

No. 136

AN ACT

SB 1145

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, to provide for disclaimers and conforming other provisions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsection (a) of section 6103 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added June 30, 1972 (P.L.508, No.164), is amended to read:
 § 6103. Release or disclaimer of powers or interests.

(a) Powers and interest releasable.—Any power of appointment, or power of consumption, whether general or special, other than a power in trust which is imperative, and any interest in, to, or over real or personal property held or owned outright, or in trust, or in any other manner which is reserved or given to any person by deed, will or otherwise, and irrespective of any limitation of such power or interest by virtue of any restriction in the nature of a so-called spendthrift trust provision, or similar provision, may be released or disclaimed, either with or without consideration by written instrument signed by the person possessing the power or the interest and delivered as hereinafter provided, but nothing in this section shall authorize an income beneficiary of a spendthrift trust to release or disclaim his right to such income, unless as a result of the release or disclaimer the released or disclaimed income will pass to one or more of the beneficiary's descendants. ***This section shall not apply to an interest that may be disclaimed under Chapter 62 (relating to disclaimers).***

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Section 2. Title 20 is amended by adding a chapter to read:

CHAPTER 62
DISCLAIMERS

Sec.

- 6201. Right to disclaim.
- 6202. Disclaimers by fiduciaries.
- 6203. Interests subject to disclaimer.
- 6204. Filing, delivery and recording.
- 6205. Effect of disclaimer.
- 6206. Bar to disclaimer.
- 6207. Other statutes.
- § 6201. Right to disclaim.

A person to whom an interest in property would have devolved by whatever means, including a beneficiary under a will, an appointee under

the exercise of a power of appointment, a person entitled to take by intestacy, a donee of an inter vivos transfer, and a person entitled to a disclaimed interest, may disclaim it in whole or in part by a written disclaimer which shall:

- (1) describe the interest disclaimed;
- (2) declare the disclaimer and extent thereof; and
- (3) be signed by the disclaimant.

The right to disclaim shall exist notwithstanding any limitation on the interest in the nature of a spendthrift provision or similar restriction.

§ 6202. Disclaimers by fiduciaries.

A disclaimer on behalf of a decedent, a minor or an incompetent may be made by his personal representative or the guardian of his estate if the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the incompetent or his creditors, as the case may be.

§ 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.

§ 6204. Filing, delivery and recording.

(a) Will or intestacy.—If the interest would have devolved to the disclaimant by will or by intestacy, the disclaimer shall 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 this Commonwealth, of the county where the property involved is located, and a copy of the disclaimer shall be delivered to any personal representative, trustee or other fiduciary in possession of the property.

(b) Inter vivos transfers.—If the interest would have devolved to the disclaimant by an inter vivos instrument, the disclaimer or a copy thereof shall be delivered to the trustee or other person having legal title to or possession of the property or interest disclaimed or who is entitled thereto by reason of the disclaimer.

(c) Powers of appointment.—If the interest would have devolved to the disclaimant by reason of the exercise of a power of appointment, the disclaimer or a copy thereof shall be filed or delivered as required by the above provisions if the donor of the power is regarded as the donor of the interest or if the person who exercised the power is regarded as the donor of the interest.

(d) Real estate.—If an interest in real property is disclaimed, a copy of the disclaimer may be recorded in the office for the recording of deeds of the county where the real estate is situated and it shall not be effective as to a bona fide grantee or holder of a lien against the property who has given value therefor before the disclaimer is so recorded.

§ 6205. Effect of disclaimer.

(a) In general.—A disclaimer relates back for all purposes to the date of the death of the decedent or the effective date of the inter vivos transfer as the case may be. The disclaimer shall be binding upon the disclaimant and all persons claiming through or under him.

(b) Rights of other parties.—Unless a testator or donor has provided for another disposition, the disclaimer shall, for purposes of determining the rights of other parties, be equivalent to the disclaimant's having died before the decedent in the case of a devolution by will or intestacy or before the effective date of an inter vivos transfer, except that, when applying section 2104(1) (relating to rules of succession) or analogous provisions of a governing instrument, the fact that the disclaimant actually survived shall be recognized in determining whether other parties take equally or by representation.

(c) Powers of appointment.—In applying this section to an interest that would have devolved by reason of the exercise of a power of appointment, the person exercising the power shall be regarded as the decedent or transferor, as the case may be.

§ 6206. Bar to disclaimer.

(a) Acceptance.—A disclaimer may be made at any time before acceptance. An acceptance may be express or may be inferred from actions of the person entitled to receive an interest in property such as the following:

- (1) The taking of possession or accepting delivery of the property or interest.
- (2) A written waiver of the right to disclaim.
- (3) An assignment, conveyance, encumbrance, pledge or other transfer of the interest or a contract to do so.
- (4) A representation that the interest has been or will be accepted to a person who relies thereon to his detriment.
- (5) A sale of the interest under a judicial sale.

To constitute a bar to a disclaimer, a prior acceptance must be affirmatively proved. The mere lapse of time, with or without knowledge of the interest on the part of the disclaimant, shall not constitute an acceptance.

(b) Partial acceptance within six months.—The acceptance of part of a single interest shall be considered as only a partial acceptance and will not be a bar to a subsequent disclaimer of any part or all of the balance of the interest if the part of the interest is accepted before the expiration of six months from:

- (1) the death of the decedent in the case of an interest that would have devolved by will or intestacy; or
- (2) the effective date of the transfer in the case of an interest that would have devolved by an inter vivos transfer.

In applying this subsection to an interest that would have devolved by reason of the exercise of a power of appointment, the person exercising the power shall be regarded as the decedent or the transferor, as the case may be.

(c) Partial acceptance after six months.—The acceptance of a part of a single interest after the expiration of such six-month period shall be considered an acceptance of the entire interest and a bar to any subsequent disclaimer thereof but shall not be an acceptance of any separate interest given under the same instrument. In construing this subsection:

(1) income for life or any other period shall be considered a single interest but separate from any interest in the principal or any additional interest in income to take effect upon the happening of a future event; and

(2) an interest in periodic payments to be made from principal or income, or both, for the life of the beneficiary or any other period shall be considered a single interest but separate from any additional payments to be made upon the happening of a future event.

§ 6207. Other statutes.

The provisions of this chapter do not abridge the right of a person to disclaim interests under any other statute and do not affect any additional requirements for a disclaimer to be effective for inheritance tax purposes or other purposes covered specifically in other statutory provisions.

Section 3. This act shall take effect immediately and shall apply to any disclaimer hereafter made of any interest that would have devolved by reason of a transfer or death whether before or after the effective date of this act.

APPROVED—The 9th day of July, A. D. 1976.

MILTON J. SHAPP