
The
American
College of
Trust
and Estate
Counsel

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ACTEC

STUDIES



The summary of each state's laws reflected in this study has been based on an opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the studies) assume any responsibility for the accuracy of the information contained in any study.

Study 25:

Disclaimers

Compiled by

Joseph J. Hanna, Jr.
Portland, Oregon

ALABAMA

Dale B. Stone
Birmingham
December 7, 1999

1. **Does your state recognize disclaimers?** Yes.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Code of Alabama §43-8-290 *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts?** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones? Uniform Disclaimer of Property Interests Act. Code of Alabama §43-8-290.
5. **Has your state made any significant alterations to the Uniform Act(s)?** The only significant alteration made by Alabama to the Uniform Act is the requirement that disclaimers of interests devolving under a testamentary instrument or by intestacy must (rather than may) be filed with the probate court of the county in which proceedings of the deceased owner have been commenced. Code of Alabama §43-8-292(a). See also question 13 below.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. Code of Alabama §43-8-292(a).
Testacy? 9 months. Code of Alabama §43-8-292(a).
Survivorship interests? 9 months. Code of Alabama §43-8-292(b).
Future interests? 9 months. Code of Alabama §43-8-292(a) and (b).
7. **When does the time period in question 6 above, begin to run?** Intestacy: death of deceased owner. Code of Alabama §43-8-292(a). Testacy: death of deceased owner. Code of Alabama §43-8-292(a). Survivorship: the effective date of the instrument creating the survivorship. Code of Alabama §43-8-292(b). Future interests: the event determining that the taker of the property or interest has been finally ascertained and his interest indefeasibly vested. Code of Alabama §43-8-292(a) and (b).
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. Code of Alabama §43-8-291(a).

Alabama, cont.

9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Code of Alabama §43-8-292(c).
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Alabama Uniform Disclaimer of Property Interests Act adopted in 1981 repealing prior disclaimer statutes found at Code of Alabama §35-17-1 *et seq.*
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Disclaimers of interests passing under a testamentary interest or the laws of intestacy are filed in the probate court of the county in which the proceedings for the estate of the deceased owner have been commenced. Code of Alabama §43-8-292(a).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Code of Alabama §43-8-291(a).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Disclaimers of interests in real property may be filed for record in the office of the judge of probate of the county where the disclaimed property is located. Code of Alabama §43-8-292(d).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Code of Alabama §43-8-295(a). See also *Pennington v. Bingham*, 512 So. 2d 1344 (Ala. 1987).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. Code of Alabama §43-8-291(a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** In the case of a disclaimer under a testamentary instrument or under the laws of intestacy, property devolves as if the disclaimant had predeceased the decedent. In the case of a nontestamentary instrument, the property devolves as if the disclaimant had died before the effective date. In the case of a future interest, it takes effect as if the disclaimant had died before the event determining that the taker of the property had become finally ascertained and his interest indefeasibly vested. Code of Alabama §43-8-294(a) and (b).
20. **Does your state law permit the disclaimer of jointly held property?** Yes. Code of Alabama §43-8-291(a) and (b).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Code of Alabama §43-8-291(a). If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Code of Alabama §43-8-294(b).

Alabama, cont.

23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Court approval is required for disclaimer of property by a personal representative unless Will expressly authorizes it. Code of Alabama §43-2-844. No court approval is required for a disclaimer by a competent beneficiary.
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** Court approval is required for a disclaimer by a protected person. Code of Alabama §26-2A-136(c).
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in §2518?** No.

ALASKA

Steven T. O'Hara
Anchorage
November 24, 1999

1. **Does your state recognize disclaimers?** Yes. AS §13.12.801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. AS §13.12.801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? Alaska's disclaimer statute is based on the Uniform Probate Code, as amended in 1993, which incorporates the then Uniform Disclaimer of Property Interests Act. Uniform Probate Code, 11th Edition, 1993 Text, §2-801.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. AS §13.12.801(b).
Testacy? 9 months. *Id.*
Survivorship interests? 9 months. AS §13.12.801 (c) and (d).
Future interests? 9 months after event determining taker. AS §13.12.801(b) and (c).
7. **When does the time period in question 6 above, begin to run?** Death, event determining taker, or knowledge, *Id.*
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. AS §13.12.801(a) and (c).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** When time period begins to run. AS §13.12.801(b) and (c).

Alaska, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1996.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Required for transfers at death. AS §13.12.801(b).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. AS §13.12.801(a).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Permitted. AS §13.12.801(e).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** Not expressly.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** None known.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. AS §13.12.801(a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** To persons designated by law or governing instrument who survive effective date, with disclaimant deemed to have predeceased. AS §13.12.801(g) and (h).
20. **Does your state law permit the disclaimer of jointly held property?** Yes. AS §13.12.801 (d).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. AS §13.12.801(a) and (c). If the answer is yes, describe the circumstances under which such a disclaimer may arise. Currently no other statutory provision.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes, in general. AS §13.12.801(g) and (h).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No, unless specified in court order. AS §13.12.801(a).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. *Id.* and AS §13.06.050(20).
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in §2518?** Yes, if authorized by another Alaska Statute. AS §13.12.801(k).

ARIZONA

Robert B. Fleming
Tucson
September 6, 1999

1. **Does your state recognize disclaimers?** Yes. Arizona Revised Statutes §14-2801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Arizona Revised Statutes §14-2801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**

Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** 9 months.
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months.
Future interests? 9 months.
7. **When does the time period in question 6 above, begin to run?** Death of owner or donee, or event that determines taken or discovery of interest.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Like the Uniform Act (on which it is based) Arizona's law permits disclaimers within nine months of discovery of the interest.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1994. Amended 1997.

Arizona, cont.

13. Does your state require (or permit) that the disclaimer be filed with a Court? No.
14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest? Yes.
15. Does your state require (or permit) that the disclaimer be recorded in the land title records?
16. Does your state require (or permit) filing, recording or lodging with any other public office (*e.g.*, Secretary of State)? Not required, but permitted if interest in real property is involved.
17. Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors? No.
18. Does your state law permit a partial disclaimer of an interest in property? Yes.
19. How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest? ARS §14-2801 (g) and (h).

Comment: As if the disclaimant predeceased.
20. Does your state law permit the disclaimer of jointly held property? Yes.
21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. If the answer to question is yes, describe the circumstances under which such a disclaimer may arise.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. Trust distribution is handled as if disclaimant predeceased.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No.

ARKANSAS

James Edward Harris
Little Rock
February 14, 2000

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. ACA §28-2-101, *et seq.*
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts: No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? N/A
5. Has your state made any significant alterations to the Uniform Act(s)?
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy? 9 months after death.
Testacy? 9 months.
Survivorship interests? *9 months.
Future interests? 9 months after vesting.
Comment: *After date of “transfer” which depends on joint interest.
7. When does the time period in question 6 above, begin to run? See comment above.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? No.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? Yes.
12. When was (were) your state disclaimer statute(s) adopted? revised? 1981 Revised.

Arkansas, cont.

13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Permits, generally, real estate = required.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Executor, yes; guardian with court approval.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Required.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** Permits filing in Probate Court.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: As if taker predeceased disclaimant.

20. **Does your state law permit the disclaimer of jointly held property?** Yes.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No*

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Comment: *Except for guardian.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in §2518?** No.

CALIFORNIA

L. Andrew Gifford
Los Angeles
October 11, 1999

1. **Does your state recognize disclaimers?** Yes. PC §260-295.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. PC §260-295.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? Within 9 months after death of creator of interest.
Testacy? Within 9 months after death of creator of interest.
Survivorship interests? Within 9 months after death of creator of interest.
Future interests? See comment #8 below.

Comment: Cal. Prob. Code §279, subsection (a) states an overriding rule that a disclaimer must be exercised within a reasonable time after the person able to disclaim acquires knowledge of the interest. The remaining subsections create conclusive presumptions of a reasonable time. Subsection (b) for testamentary and survivor interests: the later of within nine months after the death of the creator of the interest or within nine months after the interest becomes indefeasibly vested. Subsection (c) for interests created by *inter vivos* trust, exercise of presently exercisable power of appointment, *inter vivos* gift, by succession to disclaimed interest: within nine months of the later of: (1) the time of the creation of the trust, the exercise of the power, the making of the gift, creation of power of appointment, or the disclaimer; (2) the first time the person able to disclaim acquired knowledge of the interest; or (3) the time the interest becomes indefeasibly vested. Subsection (d) for interests not described in subsections (b) and (c): within nine months of the later of: the time the person able to disclaim first acquired knowledge of the interest or when the interest becomes indefeasibly vested. Subsection (e) for future interests: the later of: nine months after the interest becomes and

California, cont.

estate in possession or the time specified in subsections (b), (c) or (d). Subsection (f) if the disclaimer is not filed within the times described in subsections (b), (c), (d) or (e) the disclaimant has the burden of establishing that the disclaimer was filed within a reasonable time after the disclaimant acquired knowledge of the interest.

7. **When does the time period in question 6 above, begin to run?** See comment above.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. See comment above.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** See comment above.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. PC §295. Disclaimer effective under Title 26 USC effective in CA.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1990 effective July 1, 1991.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Disclaimer effective only if made pursuant to court order.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. For disclaimant effecting real property or obligation secured by real property.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Yes.

Comment: (1) Present interest as if disclaimant had predeceased creator (2) Future Interest: As if disclaimant had died before event determining that the taker of the interest had become finally ascertained and the taker's interest indefeasibly vested.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. PC §279 (b)(6).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. PC §279. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes.

California, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?**
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?**

COLORADO

Laurie A. Hunter
Denver
September 15, 1999

1. **Does your state recognize disclaimers?** Yes. C.R.S. §15-11-801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. C.R.S. §15-11-801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes. C.R.S. §15-11-801.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
Comment: Adopted as part of UPC II; same as UPC §2-801.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: Colorado's Act was based on version in Uniform Probate Code adopted in 1994. It is not the same as the more recent revised version.
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months after death. C.R.S. §15-11-801(2)(a).
Testacy? 9 months after death. C.R.S. §15-11-801(2)(a).
Survivorship interests? 9 months after death of 1st party, or when instrument is no longer revocable. C.R.S. §15-11-801(2)(b).
Future interests? 9 months after event determining taker of interest is finally ascertained. C.R.S. §15-11-801(2)(b).
Comment: Also, if person did not have actual knowledge of interest, 9 months after obtain knowledge.
7. **When does the time period in question 6 above, begin to run?** See answer #6 above.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.

Colorado, cont.

9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**

Comment: When the time period begins to run and where filed on *inter vivos* transfer, when it is irrevocable. Disclaimers of testamentary transfers are filed with Court; *inter vivos* transfers are delivered to person in possession.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes, basically, same time period, requirement for writing. Statute is more liberal than 2518.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1994 in UPC II, effective July 1, 1995. Prior law was old UPC adopted in 1974.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. For disclaimers of testamentary interests only.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. C.R.S. §15-11-801(1) and §15-14-501(1), plus agent if authority expressly given in power of attorney.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. C.R.S. §15-11-801(2)(d) and (3). If it affects real property, must be acknowledged and recorded.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. C.R.S. §15-11-801(1).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** C.R.S. §15-11-801(4).

Comment: As if disclaimant had predeceased decedent or effective date of contract.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. C.R.S. §15-11-801(2)(c). In Colorado, when real property is titled in joint tenancy, either tenant may unilaterally serve his or her interest. Colorado adopted Multiple Person Accounts as part of UPC II in C.R.S. §15-15-201 *et seq.*
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. C.R.S. §15-11-801(2)(b). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. C.R.S. §15-11-801(4)(b).

Colorado, cont.

23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** Yes. C.R.S. §15-11-801(1) and §13-22-101.
- Comment: Need a fiduciary to act for a minor. Person under age 18 cannot contract. Appoint a conservator, usually, but guardian can act if no conservator.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Copy of disclaimer must be sent by registered or certified mail when disclaiming non probate interest.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** Yes. C.R.S. §15-11-801(6).

CONNECTICUT

Martin Wolman
Hartford
April 10, 2000

1. **Does your state recognize disclaimers?** Yes. CGS, Chapter 802g.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. CGS §45a-578 through §45a-585.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?

Comment: Connecticut disclaimer law is based upon the Model Act on Disclaimers as promulgated by a Special Committee on Disclaimer Legislation of the ABA. The Uniform Acts noted in 4 above (other than the Uniform Disclaimer of Property Interest Act) were also based on the Model Act.
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** 9 months. CGS §45a-579(d)(1) and CGS §45a-583(d)(1).
Intestacy? 9 months. CGS §45a-579(d)(1) and CGS §45a-583(d)(1).
Testacy? 9 months. CGS §45a-(d)(1) and CGS §45a-583(d)(1).
Survivorship interests? 9 months. CGS §45a-579(d)(1) and CGS §45a-583(d)(1).
Future interests? * CGS §45a-579(d)(2) and CGS §45a-583(d)(2).

Comment: *9 months after (1) taker of interest ascertained the interest and (2) such interest is indefeasibly vested.
7. **When does the time period in question 6 above, begin to run?** CGS §45a-579(d). Testamentary—date of death of decedent or donee of power. Nontestamentary—date of instrument.

Connecticut, cont.

8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. CGS §45a-579 and CGS §45a-583.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. CGS §45a-583(d)(3). See differences below.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** CGS §45a-583(d)(3), *Inter vivos* - if person is not aware of interest, provides for a 9-month disclaimer period to run from date person obtains knowledge of interest.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No. Connecticut law should be consulted in every case. For instance, differences between CT law and §2518 may exist regarding timeliness of future interest disclaimers and knowledge of interest requirements.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted-1972 Revised-1980, 1981, 1982, 1997.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. CGS §45a-579(d) and CGS §45a-583(d). Permits filing with Probate Court.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. CGS §45a-579(b)(1)-(3) and CGS §45a-583(b)(1)-(3). Probate Court approval necessary if no specific authority to disclaim is given in the appropriate underlying document if any.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. CGS §45a-579(d)(4) and CGS §45a-583(d)(5). Requires disclaimer of a real property interest be filed in Town Clerk's office.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. Except filing with Probate Court - See question 13 above.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. *Dept. of Income Maintenance v. Watts* (all Conn. 323) and *State v. Murtha* (179 Conn. 463) have interpreted CGS §17-82j (now 17b-85) to preclude a person from disclaiming an interest in property when the person is receiving state aid/public assistance.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. CGS §45a-579(e) and CGS §45a-583(e).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** CGS §45a-579(e) and CGS §45a-583(e).

Comment: Generally, as if person disclaiming had predeceased donor or as if disposition to estate or trust were ineffective.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. CGS §45a-583.

Connecticut, cont.

21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. CGS §45a-583. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. CGS §45a-579(e)(4) and CGS §45a-583(e)(4).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. CGS §45a-579(b)(2) and CGS §45a-583(b)(2).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. CGS §45a-579(b)(3) and CGS §45a-583(b)(3).

Comment: Judicial consent necessary if disclaimer is by (1) guardian or conservator of estate of minor or incapable person or (2) executor under a will does not authorize disclaimer and expressly state Probate Court approval is not necessary.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. CGS §45a-581. However, statute merely states that rights to disclaim under other statutes or common law shall not be abridged.

DELAWARE

Richard G. Bacon
Wilmington
April 13, 2000

1. **Does your state recognize disclaimers?** Yes. 12 Del.C. §§601, 606.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. 12 Del.C. §601 *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?** Yes. Disclaimer statute, 12 Del.C. §601 *et seq.* does not eliminate “common law” disclaimers 12 Del.C. §606.

Under common law can you disclaim intestacy interest? Uncertain.

Under common law can you disclaim testacy interest? Yes.

Under common law can you disclaim will substitutes? Yes. *Cf. Smith v. Bank of Delaware*, 219 A.2d 576 (Del. 1966).

4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**

(1) **Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?** Yes.

(2) **Uniform Disclaimer of Property Interest Act?** Yes.

(3) **Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?** Yes.

If yes, which ones? “Delaware Disclaimer of Property Interests Act” has elements of all three uniform acts.

5. **Has your state made any significant alterations to the Uniform Act(s)?**

Describe alterations, if any: In general, Delaware Act is more specific and more liberal in allowing disclaimers.

6. **What is the time period within which a disclaimer must be made under your state law?** 9 months. 12 Del. C. §602.

Intestacy? 9 months. 12 Del. C. §602.

Testacy? 9 months. 12 Del. C. §602.

Survivorship interests? 9 months. 12 Del. C. §602.

Future interests? 9 months. 12 Del. C. §602.

7. **When does the time period in question 6 above, begin to run?** Under a testamentary instrument, if of a present interest, at the death of the deceased transferor, the deceased donee of a power of appointment or the deceased joint tenant, as a case may be, or, if of a future interest, at the event determining that the taker of the property or interest has become finally ascertained and the interest indefeasibly vested. Under a nontestamentary interest or contract, if of a present interest, at the effective date of the nontestamentary instrument or, if of a future interest, at the event determining that the taker of the property or interest has become finally ascertained and the interest indefeasibly vested.

Delaware, cont.

8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes. 12 Del.C. §601.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? Yes. 12 Del.C. §602.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)? Time periods as set forth in 6.
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? No.
12. When was (were) your state disclaimer statute(s) adopted? revised? 1982.
13. Does your state require (or permit) that the disclaimer be filed with a Court? Yes. Permitted. 12 Del.C. §602.
14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest? Yes. 12 Del.C. §601.
15. Does your state require (or permit) that the disclaimer be recorded in the land title records? Yes. 12 Del.C. §602.
16. Does your state require (or permit) filing, recording or lodging with any other public office (*e.g.*, Secretary of State)? No. 12 Del.C. §602 (a).
17. Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors? No.
18. Does your state law permit a partial disclaimer of an interest in property? Yes. 12 Del.C. §601.
19. How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest? 12 Del.C. §604.

Comment: In general, statute gives disclaimer the same effect as if disclaimant has died before the decedent or the event determining the taker.
20. Does your state law permit the disclaimer of jointly held property? Yes. 12 Del.C. §602 (f).
21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. 12 Del.C. §602 (b). If the answer is yes, describe the circumstances under which such a disclaimer may arise. Delaware recognizes disclaimers effective under "any other law" which depending upon the particular circumstances may include common law or the law of another jurisdiction.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. 12 Del.C. §604.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. 12 Del.C. §§601, 602 (d).

Delaware, cont.

Comment: 12 Del.C. §4513 may be read as authorization for an UTMA custodian to disclaim custodial property.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** Yes. 12 Del.C. §606.

