

Third Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Law (Proposed Legislation--Disclaimers
§§ 112.010-112.510)

Attached to this supplement is the part of the tentative recommendation relating to disclaimers. The Commission has not previously reviewed this material so it should be studied with care, noting the changes proposed in existing law. As noted in earlier memorandums, the Beverly Hills Bar Association has been studying this subject for some time and has sent us drafts of proposed revisions. The attached draft statute is drawn in part from the latest Beverly Hills Bar Association draft.

Discussions with several Commission consultants indicate that there are still some policy questions that need to be considered by the Commission; the staff is aware of the following issues:

Timeliness of Disclaimer

Section 112.250 in the attached draft statute provides a conclusive presumption that a disclaimer has been filed within a reasonable time if it is filed within nine months after the death of the creator of the interest or after an interest becomes indefeasibly vested, whichever is later. This rule is consistent with *Keinath v. Commissioner*, 480 F.2d 57 (8th Cir. 1973), which permitted a person who had a vested remainder subject to divestment if he failed to survive the life tenant to disclaim at a time six months after the death of the life tenant but 19 years after creation of the remainder. There is some concern that disclaimers should not be exercisable so long after the creation of the interest.

Partly as a reaction to Keinath, the Tax Reform Act of 1976 contained a provision governing qualified disclaimers for the purpose of federal gift and inheritance taxes that requires the disclaimer to be received not later than nine months after the date of the transfer or the date the disclaimant reaches 21 years of age, whichever is the later. I.R.C. § 2518; Note, Disclaimer Statutes: New Federal and State Tools for Postmortem Estate Planning, 20 Washburn L.J. 42, 54 (1980).

The staff draft continues the liberal rule of existing law because there may be reasons for filing disclaimers other than to qualify under I.R.C. Section 2518, e.g., to avoid claims of creditors or perhaps to obtain a net income tax savings. The Commission should consider whether

the existing rule as to timeliness of filing should be restricted in any way.

In this connection, the following provision from the Uniform Disclaimer of Transfers By Will, Intestacy or Appointment Act (1978) should be considered:

§ 2. [Time of disclaimer]

(a) An instrument disclaiming a present interest shall be delivered not later than [9] months after the death of the decedent or the donee of the power. An instrument disclaiming a future interest shall be delivered not later than [9] months after the event that determines that the taker of the property or interest has become finally ascertained and his interest indefeasibly vested. However, in either case, as to a transfer creating an interest in the disclaimant made after December 31, 1976, and subject to tax under Chapter 11, 12, or 13 of the Internal Revenue Code of 1954, as amended, a disclaimer intended as a qualified disclaimer thereunder must specifically so state and must be delivered not later than nine months after the later of the day the transfer is made or the day on which the person disclaiming attains age 21.

. . . .

The staff does not recommend this provision since it is not clear as to the effect of not including a statement in the disclaimer that it is intended as a qualified disclaimer under federal law.

Knowledge of the Interest

Another issue relating to the timeliness of a disclaimer depends upon the provisions of existing law continued by draft Section 112.250 that disclaimers may be filed within nine months after the time the first knowledge of the interest is acquired by the person able to disclaim. One consultant asks whether this provision refers to actual or constructive knowledge. The staff is not aware of any decisions on this point. Section 2 of the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978) provides that a disclaimer may be made within nine months after the person entitled to disclaim has actual knowledge of the existence of the interest. Does the Commission wish to clarify the nature of the knowledge of the interest that starts the running of the nine-month period?

Permissibility of Disclaimant Taking Disclaimed Interest By Other Means

A qualified disclaimer under I.R.C. Section 2518 must pass the interest to the spouse of the decedent or to a person other than the person making the disclaimer. California law, the three uniform acts on

this subject, and the staff draft provide that the disclaimant is treated as having predeceased the creator of the interest and that the property is disposed of accordingly, but these provisions do not specifically preclude the disclaimant from taking by another route. For example, under the right circumstances a life tenant and remainderman might both disclaim and each take half the property as a residuary legatee or by intestate succession. Or a devisee of an interest subject to a spendthrift clause might disclaim to avoid the spendthrift clause if the disclaimant would take an equivalent interest that is not subject to the spendthrift clause.

