

**ACT 72**

**S.B. NO. 1702-74**

A Bill for an Act Relating to Uniform Disclaimers of Property Interests.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM DISCLAIMER OF PROPERTY  
INTERESTS ACT**

**Sec. -1 Right to disclaim interest in property.** A person, or the representative of an incapacitated or protected person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this chapter. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. The right to disclaim shall not survive the death of the person having it.

**Sec. -2 Time of disclaimer.** (a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than six months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than six months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer shall be filed in the circuit court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative of the deceased owner or deceased donee.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not later than six months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than six months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the disclaimer shall be delivered or filed not later than six months after he has actual knowledge of the existence of the interest. 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 himself or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant or tenant by the entirety may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant or tenant by the entirety may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entirety devolving to him, if the joint tenancy or tenancy by the entirety was created by act of a deceased joint tenant or tenant by the entirety, the survivor did not join in creating the joint tenancy or tenancy by the entirety, and has not accepted a benefit thereunder.

(d) If real property or an interest therein is disclaimed, a copy of the disclaimer shall also be recorded in the office of the bureau of conveyances, unless the title to the real property is registered in the land court, in which event a copy of the instrument shall be presented for registration in the same manner as a deed or other voluntary instrument and a memorandum thereof shall be made on the certificate of title and on the owner's duplicate certificate.

**Sec. -3 Form of disclaimer.** The disclaimer shall:

- (1) Describe the property or interest disclaimed;
- (2) Declare the disclaimer and extent thereof; and
- (3) Be signed by the disclaimant.

**Sec. -4 Effect of disclaimer.** (a) If property or an interest therein devolved to a disclaimant under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the disclaimant had predeceased the decedent or, if the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent or the donee of the power. A disclaimer relates back for all purposes to the date of death of the decedent or of the donee.

(b) If property or an interest therein devolved to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the disclaimant had died before the effective date of the instrument or contract. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.

**Sec. -5 Waiver and bar.** The right to disclaim property or an interest therein is barred by:

- (1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;
- (2) A written waiver of the right to disclaim;
- (3) An acceptance of the property or interest or a benefit thereunder; or
- (4) A sale of the property or interest under judicial sale made before the disclaimer is effected.

**Sec. -6 Remedy not exclusive.** This chapter shall not abridge the right of any person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

**Sec. -7 Application.** An interest in property that exists on the effective date of this chapter as to which, if a present interest, the time for filing

a disclaimer under this chapter has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within six months after the effective date of this chapter.

**Sec. -8 Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states enacting it.

**Sec. -9 Short title.** This chapter may be cited as the Uniform Disclaimer of Property Interests Act.”

SECTION 2. Chapter 538, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1974.)