

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

Act 610 of 2003  
SENATE BILL 303

5 By: Senators Luker, Wilkinson  
6 By: Representatives Lamoureux, Bond, Hathorn  
7

## For An Act To Be Entitled

ARKANSAS DISCLAIMER OF PROPERTY INTERESTS ACT.

### Subtitle

ARKANSAS DISCLAIMER OF PROPERTY  
INTERESTS ACT.

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Short title.

20 This act may be cited as the "Arkansas Disclaimer of Property Interests  
21 Act".

22  
23 SECTION 2. Definitions.

24 In this act:

25 (1) "Disclaimant" means the person to whom a disclaimed interest or  
26 power would have passed had the disclaimer not been made;

27 (2) "Disclaimed interest" means the interest that would have passed to  
28 the disclaimant had the disclaimer not been made;

29 (3) "Disclaimer" means the refusal to accept an interest in or power  
30 over property;

31 (4) "Fiduciary" means a personal representative, trustee, agent acting  
32 under a power of attorney, or other person authorized to act as a fiduciary  
33 with respect to the property of another person;

34 (5) "Jointly held property" means property held in the name of two or  
35 more persons under an arrangement in which all holders have concurrent  
36 interests and under which the last surviving holder is entitled to the whole



1 of the property;

2 (6) "Person" means an individual, corporation, business trust, estate,  
 3 trust, partnership, limited liability company, association, joint venture,  
 4 government; governmental subdivision, agency, or instrumentality; public  
 5 corporation, or any other legal or commercial entity;

6 (7) "State" means a state of the United States, the District of  
 7 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or  
 8 insular possession subject to the jurisdiction of the United States. The  
 9 term includes an Indian tribe or band, or Alaskan native village, recognized  
 10 by federal law or formally acknowledged by a state; and

11 (8) "Trust" means:

12 (A) An express trust, charitable or noncharitable, with  
 13 additions thereto, whenever and however created; and

14 (B) A trust created pursuant to a statute, judgment, or decree  
 15 which requires the trust to be administered in the manner of an express  
 16 trust.

17  
 18 SECTION 3. Scope.

19 This act applies to disclaimers of any interest in or power over  
 20 property, whenever created.

21  
 22 SECTION 4. Act supplemented by other law.

23 (a) Unless displaced by a provision of this act, the principles of law  
 24 and equity supplement this act.

25 (b) This act does not limit any right of a person to waive, release,  
 26 disclaim, or renounce an interest in or power over property under a law other  
 27 than this act.

28  
 29 SECTION 5. Power to disclaim - General requirements, when irrevocable.

30 (a) A person may disclaim, in whole or part, any interest in or power  
 31 over property, including a power of appointment. A person may disclaim the  
 32 interest or power even if its creator imposed a spendthrift provision or  
 33 similar restriction on transfer or a restriction or limitation on the right  
 34 to disclaim.

35 (b) Except to the extent a fiduciary's right to disclaim is expressly  
 36 restricted or limited by another statute of this state or by the instrument

1 creating the fiduciary relationship, a fiduciary may disclaim, in whole or  
 2 part, any interest in or power over property, including a power of  
 3 appointment, whether acting in a personal or representative capacity. A  
 4 fiduciary may disclaim the interest or power even if its creator imposed a  
 5 spendthrift provision or similar restriction on transfer, or a restriction or  
 6 limitation on the right to disclaim, or an instrument other than the  
 7 instrument that created the fiduciary relationship imposed a restriction or  
 8 limitation on the right to disclaim.

9 (c) To be effective, a disclaimer must be in a writing or other  
 10 record, declare the disclaimer, describe the interest or power disclaimed, be  
 11 signed by the person making the disclaimer, and be delivered or filed in the  
 12 manner provided in Section 12. In this subsection:

13 (1) "Record" means information that is inscribed on a tangible  
 14 medium or that is stored in an electronic or other medium and is retrievable  
 15 in perceivable form; and

16 (2) "Signed" means, with present intent to authenticate or adopt  
 17 a record, to:

18 (A) Execute or adopt a tangible symbol; or

19 (B) Attach to or logically associate with the record an  
 20 electronic sound, symbol, or process.

21 (d) A partial disclaimer may be expressed as a fraction, percentage,  
 22 monetary amount, term of years, limitation of a power, or any other interest  
 23 or estate in the property.

