

Act No. 403
Public Acts of 1996
Approved by the Governor
October 20, 1996
Filed with the Secretary of State
October 21, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Rogers

ENROLLED SENATE BILL No. 1010

AN ACT to amend section 2 of Act No. 131 of the Public Acts of 1996, entitled "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," being section 554.872 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 2 of Act No. 131 of the Public Acts of 1996, being section 554.872 of the Michigan Compiled Laws, is amended to read as follows:

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. Joint property includes a tenancy by the entireties in real property, 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, joint tenancy, joint tenancy with rights of survivorship, and 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, estate, or 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; future interest; legal interest; equitable interest; interest acquired by intestate or testate succession, by succession to a disclaimed interest, or by lapse or release of a power of appointment; or 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. Trust 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. Trust does not include a constructive trust or a resulting trust.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.