

394.035 Uniform disclaimer of transfers under nontestamentary instruments.

- (1) A person, or the representative of an incapacitated person or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to him of any property, or interest therein by delivering or filing a written disclaimer under this section. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property, or interest therein, that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant, if the survivor did not join in creating the joint tenancy and he has not accepted a benefit thereunder. The right to disclaim shall survive the death of the person having it and may be exercised by the personal representative of such person's estate. The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimant and extent thereof, and be signed by the disclaimant.
- (2)
 - (a) An instrument disclaiming a present interest shall be delivered or filed no later than nine (9) months after the effective date of the nontestamentary instrument or contract; and a future interest shall be delivered or filed not later than nine (9) 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 instrument shall be delivered or filed not later than nine (9) 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.
 - (b) The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail to the transferor or his representative or to the trustee or other person having legal title to, or possession of, the property or interest disclaimed. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record in the office of the county clerk of the county in which the real estate is situated.
- (3) Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed shall devolve 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.
- (4)
 - (a) The right to disclaim property or an interest therein is barred by an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor, a written waiver of the right to disclaim, an

acceptance of the property or interest or benefit thereunder, or a sale of the property or interest under judicial sale made before the disclaimer is effected.

- (b) The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.
 - (c) The instrument of 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.
- (5) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.
 - (6) An interest in property existing on July 15, 1980, as to which, if a present interest, the time for filing a disclaimer under this section has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine (9) months after July 15, 1980.
 - (7) This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.
 - (8) This section may be cited as the uniform disclaimer of transfers under nontestamentary instruments section.

Effective: July 15, 1980

History: Created 1980 Ky. Acts ch. 259, sec. 10, effective July 15, 1980.