

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1051

H. P. 877

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 by Will, Intestacy or Appointment Act.

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

18 MRSA c. 119 is enacted to read:

CHAPTER 119

DISCLAIMERS OF TRANSFERS BY WILL, INTESTACY

OR APPOINTMENT

§ 1271. Short title

This chapter may be cited as the "Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act."

§ 1272. Right to disclaim succession

A person, or the representative of an incapacitated or protected person, who is an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written disclaimer under this Act. The right to disclaim does not survive the death of the person having it. The instrument shall describe the property or interest disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.

§ 1273. Time and place of filing

1. **Present interest.** An instrument disclaiming a present interest shall be filed not later than 6 months after the death of the decedent or the donee of the power.

2. **Future interest.** An instrument disclaiming a future interest shall be filed not later than 6 months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.

3. **Place.** The disclaimer shall be filed in the probate court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be 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. 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 real estate is situated.

§ 1274. Effect of disclaimer

Unless the decedent or donee of the power has otherwise provided, the property or interest disclaimed devolves as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. A 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 decedent or the donee of the power. A disclaimer relates back for all purposes to the date of the death of the decedent or the donee of the power.

§ 1275. 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 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.

§ 1276. 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.

§ 1277. 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.

§ 1278. 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 codifies the common law right to disclaim property interests passing by testamentary transfers. It codifies 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.