

STATE OF NEW HAMPSHIRE

PROBATE COURT

PROCEDURE BULLETIN 16

RELATIVE TO: Uniform Disclaimer of Property Interests Act

This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.

RSA 563-B, the Uniform Disclaimer of Property Interests Act, codifies the right of an individual, including an executor, administrator, trustee, guardian, conservator, holder of a power of attorney or any other fiduciary, to disclaim an interest in property. The statute clarifies the procedure for, and effect of, disclaiming property interests in New Hampshire. The court has observed an increase in the use, and misuse, of disclaimers since the passage of this statute. This bulletin addresses court procedure for disclaimers of property or interests devolving to the disclaimant under a testamentary instrument or by the laws of intestacy. Examples are provided for illustration.

A disclaimer must be in writing, describe the property or interest disclaimed and the extent to which the property is being disclaimed, declare that it is a disclaimer, and be signed by the disclaimant. The original disclaimer must be delivered, in person, or by registered or certified mail not later than nine (9) months after the date of the decedent's death to:

- (a) the personal representative, or other fiduciary, of the decedent,
- (b) the holder of the legal title to which the interest relates, or
- (c) the person entitled to the property or interest in the event of a disclaimer.

The disclaimant must file a copy of the disclaimer in the court in which the administration of the estate of the deceased owner has commenced. An additional copy of the disclaimer must be recorded in the registry of deeds in the county in which the property is located, if the disclaimer involves real property or an interest in real property.

The disclaimer statute, not the disclaimant, controls the distribution of the disclaimed property. Disclaimed property will pass as directed by the decedent (e.g. To X but if X disclaims to Y), or, if the decedent has not provided for another disposition, the disclaimed property will pass as if the disclaimant predeceased the decedent.

For example, an adult child may choose to disclaim his/her interest in the deceased parent's intestate estate with the intention that the surviving parent inherit the disclaimed

property. However, if the disclaimant has children, the disclaimant's children will inherit the disclaimed property, not the surviving spouse.

Similarly, if a decedent's will provides for one-half to my spouse and one-half to my child, X, without including the limitation that X must survive the decedent and without including a provision for disclaimed property, property disclaimed by X would pass to X's children pursuant to RSA 551:12. Further, pursuant to RSA 463:29, the guardian of the estate of a minor has the ability to disclaim inherited property only with prior court authorization and for good cause shown.

Individuals disclaiming are bound by the written disclaimer and a disclaimer is not revocable under any circumstances. Therefore, in the example provided in the previous paragraph, the adult child would not be entitled to revoke the disclaimer even though the property did not pass as the disclaimant intended.

The right to disclaim property or an interest may be waived by certain acts. Specifically, a person may not disclaim after:

- (a) he/she assigns, conveys, encumbers, pledges, or transfers the property or interest, or signs a contract to do any of the previous acts;
- (b) he/she signs a written waiver of the right to disclaim;
- (c) he/she accepts the property or interest, or accepts a benefit of the property or interest; for example, cashing a dividend check bars the right to disclaim the stock; or
- (d) there is a sale of the property under a judicial sale.

A joint tenant may disclaim as a separate interest any property devolving by right of survivorship. For example, assume A and B purchased property jointly with rights of survivorship and each provided one-half of the purchase price. After A dies, B automatically inherits A's half by right of survivorship. If B chooses to disclaim A's separate interest, A's half will pass as if B predeceased A and it will become part of A's estate. B cannot disclaim all interest in the property since it was created by A and B, and B contributed one-half of the purchase price.

Review of disclaimers in the court is limited to the disclaimer's execution and the proper distribution of the disclaimed property. Staff should confirm that the disclaimer:

- (a) was signed by the disclaimant or by a person with the proper authority to disclaim on the party's behalf, i.e. power of attorney, guardian of incapacitated adult, conservator, trustee, or executor;

