

Act No. 131
Public Acts of 1996
Approved by the Governor
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Rogers

ENROLLED SENATE BILL No. 496

AN ACT to provide for the right to disclaim certain property interests and control over certain property interests; to prescribe the procedures for disclaimers; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "disclaimer of property interests act".

Sec. 2. As used in this act:

(a) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of his, her, or its authority.

(b) "Disclaimable interest" includes property, the right to receive or control property, and a power of appointment, but does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property.

(c) "Effective date of a governing instrument other than a will or testamentary trust" means the date on which a property right vests, or a contract right arises, even though either right is subject to divestment.

(d) "Fiduciary" includes an agent, a conservator, a guardian if no conservator has been appointed, a guardian ad litem, a personal representative including an independent personal representative, a trustee, a probate court acting through a protective order under the revised probate code, and a temporary, successor, or foreign fiduciary.

(e) "Fiduciary power" means a management power relating to the administration or management of assets similar to those powers granted to an independent personal representative in section 334 and a trustee in sections 822 to 829 of the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.334 and 700.822 to 700.829 of the Michigan Compiled Laws, and granted by law to a fiduciary or conferred upon a fiduciary in a governing instrument.

(f) "Governing instrument" means a deed, assignment, bill of sale, will, trust, beneficiary designation, contract, instrument creating or exercising a power of appointment or a power of attorney, or other instrument under which property devolves, a property right is created, or a contract right is created. Governing instrument includes the provable terms of an oral contract or arrangement under which property devolves or a property right is created.

(g) "Joint property" means property that is owned by 2 or more persons with rights of survivorship, and includes a tenancy by the entireties in real property, a tenancy in personal property as provided in section 1 of Act No. 212 of the Public Acts of 1927, being section 557.151 of the Michigan Compiled Laws, a joint tenancy, a joint tenancy with rights

of survivorship, and a joint life estate with contingent remainder in fee. For purposes of this act, joint property is considered to consist of a present interest and a future interest. The future interest is the right of survivorship.

(h) "Person" includes an entity and an individual, but does not include a fiduciary, an estate, or a trust.

(i) "Property" means anything that may be the subject of ownership. Property includes both real and personal property and an interest in property, including a present interest; a future interest; a legal interest; an equitable interest; an interest acquired by intestate or testate succession, by succession to a disclaimed interest, or by lapse or release of a power of appointment; or an interest that may be otherwise acquired under a governing instrument.

(j) "Trust" means a fiduciary relationship with respect to property that subjects the person who holds title to the property to equitable duties to deal with the property for the benefit of another person, which fiduciary relationship arises as a result of a manifestation of an intention to create it. Fiduciary relationship includes an express trust, private or charitable, with additions to the trust, whether created by will or other than by will, and includes a trust created by statute, judgment, or decree under which the trust is to be administered in the manner of an express trust. Fiduciary relationship does not include a constructive trust or a resulting trust.

Sec. 3. (1) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest in whole or in part. A trustee, with respect to the trust as a whole or with respect to a separate trust that is or will be established under the governing instrument, may disclaim a disclaimable interest, in whole or in part, but only to the extent that the governing instrument expressly gives the trustee the right to disclaim.

(2) A disclaimer may be of a fractional or percentage share or of a limited interest or estate. A provision in a power of attorney granting the agent the authority to do whatever the principal could do, or words of similar effect, includes the authority to disclaim, unless the authority to disclaim is specifically excluded or limited. Except for a trust or a power of attorney, the right to disclaim a disclaimable interest exists notwithstanding a spendthrift provision or a restriction or limitation on the right to disclaim contained in the governing instrument.

(3) A fiduciary may disclaim a fiduciary power. The right to disclaim a fiduciary power exists notwithstanding a restriction or limitation on the right to disclaim contained in the governing instrument.

Sec. 4. (1) A disclaimer is not valid unless it complies with all of the following:

- (a) Is in writing.
- (b) Declares the disclaimer.
- (c) Describes the disclaimed interest.
- (d) Is signed by the disclaimant.
- (e) Is delivered as provided in sections 5, 6, and 7.