Should the proposed law specifically prevent a disclaimant from taking the disclaimed interest by another means? An attorney may recommend that a person disclaiming for federal tax purposes specifically disclaim any interest as a residuary taker or by intestate succession. See Kasner, Disclaimers as an Estate Planning Tool: Are the Proposed Regulations Contrary to Congressional Intent and the Expectations of Practitioners and Their Clients?, in Using Disclaimers and Powers of Appointment 27 (Cal. Cont. Ed. Bar 1981). However, if the disclaimer is made for some purpose other than avoiding taxes, the federal requirements will not be relevant. It should also be noted that the creator of the interest is in a position to provide in the creating instrument for the disposition of the disclaimed interest. See draft Section 112.280.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Disclaimer of Interests

A recipient of an interest under a will, by intestate succession, or by some other mechanism¹ may disclaim or renounce the interest within a reasonable time, with the effect that the person is treated as if he or she never received the property.² The disclaimer statute was recently amended to expand the types of interests that may be disclaimed,³ but additional revisions are needed to improve the operation of the disclaimer statute and to bring it into closer conformity with federal law. The proposed law makes a number of changes, including the following:⁴

(1) The proposed law makes clear that a disclaimer that meets the federal standard⁵ is also valid under California law. This facilitates the primary purpose of disclaimers to minimize taxes.⁶

-
1. Such as by inter vivos gift, as a surviving joint tenant, or as a beneficiary under an insurance policy or retirement plan.
 2. See Prob. Code §§ 190-190.10.
 3. 1982 Cal. Stats. ch. 41, § 1.
 4. The proposed disclaimer statute is drawn from a draft statute prepared by the Probate, Trust and Estate Planning Committee of the Beverly Hills Bar Association on file in the Commission's office.
 5. Section 2518 of the Internal Revenue Code provides in relevant part:
 - (b) [T]he term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if--
 - (1) such refusal is in writing,
 - (2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of--
 - (A) the date on which the transfer creating the interest in such person is made, or
 - (B) the day on which such person attains age 21,
 - (3) such person has not accepted the interest or any of its benefits, and
 - (4) as a result of such refusal, the interest passed without any direction on the part of the person making the disclaimer and passes either--
 - (A) to the spouse of the decedent, or
 - (B) to a person other than the person making the disclaimer.
 6. See Comment, How to Look A Gift Horse in the Mouth--Disclaimers Under California Law and the Tax Reform Act of 1976, 18 Santa Clara L. Rev. 217, 218-223 (1978).

(2) Under the proposed law a disclaimer is not a fraudulent conveyance as against creditors of the person disclaiming. This adopts the majority rule and rejects the contrary California case-law rule⁷ that pre-dates enactment of the California statute. A creditor relying on the beneficiary's anticipated acceptance of a disclaimable interest may be protected by a provision in the proposed law that permits the beneficiary to waive the right to disclaim a specific interest.

(3) The proposed law liberalizes the requirements for filing disclaimers in order to avoid technical defaults.

(4) The proposed law rejects language in a recent case to the effect that the normal disclaimer rules are inapplicable to a devise conditioned on survival.⁸

7. See In re Estate of Kalt, 16 Cal.2d 807, 108 P.2d 401 (1940); Bennett, Using Disclaimers § 5.9, in Using Disclaimers and Powers of Appointment 9-10 (Cal. Cont. Ed Bar 1981). See also Comment to Section 3 of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978). Since the disclaimed interest is treated in Probate Code Section 190.6 as never having belonged to the disclaimant, there is nothing for the creditor to reach.

8. See Estate of Murphy, 92 Cal. App.3d 413, 426, 154 Cal. Rptr. 859 (1979) (dictum).

CHAPTER 4. DISCLAIMER OF TESTAMENTARY
AND NONTESTAMENTARY INTERESTS

Article 1. Definitions

§ 112.010. Application of definitions

112.010. Unless the provision or context otherwise requires, the words and phrases defined in this article govern the construction of this chapter.

Comment. Section 112.010 is new.

24844

§ 112.020. Beneficiary

112.020. "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

Comment. Section 112.020 continues the substance of the first portion of subdivision (a) of former Section 190.

26267

§ 112.030. Creator of the interest

112.030. (a) "Creator of the interest" means a person who establishes, declares, creates, or otherwise brings into existence an interest.

(b) "Creator of the interest" includes, but is not limited to, the following:

(1) With respect to an interest created by intestate succession, the person dying intestate.

(2) With respect to an interest created under a will, the testator.

(3) With respect to an interest created under a trust, the trustor.

(4) With respect to an interest created by succession to a disclaimed interest, the disclaimant of the disclaimed interest.

(5) With respect to an interest created by virtue of an election to take against a will, the testator.

(6) With respect to an interest created by creation of a power of appointment, the donor.

(7) With respect to an interest created by exercise or nonexercise of a power of appointment, the donee.

(8) With respect to an interest created by an inter vivos gift, the donor.

(9) With respect to an interest created by a trust account, the deceased depositor.

(10) With respect to an interest created under an insurance or annuity contract, the owner, the insured, or the annuitant.

(11) With respect to an interest in joint tenancy, the deceased joint tenant.

(12) With respect to an interest created under an employee benefit plan, the employee or other owner of an interest in the plan.