DISTRICT OF COLUMBIA

Nancy G. Fax
Washington, D.C.
February 14, 2000

1. **Does your state recognize disclaimers?** Yes. D.C. Code §21-2091, *et seq.*
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. D.C. Code §21-2091, *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: Editorial and format changes only.
6. **What is the time period within which a disclaimer must be made under your state law?** D.C. Code §21-2092.
Intestacy? 9 months after date of death of deceased owner or donee of power of appointment.
Testacy? 9 months after date of death of deceased owner or donee of power of appointment.
Survivorship interests? 9 months after date of death.
Future interests? 9 months after the event determining that the taker of interest in the property has become finally ascertained and the taker's interest is indefeasibly vested.
7. **When does the time period in question 6 above, begin to run?** See answers to question 6.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. D.C. Code §21-2092(b).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.

District of Columbia, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** Passed by D.C. Council in 1990 (effective date March 6, 1991); and amended (minor word changes to clarify references) in 1995.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. D.C. Code §21-2092(a) (2) (b). Filing with Court permitted.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** No. Such authority would be granted under subchapter 8 of the Uniform Intestacy Wills and Donative Transfers Act which has been introduced in the Council for the District of Columbia.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. D.C. Code §21-2092(e). Recordation permitted.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. D.C. Code §21-2091.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** D.C. Code §21-2094. (a) If the interest in property devolved to a disclaimant under a testamentary instrument or the laws of intestacy, and the deceased owner or donee of a power of appointment has not provided for another disposition, the interest in property shall devolve as if the disclaimant had predeceased the decedent. If the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, the interest in property shall devolve as if the disclaimant had predeceased the donee of the power of appointment. If a future interest takes effect after the termination of the estate or interest disclaimed, it shall take effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and the taker's interest is indefeasibly vested. For all purposes, a disclaimer shall relate back to the date of death of the decedent, the date of death of the donee of the power of appointment, or the determinative event.
 - (b)(1) If an interest in property devolves to a disclaimant under a nontestamentary instrument or contract that does not provide for another disposition:
 - (A) The interest in property shall devolve as if the disclaimant had died before the effective date of the instrument or contract; and
 - (B) A future interest that takes effect in possession or enjoyment at or after termination of the disclaimed interest shall take effect as if the disclaimant had died before the event determining that the taker of the interest in property became finally ascertained and the taker's interest indefeasibly vested.
 - (2) For all purposes, a disclaimer shall relate back to the effective date of the instrument or contract or the date of the determinative event.
 - (c) The disclaimer or the written waiver of the right to disclaim shall be binding upon the disclaimant or person who waives the right to disclaim and any person who claims through or under the disclaimant. (Mar. 6, 1991, D.C. Law 8-204, § 5, 37 DCR 8439.)
20. **Does your state law permit the disclaimer of jointly held property?** Yes. D.C. Code §21-2092(d).

District of Columbia, cont.

21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. D.C. Code §21-2092(b). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** There is no statutory or common law authority of which I am aware.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Presumably, although there is no statutory or common law authority.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Presumably, although there is no statutory or common law authority.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

FLORIDA

Trent S. Kiziah
West Palm Beach
September 29, 1999

1. **Does your state recognize disclaimers?** Yes. §689.21, Fla. Stat., §732.801, Fla. Stat.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §689.21, Fla. Stat., §732.801, Fla. Stat.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes. §732.801, Fla. Stat.
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? Yes. §689.21, Fla. Stat.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** Yes.
Describe alterations, if any: Section 732.801, Fla. Stat. substantially rewords the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, but substantive provisions are essentially the same, except under Florida law no disclaimer if disclaimant is insolvent. As to §689.21, Fla. Stat. several substantive modifications are made: (1) Florida Statute contains none of the provisions concerning jointly held property contained in Uniform Disclaimer of Transfers under Nontestamentary Instrument Act; (2) disclaimant has 12 months in Florida to disclaim while 9 months under Uniform Act (3) and in Florida disclaimant cannot disclaim if insolvent.
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. §732.801(5), Fla. Stat.
Testacy? 9 months. §732.801(5), Fla. Stat.
Survivorship interests? 12 months. §689.21(5), Fla. Stat.
Future interests? 9 or 12 months depending on interest creating future interest. §732.801(5), Fla. Stat., §689.21(5), Fla. Stat.
7. **When does the time period in question 6 above, begin to run?**
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. See §689.21(5), Fla. Stat., §732.801(5), Fla. Stat.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.

Florida, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No. §2518-9 months Fla. Stat. - 12 months in which to disclaim as to *inter vivos* transfers.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Predecessor to §732.801, Fla. Stat. was adopted in 1971 and was revised in 1977 with minor stylistic modification in 1997. Predecessor to §689.21, Fla. Stat. was also enacted in 1971. Revised in 1973 and minor stylistic modification in 1997.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Must be recorded. §732.801(4)(b) and §689.21(4)(d).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. With Court approval. §732.801(2)(b) and §689.21(2)(b).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. As to testamentary disclaimer. §732.801(4)(b). As to *inter vivos*, yes as to real estate. §689.21(4)(d).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Disclaimer invalid if beneficiary is insolvent. §732.801(6)(a) and §689.21(6).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §732.801(1)(d) and §689.21(1)(d).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Unless otherwise provided by governing instrument, property passes as if the disclaimant had died immediately preceding the death or other event which causes him or her to become finally ascertained as a beneficiary. §732.801(3)(a) and §689.21(3)(a).
20. **Does your state law permit the disclaimer of jointly held property?** Answer appears to be yes, but statute refers to exercising disclaimer within 12 months of becoming indefeasibly vested. Query whether vesting occurs upon creation of the interest.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §689.21(2)(a). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. See *Weinstein v. MacKey*, 408 So.2d 849 (Fla.3 DCA 1982).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. As to fiduciary disclaimer. No. As to competent beneficiary disclaimer.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Florida, cont.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** State Statutes require disclaimer to be executed with same requirements as those for a deed of real property. In addition, testamentary disclaimers must be recorded in public records. Filing of disclaimer in probate court will not suffice. In addition, disclaimer must be delivered to fiduciary.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in §2518?** Yes.

Note: Answers to 21 and 26: Law is unclear. §732.801(8) provides statutes does not abridge the right to disclaim under any existing or future law. The statutory reference may be to federal law or state common law. Because Florida's disclaimer statute requirements can easily be met, the better part of wisdom is complying with the statutory requirements set forth in §689.21 or §732.801.

GEORGIA

Ralph R. Morrison
Atlanta
September 1, 1999

1. **Does your state recognize disclaimers?** Yes. O.C.G.A. §53-1-20, Georgia refers to a disclaimer as a renunciation.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. O.C.G.A. §53-1-20. See question 1 above.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**

Under common law can you disclaim intestacy interest?

Under common law can you disclaim testacy interest?

Under common law can you disclaim will substitutes?

Comment: Georgia has a statute concerning disclaimers. See O.C.G.A. §53-1-20. However, the statute does not eliminate certain common law disclaimers. See O.C.G.A. §53-1-20(h). Georgia law apparently holds in practical effect that most disclaimers will not accelerate the vesting of remainders. See *Linkous v. Candler*, 270 Ga. 284, 508 S.E.2d 657 (1998); *Wetherbee v. First State Bank and Trust Co.*, 266 Ga. 364, 466 S.E.2d 835 (1996).

4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**

(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.

(2) Uniform Disclaimer of Property Interest Act? No.

(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.

If yes, which ones?

Comment: Although some provisions in the Georgia statute are consistent with one or more of these Uniform Acts, the Georgia legislature has not indicated the Georgia statute is modeled after any of them. Also, according to current listings of states which have adopted each Uniform Act, Georgia is not listed.

5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A

Describe alterations, if any: See question 4 above.

6. **What is the time period within which a disclaimer must be made under your state law?**

Intestacy? 9 months. O.C.G.A. §53-1-20(d).

Testacy? 9 months. O.C.G.A. §53-1-20(d).

Survivorship interests? 9 months. O.C.G.A. §53-1-20(d).

Future interests? 9 months. O.C.G.A. §53-1-20(d).

Georgia, cont.

Comment: The Georgia statute does not vary the time period based on the category of disclaimer being made. Also, since the statute in O.C.G.A. §53-1-20(a) includes “any interest in property”, it is believed the same period applies regardless of the interest held by a person. However, as the language in O.C.G.A. §53-1-20(h) indicates, disclaimers can be made under common law notwithstanding the Georgia statute. The limitations for those disclaimers is not clear. See *Linkous v. Candler*, 270 Ga. 284, 508 S.E.2d 657 (1998); *Wetherbee v. First State Bank and Trust Co.*, 266 Ga. 364, 466 S.E.2d 835 (1996).

7. **When does the time period in question 6 above, begin to run?** O.C.G.A. §53-1-20(d). It begins to run on the later of “(1) The date of the transfer [of property]; or (2) [t]he day on which the person making the renunciation reaches the age of 21.”
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. O.C.G.A. §53-1-20. No distinction is made in the statute between these types of gifts; the statute uniformly applies to “[a]ny person to whom an interest in property is transferred or who succeeds to property by contract or by operation of law.” O.C.G.A. §53-1-20(a).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. O.C.G.A. §53-1-20. No distinction is made in the statute.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Legislative comment to O.C.G.A. §53-1-20. The comment states “[t]he section mirrors the requirements of Internal Revenue Code §2518 and related United States Treasury Regulations.”
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Legislative history to O.C.G.A. §53-1-20. The earliest reference to a Georgia disclaimer statute is found in the legislative history to O.C.G.A. §53-2-115, the former Georgia disclaimer statute which apparently was included as part of the 1933 Georgia Code. The most recent revision occurred in 1998 (effective January 1, 1998), and was a major revision which nearly abolished the former provision in favor of the current provision. The current provision will apply “provided, however, that no vested rights of title, year’s support, succession, or inheritance are impaired.” O.C.G.A. §53-1-1 (b).
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. O.C.G.A. §53-1-20(d). In the current statute, filing the written disclaimer with the probate court is permissive. Under the former statute O.C.G.A. §53-2-115, it was mandatory.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate’s or the ward’s interest?** Yes. O.C.G.A. §53-1-20(b). The statute provides that “personal representatives, trustees, conservators, or guardians” have authority to renounce in a fiduciary capacity for an individual, although court approval of a guardian’s actions is presumably required. See O.C.G.A. Title 29, especially Chapter 2.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. O.C.G.A. §53-1-20(d). For real property, the statute permits the filing of the disclaimer in the records of the county where the property is located.

Georgia, cont.

16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. O.C.G.A. §53-1-20. Other than those locations listed in question 13 and question 15 above, the statute does not specifically mention any other public offices where filing could be made.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Nothing on-point is explicitly found within the statute. Case law does, however, indicate that a renunciation of property will be barred where possession and use of the testator's property occurred over a long period of time and indicated an intent to claim the rights in the property and the attempted renunciation impaired the rights of third-party creditors. See, e.g., *Jordan v. Trower*, 208 Ga. App. 552, 553, 431 S.E. 2d 160,162 (1993).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. O.C.G.A. §53-1-20(b). The statute provides that property may be renounced in whole or in part.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** O.C.G.A. §53-1-20(f).

Comment: The renunciation shall cause the renounced property to pass as if the person renouncing has predeceased the decedent. The recipients may have to survive until the death of the disclaimant in order to take, see *Linkous* and *Weatherbee*.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. O.C.G.A. §53-1-2 and O.C.G.A. §53-1-20. Although not specifically provided in the disclaimer statute, the statute refers to the term "person" as those who can disclaim, and "person" is defined in O.C.G.A. §53-1-2 as including "two or more persons having a joint or common interest."
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. O.C.G.A. §53-1-20(a). The statute expressly includes succession to "an interest in property by contract." Also, even though heard under the former disclaimer statute, *Federated Life Ins. Co. v. Simmons*, 1997 WL 581052 (N.D.Ga), is consistent with the proposition that life insurance proceeds can be disclaimed. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** See comment to question 26.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** This is apparent common law rule which has been adopted in Georgia; however, Georgia law takes the position that a requirement or survival indicates a contrary intent so that the remainder is not accelerated. No case law exists referencing the current Georgia statute in this area, but *Linkous v. Candler*, 270 Ga. 284, 508 S.E. 2d 657 (1998) purports to reiterate this common law principle so long as the instrument did not manifest a contrary intent. See also *Wetherbee v. First State Bank and Trust Co.*, 266 Ga. 364, 466 S.E. 2d 835 (1996). In both cases the remainder was not accelerated.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
See question 22 above.
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** See comment question 14. O.C.G.A. §53-1-20.

Georgia, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. O.C.G.A. §53-1-20.

Comment: No judicial consent is explicitly required in the renunciation statute. However, court approval of a guardian's actions is generally required under Georgia law. See generally O.C.G.A. §29-2-1 through 29-2-24. O.C.G.A. §53-1-20(d)(2) provides a minor with the opportunity to disclaim as late as 9 months after reaching the age of 21 and see comment question 24.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. Disclaimers apparently do not accelerate remainders when a contrary intent is found in the document granting the interest. Mere survivorship language has now been construed as evidencing the intent not to accelerate a remainder. See *Linkous v. Candler*, 270 Ga. 284, 508 S.E. 2d 657 (1998); *Wetherbee v. First State Bank and Trust Co.*, 266 Ga. 364, 466 S.E. 2d 835 (1996).
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. O.C.G.A. §53-1-20(h). The statute does not abridge the right to renounce property under any other statute or common law, and any valid renunciation which is not written and signed and does not comply with O.C.G.A. §53-1-20(d) (discussed in questions above) "shall operate as a transfer of the property to those persons who would have received it had the renunciation met those requirements."

HAWAII

Mary Jane Connell
Honolulu
October 4, 2002

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. Hawaii Revised Statutes (“HRS”) Chapter 526.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts:
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
Comment: Hawaii adopted the Uniform Disclaimer of Property Interest Act (1999), effective as of July 1, 2000.
5. Has your state made any significant alterations to the Uniform Act(s)? No.
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law? There is no time limit.
Intestacy?
Testacy?
Survivorship interests?
Future interests?
7. When does the time period in question 6 above, begin to run?
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes. HRS §526-5(a).
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? No.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? Yes. HRS §526-14.
12. When was (were) your state disclaimer statute(s) adopted? revised? Adopted in 2000.

Hawaii, cont.

13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Disclaimers are required to be filed with the Court in the circuit having jurisdiction if a personal representative or trustee has not been appointed. HRS §526-12(c)(2), (d)(2), (e)(2), (i)(2) and (j)(2). In all cases, filing is permitted but not required. HRS §526-15.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. HRS §526-5 (b).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. HRS §526-15. Disclaimers of real property may be recorded.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. HRS §526-5 (a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: HRS §526-6(b)(3) provides that, if the disclaimant is an individual, the property will pass as if the individual died immediately before the time of distribution. If the interest would then pass to the disclaimant's issue by representation, only those descendants living at the time of distribution share in the interest. If the disclaimant is not an individual, the property passes as if the disclaimant did not exist. Jointly held property passes as if the disclaimant predeceased the holder to which the disclaimer relates. HRS §526-7. A disclaimer by a trustee of what would otherwise have become trust property does not become property of the trust. HRS §526-8.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. HRS §526-7.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. HRS §526-5(a) and see also HRS §526-12(a) (which defines beneficiary designation), (f) (the method of disclaiming before the beneficiary designation is effective) and (g) (the method of disclaiming after the designation becomes effective). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.**
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. HRS §526-6(b)(4).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** In some cases.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Comment: HRS §536-5(b) provides that a fiduciary may disclaim unless his right to do so is expressly restricted by another state statute or the instrument making him a fiduciary. HRS §560.5-408(3) requires court approval for guardians to disclaim. If a personal representative or trustee is in a conflict of interest situation, statutes would require court approval of a disclaimer. See, e.g. HRS §560:3-712, §554A-5.

Hawaii, cont.

25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? Yes.

IDAHO

Joseph H. Uberuaga, II
Boise
October 29, 1999

1. **Does your state recognize disclaimers?** Yes. I.C. §15-2-801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. I.C. §15-2-801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes. Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (U.L.A.).
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** Yes.
Describe alterations, if any: Although the Idaho Act is a substantial adoption of the major provisions of the Uniform Act noted above, numerous changes were made to adopt the Act to Idaho law.
6. **What is the time period within which a disclaimer must be made under your state law?** 9 months. I.C. §15-2-801(b).
Intestacy? 9 months. I.C. §15-2-801(b).
Testacy? 9 months. I.C. §15-2-801(b).
Survivorship interests? 9 months. I.C. §15-2-801(b).
Future interests? 9 months. I.C. §15-2-801(b).
7. **When does the time period in question 6 above, begin to run?** Date of Transfer or date of death whichever is later. I.C. §15-2-801(b).
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. I.C. §15-2-801(a) (1).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.

Idaho, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
 11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
 12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1978.
 13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. I.C. §15-2-801(b).
 14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. I.C. §15-2-801(a) (1) and I.C. §15-2-801(c) (1). But the exercise of that authority should only be after a court hearing. I.C. §15-5-408(b) (3).
 15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §15-2-801(b).
 16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
 17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** There is no specific statute or case in Idaho addressing whether a disclaimer would be ineffective against the disclaimant's creditors. However, Idaho has adopted the Uniform Fraudulent Transfer Act. Under Idaho Code §55-906, any transfer of property "with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor and their successors in interest..." Transfers are defined broadly as "every mode, direct or indirect, absolute or conditional voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." Idaho Code §55-910. Nevertheless, the State Reporter believes that it is likely that the disclaimer would defeat the claims of creditors of the disclaimant since the disclaimed interest "passes as if the person renouncing has predeceased the decedent..."
 18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §15-2-801 (a) (1).
 19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §15-2-801(c), Interstate Succession.
 20. **Does your state law permit the disclaimer of jointly held property?** Yes. I.C. §15-2-801(a) (1).
 21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. I.C. §15-2-801(a) (1). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
 22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. I.C. §15-2-801(c).
 23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
 24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. I.C. §15-5-408(b) (3).
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** Yes. I.C. §15-2-801(a) (1).

Idaho, cont.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.**
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No.**

ILLINOIS

No response was
received from this state.

1. Does your state recognize disclaimers?
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts:
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. Has your state made any significant alterations to the Uniform Act(s)?
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy?
Testacy?
Survivorship interests?
Future interests?
7. When does the time period in question 6 above, begin to run?
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?
12. When was (were) your state disclaimer statute(s) adopted? revised?
13. Does your state require (or permit) that the disclaimer be filed with a Court?
14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?
15. Does your state require (or permit) that the disclaimer be recorded in the land title records?

Illinois, cont.