24 (e) A disclaimer becomes irrevocable when it is delivered or filed  
 25 pursuant to Section 12 or when it becomes effective as provided in Sections 6  
 26 through 11, whichever occurs later.

27 (f) A disclaimer made under this act is not a transfer, assignment, or  
 28 release.

29  
 30 SECTION 6. Disclaimer of interest in property.

31 (a) In this section:

32 (1) "Future interest" means an interest that takes effect in  
 33 possession or enjoyment, if at all, later than the time of its creation; and

34 (2) "Time of distribution" means the time when a disclaimed  
 35 interest would have taken effect in possession or enjoyment.

36 (b) Except for a disclaimer governed by Section 7 or 8, the following

1 rules apply to a disclaimer of an interest in property:

2 (1) The disclaimer takes effect as of the time the instrument  
 3 creating the interest becomes irrevocable, or, if the interest arose under  
 4 the law of intestate succession, as of the time of the intestate's death.

5 (2) The disclaimed interest passes according to any provision in  
 6 the instrument creating the interest providing for the disposition of the  
 7 interest, should it be disclaimed, or of disclaimed interests in general.

8 (3) If the instrument does not contain a provision described in  
 9 subdivision (b)(2), the following rules apply:

10 (A) If the disclaimant is an individual, the disclaimed  
 11 interest passes as if the disclaimant had died immediately before the time of  
 12 distribution. However, if, by law or under the instrument, the descendants  
 13 of the disclaimant would share in the disclaimed interest by any method of  
 14 representation had the disclaimant died before the time of distribution, the  
 15 disclaimed interest passes only to the descendants of the disclaimant who  
 16 survive the time of distribution; and

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

19 (4) Held by a person other than the disclaimant takes effect as  
 20 if the disclaimant had died or ceased to exist immediately before the time of  
 21 distribution, but a future interest held by the disclaimant is not  
 22 accelerated in possession or enjoyment.

23  
 24 SECTION 7. Disclaimer of rights of survivorship in jointly held  
 25 property.

26 (a) Upon the death of a holder of jointly held property, a surviving  
 27 holder may disclaim, in whole or part, the greater of:

28 (1) A fractional share of the property determined by dividing  
 29 the number one by the number of joint holders alive immediately before the  
 30 death of the holder to whose death the disclaimer relates; or

31 (2) All of the property except that part of the value of the  
 32 entire interest attributable to the contribution furnished by the  
 33 disclaimant.

34 (b) A disclaimer under subsection (a) takes effect as of the death of  
 35 the holder of jointly held property to whose death the disclaimer relates.

36 (c) An interest in jointly held property disclaimed by a surviving

1 holder of the property passes as if the disclaimant predeceased the holder to  
2 whose death the disclaimer relates.

3  
4 SECTION 8. Disclaimer of interest by trustee.

5 If a trustee disclaims an interest in property that otherwise would  
6 have become trust property, the interest does not become trust property.

7  
8 SECTION 9. Disclaimer of power of appointment or other power not held  
9 in fiduciary capacity.

10 If a holder disclaims a power of appointment or other power not held in  
11 a fiduciary capacity, the following rules apply:

12 (1) If the holder has not exercised the power, the disclaimer takes  
13 effect as of the time the instrument creating the power becomes irrevocable;

14 (2) If the holder has exercised the power and the disclaimer is of a  
15 power other than a presently exercisable general power of appointment, the  
16 disclaimer takes effect immediately after the last exercise of the power; and

17 (3) The instrument creating the power is construed as if the power  
18 expired when the disclaimer became effective.

19  
20 SECTION 10. Disclaimer by appointee, object, or taker in default of  
21 exercise of power of appointment.

22 (a) A disclaimer of an interest in property by an appointee of a power  
23 of appointment takes effect as of the time the instrument by which the holder  
24 exercises the power becomes irrevocable.

25 (b) A disclaimer of an interest in property by an object or taker in  
26 default of an exercise of a power of appointment takes effect as of the time  
27 the instrument creating the power becomes irrevocable.

28  
29 SECTION 11. Disclaimer of power held in fiduciary capacity.

30 (a) If a fiduciary disclaims a power held in a fiduciary capacity  
31 which has not been exercised, the disclaimer takes effect as of the time the  
32 instrument creating the power becomes irrevocable.

33 (b) If a fiduciary disclaims a power held in a fiduciary capacity  
34 which has been exercised, the disclaimer takes effect immediately after the  
35 last exercise of the power.

