

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 402 (Senator Giannetti)
Judicial Proceedings

Judiciary

Maryland Uniform Disclaimer of Property Interests Act

This bill revises the procedures for disclaimers of succession to property interests created by will, intestacy, or the exercise of testamentary powers of appointment by incorporating the Uniform Disclaimers of Property Interests Act of 1999 (UDPIA).

Fiscal Summary

State Effect: None. The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill provides the authority to make disclaimers, what interests may be disclaimed, the time when disclaimers are effective, and the effect on the distribution of the disclaimed property interests. An heir in an intestate estate, a devisee of a will, a beneficiary of a trust or other nontestamentary transfer, a joint tenant in a joint tenancy with right of survivorship, a trustee of a trust, or any other fiduciary acting in a fiduciary capacity may disclaim a property interest under the bill.

Any interest that may come to the person entitled to disclaim, may be disclaimed, including a distribution of property in a probate estate, property due under a trust instrument, the property rights of a joint tenant at the death of another joint tenant, or the

beneficiary rights following any other kind of nontestamentary or nonprobate transfer at death. The disclaimer, when effective, treats the interest as if it had never been granted.

The bill does not express any time limits for disclaiming interests after which the grantor may no longer revoke the grant of an interest.

Current Law: The current disclaimer law – the Maryland Uniform Disclaimer of Property Interests Act of 1978 – does not provide an express authority to disclaim powers of appointment. Also, neither trustees nor other fiduciaries are specifically covered under the current disclaimer rules.

Current law provides that the grantor may only revoke the grant of an interest within nine months of the death of the grantor of the interest.

Background: A disclaimer is a declaration by a person entitled to property that the interest in that property is disclaimed or renounced. Disclaimers are used by those who receive property as heirs or legatees in an estate, or by beneficiaries of a nontestamentary transfer of property at death; for example, the beneficiaries of a trust. A disclaimer allows the disclaiming heir, legatee, or beneficiary to disclaim an interest in such a fashion that the right to the property that is disclaimed is treated as if it never existed.

Disclaimers become effective generally when the instrument providing for the interest disclaimed may not be revoked by the grantor of these interests. In many cases that time occurs when the grantor of an interest dies, but an interest in a trust may become irrevocable before the death of the settlor.

The following is an example of the use of a disclaimer. A father creates a trust in which his wife is the income beneficiary during her life, and his only child, and grandchildren by that child, are the remainder beneficiaries, receiving the assets of the trust at the death of the settlor's wife. The son determines that the most efficient distribution at the end of the trust would be to the grandchildren. The son wants to increase their estate and not pass the property through his own estate. So, the son executes a disclaimer of the interest in the trust. The disclaimer will extinguish that interest as if it had never been granted. The settlor's grandchildren will have an increased estate, skipping a generation, in effect.

Nothing in UDPIA abrogates fiduciary obligations, and the power to disclaim is subject to those obligations.

The prior acts expressed periods that responded to federal tax requirements. Under this bill, there is no link to federal tax law limits but federal tax law continues to control the effectiveness of any disclaimer for tax purposes.

Generally, a disclaimer means that those who receive a distribution, minus the person disclaiming, will receive a greater benefit. The bill has rules limiting benefits, however, to avoid windfalls. In the earlier example, if there are two children who share equally as remainder beneficiaries of the trust, with grandchildren to take by right of representation, then it is possible for a disclaimer by one child to upset the balance of distributions to all the grandchildren. The bill makes it clear that the disclaimer is only the proportionate share that the disclaiming person would take that would not upset a balance with beneficiaries, so that windfalls are prevented. These rules clarify problems with the prior uniform act.

Additional Information

Prior Introductions: A nearly identical bill, HB 1118, was unfavorably reported by the House Judiciary Committee during the 2001 session.

Cross File: HB 59 (Delegate Vallario) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

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Analysis by: Michelle L. Harrison-Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510