16. **Does your state require (or permit) filing, recording or lodging with any other public office (*e.g.*, Secretary of State)?**
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?**
18. **Does your state law permit a partial disclaimer of an interest in property?**
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**
20. **Does your state law permit the disclaimer of jointly held property?**
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? If the answer is yes, describe the circumstances under which such a disclaimer may arise.**
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?**
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?**
Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?**
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?**

INDIANA

Brian C. Hewitt
Greenwood
October 25, 2002

1. **Does your state recognize disclaimers?** Yes. Ind. Code §32-17-7-1, *et seq.*
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Ind. Code §32-17-7-1, *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? Ind. Code §32-17-7-8 (d). Not later than nine (9) months after the death of the decedent if a present interest is disclaimed.
Testacy? Ind. Code §32-17-7-8(d). Not later than nine (9) months after the death of the decedent if a present interest is disclaimed.
Survivorship interests? Ind. Code §32-17-7-10(b). Not later than nine (9) months after the event by which the final taker of the entire interest is ascertained.
Future interests? Ind. Code §32-17-7-8 (d). Nine (9) months after the taker of the future interest is finally ascertained or the day the disclaimant attains age twenty-one (21), whichever is later.
7. **When does the time period in question 6 above, begin to run?** See question 6 above.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. Ind. Code §32-17-7-7, (see Probate Study Commission Comments).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. Ind. Code §32-17-7-8, Ind. Code §32-17-7-11 and Ind. Code §32-17-7-12.

Indiana, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Ind. Code §32-17-7-8. Ind. Code §32-17-7-11. Ind. Code §32-17-7-12. A disclaimer of an interest that has devolved from a decedent under a testamentary instrument (or under the laws of intestacy) is effective only if it is: (i) filed in a court in which proceedings concerning the decedent's estate are pending, or, if no proceedings are pending, in a court in which proceedings could be pending if commenced; and (ii) delivered in person or mailed by First Class U.S. Mail to the personal representative of the decedent, or to the holder of the legal title to the property to which the interest relates. A disclaimer of an interest in real property is effective only if it is recorded in each county where the real property is located. In addition, a disclaimer with respect to a testamentary transfer is effective only if it is accomplished not later than nine (9) months after the death of the decedent if a present interest is disclaimed, or, if a future interest is disclaimed, not later than nine (9) months after the later of: (a) the event by which the final taker of the interest is ascertained; or (b) the day on which the disclaimant attains the age of twenty-one (21). While an interest that has devolved under a nontestamentary instrument is effective only if it is delivered in person or mailed by First Class U.S. Mail either to the transferor of the interest or his personal representative, or to the holder of the legal title to the property to which it relates. In addition, a disclaimer of such an interest in real property is effective only if it is recorded in each county where the real property is located. Finally, a disclaimer of a nontestamentary instrument is effective only if it is accomplished not later than nine (9) months after the creation of the interest if a present interest is disclaimed, or, if a future interest is disclaimed, not later than nine (9) months after the later of: (1) the event by which the final taker of the interest is ascertained; or (2) the day on which the disclaimant attains the age of twenty-one (21).
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Statute is generally coordinated with federal law.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Effective July 1, 1983, Indiana adopted comprehensive legislation to govern the disclaimer the property interests in all situations and to clarify and correct inadequacies in the common law rule. In 2002, re-codified at §32-17-7-1, *et seq.*
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Ind. Code §32-17-7-8 requires that a disclaimer of an interest (except for an interest with the right of survivorship) that has devolved from a decedent either by the laws of intestacy or under a testamentary instrument, including a power of appointment exercised by a testamentary instrument, must be filed in a court in which proceedings concerning the decedent's estate are pending, or, if no proceedings are pending, in a court in which proceedings could be pending if commenced.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Ind. Code §32-17-7-7.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Ind. Code §32-17-7-8, Ind. Code §32-17-7-12. A disclaimer of real property must be recorded in each county where the real property is located.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. Other than as set forth in questions 13 and 15, there are no other required filings/recordings. There is, however, no express prohibition on additional filings/recordings which may be desired. The disclaimer statutes are simply silent on such matters.

Indiana, cont.

17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. Ind. Code §32-17-7-8. (See Probate Code Study Commission Comments) *In Re: Estate of Wisely*, 402 N.E.2d 14 (Ind. App. 1980). This includes Indiana inheritance tax and other taxing authorities.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. Ind. Code §32-17-7-7. (See Probate Code Study Commission Comments). "Partial Disclaimers are permitted of a portion or a fractional part of the property interest; also of any limited interest or estate in the property."
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Ind. Code §32-17-7-8.

Comment: Interest Devolving from a Decedent Either by Intestacy or under a Testamentary Instrument: If provision has not been made for another devolution, an interest disclaimed devolves as if: (I) the disclaimed interest had never been created in the disclaimant, if the disclaimant is a fiduciary, or (ii) the disclaimant had predeceased the decedent in all other cases.

Ind. Code §32-17-7-9, Interest Devolving Under Life Insurance Policy of Annuity: If provisions has not been made for another devolution, an interest disclaimed devolves as if: (I) the disclaimed interest had never been created in the disclaimant, if the disclaimant is a fiduciary; or (ii) the disclaimant had predeceased the insured or annuitant in all other cases.

Ind. Code §32-17-7-10, Interest Devolving of Joint Tenancy Interests: If no provision has been made for another devolution, an interest disclaimed devolves as if: (I) the disclaimed interest has never been created in the disclaimant, if the disclaimant is a fiduciary; or (ii) the disclaimant had died immediately before the creation of the interest in all other cases.

Ind. Code §32-17-7-11, Devolution by Means Other than Those Described Above, Including an Interest That Is Devolved under a Nontestamentary Interest, or the Exercise of a Power of Appointment by a Nontestamentary Instrument: If no provision has been made for another devolution, an interest disclaimed devolves as if: (I) the disclaimed interest had never been created in the disclaimant, if the disclaimant is a fiduciary; or (ii) the disclaimant had died immediately before the creation of the interest in all other cases.

Ind. Code §32-17-7-13, Disclaimer of Future Interests: If no provision has been made for another devolution, the future interest that would have taken effect in possession or enjoyment if it had not been disclaimed takes effect for all purposes as if the disclaimant had died before the event by which the final taker of the interest is ascertained.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. Ind. Code §32-17-7-10 and Ind. Code §32-17-7-12.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Ind. Code §32-17-7-9 and Ind. Code §32-17-7-11. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Ind. Code §32-17-7-13, See example in Probate Code Study Commission Comments.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. Ind. Code §32-17-7-7. (See Probate Code Study Commission Comments).

Indiana, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Issues not addressed in statute with respect to future interests, person has until at least day on which he becomes twenty-one (21) years of age to disclaim. Ind. Code §32-17-7-8 and §32-17-7-11. Ind. Code §29-3-3-3 lists various circumstances under which parents of minor may act and execute documents on behalf of minor; disclaimers are not included in that list.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No. There appears to be no Indiana statutory or other authority addressing such noncompliant disclaimers.

IOWA

J. Edward Power
Des Moines
May 29, 2002

1. **Does your state recognize disclaimers?** Yes. Iowa Code §633.704. See *In re Estate of Kirk*, 591 N.W.2d 630 (1999).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Iowa Code §633.704. See also Iowa Code §559.5 (regarding disclaimer of a power of appointment).
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** Iowa Code §633.704.2.a.
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months.
Future interests? 9 months.
7. **When does the time period in question 6 above, begin to run?** Date of transfer (death). Iowa Code §633.704.2.a (Note: Exceptions for (1) minors or (2) persons who have no actual knowledge of the transfer).
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. Statute expressly refers to transfers. Iowa Code §633.704.2.a.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. See Iowa Code §633.704.2.a.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A

Iowa, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Statute revised effective July 1, 1981 to conform to Internal Revenue Code §2518.
12. **When was (were) your state disclaimer statute(s) adopted? revised?**

Comment: Applies to transfers occurring on or after July 1, 1981 (earlier versions date to 1972). Amended by Acts 1995 Chapter 63, Section 7; Acts 1999 Chapter 56, Section 6; and Acts 2000 Chapter 1060, Section 8.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Permitted by Iowa Code §633.704.2.b.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Iowa Code §633.704.3.c. See *In re Estate of Kirk*, 591 N.W. 2d 630 (1999).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Required by Iowa Code §633.704.2.b. However, failure to file with the County Recorder within the time permitted for disclaiming does not invalidate the disclaimer.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. But see *In re Kloubec*. Bankr. N.D. IA 2000, 247 B.R. 246.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. Iowa Code §633.704.1.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Yes. The statute provides (unless the disclaimant is the spouse of the transferor) that the property disclaimed passes to the disclaimant's heirs unless the instrument (Will, Trust, etc.) provides to the contrary. If the disclaimant is the spouse, the property disclaimed passes under other provisions of the Will or Trust. Iowa Code §633.704.3.a. Caution must be exercised as the anti-lapse statute may or may not apply. See Iowa Code §633.273.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. Iowa Code §633.704.1. See *In re Estate of Kirk*, 591 N.W.2d 630 (1999).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Iowa Code §633.704.1. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Iowa Code §633.704.3.a. Unless the transferor has otherwise provided.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Iowa, cont.

Comment: A guardian or conservator needs Court approval. Iowa Code §733.704.3.c. A personal representative or a beneficiary does not need Court approval (unless the beneficiary is under disability).

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. An Attorney-in-Fact through a written Power of Attorney may disclaim for the principal if expressly authorized by the Power of Attorney document. Iowa Code §633.704.3.d.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

KANSAS

Linda K. Constable
Wichita
February 16, 2000

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. K.S.A. §59-2291 to K.S.A. §59-2294.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts:
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes. 1978 Act.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? Yes. 1978 Act.
If yes, which ones?
5. Has your state made any significant alterations to the Uniform Act(s)? Kansas has adopted provisions from both of the above Uniform Acts, with substitutions, omissions and additions.
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months.
Future interests? 9 months.
7. When does the time period in question 6 above, begin to run? Latest of: Death of decedent or donee of the power; Date the taker and the taker's interest is indefeasibly fixed in quality and quantity; and Date the taker attains 21 years of age.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Statute is applicable only to property, interests or powers passing upon death.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?

Kansas, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted in 1968, revised in 1972, 1976, 1980, 1982, 1985, 1993.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Filing is required in district court in which the estate of decedent or donee of the power is or may be administered.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** The "personal representative of a person" may disclaim (K.S.A. §59-2291) and personal representative is defined as executors, administrators, conservators and guardians. K.S.A. §59-102(2). However, if you interpret this provision consistently with the powers granted under the other provisions of the probate code, the disclaimer by the personal representative would usually not be within the powers of a personal representative. A conservator can make certain gifts under K.S.A. §59-3039 and that statute might be used as authority for a disclaimer.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** No requirement under the disclaimer statutes.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No requirement.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** I assume the question means ineffective to protect assets from the disclaimant's creditors. The general rule in Kansas is that a disclaimer relates back to the death of the decedent or donee but a disposition, including a disposition by judicial process precludes a disclaimer. K.S.A. §59-2293(b); *Citizens State Bank of Grainfield v. Kaiser*, 12 K.A.2d 539, 750 P.2d 422 (1988).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Yes. The property passes as if the disclaimant had predeceased the decedent or donee of the power. K.S.A. §59-2293.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. But only to the extent "the survivor may take more than the survivor's equitable portion of the property." K.S.A. §59-2291(a).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. K.S.A. §59-2291(a). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** The statute would treat the life tenant as having predeceased; that would probably mean that the remainder interests would accelerate under the terms of the instrument creating the life estate.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Not under the disclaimer statutes.

Kansas, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? A natural guardian has the power to "dispose of" property for a minor if the minor's total estate does not exceed \$5,000 in value; however, there is no authority that would indicate that this includes a disclaimer. K.S.A. §59-3003.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** No.

KENTUCKY

J. David Porter
Lexington
February 9, 2000

1. **Does your state recognize disclaimers?** Yes. KRS §394.035 and KRS §394.610. KRS §394.035 applies to nontestamentary disclaimers; KRS §394.610-680 applies to testamentary disclaimers.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. KRS §394.035, KRS 394.610-680.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes. KRS §394.035.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? Yes. KRS §394.035.
If yes, which ones? Yes. KRS §394.035.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months after death of decedent.
Testacy? 9 months after death of decedent.
Survivorship interests? 9 months after death of decedent.
Future interests? 9 months after event determining that interests ascertained and vested.
7. **When does the time period in question 6 above, begin to run?** See question 6 above.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. KRS §394.035 applies to nontestamentary transfers; KRS §394.610-680 applies to testamentary transfers.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** KRS §394.035 applies to nontestamentary transfers; KRS 394.610-680 applies to testamentary transfers.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.

Kentucky, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** KRS §394.035 adopted 1980. KRS §394.610-680 adopted 1974 amended 1980 and 1998.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** KRS §394.035 permits filing of real property interest KRS §394.610-680 requires filing.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. KRS §394.035(1) and KRS §394.610(1).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Permitted. KRS §394.035 and KRS §394.620.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. KRS §394.035(1) and KRS §394.610(2) in whole and in part.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Under KRS §394.035, the property or interest disclaimed devolves as if the disclaimant had died before the effective date of the instrument or contract. Under KRS §394.630, the property or interest disclaimed devolves as if the disclaimant had predeceased the decedent, or donee of a power of appointment.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. KRS §394.035.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. KRS §394.035. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. KRS §394.610(3).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. KRS §394.610(3).

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. No disclaimer by an attorney-in-fact shall be made unless the instrument governing the attorney-in-fact's authority expressly authorizes a disclaimer. KRS §394.610(3); effective July 15, 1998.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

LOUISIANA

David F. Edwards
New Orleans
April 14, 2000

1. **Does your state recognize disclaimers?** Yes. La. Civ. Code art. §947. Disclaimers are known as “renunciations” in Louisiana.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** La. Civ. Code arts. §947-67.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? N/A
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** N/A
Intestacy?
Testacy?
Survivorship interests?
Future interests?

Comment: Louisiana states no time period for renunciations.
7. **When does the time period in question 6 above, begin to run?** N/A
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** No. An *inter vivos* gift is not effective unless expressly accepted by the donee. Therefore, a donee may effectively renounce by failing or refusing to accept, but the renunciation/disclaimer provisions do not per se apply to *inter vivos* gifts. See La. Civ. Code art. §1540.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** N/A
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A

Louisiana, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1808, 1825, 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** No. Louisiana doesn't require that a renunciation be filed anywhere, but it is customary to file it in the record of the decedent's succession proceedings.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. See La. Civ. Code art. §948 (minors); *DeLaune v. U.S.*, 143 F.3d 995 (5th Cir. 1998), *cert. denied*, 525 U.S. 1074 (1999) (decedents).

Comment: Only renunciations by tutors (guardians) on behalf of minors are specifically authorized by statute, but this reporter believes that executors and conservators ("curators" in Louisiana), as well as trustees and other fiduciaries, have the power to renounce in the best interest of their beneficiary.

15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** No.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. La. Civ. Code art. §956. The renunciation remains effective as to the renouncing heir, but with court approval the heir's creditors may be allowed to take his share.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. La. Civ. Code art. §947.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: In intestate successions the renounced portion passes to person who would have been the decedent's heirs had the renouncing heir predeceased. La. Civ. Code art. §964. In testate successions the renounced portion passes to the renouncing heir's descendants, if any, by roots (per stirpes), or in the absence of any as if the legacy had lapsed. *Id.* art. §965.

20. **Does your state law permit the disclaimer of jointly held property?** N/A

Comment: Louisiana does not reorganize tenancies with rights of survivorship.

21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Although there is no express statutory authority for renouncing contractual rights such as life insurance proceeds and benefits from qualified plans, this reporter believes that a beneficiary has the right to renounce and that, in all likelihood, the proceeds accrue to the successor beneficiaries in accordance with the applicable contract (as opposed to the descendants of the renouncing heir as in testate successions). If the answer is yes, describe the circumstances under which such a disclaimer may arise. See answer to question 26.

Louisiana, cont.

22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. La. Civ. Code art. §626. Louisiana law of usufruct (similar to a common-law life estate) expressly provides that a usufruct terminates by renunciation. La. Civ. Code art. §626. However, the recent enactment of a new rule for the accretion of renunciations in a testate succession may be read as suggesting that the usufruct passes to the descendants of the renouncing usufructuary. See *Id.* art. §965 and answer to 19 above.

23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A

24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. La. Civ. Code art. §948.

Comment: A guardian ("tutor") for a minor and a conservator ("curator") of an interdict must have court approval, but there is no statutory requirement that any other fiduciaries obtain court approval.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.

26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. *Arsht v. David*, §561 So. 2d 58 (La. 1990). The statute as revised effective in 1999 now provides simply that a renunciation must be in writing. Prior law required a specific and very formal kind of writing, but judicial decisions like *Arscht v. David* had recognized an exception where the renunciation is made by "judicial declaration," that is, some reference in pleading filed in the succession proceedings. With the liberalization of the statute, the judicial decisions and statute are now harmonious.

MAINE

Philip C. Hunt
Portland
October 8, 2002

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. 18-A MRSA §2-801.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts:
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? Yes.
If yes, which ones? All are incorporated.
5. Has your state made any significant alterations to the Uniform Act(s)?
Describe alterations, if any: The three Uniform Acts have been melded into a single section substantially the same as §2-801 of the Uniform Probate Code.
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy? 9 months. 18A MRSA §2-801.
Testacy? 9 months. 18A MRSA §2-801.
Survivorship interests? 9 months. 18A MRSA §2-801.
Future interests? 9 months. 18A MRSA §2-801.
7. When does the time period in question 6 above, begin to run? Present interest arising at death - at death. Present interest created during life - creation of interest or discovery. Future interest - vesting of interest.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? No. Except that the time from which the 9 month period runs varies as noted in item question 7.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?

Maine, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Disclaimer effective under §2518 is effective under state law.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Current Code Section effective January 1, 1981, prior statute adopted in 1975.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Both the estate or a person authorized to represent protected person has authority to renounce.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Disposition is made as if renouncing person predeceased.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. Surviving joint tenant may renounce interest passing by survivorship. Surviving joint tenant may renounce the entire interest if the deceased created the joint tenancy and survivor did not join.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise. Beneficiary may disclaim within 9 months period described above.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Life tenant is deemed to have predeceased.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Comment: Yes, Conservator, if amount at issue is more than \$5,000.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. A disclaimer valid under §2518 is effective under state law.

MARYLAND

Alexander I. Lewis, III
Baltimore
April 13, 2000

1. **Does your state recognize disclaimers?** Yes. Annotated Code of MD - Estates & Trusts Article §9-201.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Annotated Code of MD - Estates & Trusts Article §9-201-9-209.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones? #2, §9-209.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: .
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months.
Future interests? 9 months.
Comment: Annotated Code of MD – Estates & Trusts Article §9-202.
7. **When does the time period in question 6 above, begin to run?** Per Maryland Annotated Code, Estates & Trusts Article §9-202, the time period begins to run for Intestacy, Testacy, or a Survivorship interest as of date of death. For a Future interest, the time period begins to run upon the occurrence of the event determining that the taker of the property or interest is finally ascertained and that his right to possess or enjoy his interest is indefeasibly vested.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.