36 (c) A disclaimer under this section is effective as to another

1 fiduciary if the disclaimer so provides and the fiduciary disclaiming has the  
 2 authority to bind the estate, trust, or other person for whom the fiduciary  
 3 is acting.

4  
 5 SECTION 12. Delivery or filing.

6 (a) In this section, "beneficiary designation" means an instrument,  
 7 other than an instrument creating a trust, naming the beneficiary of:

8 (1) An annuity or insurance policy;

9 (2) An account with a designation for payment on death;

10 (3) A security registered in beneficiary form;

11 (4) A pension, profit-sharing, retirement, or other employment-  
 12 related benefit plan; or

13 (5) Any other nonprobate transfer at death.

14 (b) Subject to subsections (c) through (1), delivery of a disclaimer  
 15 may be effected by personal delivery, first-class mail, or any other method  
 16 likely to result in its receipt.

17 (c) In the case of an interest created under the law of intestate  
 18 succession or an interest created by will, other than an interest in a  
 19 testamentary trust:

20 (1) A disclaimer must be delivered to the personal  
 21 representative of the decedent's estate; or

22 (2) If no personal representative is then serving, it must be  
 23 filed with a court having jurisdiction to appoint the personal  
 24 representative.

25 (d) In the case of an interest in a testamentary trust:

26 (1) A disclaimer must be delivered to the trustee then serving,  
 27 or if no trustee is then serving, to the personal representative of the  
 28 decedent's estate; or

29 (2) If no personal representative is then serving, it must be  
 30 filed with a court having jurisdiction to enforce the trust.

31 (e) In the case of an interest in an inter vivos trust:

32 (1) A disclaimer must be delivered to the trustee then serving;

33 (2) If no trustee is then serving, it must be filed with a court  
 34 having jurisdiction to enforce the trust; or

35 (3) If the disclaimer is made before the time the instrument  
 36 creating the trust becomes irrevocable, it must be delivered to the settlor

1 of a revocable trust or the transferor of the interest.

2 (f) In the case of an interest created by a beneficiary designation  
 3 made before the time the designation becomes irrevocable, a disclaimer must  
 4 be delivered to the person making the beneficiary designation.

5 (g) In the case of an interest created by a beneficiary designation  
 6 made after the time the designation becomes irrevocable, a disclaimer must be  
 7 delivered to the person obligated to distribute the interest.

8 (h) In the case of a disclaimer by a surviving holder of jointly held  
 9 property, the disclaimer must be delivered to the person to whom the  
 10 disclaimed interest passes.

11 (i) In the case of a disclaimer by an object or taker in default of  
 12 exercise of a power of appointment at any time after the power was created:

13 (1) The disclaimer must be delivered to the holder of the power  
 14 or to the fiduciary acting under the instrument that created the power; or

15 (2) If no fiduciary is then serving, it must be filed with a  
 16 court having authority to appoint the fiduciary.

17 (j) In the case of a disclaimer by an appointee of a nonfiduciary  
 18 power of appointment:

19 (1) The disclaimer must be delivered to the holder, the personal  
 20 representative of the holder's estate or to the fiduciary under the  
 21 instrument that created the power; or

22 (2) If no fiduciary is then serving, it must be filed with a  
 23 court having authority to appoint the fiduciary.

24 (k) In the case of a disclaimer by a fiduciary of a power over a trust  
 25 or estate, the disclaimer must be delivered as provided in subsection (c),  
 26 (d), or (e), as if the power disclaimed were an interest in property.

27 (l) In the case of a disclaimer of a power by an agent, the disclaimer  
 28 must be delivered to the principal or the principal's representative.

29  
 30 SECTION 13. When disclaimer barred or limited.

31 (a) A disclaimer is barred by a written waiver of the right to  
 32 disclaim.

33 (b) A disclaimer of an interest in property is barred if any of the  
 34 following events occur before the disclaimer becomes effective:

35 (1) The disclaimant accepts the interest sought to be  
 36 disclaimed;

1           (2) The disclaimant voluntarily assigns, conveys, encumbers,  
 2 pledges, or transfers the interest sought to be disclaimed or contracts to do  
 3 so; or

4           (3) A judicial sale of the interest sought to be disclaimed  
 5 occurs.

6           (c) A disclaimer, in whole or part, of the future exercise of a power  
 7 held in a fiduciary capacity is not barred by its previous exercise.

