875

House of Representatives, March 13, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Perkins of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish the Uniform Disclaimer of Transfers
under Nontestamentary Instruments Act.

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

18 MRSA c. 118 is enacted to read:

CHAPTER 118

DISCLAIMERS OF TRANSFERS UNDER
NONTESAMENTARY INSTRUMENTS

§ 1251. Short title

This chapter may be cited as the "Uniform Disclaimer of Transfers under Nontestamentary Instruments Act."

§ 1252. Right to disclaim transfer

A person, or the representative of an incapacitated person or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to him of any property or interest therein by delivering or filing a written disclaimer under this Act. 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, if the survivor did not join in creating the joint tenancy, and he has not ac-

cepted a benefit thereunder. The right to disclaim does not survive the death of the person having it. The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof and be signed by the disclaimant.

§ 1253. Time and place of filing

1. Time. An instrument disclaiming:

A. A present interest shall be delivered or filed no later than 6 months after the effective date of the nontestamentary instrument or contract; and

B. A future interest shall be delivered or filed 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 instrument shall be delivered or filed not later than 6 months after he has actual knowledge of the existence of the 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.

2. Place. The disclaimer, or a copy thereof, shall be delivered in person or mailed by registered or certified mail to the trustee or other person having legal title to, or possession of, the property or interest disclaimed or who is entitled thereto in the event of disclaimer. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record in the office of the register of deeds of the county in which the real estate is situated.

§ 1254. Effect of disclaimer

Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed shall devolve 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.

§ 1255. Waiver and bar

1. 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 benefit thereunder, or a sale of the property or interest under judicial sale made before the disclaimer is effected.

2. Spendthrift provisions. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

3. Waiver. The instrument of 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.

§ 1256. 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.

§ 1257. Application

An interest in property existing 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.

§ 1258. 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 states enacting it.

STATEMENT OF FACT

This Act provides a procedure for disclaiming property interests passing under nontestamentary instruments, such as inter vivos trusts, deeds and insurance policies. It details the disclaiming procedure, time limits, disposition of disclaimed property, and the effects on others of disclaiming. This Act is a Uniform Act approved by the National Conference of Commissioners on Uniform State Laws.