Maryland, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Per Maryland Annotated Code, Estate & Trust Article §9-202, the time period begins to run for *inter vivos* transfers on the effective date of the nontestamentary instrument or contract, and if of a future interest upon the occurrence of the event determining that the taker of the property or interest is finally ascertained and that his right to possess or enjoy his interest indefeasibly vested. 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 the maker of the revocable instrument or contract or another the entire legal and equitable ownership of the interest.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1978 – no substantial revisions.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** It depends on what interest is being disclaimed. If the property disclaimed is under a testamentary instrument or by the laws of intestacy the disclaimer must be filed with the Register of Wills 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. If the property disclaimed is under a nontestamentary instrument or contract the disclaimer shall be delivered or mailed by registered or certified mail to the trustee or other person who has legal title to the property or interest disclaimed, or to the transferor of the property or interest disclaimed or his legal representative. If real property is disclaimed a copy of the disclaimer shall be recorded among the land records of the county in which the real property is located.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §9-201(c).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes, §9-202(c).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** Yes. §9-201(a). For estates - file with Register of Wills.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §9-201.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §9-204.

Comment: Where devolution to the disclaimant is expressly conditioned on the disclaimant's survival of the deceased owner, the disclaimant is treated as having predeceased the owner or the deceased donee of the power of appointment, and the property interest disclaimed devolves as if the disclaimant had died immediately before the deceased owner. Otherwise, the property interest disclaimed is devolved directly to those persons who would have taken the property interest if the disclaimant had died, intestate, domiciled in the State of Maryland, owning the property or interest, immediately before the deceased owner or the deceased donee of the power.

20. **Does your state law permit the disclaimer of jointly held property?** Yes.

Maryland, cont.

21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? No.
25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? The Statute is coordinated with §2518.

MASSACHUSETTS

Arnold W. Hunnewell
Boston
September 3, 1999

1. **Does your state recognize disclaimers?** Yes. Statutory law and case law. Massachusetts disclaimer statute codified and broadened common law.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Mass. Gen. Laws Chapter 191A §1-10.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months after death of joint tenant.
Future interests? 9 months.
7. **When does the time period in question 6 above, begin to run?** In general 9 months after the event determining that the disclaimant is finally ascertained as the disclaimant of the disclaimed interest and that such interest is indefeasibly vested.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**

Massachusetts, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1975.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. Ch. 191A, §2. Provided that Probate Court approval is first obtained.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Ch. 191A, §5.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Ch. 191A, §3. Right to disclaim is barred by disclaimant's insolvency.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Ch. 191A, §7.

Comment: Disclaimed interest passes as if the beneficiary (or disclaimant) died immediately preceding the event determining that he, she or it is the beneficiary of such interest and that such interest is indefeasibly vested. If the disclaimer creates a gap, normal common law rules of construction apply. Anyone holding the property which is being disclaimed, may petition a court for instructions as to the effect of the disclaimer.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. Ch. 191A, §2.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Ch. 191A, §2. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Ch. 191A, §2. Yes, if remainder is indefeasibly vested. Otherwise normal construction rules apply.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.

Massachusetts, cont.

26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** Yes. Ch. 191A §10 provides that the right to disclaim or release under any other statute or rule of law is preserved.

Note: The Mass. disclaimer statute does not specifically provide for disclaimer of powers held by some of the trustees of a trust, but not all. Mass. Gen. Laws Chapter 204, secs. 27-37, contain provisions relating to releases of powers held by one in an individual or in a fiduciary capacity. Section 30 expressly provides that a power held by co-trustees can be released by one without preventing or limiting the exercise of the power by the other trustees. Further, the same section is applicable to persons serving as trustees successively. Thus a disclaimer of a power by one fiduciary will not be binding on his or her successor.

MICHIGAN

Michael G. Cumming
Bloomfield Hills
September 27, 1999

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. Michigan Compiled Laws §554.871-§554.890.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts: No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. Has your state made any significant alterations to the Uniform Act(s)? N/A
Describe alterations, if any: Michigan has an entirely new version of disclaimer legislation.
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy? No limitation.
Testacy? No limitation.
Survivorship interests? No limitation.
Future interests? No limitation.

Comment: The disclaimant may disclaim at any time before an event that bars disclaimer listed at MCL §554.881.
7. When does the time period in question 6 above, begin to run? N/A
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? Yes.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)? Yes. Time of disclaimer and delivery of disclaimer as between testamentary and nontestamentary interests. MCL §554.875.
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? No.

Michigan, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** June 1, 1996.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Permitted.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Permitted MCL §554.877(3).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** Yes .
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment As though disclaimant predeceased the event giving rise to the disclaimed interest.
20. **Does your state law permit the disclaimer of jointly held property?** Yes.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. Michigan has an unique statute with few limitations. It is left up to the fiduciary, or his or her attorney, to coordinate the disclaimer with tax law, fiduciary duties, etc.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

MINNESOTA

Steve A. Brand
Minneapolis
October 30, 2002

1. **Does your state recognize disclaimers?** Yes.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes, Minn. Stats. §525.532 (2000) and Minn. Stats. §501B.86 (2000).
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any: 8A Uniform Laws Annotated at 164 states “The Minnesota act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional material which cannot be clearly indicated by statutory notes.”
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy?
Testacy?
Survivorship interests?
Future interests?
Comment: (a) Interests passing “by will, intestate succession or under certain powers of appointment”

“shall be filed at any time after the creation of the interest, but in all events within nine months after the death of the person by whom the interest was created or from whom it would have been received, or, if the disclaimant is not finally ascertained as a beneficiary or the interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than nine months after the event which would cause the disclaimant so to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.” Minn. Stats. §525.532, Subd. 3 (2000).

Minnesota, cont.

(b) Interests passing “by deed, assignment, under certain nontestamentary instruments, or under certain powers of appointment”

“may be filed at any time after the creation of the interest, but it must be filed within nine months after the effective date of the nontestamentary instrument creating the interests, or, if the disclaimant is not then fully ascertained as a beneficiary or the disclaimant’s interest has not become indefeasibly fixed both in quality and quantity, the disclaimer must be filed not later than nine months after the event that would cause the disclaimant to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.” Minn. Stats. §501B.86. Subd. 3 (2000).

7. **When does the time period in question 6 above, begin to run?** See answer to #6.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** (a) Minn. Stats. §525.532 - adopted in 1965 and modified in 1975, 1976, 1980 and 1986. (b) Minn. Stats. §501B.86 - adopted in 1989.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Requires Filing.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate’s or the ward’s interest?** Yes.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer’s creditors?** Yes: “The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before the beneficiary has filed a disclaimer, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.” Minn. Stats. §525.532, Subd. 6 (2000);
 “The right to disclaim is barred if the beneficiary: (1) is insolvent; (2) assigns or transfers, or contracts to assign or transfer, an interest in the property to be disclaimed; (3) in writing, waives the right to disclaim the succession to an interest in the property; or (4) sells for otherwise disposes of an interest in the property.” Minn. Stats. §501B.86, Subd. 6 (2000).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.

Minnesota, cont.

19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** By Definition: “Beneficiary” means and includes any person entitled, but for that person’s disclaimer, to take an interest: by interstate succession; by devise; by legacy or bequest; by succession to a disclaimed interest by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary trust; pursuant to the exercise or nonexercise of a testamentary power of appointment; as donee of a power of appointment created by testamentary instrument; or otherwise under a testamentary instrument.” Minn. Stats. §525.532, Subd. 1(a) (2000).

“Beneficiary” means a person entitled, but for the person’s disclaimer, to take an interest:

- (1) as grantee;
- (2) as donee;
- (3) under an assignment or instrument of onceyance or transfer;
- (4) by succession to a disclaimed interest, other than by will, intestate succession, or through the exercise or nonexercise of a testamentary power of appointment;
- (5) as beneficiary of an *inter vivos* trust or insurance contract;
- (6) pursuant to the exercise or nonexercise of a nontestamentary power of appointment;
- (7) as donee of a power of appointment created by a nontestamentary power of appointment; or
- (8) otherwise under a nontestamentary instrument.”

Minn. Stats. §501B.86, Subd. 1(a) (2000).

20. **Does your state law permit the disclaimer of jointly held property?** See Minn. Stats. §501B.86, Subd. 1(a)(8) (2000) as cited in #19, above.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes, see Minn. Stats. §501B.86, Subd. 1(a)(8) (2000) as cited in #19, above. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** “This section does not abridge the right of a person, apart from this section, under an existing or future statute or rule of law, to disclaim an interest or to assign, convey, release, renounce, or otherwise dispose of an interest.” Minn. Stats. §501B.86, Subd. 8 (2000). “The survivor or survivors of a bank deposit held in the names of the decedent and the survivor or survivors may at any time disclaim that interest by authorizing the inclusion of the proceeds of the bank deposit in the inventory and appraisal required by law to be filed by the representative or executor of the estate of the decedent. For purposes of this subdivision, ‘bank deposit’ includes a checking or savings account or time deposit in any financial institution authorized to accept deposits.” Minn. Stats. §501B.86, Subd. 10 (2000).
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary’s or beneficiary’s disclaimer?** No.
- Is it necessary to appoint a guardian for a minor child to disclaim that child’s interest?** Yes.

Minnesota, cont.

25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No.

MISSISSIPPI

W. McDonald Nichols
Jackson
August 15, 1999

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. §§ 89-21-5 *et seq.* Miss. Code Ann.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts: Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones? Uniform Disclaimer of Property Interest Act.
5. Has your state made any significant alterations to the Uniform Act(s)? No.
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law?
Intestacy? 9 months after death of decedent.
Testacy? 9 months after death of testator.
Survivorship interests? 9 months after maker no longer has power to revoke, or 9 months after disclaimant learns of existence of interest, whichever is later.
Future interests? 9 months after interest vests indefeasibly.
7. When does the time period in question 6 above, begin to run? See question 6 above.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? No.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? Yes.
12. When was (were) your state disclaimer statute(s) adopted? revised? July 1, 1994.
13. Does your state require (or permit) that the disclaimer be filed with a Court? Yes.

Mississippi, cont.

14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest? Yes.
15. Does your state require (or permit) that the disclaimer be recorded in the land title records? Yes.
16. Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)? No.
17. Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors? §89-21-11 Miss. Code Ann. would protect a secured creditor, but not an unsecured creditor.
18. Does your state law permit a partial disclaimer of an interest in property? Yes.
19. How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest? See §89-21-9 Miss. Code Ann.
20. Does your state law permit the disclaimer of jointly held property? Yes.
21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? See comment.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Comment: Although there is no specific statute requiring a fiduciary to obtain judicial consent to disclaim, good practice dictates that such consent be obtained in view of general statutes regarding duties of fiduciaries to preserve assets.

25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518? No.

MISSOURI

Scot W. Boulton
St. Louis
September 13, 1999

1. **Does your state recognize disclaimers?** Yes. Disclaimers are recognized by common law and by statute, *Commerce Trust Company v. Fast*, 396 S.W.2d 683 (Mo. 1965), *Bostian v. Milens*, 193 S.W.2d 797 (Mo. App. 1946), Sections §469.010 to §469.120, R.S.Mo.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. See question 1.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** Generally 9 months by statute, but §469.110 specifically preserves all common law disclaimer rules which provides only that a disclaimer has to be made within a reasonable time of the transfer, *Cavers v. St. Louis Union Trust Co.*, 531 S.W.2d 526 (Mo. App. E.D. 1975). These rules apply to the disclaimer of all interests, including intestacy, testacy, survivorship interests, and future interests.
Intestacy?
Testacy?
Survivorship interests?
Future interests?
7. **When does the time period in question 6 above, begin to run?** From the date of transfer, except that, under §469.070, a “contingent future interest” can be disclaimed “...at any time before, or within nine months after, the beneficiaries of the interest have been fully ascertained and their interest vested.” For the purposes of the section, vested interests subject to defeasance or divestment are deemed contingent interests.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.

Missouri, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. The statutes are coordinated with §2518, IRC. As noted above common law disclaimers are still recognized.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** August 1977. The predecessor statute, §474.490 R.S.Mo. Repealed, was effective August 13, 1982.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Permissive, if the disclaimer involves an estate or property within the jurisdiction of the probate division of the circuit court, §469.020.1.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §469.030.2.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** No. The statutes are silent as to this issue, but I know of nothing that would prevent such a recordation.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. The statutes are silent as to this issue.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Interesting issue. §469.010 states in part that "For all purposes the disclaimed interest is deemed to have passed directly from the transferor to the ultimate taker or takers and is not subject to the claim of any creditor of the disclaimant. As noted, however, §469.110 provides that the disclaimer statutes do not effect the right of any person to release, disclaim, or renounce under common law. This is viewed as preserving all precedent regarding the common law right to disclaim. Under Missouri case authority, it appears that a valid common law disclaimer of a legacy or devise under a will is valid as to creditors, but that a valid common law disclaimer of an interstate interest is not valid as to creditors, *Bostian v. Milens*, 193 S.W.2d 797 (Mo. App. 1946), *Sanders v. Jones*, 147 S.W.2d 424(Mo.).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §469.050.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Yes.

Comment: §469.010 provides in part "Unless the terms of the transfer otherwise provide, the disclaimer shall cause the terms of the transfer to be applied to the disclaimed transfer and to any future interest taking effect thereafter as if the disclaimant had died immediately before the transfer".
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §469.010.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §469.010 and §461.048 R.S. Mo. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.**
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §469.010.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A

Missouri, cont.

24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Comment: §469.100 provides that a person under the age of 21 has until attaining that age to disclaim, assuming that such person has not executed a "written acceptance."

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** See answers to questions 1, 6, and 17.

MONTANA

David L. Johnson
Billings
September 15, 1999

1. **Does your state recognize disclaimers?** Yes. §72-2-811, MCA.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §72-2-811, MCA through §72-2-814, MCA.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes. §72-2-811, MCA.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. §72-2-811(2)(a), MCA.
Testacy? 9 months. §72-2-811(2)(a), MCA.
Survivorship interests? 9 months. §72-2-811(2)(b), MCA.
Future interests? 9 months. §72-2-811(2)(b), MCA.
7. **When does the time period in question 6 above, begin to run?** At death for 1st three; for future interests 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §72-2-811(1)(a), MCA. Right to disclaim applies to property or an interest in property which devolves "by whatever means."
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. §72-2-811(2)(b), MCA.

Note: All citations are to the Montana Code Annotated, abbreviated as MCA. Usual citation style is §72-2-811, MCA.

Montana, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** For *inter vivos* transfers, the disclaimer toll date is extended to 9 months after disclaimant learns of the existence of the interest.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §72-2-811, MCA.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1993; stylistic amendments in 1995 and 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §72-2-811(2)(b), MCA.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §72-2-811(1)(a), MCA. Representative may rely on a general family benefit, §72-2-811(1)(c), MCA.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §72-2-811(d), MCA. Recording is permissive.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. Statute does not address the issue. No reported case law.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §72-2-811(1)(a), MCA. Person may disclaim "in whole or in part."
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §72-2-811(4)(a) & (b), MCA.

Comment: The disclaimed interest passes as if the disclaimant predeceased the decedent, in the case of a testamentary instrument or power of appointment, and passes as if the disclaimant had predeceased the effective date of the instrument or contract, in the case of a nontestamentary instrument or contract.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. §72-2-811(c), MCA.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §72-2-811(1)(a), MCA. Right to disclaim applies to property or an interest in property which devolves "by whatever means." If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §72-2-811(4)(a), MCA. A future interest takes effect as if the disclaimant predeceased the decedent.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. §72-2-811(1)(a), MCA.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. §72-2-811(1)(c), MCA.

Montana, cont.

25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No reported cases.

NEBRASKA

Gary W. Radil
Omaha
October 15, 2002

1. **Does your state recognize disclaimers?** Yes. Neb. Rev. Stat. §30-2352 (Reissue 1995). §30-2352 “Renunciation of succession.”
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §30-2352, Chapter 30: Intestate Succession and Wills; Part 8: General Provisions.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones? Nebraska adopted the Uniform Probate Code §2-801 in 1974. The Uniform Disclaimers of Property Interests Act and the Uniform Disclaimers of Transfers by Will, Intestacy, or Appointment Act were both incorporated into §2-801 of the Uniform Probate Code.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: Nebraska adopted the Uniform Probate Code §2-801. The Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act and Uniform Disclaimer of Property Interest Act were incorporated in that Section. Although various substitutions, omissions, and additions have been made by the Nebraska legislature, such changes, in general, are not major or substantial.
6. **What is the time period within which a disclaimer must be made under your state law?** §30-2352(b).
Intestacy? See comment.
Testacy? See comment.
Survivorship interests? See comment.
Future interests? See comment.

Comment: For estate and inheritance tax determination, renunciation must be received no later than nine (9) months after the later of (i) the date the transfer creating the interest was made or (ii) the date on which such person reaches the age of twenty-one (21). All interests listed above are treated the same.

Nebraska, cont.

7. **When does the time period in question 6 above, begin to run?** §30-2352(b). The time period starts on the later of the date which the transfer creating the interest in the renouncing person is made, or if the date on which such a person reaches the age of twenty one (21), whichever the case may be.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §30-2352(a)(1). Laundry list of all transfers covered. Includes heir, devisee, donee, grantee...etc.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. All transfers listed are treated in the same respect.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §30-2352(a),(b),(c).

Comment: Both state law and federal law require that a written instrument be received no later than nine (9) months after the later of (i) the date the transfer creating the interest was made (ii) the date on which such person attains the age of twenty-one (21).

12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted: LB 354, U.P.C. 2-801 (1974); Revised: LB 650 (1978), LB 694 (1980).
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §30-2352(b). If interest rights to be renounced arose out of death of the transferor, then a copy of the renouncement must be filed in the county court where the decedent's estate proceedings are pending or would be pending.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §30-2352(a)(1). A person or the representative of a deceased, incapacitated, or protected person has the right to renounce interests.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §30-2352(b). If the interest to be renounced is real estate, then a copy of the renouncement must be recorded in the office of the register of deeds in the county where the real estate is located.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. See *Trew v. Trew*, 5 Neb. App. 255, 558 N.W.2d 314 (1996) rev'd on other grounds, 252 Neb. 555, 567 N.W.2d 284 (1997) (creditors cannot reach renounced interests).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §30-2352(a)(1). In whole or in part, or with reference to special parts, fractional shares, undivided portions, or assets.

Nebraska, cont.