8           (d) A disclaimer, in whole or part, of the future exercise of a power  
 9 not held in a fiduciary capacity is not barred by its previous exercise  
 10 unless the power is exercisable in favor of the disclaimant.

11           (e) A disclaimer is barred or limited if so provided by law other than  
 12 this act.

13           (f) A disclaimer of a power over property which is barred by this  
 14 section is ineffective. A disclaimer of an interest in property which is  
 15 barred by this section takes effect as a transfer of the interest disclaimed  
 16 to the persons who would have taken the interest under this act had the  
 17 disclaimer not been barred.

18  
 19           SECTION 14. Tax qualified disclaimer.

20           Notwithstanding any other provision of this act, if as a result of a  
 21 disclaimer or transfer the disclaimed or transferred interest is treated  
 22 pursuant to the provisions of Title 26 of the United States Code, as now or  
 23 hereafter amended, or any successor statute thereto, and the regulations  
 24 promulgated thereunder, as never having been transferred to the disclaimant,  
 25 then the disclaimer or transfer is effective as a disclaimer under this act.

26           In order for a disclaimer made under the provisions of this act to be  
 27 effective as a tax qualified disclaimer pursuant to the provisions of Title  
 28 26 of the United States Code, the disclaimer must be made within the time  
 29 periods set out in Title 26, Section 2518 of the United States Code.  
 30 (Generally within 9 months from the day that the interest being disclaimed  
 31 was created.)

32  
 33           SECTION 15. Disclaimer of interest in real property; Recording of  
 34 disclaimer.

35           (a) If real property or an interest therein is disclaimed, a copy of  
 36 the disclaimer shall be recorded in the office of the circuit clerk of the



1 county in which the property or interest disclaimed is located.

2 (b) If an interest in or relating to real property is disclaimed and  
3 recorded as provided in this section, the spouse of the person entering the  
4 disclaimer, if the spouse has consented to the disclaimer in writing, shall  
5 be automatically debarred from any dower or curtesy interest in the real  
6 estate to which the spouse would have been lawfully entitled except for the  
7 disclaimer.

8 (c) Failure to file, record or register the disclaimer does not affect  
9 its validity as between the disclaimant and the person to whom the property  
10 interest or power passes by reason of the disclaimer.

11  
12 SECTION 16. Minor, incompetent, or deceased beneficiary.

13 A guardian of the property or an executor or administrator of the  
14 estate of a minor, incompetent, or deceased beneficiary may, if the fiduciary  
15 deems it to be in the best interest of those concerned with the estate of the  
16 beneficiary and of those who will take the beneficiary's interest by virtue  
17 of the disclaimer and is not detrimental to the best interest of the  
18 beneficiary, with or without an order of the court having jurisdiction, shall  
19 execute and file a disclaimer on behalf of the beneficiary within the time  
20 and in the manner in which the beneficiary himself could disclaim if he were  
21 living, of legal age, or competent.

22  
23 SECTION 17. Relation to electronic signatures in global and national  
24 commerce act. This act modifies, limits, and supercedes the federal  
25 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section  
26 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of  
27 that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any  
28 of the notices described in Section 103(b) of that act (15 U.S.C. Section  
29 7003(b)).

30  
31 SECTION 18. Uniformity of application and construction.

32 In applying and construing this act, consideration must be given to the  
33 need to promote uniformity of the law with respect to its subject matter  
34 among states that enact it.

35  
36 SECTION 19. Effective date.

1        This act takes effect on September 1, 2003.

2  
3        SECTION 20. Repeals.

4        Arkansas Code §§ 28-2-101 through 28-2-109 are repealed.

5  
6        ~~28-2-101. Right to disclaim interest in property.~~

7        ~~(a) A person or a representative of a deceased, incapacitated, or~~  
8 ~~incompetent person to whom any property or interest therein devolves, by~~  
9 ~~whatever means, may disclaim it in whole or in part by delivering a written~~  
10 ~~disclaimer under this chapter.~~

11        ~~(b) A disclaimer may be of a fractional share or any limited interest~~  
12 ~~or estate.~~

13        ~~(c) The right to disclaim granted by this chapter shall exist~~  
14 ~~irrespective of any limitations imposed upon the interest of the disclaimant~~  
15 ~~in the nature of an expressed or implied spendthrift provision or similar~~  
16 ~~restriction.~~