(2) If a disclaimable interest is disclaimed by a fiduciary on behalf of the person to whom the disclaimable interest devolves, the disclaimer shall be signed by all incumbent fiduciaries. Unless the governing instrument requires otherwise, a disclaimer of a disclaimable interest by a trustee may be signed by less than all incumbent trustees. A disclaimer of a fiduciary power by a fiduciary may be signed by less than all incumbent fiduciaries.

Sec. 5. (1) Except as provided in section 6, if a disclaimed interest arises under a will or testamentary trust, or by the laws of intestacy, the disclaimer shall be delivered after the death of the owner of the property and before any event described in section 11. If a disclaimed interest arises under a will or by the laws of intestacy, the disclaimer shall be delivered to the personal representative of the deceased owner's estate. If a disclaimed interest arises under a testamentary trust, the disclaimer shall be delivered to the trustee of the testamentary trust or, if a trustee has not been appointed, to the personal representative of the deceased owner's estate.

(2) Except as provided in section 6, if a disclaimed interest arises under a governing instrument other than a will or testamentary trust, the disclaimer shall be delivered after the effective date of the governing instrument and before any event described in section 11. A disclaimer under this subsection shall be delivered in 1 of the following manners:

(a) If the disclaimer is made by a beneficiary of a trust, the disclaimer shall be delivered to the trustee.

(b) If the disclaimer is made by a donee with respect to a gift from a living donor, the disclaimer shall be delivered to the donor of the gift.

(c) If the disclaimer is made by a beneficiary under a beneficiary designation, the disclaimer shall be delivered to the payor.

(d) If the disclaimer is made by a trustee with respect to a separate trust that is or will be established under the governing instrument, the disclaimer shall be delivered to another incumbent trustee of that trust who has not disclaimed or to all the beneficiaries of that trust who are then living and whose whereabouts are known or reasonably ascertainable.

Sec. 6. (1) A disclaimed interest that is subject to, or arises under, an exercise, release, or lapse of a power of appointment, shall comply with the following:

(a) A disclaimer by an appointee shall be delivered to the donee, to the personal representative of the donee's estate, or to the fiduciary under the instrument that created the power of appointment. The disclaimer by the appointee shall be delivered after the exercise of the power of appointment by the donee and before any event described in section 11.

(b) A disclaimer by a taker in default shall be delivered to the donee, to the fiduciary under the instrument that created the power of appointment, or to 1 of the persons entitled to the property in the event of a disclaimer. The disclaimer by a taker in default may be delivered before or after the lapse or release of the power of appointment, and shall be delivered before any event described in section 11.

(2) If the disclaimed interest arises out of joint property, the disclaimer shall be delivered after creation of the joint ownership and before any event described in section 11, to the person who created the joint property, to a remaining owner who has not disclaimed, or to the person entitled to the disclaimed interest in the event of a disclaimer. The barring of the right to disclaim a present interest under section 11 does not bar the right to disclaim the future interest.

(3) A fiduciary power may be disclaimed at any time, before or after exercise of the power. The disclaimer shall be delivered to the person who established the instrument that gave rise to the power or to 1 of the following:

(a) If the fiduciary is a personal representative, to all the devisees under the will who are then living and whose whereabouts are known or reasonably ascertainable.

(b) If the fiduciary is a trustee, to another incumbent trustee who has not disclaimed the power or to all the beneficiaries of the trust who are then living and whose whereabouts are known or reasonably ascertainable.

(c) If the fiduciary is a guardian or conservator, to the interested parties.

(d) If the fiduciary is an agent to the principal, or if the principal is legally incapacitated, to the principal's presumptive heirs at law.

Sec. 7. (1) A disclaimer shall be delivered in 1 of the following manners:

(a) By personally handing it to the person to whom it is to be delivered or to a fiduciary representing that person.

(b) By enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to whom it is to be delivered or to a fiduciary representing that person, and depositing the envelope and its contents in the United States mail.

(c) By another means that is reasonably likely to accomplish delivery to the person who is to receive the disclaimer or to a fiduciary representing that person.

(2) If delivery is to be made to a fiduciary, the following apply:

(a) If a fiduciary is not currently serving, the delivery of the disclaimer shall be made by filing the disclaimer with the probate court that has jurisdiction to entertain proceedings to appoint or qualify the fiduciary.