19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §30-2352(c). In every case where renunciation is within the nine (9) month time period set forth in the statute, the renunciation relates back for all purposes to the date of death of the decedent or the date on which the transfer creating the interest is made. If the renunciation is not within the nine (9) month period, the interest will pass as if the person renouncing had died on the date the interest was in fact renounced.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §30-2352(a)(1). Only the surviving joint owner or the surviving joint tenant is permitted to renounce interests.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §30-2352(a)(1). The owner of an insurance contract or any incident of ownership therein has the right to renounce the interest. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §30-2352(c). Unless transferor has otherwise indicated in instrument, the interest renounced, and any future interest of possession or employment, passes as if the person renouncing had predeceased the decedent or has died prior to the date on which the transfer is made. Question of whether remaindermen would take outright depends upon terms and provisions of trust document.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes, in certain circumstances §30-2352(f).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? No. §30-2352(b).

Comment: (A) A spendthrift trust beneficiary may assign, sell, or convey his/her interest or any part of the trust upon the finding of a court that the rights of the remaining beneficiaries would not be impaired by such conveyance and no substantial benefits would be obtained by non-beneficiaries at the expense of the trust. Such finding must be made after hearing and upon notice to all beneficially interested parties. (B) An interest may be renounced at a time no later than nine (9) months from the time such person reaches the age of twenty-one (21).

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

NEVADA

Marilyn L. Skender
Reno
May 29, 2002

1. **Does your state recognize disclaimers?** Yes.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. NRS §120.010-120.090.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** NRS §120.030.
Intestacy? 9 months. Max 1 year.
Testacy? 9 months. Max 1 year.
Survivorship interests? 9 months after 1st knowledge.
Future interests? Depends on how created; 9 months. Max 1 year.

Comment: NRS §120.030. A disclaimer must be filed within a reasonable time after the person able to disclaim acquires knowledge of the interest. A disclaimer is conclusively presumed to have been filed within a reasonable time if filed in the case of intestacy or testacy within 9 months after the date of death and in the case of a transfer by *inter vivos* gift, by trust within 9 months after the interest becomes indefeasibly fixed. In other cases, within 9 months after the first knowledge of the interest is acquired by a person able to disclaim. A disclaimer is conclusively presumed not to have been filed within a reasonable time after the person able to disclaim acquired knowledge of the interest if 1 year has elapsed from the death of the person dying intestate or creating by will the interest sought to be disclaimed, or from the date of transfer by *inter vivos* gift, whether out right or in trust.
7. **When does the time period in question 6 above, begin to run?** §120.030; Time begins to run when the person able to disclaim acquires knowledge of the interest.

Nevada, cont.

8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes. §120.010.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? No.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)?
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? No.
12. When was (were) your state disclaimer statute(s) adopted? revised? Adopted: 1979 Revised: Only §120.010 was amended in 1981 and 1991.
13. Does your state require (or permit) that the disclaimer be filed with a Court? Yes. If interest created by will or intestate successor.
14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest? §120.010(4). NRS §120.010(4) defines disclaimant to include a beneficiary and his guardian, executor, administrator or general attorney in fact. However, the probate and guardianship statutes do not specifically give an executor or guardian the power to disclaim, so such an action would require court approval.
15. Does your state require (or permit) that the disclaimer be recorded in the land title records? Yes. §120.040(2).
16. Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)? Yes. (1) County Clerk where administration of estate would be proper; (2) where settlor resides.
17. Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors? No. No answer to this question under Nevada law.
18. Does your state law permit a partial disclaimer of an interest in property? Yes. §120.010(2).
19. How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest? §120.060. Interest disclaimed shall descend, go, be distributed or continue to be held as if the beneficiary disclaiming had predeceased the person creating the interest.
20. Does your state law permit the disclaimer of jointly held property? Yes. §120.010(2).
21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. §120.010(2). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. §120.060.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? Yes.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

Nevada, cont.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Nevada has no case law interpreting NRS Chapter 120.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** Unknown. No case law to determine if statute will be strictly construed.

NEW HAMPSHIRE

Ruth Tolf Ansell
Bedford
November 30, 1999

1. Does your state recognize disclaimers? Yes. RSA §563-B.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. RSA §563-B.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts: Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? Yes. RSA 563-B.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. Has your state made any significant alterations to the Uniform Act(s)? No.
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law? RSA §563-B:(2).
Intestacy? 9 months after death. RSA §563-B:(2)(I).
Testacy? 9 months after death. RSA §563-B:(2)(I).
Survivorship interests? 9 months after death. RSA §563-B:(2)(II).
Future interests? 9 months after interest is indefeasibly vested. RSA §563-B:(2)(I).
7. When does the time period in question 6 above, begin to run? See question 6 above.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes.
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? Yes.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)? If the donee does not have actual knowledge of the interest, the disclaimer must be executed within 9 months after the donee has actual knowledge of the interest. RSA §563-B:(2)(II). Also, a copy of the disclaimer of a testamentary interest must be filed with the probate court. RSA §563-B:(2)(I).
11. Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code? Yes. RSA §563-(B):(2),(III).
12. When was (were) your state disclaimer statute(s) adopted? revised? January 1, 1997 adoption.

New Hampshire, cont.

13. Does your state require (or permit) that the disclaimer be filed with a Court? Yes. RSA §563-B:(2)(I).
14. Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest? Yes. RSA §563-(B):(I).
15. Does your state require (or permit) that the disclaimer be recorded in the land title records? Yes. RSA §563-B:(2)(V).
16. Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)? No.
17. Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors? No.
18. Does your state law permit a partial disclaimer of an interest in property? Yes. RSA §563-B:(1).
19. How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest? Yes. RSA §563-B:(4).

Comment: Disclaimed interest passes as if the disclaimant had predeceased the donee of the power; or the determinative event for a future interest, or the effective date of the contract.

20. Does your state law permit the disclaimer of jointly held property? Yes. RSA §563-B:(2)(IV).
21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. RSA §563-B:(2)(II). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. Or in continuing trust as directed in instrument. RSA §563-B:(4).
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed? Yes. RSA §563-B:(4). The future interest is accelerated.
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? Yes. *In re Estate of Lamson*, 139 NH 732 (1995).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. RSA §463:29. Also, RSA §464-A (guardian for incapacitated adult).
25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518? No.

NEW JERSEY

Ann Reichelderfer
Princeton
September 14, 1999

1. **Does your state recognize disclaimers?** Yes. NJS §3B:9-1, *et seq.* and NJS §46:2E-1, *et seq.*
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. NJS §3B:9-1, *et seq.* and NJS §46:2E-1, *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes. §3B:9-1, *et seq.*
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? Yes. §46:2E-1, *et seq.*
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: New Jersey substantially adopts the Uniform Disclaimer of Transfers by Will, etc. Act but adds definitions, filing requirements and a bar for fraudulent conveyances, and deletes references to the Internal Revenue Code disclaimer requirements. Court approval is required for disclaimers by executors, trustees and guardians. Disclaimers in New Jersey must be acknowledged. Other changes of an editorial nature are made.
New Jersey has substantially adopted the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act but adds definitions, filing requirements, a requirement that disclaimers be acknowledged, and a bar to disclaim in violation of the Fraudulent Conveyance Act, and deletes references to the Internal Revenue Code requirements. Personal representatives and guardians must receive court approval to disclaim property. Other changes of an editorial nature are made.
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 Month. §3B:9-5(a).
Testacy? 9 Month. §3B:9-5(a).
Survivorship interests? 9 Month. §46:2E-6.
Future interests? 9 Month. §3B:9-5(b).

New Jersey, cont.

7. **When does the time period in question 6 above, begin to run?** §3B:9-5 and §46:2E-6; *Intestacy*—from death of decedent. *Testacy*—from death of decedent or donee of the power. *Future Interest* - from the happening of the event which determines the taker's right to possession, use or enjoyment of the property or interest. *Survivorship of Present Interests*—from the effective date of the nontestamentary instrument or of the actual knowledge of the interest. *Survivorship of Future Interests*—from the event in which the taker is finally ascertained. *Revocable Instruments*—from the date it becomes irrevocable or when the maker can no longer change the ownership.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §46:2E-1.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Disclaimers of survivorship interests need not be filed.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. Not explicitly.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1979/1981 - §3B:9-1 and 1979/1989 - §46:2E-1.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Requires.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §3B:9-4 and §46:2E-5.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Requires. §3B:9-7 and §46:2E-7.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. §3B:9-9(e) and §46:2E-9. Disclaimer ineffective if "in fraud of [disclaimer's] creditors."
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §3B:9-2 and §46:2E-2.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §3B:9-8 and §46:2E-8.

Comment: *Inter Vivos Transfers*: disclaimed property passes to those who would have taken had the disclaimant died before the date of the instrument (present interests) or died before the date when the taker of the interest became finally ascertained (future interests). *Testamentary/Intestate*: disclaimed property passes to those who would have taken had the disclaimant predeceased the decedent or the donee of the power (present interest) or died before the event by which the taker is finally ascertained (future interests).
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §46:2E-2.

New Jersey, cont.

21. Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans? Yes. §46:2E-2. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. §3B:9-8.
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer? Yes. §3B:9-4.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. Court Rule - §4:26-2.
25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No.

NEW MEXICO

James F. Beckley
Albuquerque
October 8, 2002

1. **Does your state recognize disclaimers?** Yes. §§46-10-1 to 46-10-17 NMSA (1978 Comp).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §§46-10-1 to 46-10-17 NMSA (1978 Comp).
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? §§46-10-1 to 46-10-17 NMSA (1978 Comp).
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any: New Mexico simply adopted the Uniform Disclaimer of Property Interest Act., effective July 1, 2001. This represents a substantial change from the disclaimer provisions enacted in 1993 as part of revisions to Section 2-801 of the Uniform Probate Code.
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? No set time period; but see §46-10-14 NMSA (1978 Comp) for coordination with IRC §2518.
Testacy? No set time period; but see §46-10-14 NMSA (1978 Comp) for coordination with IRC §2518.
Survivorship interests? No set time period; but see §46-10-14 NMSA (1978 Comp) for coordination with IRC §2518.
Future interests? No set time period; but see §46-10-14 NMSA (1978 Comp) for coordination with IRC §2518.
7. **When does the time period in question 6 above, begin to run?** No set time period; but see §46-10-14 NMSA (1978 Comp) for coordination with IRC §2518.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. See §§46-10-12(d) and (e), NMSA (1978 Comp).

New Mexico, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Delivery of a disclaimer of an interest in a testamentary trust must be to the trustee, or if none, to the personal representative of the decedent's estate, or if none then serving, it must be filed with a court having jurisdiction to enforce the trust. §46-10-12 (d) NMSA (1978 Comp). Delivery of a disclaimer of an interest in an *inter vivos* trust must be to the trustee, or if none, it must be filed with a court having jurisdiction to enforce the trust; or if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest. §46-10-12 (e) NMSA (1978 Comp).
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §46-10-14 NMSA (1978 Comp.)
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted effective July 1, 2001.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** A Court filing may be required under §46-10-12 NMSA (1978 Comp) to accomplish the delivery required under §46-10-5 (c) NMSA (1978 Comp).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §46-10-5 NMSA (1978 Comp).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes, it is permitted, but not required. §46-10-15 NMSA (Comp).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** Yes. It is permitted, but not required. §46-10-15 NMSA (1978 Comp).
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** None to my knowledge.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §46-10-5 (d) NMSA (1978 Comp).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Under §46-10-6(b)(3) NMSA (1978 Comp), the identity of the taker is determined under the Uniform Probate Code.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §46-10-7 NMSA (1978 Comp).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §46-10-5 and 6 NMSA (1978 Comp). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** See §46-10-5 and 6 NMSA (1978 Comp),
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Except that a future interest held by the disclaimant is not accelerated in possession or enjoyment. §46-10-6(b)(4) NMSA (1978 Comp).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

New Mexico, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** No. §46-10-13 (f) NMSA (1978 Comp.); But see §46-10-14 NMSA (1978 Comp) for recognition of tax qualified disclaimers complying with IRC §2518.

NEW YORK

John J. Barnosky
Uniondale
May 29, 2002

1. **Does your state recognize disclaimers?** Yes.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Estates, Powers and Trusts Law (“EPTL”) §2-1.11.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any: The New York statute predates the Uniform Acts.
6. **What is the time period within which a disclaimer must be made under your state law?** All interests must be renounced within nine months of the effective date of a disposition. EPTL §2-1.11(a)(2).
Intestacy?
Testacy?
Survivorship interests?
Future interests?
7. **When does the time period in question 6 above, begin to run?** (1) Will: Date of death of Testator. (2) The exercise or non-exercise of a testamentary power of appointment: Date of death of the holder of the power of appointment. (3) The exercise of a presently exercisable power of appointment: Date of exercise of the power of appointment. (4) Intestate distribution: Date of death of the intestate ancestor. (5) Totten Trusts: Date of death of the creator of the trust account. (6) Life insurance or an annuity contract: Date of death of the insured or the annuitant. (7) Joint tenancy or a tenancy by the entirety: Date of death of the other joint tenant or tenant by the entirety. (8) Employee benefit plan: Date of death of the employee. (9) Trust agreement: Date of the Trust Agreement. (10) Disposition created by renunciation of another: Date of the renunciation. (11) Any other testamentary or nontestamentary instrument, or by operation of law: Date of the event by which the beneficiary is finally ascertained. (12) Future estate: Date on which it becomes an estate in possession. Authority—EPTL §2-1-11(a)2.

New York, cont.

8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. EPTL §2-1.11(A)1.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Differences in effective date. See question 7 above. Also, Supreme Court has concurrent jurisdiction over lifetime trusts, thus in such cases the renunciation may be filed in Supreme Court as well as Surrogate's Court. EPTL §2-1.11(b)2.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1964, as to intestacy, Decedent Estate Law §87-a (L. 1964, ch.94); 1966, DEL §87 was transformed into EPTL 4-1.3. 1971, codified the common law relating to the renunciation of will dispositions EPTL §3-3-10. 1977, EPTL §2-1-11 enacted largely in the present form. 1978, EPTL §2-1.11(j), added specifically providing that the New York estate tax law must be applied to determine the validity of renunciations. 1980, to conform to IRS §2518, made a renunciation irrevocable, and reduced the filing period to nine months.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. EPTL §2-1.11(b)(2) requires that the renunciation be filed in the office of the clerk of the court having jurisdiction over the will or trust agreement. The renouncing party must also file an affidavit stating that no person whose interest will be accelerated has paid the disclaimant any consideration for the renunciation.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. A renunciation on behalf of an infant, incompetent, conservatee or a decedent may be made by the guardian, committee, conservator or personal representative if authorized by the court having jurisdiction. EPTL §2-1.11(c).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Renunciations are permitted but not required to be recorded in the land title records, if acknowledged.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. Case law generally allows renunciations even when purpose is to keep a bequest beyond the reach of creditors. *Matter of Schiffman*, §105 Misc.2d 1029 (1980). The courts have made certain exceptions: (a) Joint Tenancy exception: EPTL §2.1.11(b)(1) expressly prohibits a surviving joint tenant or tenant by the entirety from renouncing that portion of an interest in the joint property that he contributed. Thus, a surviving joint tenant cannot evade creditors by renouncing an interest that was his to begin with. (See *In re Lastella*, §113 Misc.2d 702). (b) Medicaid exception: While a person may renounce a testamentary or intestate disposition, if by doing so one creates one's own neediness by refusing a readily available resource, such renounced property will be considered an available resource for purposes of ,

New York, cont.

calculating Medicaid eligibility. In *In re Molloy*, 5214 A.D.2d 171, 631 N.Y.S.2d910 (2d Dept. 1995). (c) Federal Tax Lien exception: In *In re Adler*, 869 F.Supp. §1021 (E.D.N.Y. 1994), federal tax liens were held to attach to the proceeds of a wrongful death action to which the taxpayer was entitled, despite taxpayer's renunciation of such proceeds.

18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. EPTL §2-1.11(e).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** A renunciation has the same effect as if the renouncing person had predeceased the creator unless otherwise provided by the creator of the disposition. EPTL §2.1.11(d).
20. **Does your state law permit the disclaimer of jointly held property?** Yes. But EPTL §2-1.11(b)(1) provides that a surviving joint tenant can only renounce that part of a joint tenancy that was contributed by the decedent. See also EPTL §2-1.11(j) which provides that the New York estate tax law be applied to renunciations of joint property, and the New York estate tax law provides, in turn, that the rules set forth in IRS §2518 shall govern.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. EPTL §2-1.11(a)(1). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. But a person cannot accelerate her own future interest. If a person who has a present interest and a future interest renounces her present interest, she is deemed to have renounced her future interest to the same extent. EPTL §2-1.11(d).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** While a fiduciary may renounce the interest of a decedent only with the permission of the Court (*In re Deitch's Estate*, §106 Misc.2d 690, 435 N.Y.S. 2d 244), no such consent is required for competent adult beneficiaries.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** There is limited authority. In *In re Witz*, §95 Misc.2d 36, 406 N.Y.S.2d 671, the Surrogate's Court upheld a renunciation that did not comply with what is now EPTL §2-1.11, but did comply in all respects with the requirements of the Internal Revenue Code disclaimer provisions.

NORTH CAROLINA

Maria M. Lynch
Raleigh
October 6, 1999

1. **Does your state recognize disclaimers?** Yes. Chapter 31B N.C. Gen. Stat.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. N.C. Gen. Stat. §§31-B-1 to-7.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? Yes. §§31B-1 to-7.
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** Yes. Broader category of interests may be disclaimed.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? Qualified disclaimer; federal period; if none, nine months. §31B-2(a).
Testacy? Qualified disclaimer; federal period; if none, nine months. §31B-2(a).
Survivorship interests? Qualified disclaimer; federal period; if none, nine months. §31B-2(a).
Future interests? Six months. §31B-2(b).
7. **When does the time period in question 6 above, begin to run?** Qualified disclaimer based on federal law; future interest: date taker ascertained. §31B-2.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** No.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?**
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §31B-2.

North Carolina, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted: 1975. Revised: 1983, 1989, 1998.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §31-B(2)(c).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §31-B-1 and §31B-1(a)(9d),(10).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §31B-2(d).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §31B-1(a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §31B-3.

Comment: Qualified disclaimer: as if renouncer predeceased. Nonqualified: as if renouncer died on date renunciation filed.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. §31B-1(a)(9a).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §31B-1(a)(5), (9c). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** §31B-5. Comment: Case law recognizes disclaimers effected by separation agreements.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §31B-3(a)(3). Case law indicated otherwise; statute amended; no subsequent decision.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. §31B-1(a)(9d). Consent required for disclaimer by guardian only.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. §31B-(a)(9d).
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. Statute permits disclaimer of fiduciary powers. §31B-1A. Statute expressly recognizes nonqualified disclaimers, §§31B-1(b); -3(a)(2); -4(e).
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. §31B-5.