17        ~~(d) This chapter does not abridge the right of any person to waive,~~  
18 ~~release, disclaim, or renounce property or an interest therein under any~~  
19 ~~other statute.~~

20  
21        ~~28-2-102. Waiver and bar.~~

22        ~~The right to disclaim property or an interest therein is barred by:~~

23        ~~(1) An assignment, conveyance, encumbrance, pledge, or transfer~~  
24 ~~of the property or interest, or a contract therefor;~~

25        ~~(2) A written waiver of the right to disclaim;~~

26        ~~(3) An acceptance of the property or interest or a benefit~~  
27 ~~thereunder;~~

28        ~~(4) A sale of the property or interest under judicial sale made~~  
29 ~~before the disclaimer is effected.~~

30  
31        ~~28-2-103. Minor, incompetent, or deceased beneficiary.~~

32        ~~A guardian of the property or an executor or administrator of the~~  
33 ~~estate of a minor, incompetent, or deceased beneficiary may, if the fiduciary~~  
34 ~~deems it to be in the best interest of those concerned with the estate of the~~  
35 ~~beneficiary and of those who will take the beneficiary's interest by virtue~~  
36 ~~of the disclaimer and is not detrimental to the best interest of the~~

1 beneficiary, with or without an order of the court having jurisdiction, shall  
 2 execute and file a disclaimer on behalf of the beneficiary within the time  
 3 and in the manner in which the beneficiary himself could disclaim if he were  
 4 living, of legal age, or competent.

5  
 6 ~~28-2-104. Joint interests.~~

7 ~~(a) A surviving joint tenant or tenant by the entirety may disclaim~~  
 8 ~~as a separate interest any property or interest therein devolving to him by~~  
 9 ~~right of survivorship.~~

10 ~~(b) A surviving joint tenant or tenant by the entirety may disclaim~~  
 11 ~~the entire interest in any property or interest therein that is the subject~~  
 12 ~~of a joint tenancy or tenancy by the entirety devolving to him, if the~~  
 13 ~~joint tenancy or tenancy by the entirety was created by act of a deceased~~  
 14 ~~joint tenant or tenant by the entirety and the survivor did not join in~~  
 15 ~~creating the joint tenancy or the tenancy by the entirety. However, if the~~  
 16 ~~survivor did join in creating the joint tenancy or the tenancy by the~~  
 17 ~~entireties, then the survivor may disclaim only the incremental interest~~  
 18 ~~acquired by the survivor by virtue of the death of the deceased joint tenant~~  
 19 ~~or tenant by the entirety.~~

20  
 21 ~~28-2-105. Agents or attorneys.~~

22 ~~A disclaimant may, if he desires, execute and file a disclaimer by~~  
 23 ~~agent or attorney lawfully empowered.~~

24  
 25 ~~28-2-106. Form of disclaimer.~~

26 ~~The disclaimer shall describe the property or interest disclaimed,~~  
 27 ~~declare the disclaimer and extent thereof, and be signed by the disclaimant.~~

28  
 29 ~~28-2-107. Time of disclaimer—Delivery.~~

30 ~~(a)(1) Except as provided in subsection (c), if the property or~~  
 31 ~~interest has devolved to the disclaimant under a testamentary instrument or~~  
 32 ~~by the laws of intestacy, the disclaimer shall be delivered, as to a present~~  
 33 ~~interest, not later than nine (9) months after the death of the deceased~~  
 34 ~~owner or deceased donee of a power of appointment and, as to a future~~  
 35 ~~interest, not later than nine (9) months after the event determining that the~~  
 36 ~~taker of the property or interest has become finally ascertained and his~~

1 ~~interest is indefeasibly vested.~~

2 ~~(2) The disclaimer shall be delivered in person or mailed by~~  
 3 ~~registered or certified mail to any personal representative or other~~  
 4 ~~fiduciary of the decedent or the donee of the power, to the holder of the~~  
 5 ~~legal title to which the interest relates, or to the person entitled to the~~  
 6 ~~property or interest in the event of disclaimer.~~

7 ~~(3) A copy of the disclaimer shall be filed in the probate court~~  
 8 ~~of the county in which proceedings for the administration of the estate of~~  
 9 ~~the deceased owner or deceased donee of the power have been commenced.~~