(b) If the fiduciary cannot be located, the delivery of the disclaimer shall be made by filing the disclaimer with the probate court that has jurisdiction over the fiduciary.

(3) A copy of a disclaimer may be filed in a probate court where proceedings are pending concerning the disclaimed interest, or in the probate court that would have jurisdiction if proceedings were commenced. If the disclaimed interest pertains to real property, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property is located.

Sec. 8. (1) Except as otherwise provided in this section and section 9, if a disclaimed interest arises under a will or testamentary trust, or by the laws of intestacy, and the decedent has not provided for another disposition of that interest should it be disclaimed, or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. However, if by law, or under the will or testamentary trust, the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent.

(2) A future interest that takes effect in possession or enjoyment upon the termination of the disclaimed interest, takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

(3) Except as otherwise provided in this section and section 9, if the disclaimed interest arises under a governing instrument other than a will or testamentary trust, and the governing instrument does not provide for another disposition of that interest should it be disclaimed, or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. However, if by law or under the governing instrument the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the effective date of the

instrument, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument.

(4) 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 time when the interest was entitled to take effect in possession or enjoyment. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

Sec. 9. (1) If the disclaimed interest arises out of joint property created by a governing instrument, testamentary or nontestamentary, the following apply:

(a) If the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners.

(b) If the disclaimant is not the only living owner, the disclaimed interest devolves to the living joint owners equally, or all to the other living owner, if there is only 1 living owner.

(2) If the donee of a power of appointment disclaims the power of appointment, the property that is subject to the power of appointment devolves as follows:

(a) If the power of appointment arises out of a will or testamentary instrument, as if the donee died before the decedent.

(b) If the power of appointment arises out of a governing instrument other than a will or testamentary trust, as if the disclaimant died before the effective date of the governing instrument.

(3) If all incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest should it be disclaimed, or for another disposition of disclaimed or failed interests in general, then the disclaimed interest devolves as if the trust with respect to which the disclaimer was made never existed. If less than all incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest under those circumstances, then the trustee who disclaims is treated as never having had any interest in or power over the disclaimed interest.

(4) If a fiduciary disclaims a fiduciary power, the fiduciary power ceases to exist as of the effective date of the disclaimer. A disclaimer of a fiduciary power by 1 of multiple incumbent fiduciaries is binding only on the fiduciary who disclaims, and is not binding on the other incumbent fiduciaries or on successor fiduciaries. A disclaimer of a fiduciary power by all incumbent fiduciaries is binding on all successor fiduciaries, unless the disclaimer states otherwise.

Sec. 10. (1) A disclaimer, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving the right to disclaim, and all persons claiming through or under him or her.

(2) A disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the disclaimed interest. The disclaimant is treated as never having received the disclaimed interest.

Sec. 11. (1) The right to disclaim property is barred by any of the following events that occur after the event giving rise to the right to disclaim and before the disclaimer is perfected:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract for such a transaction.

(b) A written waiver of the right to disclaim.

(c) An acceptance of the disclaimable interest or a benefit under the disclaimable interest after actual knowledge that a property right has been conferred.

(d) A sale of the property under judicial sale.

(e) The expiration of the permitted applicable perpetuities period.

(2) The right to disclaim is barred to the extent provided by other applicable law. A partial bar does not preclude the disclaimant from disclaiming all or any part of the balance of the property if the disclaimant has received a portion of the property and there still remains an interest that the disclaimant is yet to receive. An act that bars the right to disclaim a present interest in joint property does not bar the right to disclaim a future interest in joint property.

Sec. 12. The common law right of disclaimer or renunciation is abolished. This act does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under another statute.

Sec. 13. An interest in property that exists on the effective date of this act as to which, if a present interest, the time for delivering 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 after the effective date of this act and before any event described in section 11.

Sec. 19. Act No. 9 of the Public Acts of 1971, being sections 554.501 to 554.520 of the Michigan Compiled Laws, is repealed.

Sec. 20. This act shall take effect June 1, 1996.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.