NORTH DAKOTA

Wesley A. Argue
Hamilton
August 31, 1999

1. **Does your state recognize disclaimers?** Yes. NDCC §30.1-10-01.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. NDCC §30.1-10-01.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts?** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? Uniform Disclaimer of Property Interest Act.
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** Generally 9 months. NDCC §30.1-10-01.
Intestacy? 9 months after decedent's date of death.
Testacy? 9 months after decedent's date of death.
Survivorship interests? 9 months after effective date of the nontestamentary instrument or contract. Effective date is date on which maker no longer has the power to revoke or transfer to another the entire ownership of the interest.
Future interests? 9 months after interest finally ascertained and interest indefeasibly vested.
7. **When does the time period in question 6 above, begin to run?** Date of death except for future interests where it is the date the interest is finally ascertained or indefeasibly vested. If the interest is created by way of a nontestamentary instrument or contract, this creates a present interest not later than 9 months after the effective date of its creation or 9 months after the person learns of the existence of the interest, whichever is later. If a future interest is created in nontestamentary interest or contract, not later than 9 months after the event determining the taker of the property or interest is fully ascertained and the interest is indefeasibly vested.

North Dakota, cont.

8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. NDCC §30.1-10-01.
 9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Recipient has 9 months after the discovery of the existence of the interest in which to disclaim present interest of an *inter vivos* transfer.
 10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Surviving joint tenant may disclaim after death if joint tenancy is created by decedent and survivor did not join in its creation or accept any benefits under it. Any revocable beneficiary or other survivorship designation is not a completed transfer which must be disclaimed. When a revocable beneficiary is designation or survivorship designation become *irrevocable*, the disclaimer provisions become applicable.
 11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** There is no specific reference to §2518 IRC, but the time frame is identical.
 12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1973, 1977, 1979, 1983, 1991, 1993 and 1995.
 13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Filing required.
 14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. NDCC §30.1-10-01.
 15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Not required, but permitted.
 16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No mention in statute of other public offices.
 17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. NDCC §50-24.1-02. Disclaimer considered a disqualifying transfer for Medicaid purposes.
 18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
 19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** Interstate succession laws apply.
 20. **Does your state law permit the disclaimer of jointly held property?** Yes.
 21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
 22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
 23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
 24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.

North Dakota, cont.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** May be possible. §30.1-1-01(6) states: “This section does not abridge the right of a person to waive, release, disclaim, or renounce property or any interest therein under any other statute.” This may include federal, as well as state statutory law.

OHIO

Barry R. Robinson
Columbus
February 28, 2000

1. **Does your state recognize disclaimers?** Yes. Disclaimers are recognized by statute §1339.68. The procedures established by the statute "...are in addition to, and do not exclude or abridge, any other rights or procedures existing under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property." §1339.68(N). Before enactment of the original disclaimer statutes, Ohio case law followed the common law rules that a person may not disclaim an interest that passes by interstate succession, *Wallace v. McMicken*, 2 Disn 564, 13 Ohio Dec. Rep. 537 (Superior Ct. Cincinnati 1859); but, that a person may disclaim an interest that passes by testacy, *Brown v. Routzahn*, 63 F.2d 914 (6th Cir. 1933); and, that a person may disclaim an interest in joint and survivorship bank accounts and stock certificates, *In re Krakoff's Estate*, 179 N.E.2d 566, 87 Ohio Law Abs. 387, 18 O.O.2.d 116 (Franklin County P. Ct. 1961).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §1339.68.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?** Not applicable. For discussion of Ohio common law, see question 1 above.

Under common law can you disclaim intestacy interest?

Under common law can you disclaim testacy interest?

Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.

(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?

(2) Uniform Disclaimer of Property Interest Act?

(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?

If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A

Describe alterations, if any: N/A
6. **What is the time period within which a disclaimer must be made under your state law?** See question 7, below, for date when time period begins to run.

Intestacy? Nine (9) months. §1339.68(D).

Testacy? Nine (9) months. §1339.68(D).

Survivorship interests? Nine (9) months. §1339.68(D).

Future interests? Nine (9) months. §1339.68(D).

Ohio, cont.

7. **When does the time period in question 6 above, begin to run?** The later of (i) the date of the event when the taker and the taker's interest are ascertainable (i.e. the effective date of an irrevocable trust or the date of a decedent's death) or (ii) the date the disclaimant attains twenty-one or is no longer incompetent.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §1339.68(A)(1)(b), (F)(1),(G)(3).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. See question 10, below.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** (a) Time period to disclaim an *inter vivos* transfer begins on the effective date of the donative instrument §1339.68(D)(1), while time period to disclaim a testamentary transfer begins on the date of decedent's death §1339.68(D)(2).

(b) Disclaimer of an *inter vivos* transfer is to be delivered to the trustee or other person who has legal title to or possession of the property disclaimed §1339.68(F)(1), while a disclaimer of a testamentary transfer is to be filed in the probate court where the decedent's estate is being administered with a signed copy to be delivered to the personal representative of the decedent's estate §1339.68(F)(2).

(c) If the property disclaimed is an *inter vivos* transfer it will pass if the disclaimant had died before the effective date of the donative instrument §1339.68(G)(3), while if the property disclaimed is a testamentary transfer it will pass as if the disclaimant predeceased the decedent §1339.68(G)(3).
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. In the sense that, if all of the requirements of the statute are met, then all of the requirements under §2518 of the Internal Revenue Code are met, as well.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Current statute was adopted effective September 27, 1976; and was amended effective March 23, 1981, April 4, 1985, December 17, 1986 and March 22, 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. But only disclaimers of interests created by testamentary instruments or intestate succession must be filed in the probate court §1339.68(F)(2),(3).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §1339.68(B)(1), (4). But only if the disclaimant is not "... a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest..." and, the disclaimant obtains the consent and an order of the probate court that has jurisdiction of the estate that finds upon hearing and after notice to all interested parties that the disclaimer (i) is in the best interests of the estate and of those who will take the disclaimed interest and (ii) would not materially, adversely effect the beneficiaries, minor or incompetent after taking into consideration certain relevant factors.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. But only if the interest disclaimed is an interest in real estate §1339.68(F)(4).

Ohio, cont.

16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. But, see answers to questions 13 and 15, above.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. See *Stein v. Brown*, (Ohio 1985) 18 Ohio St.3d 305, 480 N.E.2d 1121; and, *In re Betz* (Bkrcty.N.D. Ohio 1987) 84 B.R. 470.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §1339.68(B)(1),(2),(3)(b).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Both in presence and absence of a direction in the donative instrument, the taker of the disclaimed interest shall be determined: as if the disclaimant had predeceased the decedent, in the case of a testate or intestate succession; and, in the case of a nontestamentary transfer, as if the disclaimant had died before the effective date of the nontestamentary instrument §1339.68(G).

20. **Does your state law permit the disclaimer of jointly held property?** Yes. §1339.68(A)(1)(a). Also, see §1109.73 as to partition of jointly held property.
21. **Does your state permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §1339.68(A)(2). But only to the extent included in general definition of "property" under statute as meaning all forms of property, real and personal, tangible and intangible. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** The disclaimer rights and procedures under the statute are in addition to, and do not exclude or abridge, any other rights or procedures existing under any other Ohio statute or at common law to assign, convey, release, refuse to accept, renounce, waive or disclaim property §1339.68(N). For example, depending upon the circumstances, a disclaimer may be effective under common law even though it may not have been signed before the time period specified under §1339.68(D) expired, or, it may not have been delivered, filed or recorded in the manner specified under §1339.68(F). Also, depending upon the circumstances, such a common law disclaimer may result in an acceleration of a remainder interest under common law. But, it is unclear whether such a common law disclaimer would result in a statutory acceleration of a remainder interest under §1339.68(G).
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** (a) Yes. §1339.68(G). But not if the donative instrument expressly prohibits the acceleration of remainders and other interests if there is a disclaimer. (b) Yes. §1339.68(G). But only if outright distribution is consistent with the provisions of the donative instrument.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Fiduciary's disclaimer: Yes. §1339.68(B)(4). But only if the fiduciary is a guardian of the estate of a minor or incompetent, or, the personal representative of a decedent's estate. Beneficiary's disclaimer? No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. §1339.68(B)(4).

Ohio, cont.

25. Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.
26. Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? Yes. §1339.68(N).

OKLAHOMA

Mark R. Gillett
Norman
November 1, 1999

1. **Does your state recognize disclaimers?** Yes. 60 §751-759 and 84 §22-26. There are separate provisions for lifetime and testamentary disclaimers.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. 60 §751-759 and 84 §22-26.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. 84 §24.
Testacy? 9 months. 84 §24.
Survivorship interests? 9 months. 60 §753 and 84 §24.
Future interests? 9 months. 60 §753 and 84 §24.
7. **When does the time period in question 6 above, begin to run?** Not until interest is indefeasibly fixed both in quality and quantity.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. 84 §22-26.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. No significant differences.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No. The period of disclaimer for state purposes may extend beyond federal period.

Oklahoma, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1973, 1979, 1988.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. Required, 60 §754 and 84 §25.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. 60 §752 and 84 §23.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Required. 60 §754 and 84 §25.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?**
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. 60 §752 and 84 §23.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** 60 §755 and 84 §26.

Comment: As if the disclaimant had died immediately before the event which caused him to be finally ascertained as a beneficiary and his interests to become indefeasibly fixed both in quality and quantity.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. 60 §751(3).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. 60 §751(1)(2). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** See *Thomsen v. Thomsen*, 166 P.2d 417 (OK 1946). The question is not resolved, but the answer is probably.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. 60 §752 and 84 §23.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. 60 §752 and 84 §23. It is optional to obtain judicial consent.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No. *Matter of Griffin's Estate*, §599 P2d 402(1979).

OREGON

Laurie Neilson Lee
Portland
November 1, 2002

1. **Does your state recognize disclaimers?** Yes. By statute. See response to question 2.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. ORS §105.623 to 105.649 (Note: ORS §105.625-640 and ORS §112.650-667 have been repealed).
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts?** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No. (Repealed 2001).
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No. (Repealed 2001).
If yes, which ones? Uniform Disclaimer of Property Interest Act (1999).
5. **Has your state made any significant alterations to the Uniform Act(s)?** Yes.
Describe alterations, if any: Most significant alterations are elimination of time periods and protection of state's recovery for public assistance payments (disclaimer not effective to prevent recovery). ORS §105.629(1): See question #6 and response re time limits. ORS §105.648: See question #17 and response re state claims. ORS §105.629(3): Requirements for effective disclaimer are modified.
6. **What is the time period within which a disclaimer must be made under your state law?** None.
Intestacy? None.*
Testacy? None.*
Survivorship interests? None.*
Future interests? None.*
Comment: *There is no time limit unless barred by written waiver, acceptance, assignment, conveyance, encumbrance, pledge or contract to do so before a disclaimer becomes effective. ORS §105.629.
7. **When does the time period in question 6 above, begin to run?** N/A.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.

Oregon, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. ORS §105.645.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 2001, effective January 1, 2002.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Court filing required only if interest to be disclaimed is created under law of intestate succession or by will and there is no personal representative (or in the case of a testamentary trust, no trustee) serving. ORS §105.642(3)(b) and (4)(b).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes with respect to executor (personal representative) and conservator, ORS §105.629(2); but a conservator must first obtain court approval. ORS §125.440(4).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. Recording permitted for interest in or power over property. ORS §105.646.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. With the exception of ORS §105.648, prohibiting disclaimers to prevent the state from recovering money or property for public assistance payments under ORS §411.620.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. ORS §105.629(4).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** ORS §105.633(2)(c) and (d).

Comment: “(c) If the instrument creating the interest does not contain a provision described in subsection (2) of this section, the following rules apply:

“(A) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the decedents of the disclaimant who survive the time of distribution.

“(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

“(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.” (See also question #22 and response).”

20. **Does your state law permit the disclaimer of jointly held property?** Yes. ORS §105.634 describes the interest a surviving holder of a jointly held property may disclaim, in whole or in part: the greater of the disclaimant's pro rata share of the joint property or all of the property except the portion attributable to the disclaimant's contributions.

Oregon, cont.

21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. ORS §105.624(1), (6), and (7). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** Death of insured, account owner, securities owner, or holder of IRA or qualified plan. Also, a sale or gift of such contractual rights. Further, Oregon recognizes disclaimers effective under a law other than ORS §105.623 to 105.649. ORS §106.628.
22. Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright? Yes. ORS §105.633(2)(d) provides for acceleration of future interests by disclaimer, except future interests of disclaimants are not accelerated. (See also question #19 and response).
23. If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. With exception of conservator. ORS §125.440(4).
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? A conservator should be appointed and judicial consent obtained.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. "[I]f as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of the Internal Revenue Code...as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under ORS §105.623 to §105.649."

PENNSYLVANIA

Kenneth J. Levin
Philadelphia
October 21, 1999

1. **Does your state recognize disclaimers?** Yes. By statute. See response to question 2.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. 20 Pa.C.S. §§6201, *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes. Uniform Disclaimer of Property Interests Act.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** Yes. There are numerous modifications. The most significant is that there is no time limit for disclaiming. The provision of the Uniform Act that the right to disclaim does not survive the death of the person having it is omitted from the Pennsylvania Act and a provision authorizing the disclaimer by the personal representative of a deceased person is added. The following Section describing "Interests Subject to Disclaimer" for which there is no counterpart in the Uniform Act is added: §6203. INTERESTS SUBJECT TO DISCLAIMER: A disclaimer in whole or in part may be made of any present or future interest, vested or contingent, including a possible future right to take as an appointee under an unexercised power of appointment or under a discretionary power to distribute income or principal.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** Generally there is no time limit for making a disclaimer. It need only be made prior to acceptance of an interest. To bar a disclaimer, acceptance must be affirmatively proved. The mere lapse of time, with or without knowledge of the disclaimant, does not constitute an acceptance. However, the acceptance of part of a single interest will bar a subsequent disclaimer of the balance of that interest if a part of the interest is accepted after the expiration of six months from: (a) the death of the decedent in the case of an interest that would have devolved by will or intestacy; or (b) the effective date of the transfer in the case of an interest that would have devolved by an *inter vivos* transfer or third party beneficiary contract. The acceptance of a part of a single interest is not a bar to a disclaimer of any other interest.

Pennsylvania, cont.

Intestacy?

Testacy?

Survivorship interests?

Future interests?

7. **When does the time period in question 6 above, begin to run?** See response to question 6.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Only as to the time for making the disclaimer (see response to question 6 above) and the necessity for filing the disclaimer with the Clerk of the Orphans' Court in the case of a transfer by will or intestacy. See response to question 19.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** There is no specific coordination with §2518. However, the Official Comment indicates that the statute is not intended to bar any disclaimer which would be allowed by §2518.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** The statute was adopted in 1976 and revised in 1984 and 1994.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Pennsylvania does require that the disclaimer of an interest passing by will or intestacy be filed with the Court. It is required to be filed with the Clerk of the Orphans' Court Division of the county where the decedent died domiciled, or if the decedent was not domiciled in Pennsylvania, in the county where the property involved is located.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Pennsylvania does not require but does permit that a disclaimer be recorded in the land title records.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. It has been held that an insolvent beneficiary may not disclaim because his disclaimer would constitute a fraudulent conveyance under §4 of the Uniform Fraudulent Conveyance Act. *Centrella Estate*, 20 D.&C.2d 344 (Orphans' Ct. Phila. 1960).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.

Pennsylvania, cont.

19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** The identity of the taker of the disclaimed interest in the absence of a direction is determined as though the disclaimant died before the decedent in the case of a transfer by will or intestacy or before the effective date of the transfer in the case of an *inter vivos* transfer, subject to two modifications: (a) the fact that the disclaimant actually survived is recognized for purposes of determining whether other parties take equally or by right of representation; or (b) if, as a result of the disclaimer, the property passes to a fund in which the disclaimant has an interest or power, the disclaimant retains the interest or power in the augmented fund.
20. **Does your state law permit the disclaimer of jointly held property?** Pennsylvania does permit disclaimer of jointly held property. It is not absolutely explicit on the issue of whether it permits the disclaimer of property held as tenants by the entireties, but the clearly more appropriate interpretation is that it does permit such a disclaimer.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Absent a contrary intent in the dispositive instrument.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** An executor may be permitted to disclaim without court approval if the will so provides. A disclaimer by any other fiduciary must be approved by the court. A guardian of a minor is required in order to disclaim the minor's interest.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** (a) There are specific requirements which must be met in order to permit disclaimer by a fiduciary, except in the case of an executor whose disclaimer is authorized by the will. The court must find that the disclaimer is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of a decedent, the creditors of a minor, or the incapacitated person or his creditors, as the case may be. (b) The fact that the disclaimant retains all interests and powers in funds to which the disclaimed property passes creates a risk: (I) that the disclaimer will be invalid under §2518 in the case of a spouse who has a special power of appointment in the fund to which the disclaimed property passes in the absence of a disclaimer of such power
(ii) that the disclaimer will be invalid in the case of a non-spouse unless a further disclaimer is made with respect to all interests and powers of the disclaimant in the assets augmenting such a fund (e.g. a trust).
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?**

RHODE ISLAND

David T. Riedel
Providence
September 24, 1999

1. **Does your state recognize disclaimers?** Yes. Common Law Rule. Rhode Island apparently recognizes the common law rule. See *Webster v. Wiggin*, 19 R.I.73, §31A.824 (1895).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. R.I.G.L. §34-5-1 *et seq.*
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones? N/A
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** 9 months.
Intestacy? 9 months.
Testacy? 9 months.
Survivorship interests? 9 months.
Future interests? 9 months.* R.I.G.L. §34-5-5.
7. **When does the time period in question 6 above, begin to run?** Date of Death for testamentary instrument; Date of instrument for intestamentary instrument.*
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. See question 7 above; R.I.G.L. §34-5-6.

Note: *If a future interest, not later than nine (9) months after the event determining that the taker of the interest is in possession of it. R.I.G.L. §34-5-5(a)(2).