10 ~~(b)(1)(A) Except as provided in subsection (c), if the property or~~  
 11 ~~interest has devolved to the disclaimant under a nontestamentary instrument~~  
 12 ~~or contract, the disclaimer shall be delivered, as to a present interest, not~~  
 13 ~~later than nine (9) months after the effective date of the nontestamentary~~  
 14 ~~instrument or contract and, as to a future interest, not later than nine (9)~~  
 15 ~~months after the event determining that the taker of the property or interest~~  
 16 ~~has become finally ascertained and his interest indefeasibly vested.~~

17 ~~(B) If the person entitled to disclaim does not have~~  
 18 ~~actual knowledge of the existence of the interest, the disclaimer shall be~~  
 19 ~~delivered not later than nine (9) months after he has actual knowledge of the~~  
 20 ~~existence of the interest.~~

21 ~~(2) The disclaimer shall be delivered in person or mailed by~~  
 22 ~~registered or certified mail to the person who has legal title to or~~  
 23 ~~possession of the interest disclaimed.~~

24 ~~(c) In any case, as to a transfer creating an interest in the~~  
 25 ~~disclaimant made after December 31, 1976, and subject to tax under chapters~~  
 26 ~~11, 12, or 13 of the Internal Revenue Code of 1954, as amended, a disclaimer~~  
 27 ~~intended as a qualified disclaimer must specifically so state and must be~~  
 28 ~~delivered not later than nine (9) months after the later of either the date~~  
 29 ~~the transfer is made or the day on which the person disclaiming attains age~~  
 30 ~~twenty one (21) years.~~

31  
 32 ~~28-2-108. Effect of disclaimer generally.~~

33 ~~(a)(1) If the property or interest devolved to a disclaimant under a~~  
 34 ~~testamentary instrument or under the laws of intestacy and the deceased owner~~  
 35 ~~or donee of a power of appointment has not provided for another disposition,~~  
 36 ~~it devolves as if the disclaimant had predeceased the decedent or, if the~~

1 ~~disclaimant was designated to take under a power of appointment exercised by~~  
 2 ~~a testamentary instrument, as if the disclaimant had predeceased the donee of~~  
 3 ~~the power.~~

4 ~~(2) Any future interest that takes effect in possession or~~  
 5 ~~enjoyment after the termination of the estate or interest disclaimed takes~~  
 6 ~~effect as if the disclaimant had died before the event determining that the~~  
 7 ~~taker of the property or interest had become finally ascertained and his~~  
 8 ~~interest is indefeasibly vested.~~

9 ~~(3) A disclaimer relates back for all purposes to the date of~~  
 10 ~~death of the decedent or of the donee of the power or the determinative event~~  
 11 ~~as the case may be.~~

12 ~~(b)(1) If the property or interest devolved to a disclaimant under a~~  
 13 ~~nontestamentary instrument or contract and the instrument or contract does~~  
 14 ~~not provide for another disposition:~~

15 ~~(A) It devolves as if the disclaimant had died before the~~  
 16 ~~effective date of the instrument or contract; and~~

17 ~~(B) A future interest that takes effect in possession or~~  
 18 ~~enjoyment at or after the termination of the disclaimed interest takes effect~~  
 19 ~~as if the disclaimant had died before the event determining that the taker of~~  
 20 ~~the property or interest had become finally ascertained and his interest~~  
 21 ~~indefeasibly vested.~~

22 ~~(2) A disclaimer relates back for all purposes to the effective~~  
 23 ~~date of the instrument or contract or the date of the determinative event, as~~  
 24 ~~the case may be. The effective date of a revocable instrument or contract is~~  
 25 ~~the date on which the maker no longer has power to revoke it or to transfer~~  
 26 ~~to himself or another the entire legal equitable ownership of the interest.~~

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

30  
 31 ~~28-2-109. Disclaimer of interest in real property.~~

32 ~~(a) If real property or an interest therein is disclaimed, a copy of~~  
 33 ~~the disclaimer shall be recorded in the office of the circuit clerk of the~~  
 34 ~~county in which the property or interest disclaimed is located.~~

35 ~~(b) If an interest in or relating to real property is disclaimed and~~  
 36 ~~duly recorded as provided in this section, the spouse of the person entering~~

1 ~~the disclaimer, if the spouse has consented to the disclaimer in writing,~~  
2 ~~shall be automatically debarred from any dower or curtesy interest in the~~  
3 ~~real estate to which the spouse would have been lawfully entitled except for~~  
4 ~~the disclaimer.~~

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\_\_\_\_\_ **APPROVED: 3/24/2003**