Rhode Island, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** Place of filing disclaimer; Probate Court for testamentary interests, Superior Court for nontestamentary interests; Land Records Office, in addition, for interests in real estate. R.I.G.L. §34-5-6.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. R.I.G.L. §34-5-5. Note the I.R.C. §2518 contains no specific provisions regarding future interests.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** R.I.G.L. §34-5-5(a)(2) appears to be inconsistent.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. R.I.G.L. §34-5-2(b) and R.I.G.L. §34-5-3.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. R.I.G.L. §34-5-6(a)(2) as to a disclaimer if an interest in real estate.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. As to testamentary interests filing is required with probate Court; as to nontestamentary interests filing required with Superior Court. R.I.G.L. §34-5-6(a)(1). See answers to questions 13 and 15 above.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. R.I.G.L. §34-5-10; §34-5-8(c).
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. R.I.G.L. §34-5-1(2).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** R.I.G.L. §34-5-8(b) provides: Unless the will or *inter vivos* instrument creating the interest in property so disclaimed provides for another disposition of the interest, the interest shall pass in the same manner as if the disclaimant had died immediately preceding the event determining that he, she, or it is the beneficiary of the interest. If a disclaimer relates to an interest disposed of by a particular provision of the will or *inter vivos* instrument, then the interest so disclaimed shall pass in the same manner as if the disclaimant had died immediately preceding the event determining that he, she, or it is the beneficiary of that interest, but only for the purposes of that provision and the interest may pass to or for the benefit of the disclaimant under other provisions of the will or *inter vivos* instrument. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest shall take effect in the same manner as it would have if the disclaimant had died immediately preceding the event determining that he, she, or it is the beneficiary of the disclaimed interest. The disclaimer shall relate back for all purposes to that date.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. R.I.G.L. §34-5-2(a)(2) and §34-5-5(a)(2).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. R.I.G.L. §34-5-3(a)(2). If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. R.I.G.L. §34-5-8(b).

Rhode Island, cont.

23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. As to guardians and conservators if an incompetent beneficiary and executors and administrators of the estate if a deceased beneficiary. See R.I.G.L. §34-5-3.
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** Yes. R.I.G.L. §34-5-2(b).
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518?** No.

SOUTH CAROLINA

Keith G. Meacham
Greenville
January 20, 2000

1. **Does your state recognize disclaimers?** Yes. §12-16-1910 and §62-2-801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §12-16-1910 and §62-2-801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** §12-16-1910 refers to Internal Revenue Code §2518.
Intestacy?
Testacy?
Survivorship interests?
Future interests?

Comment: The timeliness of a disclaimer is determined by reference to Internal Revenue Code §2518.
7. **When does the time period in question 6 above, begin to run?** §12-16-1910 refers to Internal Revenue Code §2518. The timeliness of a disclaimer is determined by reference to Internal Revenue Code §2518.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §62-2-801(a).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Yes. §62-2-801(e). A disclaimer relates back to the date of effectiveness of the disclaimed interest, which is defined differently for testamentary and *inter vivos* transfers.

South Carolina, cont.

10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** §62-2-801(e). The disclaimer relates back to the date of effectiveness of the disclaimed interest, which is defined differently for testamentary and *inter vivos* transfers.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §12-16-1910. Refers to Internal Revenue Code §2518.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** §12-16-1910 in its present form became effective with respect to decedents dying after June 30, 1991. §62-2-801 in its present form became effective January 1, 1992.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** No. Not addressed by statute. However, Disclaimers can be filed with the Court.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §62-2-801(a).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** No. Not addressed by statute. However, Disclaimers can be recorded in land title records.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. Not addressed by statute.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §62-2-801(a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §62-2-801(d). State law provides that the disclaimant is treated as having predeceased the date of effectiveness of the transfer creating the interest.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §62-2-801(a). State law allows disclaimer of property transferred by "survivorship provision."
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §62-2-801(a). State law allows disclaimer of property transferred "by any means whatsoever" including by contract or beneficiary designation. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.**
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §62-2-801(d). Unless the transferor has provided otherwise.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. §62-2-801(g).
Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? See comment §62-2-801.

South Carolina, cont.

Comment: Court approval is required for a personal representative, trustee, or similar fiduciary to disclaim a power granted to such fiduciary. Judicial consent is not required for a beneficiary's disclaimer. The disclaimer section does not address the issue of appointing a guardian to disclaim a child's interest; however, a guardian does have authority to execute a disclaimer.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No. State law only recognizes disclaimers which are valid under Internal Revenue Code §2518.

SOUTH DAKOTA

Raymond M. Schutz
Aberdeen
August 20, 1999

1. **Does your state recognize disclaimers?** Yes. SDCL §29-A-2-801.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. SDCL §29-A-2-801.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Modeled on UPC §2-801.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any: N/A
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months after death of intestate.
Testacy? 9 months after death of testator.
Survivorship interests? Not later than 9 months after decedent's death.
Future interests? Not later than 9 months after taker's interest is vested.
7. **When does the time period in question 6 above, begin to run?** After the event determining that the taker is finally ascertained and the taker's interest is indefeasibly vested.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** Testamentary within 9 months from death. *Inter vivos* within 9 months of date of transfer.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** See above.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No. South Dakota statute is broader than federal.

South Dakota, cont.

12. **When was (were) your state disclaimer statute(s) adopted? revised?** SL 1995 and Revised SL 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Anti lapse statute if relative (SDCL §29A-2-603 & 604), if not relative of testator, §29A-2-604 - provider goes to residing clause.
20. **Does your state law permit the disclaimer of jointly held property?** Yes.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No statutes or cases.

TENNESSEE

James J. McMahon
Memphis
October 11, 1999

1. **Does your state recognize disclaimers?** Yes. T.C.A. §31-1-103.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. T.C.A. §31-1-103.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. T.C.A. §31-1-03(b) (2).
Testacy? 9 months. T.C.A. §31-1-03(b) (2).
Survivorship interests? 9 months. T.C.A. §31-1-03(b) (2).
Future interests? 9 months. T.C.A. §31-1-03(b) (2).
7. **When does the time period in question 6 above, begin to run?** §31-1-103(b) (2) (A) and (B). Later of date of transfer or attaining age 21.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §31-1-103(a) (1)-(7).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**

Tennessee, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. State statute has no provision similar to IRC §2518(c) (3). "Certain Transfers Treated as Disclaimers."
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1977, Revised 1978, 1986 and 1995.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §31-1-130(b) (2). Yes. If it involves an interest in a decedent's estate. Otherwise, No.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §31-1-103 (a).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §31-1-103(b) (2). Required if disclaimed property is realty.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** 42 USC §1396p (e) (1), *Tannler v. State Dept. of Health*, 557 N.W.2d 434 (CA9) *In Re Estate of Heater*, 640 N.E2d 654 (III App.9). It is believed TennCare (Medicaid) would disregard an applicant's disclaimer of assets due to the law changes in OBRA 1993.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §31-1-103(a).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §31-1-103(c).

Comment: Unless otherwise indicated by will, the interest disclaimed passes to those persons including those who would take under §32-3-105, as if the person disclaiming had predeceased the decedent. Unless otherwise indicated in the document evidencing the gift or creating the power, the interest passes as if the person disclaiming died intestate; if the person disclaiming would take pursuant to a power of appointment, as if the person disclaiming had predeceased the donor of the power.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. If disclaimant did not contribute such property; and No, if tenancy by the entireties.
 21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §31-1-103(a) (7). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
 22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §31-1-103(c).
 23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
 24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. §31-1-103(a).
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** No. §31-1-103(a).

Tennessee, cont.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state? No.**
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, *e.g.*, disclaimers similar to those provided for in § 2518? No.**

TEXAS

C. Boone Schwartzel
Houston
October 10, 2002

1. **Does your state recognize disclaimers?** Yes. TEX. PROB. CODE §37A (Vernon Supp. 1999) (Probate disclaimers statute); TEX. PROP. CODE §112.010 (Vernon 1995) Trust disclaimer statute); see also TEX. PROB. CODE §37B (Assignments of property received from decedent).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. See question 1 above.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?** While Texas has no specific disclaimer statute governing gifts (other than the trust disclaimer statute), Texas does follow the common law rule that a gift is not complete until accepted. Moreover, Texas disclaimer statutes generally prohibit disclaimers after acceptance, and thus it is doubtful whether a person who accepts benefits from a trust or other arrangement prior to attaining age 21 can subsequently disclaim as allowed under U.S. Treas. Regs. §25.2518-2(d)(3). See TEX. PROB. CODE §37 (g); TEX. PROP. CODE §112.010 (c-1). No case has considered whether distributions during minority constitute an “acceptance” by the minor.

Under common law can you disclaim intestacy interest?

Under common law can you disclaim testacy interest?

Under common law can you disclaim will substitutes?

4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
 - (1) **Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?** No.
 - (2) **Uniform Disclaimer of Property Interest Act?** No.
 - (3) **Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?** No.

If yes, which ones?

Comment: I have not compared Texas’ statute to the various Uniform Acts. However, the relevant Uniform Acts do not list Texas as one of the states having adopted some version of the Uniform Acts.

5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A

Describe alterations, if any:

6. **What is the time period within which a disclaimer must be made under your state law?**

Intestacy? 9 months of death.

Testacy? 9 months of death.

Survivorship interests? 9 months of death.

Future interests? 9 months of vesting.

Texas, cont.

Comment: Except for charitable organizations or governmental agencies of the state (which have 9 months after notice of their bequests pursuant to TEX. PROB. CODE §128A), disclaimers of property passing from a decedent must have been made (I) for present interests, within 9 months after the date of death, and (ii) with respect to future interests, within 9 months “after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.” TEX. PROB. CODE §37A (a). The Texas trust disclaimer statute refers to the probate laws for disclaimers under testamentary trusts. TEX. PROP. CODE §112.010 (b). As respects disclaimers of interests in *inter vivos* trusts, the time period is 9 months after the date of the transfer creating the interest in the beneficiary except (I) future interests can be disclaimed within nine months of vesting as under the probate law and (ii) beneficiaries under age 21 have nine months after attaining age 21. TEX. PROP. CODE §112.010 (c-2).

7. **When does the time period in question 6 above, begin to run?** See question 6 above.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. Trust Disclaimer statute deals with gifts.

Comment: As mention above, as respects interests under *inter vivos* trusts, the trust disclaimer statute permits persons who have not attained age 21 to disclaim within 9 months after attaining age 21. Of course, the filing requirements of the two statutes are slightly different for testamentary and *inter vivos* trusts.

9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** See question 8 above.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** See question 8 above.
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Not entirely. Texas’ probate disclaimer statute requires a disclaimer to be filed in the probate court in which the administration of the decedent’s estate is pending. In some cases, such as when the administration of the estate has been closed, when more than a year has passed since the opening of an independent administration, and when no administration has been opened, a disclaimer must be filed in the deed records of the county in which the decedent resides (or in the case of non-resident decedents, in the county in which the decedent owned an interest in real property). TEX. PROB. CODE §37A (a). A copy of the disclaimer must be delivered to the personal representative of the estate. TEX. PROB. CODE §37A (b). Under Texas’ trust disclaimer statute, the disclaimer is to be delivered to the trustee. TEX. PROP. CODE §112.010 (c-2).
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Probate - 1971 (plus numerous amendments). Trust - 1984 (plus amendments).
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. In some cases, see question 11 above.

Texas, cont.

14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. With court approval (except independent executors without court approval). TEX. PROB. CODE §37A; TEX. PROP. CODE §112.010(c).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** In some cases, see question 11 above.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. Case law and statutes now clearly protect against claims.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. TEX. PROB. CODE §37A (e); TEX. PROP. CODE §§112.010;111.004(6).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: The property passes as if the disclaimant had predeceased the decedent and relates back to the date of transfer for all purposes. TEX. PROB. CODE §37A; TEX. PROB. CODE §112.010(d). However, if a disclaimer is made and if under state intestacy statutes what would have been a per stirpes division of property (had no disclaimer occurred) otherwise change to a per capita division of property (because, for example, the disclaimant is the last heir alive in his or her generation), a per stirpes division carries forward. *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. App.—Corpus Christi 1981, writ ref'd n.r.e.).

20. **Does your state law permit the disclaimer of jointly held property?** Yes.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. If the answer to question 21 is yes, describe the circumstances under which such a disclaimer may arise. See answer to 26.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. TEX. PROB. CODE §37A provides that “a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent.” This sentence was added in 1993 and presumably is intended to require the acceleration of remainder interests. A similar provision can be found in the trust disclaimer statute. TEX. PROP. CODE §112.010(d). Under prior law, whether or not a remainder interest would be accelerated depended on the settlor's intent, and in at least one case, acceleration did not occur. *Aberg v. First Nat. Bk. In Dallas*, 450, S.W.2d 403 (Tex. App.—Dallas, 1970 writ ref'd n.r.e.). No case has construed the new statutory provisions.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** See question 22 above.

Texas, cont.

24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes. In some cases, TEX. PROB. CODE §37A allows a guardian, personal representative of a deceased person or a guardian ad litem of an unborn or unascertained person, with prior court approval, to disclaim. An independent executor can disclaim without prior court approval. *Id.* With respect to *inter vivos* trusts, TEX. PROP. CODE §112.010 (c) allows disclaimers by "personal representatives" of incompetent, deceased, unborn or unascertained, or minor beneficiaries with court approval (except independent executors who may act without court approval).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. See comment above.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** See question 3 above.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. TEX. PROB. CODE §37B and TEX. PROP. CODE §112.010(e) provide that a failure to comply with statutory requirements for disclaimers will be ineffective "except as an assignment of the interest to those who have received the interest being disclaimed..." There have been cases in which a defective disclaimer has not been effective to transfer the property to the person who otherwise would have received the property because the disclaimer did not meet the requirements of an assignment under Texas law. *E.g. Tate v. Siepielski*, 740 S.W.2d 92 (Tex. App-Fort Worth 1987, no writ). There is certainly nothing in Texas' statutes which would preclude a beneficiary from making a "transfer disclaimer" under IRC §2518 (c), subject to the rights of the disclaimant's creditors and the terms of any applicable spendthrift clause.

UTAH

Mark Edwards Lehman
Salt Lake City
October 4, 1999

1. Does your state recognize disclaimers? Yes.
2. Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)? Yes. §75-2-801.
3. If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. Are your state statute(s), if any, modeled on any of the following three Uniform Acts:
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? Yes.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. Has your state made any significant alterations to the Uniform Act(s)? No.
Describe alterations, if any:
6. What is the time period within which a disclaimer must be made under your state law? 9 months. §75-2-801(2).
Intestacy? 9 months from death.
Testacy? 9 months from death.
Survivorship interests? 9 months from death.
Future interests? 9 months from vesting.
7. When does the time period in question 6 above, begin to run? See question 6 above.
8. Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts? Yes. §75-2-801(1).
9. If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers? Yes. §75-2-801(4). Testamentary - disclaimed interest distributed assuming disclaimant predeceases decedent.
10. If the answer to question 9 is yes, what are the differences in application of the statute(s)? *Inter vivos* - Assume disclaimant predeceases effective date of transfer.

Utah, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted 1977 and Revised 1998.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §75-2-801(2). Required to be filed on testamentary transfer with the court in which administration proceedings are commenced.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §75-2-801(1).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §75-2-801(2). Real Property disclaimer may be filed with County Recorder.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §75-2-801(1).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §75-2-801(4). *Testamentary*—by law of intestacy assuming disclaimant predeceases decedent. *Inter vivos*—by law of intestacy assuming disclaimant predeceases the effective date of the instrument creating the transfer.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §75-2-801(2).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §75-2-801(1). If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §75-2-801(4).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.
Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? No.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

VERMONT

Charles R. Cummings
Brattleboro
August 31, 1999

1. **Does your state recognize disclaimers?** Yes. 14 V.S.A. §1951 *et seq.*
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. 14 V.S.A. §1951-1959.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** Yes.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes. 14 V.S.A. §1951 *et seq.*
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** 14 V.S.A. §1952.
Intestacy? 9 months from death.
Testacy? 9 months from death.
Survivorship interests? 9 months from death.
Future interests? 9 months from death.
Comment: The interest has been indefeasibly vested.
7. **When does the time period in question 6 above, begin to run?** See question 6 for nontestamentary instrument. Time runs from date of instrument or contract. If person has no actual notice, time runs from point where actual notice is received.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**

Vermont, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted July 1, 1996.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §1952, Probate Court.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §1951.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §1952. Only with respect to real property.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. 14 V.S.A. §1951.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** By laws of interstate succession.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §1952.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §1951. If the answer is yes, describe the circumstances under which such a disclaimer may arise.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §1954. Unless remaindermen are minors.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. 14 V.S.A. §2645, §2647.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

VIRGINIA

E. Diane Thompson
Norfolk
November 30, 1999

1. **Does your state recognize disclaimers?** Yes. §64.1-188 and 64.1-196.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §64.1-188 and 64.1-196.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?

Comment: Virginia's disclaimer statute was not modeled on any of the Uniform Acts. Virginia's statute was first enacted in 1972. However, Virginia's disclaimer statute closely resembles the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978) and the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978). The differences between the Virginia statute and the Uniform Acts are mostly insignificant. One difference of some significance is that Virginia's statute regarding the time for disclaiming property passing under nontestamentary instruments (Virginia Code §64.1-192) does not include a provision similar to that in §2 of the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978), stating that "If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument of disclaimer shall be delivered not later than [9] months after he has actual knowledge of the existence of the interest."
5. **Has your state made any significant alterations to the Uniform Act(s)?**
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 9 months. §64.1-189.
Testacy? 9 months. §64.1-189.
Survivorship interests? 9 months. Yes. §64.1-192.

Virginia, cont.

Future interests? For all interests, if the taker of the property or interest is not then finally ascertained or the interest is not indefeasibly fixed both in quality and quantity, then not later than 9 months after the event in when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity.

7. **When does the time period in question 6 above, begin to run?** (a) If the taker of the property is over age 21, the time period begins to run with the death of the decedent for property passing under testamentary instruments unless the taker of the property or interest is not then finally ascertained or his interest has not become indefeasibly fixed both in quality and quantity in which the event the time period begins to run when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity. (b) If the taker of the property is under age 21, the time begins running the later of age 21 or the above. §64.1-189. (c) For nontestamentary instruments, the time period begins to run on the effective date of the nontestamentary instrument unless the taker of the property or interest is not then finally ascertained or his interest has not become indefeasibly fixed both in quality and quantity in which event the time period begins to run when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity. An interest is not considered effective so long as by its terms the maker has power to revoke it or to transfer or direct to be transferred to himself the entire legal and equitable ownership of the property subject to the instrument. (d) If the taker of the property is under age 21, the time begins running the later of age 21 or the above. Yes, §64.1-192.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §64.1-191.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. §64.1-188 and §64.1-193. Only as to place and to whom delivery of the disclaimer should be made.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** I am not sure how to answer this question. The statute is not specifically coordinated with §2518; my recollection from reviewing the disclaimer statutes of all states is that only a few specifically mention §2518. The Virginia statute permits the disclaimer of property up until 9 months after the event when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity, as noted above, which exceeds the §2518 period. On the other hand, the Virginia statute follows the age 21 rule, which is a §2518 rule, permits the disclaimer of joint property (which can be allowed by §2518), but also permits the disclaimer of the entire tenants by the entirety interest if the survivor did not join in creating the tenancy (whereas §2518 would permit the disclaimer of only 50% of the tenants by the entirety property).
12. **When was (were) your state disclaimer statute(s) adopted? revised?** 1972 with amendments in various years.

Virginia, cont.

13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. The disclaimer of property passing under a testamentary instrument must be filed with the court in Virginia in which the estate is being administered or, if there has been no administration on the estate within nine months of the date of death, then with the court which would be the proper place of administration of the estate within Virginia. §64.1-189. If the disclaimed property is real estate, whether passing under testamentary or nontestamentary instrument, a copy of the disclaimer must be recorded in the court where deeds to real estate located in such jurisdictions are recorded. §64.1-189 for real estate passing under testamentary instruments. §64.1-192 for real estate passing under nontestamentary instruments.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §64.1-188 and §64.1-191. (For personal representative). §37.1-137.5 for conservator. Court must authorize disclaimer by a conservator.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. To the contrary, See *Abbott v. Willey*, Va. 479 S.E.2d 578 (1977) which permitted disclaimer to avoid creditors.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §64.1-188 (testamentary instruments). §64.1-191 (nontestamentary instruments). Language is "in whole or in part".
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §64.1-190 (testamentary) and §64.1-193 (nontestamentary instruments). As if the disclaimant had predeceased the decedent. As if the disclaimant had died before the effective date of the instrument for nontestamentary instruments. §64.1-190.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. §64.1-191.
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. §64.1-191. Does not specifically mention these but §64.1-188 allows disclaimer by a beneficiary under a testamentary instrument and §64.1-191 allows disclaimer by a beneficiary under a nontestamentary instrument. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** §64.1-188 and §64.1-191 (for personal representation). §37.1-137.5 (for conservator). Court must authorize disclaimer by a conservator.
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §64.1-193. (Nontestamentary). Appears this would be the result under a literal reading of the statute.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?**
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** Yes and No. §37.1-137.5 (for ward).

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes. (or conservator).

Virginia, cont.

- '25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?**
- 26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518? No. No provision referencing §2518.**

WASHINGTON

T. Randall Grove
Vancouver
February 3, 2000

1. **Does your state recognize disclaimers?** Yes. RCW §11.86.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. RCW §11.86.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?** 9 months. §11.86.031(2).
Intestacy? 9 months. §11.86.031(2).
Testacy? 9 months. §11.86.031(2).
Survivorship interests? 9 months. §11.86.031(2).
Future interests? 9 months. §11.86.031(2).
7. **When does the time period in question 6 above, begin to run?** RCW §11.86.031(2)(a)-(c). Upon the latest of: the date that the beneficiary attains age 21; the date of the transfer; or the date the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. RCW §11.86.011(2)(h).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?**

Washington, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** No. IRC §2518 is not expressly referenced in RCW §11.86.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** Adopted in 1973. Revised 1979, 1989, 1991, 1995, 1997 and 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. RCW §11.86.031(4)&(5). The statute permits filing with the clerk of the probate court.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. RCW §11.86.021(3). Disclaimer is authorized if legal representative deems the disclaimer to be in the best interests of recipients and not detrimental to the best interests of the estate or ward.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. RCW §11.86.031(5). May record in county auditor's office.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. RCW §11.86.011(2).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** RCW §11.86.041. The disclaimed interest shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. RCW §11.86.011(k).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. RCW §11.86.011 life insurance (l) pay on death accounts (l) qualified plans (l) & (m). The statute is very broad and includes a "catch all" for disclaimer of other interests. (o). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** Disclaimers authorized by other statutes, or implied disclaimers arising from the election of one benefit that is inconsistent with the acceptance of another (surviving spouse who received benefits under a probated will rather than a community property agreement was found to have disclaimed the community property agreement) *Norris v. Norris* '95 WA 2nd 124.622 p2d 816 (1980).
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. RCW §11.86.041(3).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No. RCW §11.86.021(3).

Washington, cont.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? No. RCW §11.86.021(3).

Comment: Guardian or other legal representative of the estate of a minor may disclaim.

25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. RCW §11.86.080. The statute does not abridge any rights to disclaim or renounce under any other statute or rule of law.

WEST VIRGINIA

Thomas G. Byrum
Wheeling
February 17, 2000

1. **Does your state recognize disclaimers?** Yes.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. §42-6-1 to §42-6-8.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act? Yes. §42-6-1.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** No.
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? 6 months. §42-6-3.
Testacy? 6 months. §42-6-3.
Survivorship interests? 6 months. §42-6-3.
Future interests? 6 months. §42-6-3.

Comment: Time period is 9 months for any interest which would be subject to tax under Chapters 11, 12 and 13 of the I.R.C. §42-6-3(c).
7. **When does the time period in question 6 above, begin to run?** Upon the death of the deceased or the date of the event vesting interest.
8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. §42-6-3(b).
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A

West Virginia, cont.

11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. §42-6-3(c).
12. **When was (were) your state disclaimer statute(s) adopted? revised?** §42-6-8. (May 5, 1982).
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. §42-6-3(a).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. §42-6-2.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Yes. §42-6-3(e).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No.
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. §42-6-2. §36-5-1 provides for total or partial disclaimer of a general power of appointment.
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?** §42-6-5.

Comment: Under the West Virginia disclaimer statute, the subject property will pass as if the disclaimant had predeceased the decedent. Subsequently, the property will be subject to the West Virginia anti-lapse statute, §41-3-3, or will pass by intestacy.

20. **Does your state law permit the disclaimer of jointly held property?** Yes. §42-6-3(d).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. No contrary authority. If the answer is yes, describe the circumstances under which such a disclaimer may arise. N/A
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. §42-6-5.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.

Is it necessary to appoint a guardian for a minor child to disclaim that child's interest? Yes.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** No.

WISCONSIN

David W. Reinecke
Madison
October 4, 1999

1. **Does your state recognize disclaimers?** Yes. Wisconsin recognizes disclaimers. Wis. Stat. §854.13(2).
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. Wisconsin has statutes concerning disclaimers. Wis. Stat. §§701.26; 852.13; 853.40; and 854.13.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:** No. Wisconsin statutes are not modeled on the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act; the Uniform Disclaimer of Property Interest Act; or the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act.
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act?
(2) Uniform Disclaimer of Property Interest Act?
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act?
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy?
Testacy?
Survivorship interests?
Future interests?

Comment: The time period within which a disclaimer must be made under Wisconsin law is as follows: For intestacy, testacy, and survivorship interests: The instrument of disclaimer must be executed and delivered within 9 months after the effective date of the transfer under the governing instrument. For cause shown, a court may extend the period. Wis. Stat. §854.13(4)(a).

For future interests: The instrument of disclaimer must be executed and delivered within 9 months after the event that determines that the taker of the property is finally ascertained and his or her interest indefeasibly fixed. For cause shown, a court may extend the period. Wis. Stat. §854.13(4)(b).
7. **When does the time period in question 6 above, begin to run?** See question 6 above.

Wisconsin, cont.

8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** The Wisconsin statutes governing disclaimers apply to testamentary and nontestamentary transfers after death. They do not apply to *inter vivos* gifts. Wis. Stat. §§701.26; 854:02; and 854.13.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** N/A
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. The Wisconsin disclaimer statute is coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code. Wis. Stat. §854.13(12)(b).
12. **When was (were) your state disclaimer statute(s) adopted? revised?** The Wisconsin disclaimer statutes were adopted in 1977 and revised effective January 1, 1999.
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Wisconsin requires that the disclaimer be filed in the probate court having jurisdiction. Wis. Stat. §854-13(5)(c).
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. An executor, personal representative, guardian or conservator has authority under Wisconsin law to disclaim the estate's or the ward's interest, with court approval. Wis. Stat. §854.13(2)(f) and (h).
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** Wisconsin permits the disclaimer to be recorded in the land title records. Wis. Stat. §854.13(5)(e).
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. Wisconsin does not require (nor provide a mechanism to permit) filing, recording or lodging with any other public office (e.g., Secretary of State).
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** No. Wisconsin does not have any laws, including case law, which would render a disclaimer ineffective in order to protect the disclaimer's creditors.
18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. Wisconsin law permits a partial disclaimer of an interest in property, unless expressly prohibited by the governing instrument. Wis. Stat. §854.13(2)(d).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**

Comment: Under Wisconsin law, disclaimed property generally devolves as if the disclaimant had died before the decedent or before the effective date of the transfer under the governing instrument. Wis. Stat. §854.13(7). A disclaimed interest in a joint tenancy or in survivorship marital property passes to the decedent's probate estate. Wis. Stat. §854.13(8) and (9). A future interest limited to take effect in possession or enjoyment after the termination of the interest which is disclaimed takes effect as if the disclaimant had died before the effective date of the governing instrument. Wis. Stat. §854.13(10).
20. **Does your state law permit the disclaimer of jointly held property?** Yes. Wisconsin law (since January 1, 1999) permits the disclaimer of jointly held property. Wis. Stat. §854.13(2)(b).

Wisconsin, cont.

21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. Wisconsin law permits the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities and benefits from qualified plans. Wis. Stat. §§854.01 and 854.13(2). **If the answer is yes, describe the circumstances under which such a disclaimer may arise.** Any disclaimer that meets the requirements of §2518 of the Internal Revenue Code, or the requirements of any other federal law relating to disclaimers, constitutes an effective disclaimer under the laws of Wisconsin. Wis. Stat. §854.13(12)(b).
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. Under Wisconsin law, if a trust life estate is disclaimed, the trust remainder is accelerated and the remainderman then take outright, unless the governing instrument manifests a contrary intent either expressly or as construed from extrinsic evidence. Wis. Stat. §854.13(10).
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?**
Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?

Comment: In Wisconsin, judicial consent is not required for a beneficiary to disclaim. Wis. Stat. §854.13(2)(a). Nor is judicial consent required for an agent under a power of attorney to disclaim, so long as the power of attorney specifically grants the power to disclaim. Wis. Stat. §854.13(2)(g). It appears necessary, however, to appoint a guardian for a minor child to disclaim that child's interest. Wis. Stat. §854.13(2) [by omission]. If the minor child's interest were to pass to the parent (or other individual) as *custodian* under the Wisconsin Uniform Transfers to Minors Act (either by custodial nomination in the will or trust [Wis. Stat. §880.63], or if the will or trust does not so authorize, by act of the personal representative [Wis. Stat. §880.635], the parent may arguably then have the power to disclaim the child's interest. §880.67(1) of the Wisconsin Statutes grants a custodian, acting in a custodial capacity, all the rights, powers, and authority over the property that unmarried adult owners have over their own property.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** No. There is nothing not already mention which a practitioner might consider out of the ordinary with respect to disclaimers in Wisconsin.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?** Yes. Wisconsin recognizes written property disclaimers that otherwise do not comply with the statute so long as such disclaimers qualify under §2518 of the Internal Revenue Code. Wis. Stat. §854.13(12)(b).

WYOMING

Thomas N. Long
Cheyenne
May 23, 2002

1. **Does your state recognize disclaimers?** Yes. WYO. STAT. ANN. §2-1-401-405.
2. **Does your state have statute(s) concerning disclaimers? If so, what is (are) the citation(s)?** Yes. WYO. STAT. ANN. §2-1-401-405.
3. **If you do not have a statute concerning disclaimers, does your state follow a common law rule of disclaimers?**
Under common law can you disclaim intestacy interest?
Under common law can you disclaim testacy interest?
Under common law can you disclaim will substitutes?
4. **Are your state statute(s), if any, modeled on any of the following three Uniform Acts:**
(1) Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act? No.
(2) Uniform Disclaimer of Property Interest Act? No.
(3) Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act? No.
If yes, which ones?
5. **Has your state made any significant alterations to the Uniform Act(s)?** N/A
Describe alterations, if any:
6. **What is the time period within which a disclaimer must be made under your state law?**
Intestacy? Nine months. WYO. STAT. ANN. §2-1-403(a)(ii).
Testacy? Nine months. WYO. STAT. ANN. §2-1-403(a)(ii).
Survivorship interests? Nine months. WYO. STAT. ANN. §2-1-403(a)(ii).
Future interests? Nine months. WYO. STAT. ANN. §2-1-403(a)(ii).
7. **When does the time period in question 6 above, begin to run?** WYO. STAT. ANN. §2-1-403(a)(ii)(A&B).
The time begins to run the later of: (A.) The day on which the transfer creating the interest in the person is made; or (B.) The day on which the person attains age twenty-one [21].*

*Note: The Wyoming Statutes Annotated do not specifically provide when the nine month period begins for survivorship benefits or future interests. However, the Wyoming disclaimer statutes were taken from §1528 of the Internal Revenue Code. The federal regulations to §1528 provide that a disclaimer of an interest which would pass by right of survivorship or joint-tenancy must be made within nine months of the creation of the tenancy. 25 C.F.R. 25.2518-2(c)(4)(i).

This rule excludes joint bank, brokerage and other investment accounts, if the transferor may unilaterally regain the transferor's contribution to the account without the consent of the cotenant. A surviving joint tenant may make a disclaimer of the funds in the account attributed by the

(continued...)

Wyoming, cont.

8. **Does (Do) your state statute(s) apply to testamentary transfers as well as *inter vivos* gifts?** Yes. WYO. STAT. ANN. §2-1-401.
9. **If the answer to question 8 is yes, are there any differences between the application of your state disclaimer statute(s) to testamentary transfers and *inter vivos* transfers?** No. WYO. STAT. ANN. §2-1-401.
10. **If the answer to question 9 is yes, what are the differences in application of the statute(s)?** N/A
11. **Is your state disclaimer statute coordinated with the federal law on qualified disclaimers under §2518 of the Internal Revenue Code?** Yes. WYO. STAT. ANN. §2-1-401.
12. **When was (were) your state disclaimer statute(s) adopted? revised?** WYO. STAT. ANN. §2-1-401, adopted 1979, revised 1997. WYO. STAT. ANN. §2-1-402, adopted 1979, revised 1980. WYO. STAT. ANN. §2-1-403, adopted 1979, revised 1980, 1987. WYO. STAT. ANN. §2-1-404, adopted 1979 revised 1980, 1987, 1997. WYO. STAT. ANN. §2-1-405, adopted 1979, revised 1980. The 1987 revisions provide that a written transfer of the entire interest in the property would be treated as a disclaimer if the transfer met the requirements for a disclaimer and the transfer was to a person who would have received the property if it had been disclaimed. WYO. STAT. ANN. §2-1-403(b). The 1987 revisions also reserve in the disclaimer the right to benefits as an income beneficiary of any trust established by the transferor's will. WYO. STAT. ANN. §2-1-403(c). The 1997 revisions create the right to disclaim an interest that would otherwise pass by right of survivorship. WYO. STAT. ANN. §2-1-401 and §2-1-404(c).
13. **Does your state require (or permit) that the disclaimer be filed with a Court?** Yes. WYO. STAT. ANN. §2-1-403(a)(ii). Filing the disclaimer with the court is not required but is permitted.
14. **Does an executor, guardian, or conservator have authority under your state law to disclaim the estate's or the ward's interest?** Yes. WYO. STAT. ANN. §2-1-405. The statute expressly provides a guardian authority to disclaim a ward's interest. Most likely an executor would also be able to disclaim the estate's interests. The executor is entitled to possession of all real and personal estate until the estate is settled, but there is no express provision allowing them to disclaim the estate's interests. WYO. STAT. ANN. §2-7-401.
15. **Does your state require (or permit) that the disclaimer be recorded in the land title records?** No. WYO. STAT. ANN. §2-1-403(a)(ii). The disclaimer could be recorded as a quit claim deed.
16. **Does your state require (or permit) filing, recording or lodging with any other public office (e.g., Secretary of State)?** No. WYO. STAT. ANN. §2-1-403(a)(ii).
17. **Does your state have any laws, including case law, which would render a disclaimer ineffective to protect the disclaimer's creditors?** Yes. *In Re Matter of Estate of Reed*, the Wyoming Supreme Court ruled that disclaiming land in anticipation of a judgement is considered a fraudulent transfer. 566 P2d 587 (1977).

**(...continued)*

deceased cotenant, if the disclaimer is made within nine months of the cotenant's death. 25 C.F.R. 25.2518-2(c)(4)(i).

The regulations also provide that a disclaimer of a future interest must be made within nine months of the original transfer creating the interest, regardless of whether the future interest is vested or contingent. 25 C.F.R. 25.2518-2(c)(3).

Wyoming, cont.

18. **Does your state law permit a partial disclaimer of an interest in property?** Yes. WYO. STAT. ANN. §2-1-402(a)(I).
19. **How does your state law determine the identity of the taker of the disclaimed interest in the absence of a direction in the will, trust, or other instrument of transfer creating the interest?**
- Comment: WYO. STAT. ANN. §2-1-404. The interest disclaimed reverts to the transferor if he is living on the date of the disclaimer, otherwise the interest will pass through as though the disclaimer did not survive the transferor.
20. **Does your state law permit the disclaimer of jointly held property?** Yes. WYO. STAT. ANN. §2-1-401 and §2-1-404(c).
21. **Does your state law permit the disclaimer of contractual rights such as life insurance proceeds, pay on death accounts, transfer on death securities or benefits from qualified plans?** Yes. WYO. STAT. ANN. §2-1-401. The statute provides for a disclaimer of any interest in property and property is defined to include both real and personal property. **If the answer is yes, describe the circumstances under which such a disclaimer may arise.**
22. **Under your state law, if a trust life estate is disclaimed, does that accelerate the trust remainder and do the remaindermen then take outright?** Yes. WYO. STAT. ANN. §2-1-404(a). The life beneficiary is deemed to have died and remainder will accelerate and remainderman will take outright if the trust so provides upon life beneficiary's death.
23. **If the answer to question 22 is NO, what is the result if a trust life estate is disclaimed?** N/A
24. **Does your state law require judicial consent to a fiduciary's or beneficiary's disclaimer?** No.
- Is it necessary to appoint a guardian for a minor child to disclaim that child's interest?** Yes.
- Comment: WYO. STAT. ANN. §2-1-403(a)(ii)(B). A minor lacks capacity to deal in property. Any disclaimer can be made within nine months after the minor obtains the age of 21.
25. **Is there anything not already mentioned which you believe a practitioner might consider out of the ordinary with respect to disclaimers in your state?** Yes. WYO. STAT. ANN. §2-1-403(c). Allows disclaimers to enjoy benefits of discharged property as income beneficiary of a trust under a will. If a marital gift is disclaimed by spouse and assets drop into credit shelter then spouse may get benefits from shelter.
26. **Does your state recognize written property disclaimers that otherwise do not comply with statute, e.g., disclaimers similar to those provided for in § 2518?**