(13) With respect to an interest created under an individual retirement account, annuity, or bond, the owner.

Comment. Section 112.030 is new. See also Sections 112.060 ("employee benefit plan" defined), 112.070 ("interest" defined), 112.080 ("trust account" defined), 100.310 ("person" defined).

26268

§ 112.040. Disclaimant

112.040. "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

Comment. Section 112.040 continues subdivision (d) of former Section 190.

26967

§ 112.050. Disclaimer

112.050. "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

Comment. Section 112.050 continues subdivision (c) of former Section 190.

§ 112.060. Employee benefit plan

112.060. "Employee benefit plan" includes, but is not limited to, any pension, retirement, death benefit, stock bonus, or profit sharing plan, system, or trust.

Comment. Section 112.060 is new.

27229

§ 112.070. Interest

112.070. (a) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, or any estate in any such property, or any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property.

(b) "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (1) By intestate succession.
- (2) Under a will.
- (3) Under a trust.
- (4) By succession to a disclaimed interest.
- (5) By virtue of an election to take against a will.
- (6) By creation of a power of appointment.
- (7) By exercise or nonexercise of a power of appointment.
- (8) By an inter vivos gift, whether outright or in trust.
- (9) By a trust account.
- (10) Under an insurance or annuity contract.
- (11) In joint tenancy.
- (12) Under an employee benefit plan.
- (13) Under an individual retirement account, annuity, or bond.
- (14) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

Comment. Subdivision (a) of Section 112.070 continues the substance of subdivision (b) of former Section 190. Subdivision (b) of Section 112.070 continues a portion of subdivision (a) of former Section 190 (as amended by 1982 Cal. Stats. ch. 41). See also Sections 112.060 ("employee benefit plan" defined), 112.080 ("trust account" defined).

§ 112.070. Interest

112.070. (a) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, or any estate in any such property, or any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property.

(b) "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (1) By intestate succession.
- (2) Under a will.
- (3) Under a trust.
- (4) By succession to a disclaimed interest.
- (5) By virtue of an election to take against a will.
- (6) By creation of a power of appointment.
- (7) By exercise or nonexercise of a power of appointment.
- (8) By an inter vivos gift, whether outright or in trust.
- (9) By a trust account.
- (10) Under an insurance or annuity contract.
- (11) In joint tenancy.
- (12) Under an employee benefit plan.
- (13) Under an individual retirement account, annuity, or bond.
- (14) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

Comment. Subdivision (a) of Section 112.070 continues the substance of subdivision (b) of former Section 190. Subdivision (b) of Section 112.070 continues a portion of subdivision (a) of former Section 190 (as amended by 1982 Cal. Stats. ch. 41). See also Sections 112.060 ("employee benefit plan" defined), 112.080 ("trust account" defined).

27230

§ 112.080. Trust account

112.080. "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a trust account, it is not essential that payment to the beneficiary be mentioned in the

deposit agreement. A trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

Comment. Section 112.080 is the same in substance as paragraph (14) of Section 6-101 of the Uniform Probate Code.

27232

Article 2. General Provisions

§ 112.210. Right to disclaim interest

112.210. A beneficiary may disclaim any interest, in whole or in part, by filing a disclaimer as provided in this chapter.

Comment. Section 112.210 continues the first sentence of former Section 190.1.

27400

§ 112.220. Disclaimer on behalf of conservatee

112.220. A disclaimer on behalf of a conservatee shall be made by the conservator of the estate of the conservatee pursuant to a court order obtained under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4 authorizing or requiring the conservator to execute and file the disclaimer.

Comment. Section 112.220 continues the substance of a portion of former Section 190.2 and adds a reference to the substituted judgment provisions of the guardianship-conservatorship law. The substituted judgment provisions specifically are applicable to disclaimers. See Section 2580(b)(9) (providing for an order of the court authorizing or requiring the conservator to exercise "the right of the conservatee to renounce or disclaim any interest").

27946

§ 112.230. Disclaimer on behalf of minor or decedent

112.230. (a) A disclaimer on behalf of a minor shall be made by the guardian of the estate of the minor if one has been appointed or, if none has been appointed, by a guardian ad litem of the minor.

(b) A disclaimer on behalf of a decedent shall be made by the personal representative of the decedent.

(c) A disclaimer by a guardian or personal representative is not effective unless made pursuant to a court order obtained under this section that authorizes or requires the guardian or personal representative to execute and file the disclaimer. A petition for such an order shall be filed in the superior court in the county in which the estate of the minor or decedent is administered or, if there is no administration, the superior court in any county in which administration would be proper. The petition may be filed by the guardian, personal representative, or other interested person.

(d) The petition shall:

- (1) Identify the creator of the interest.
- (2) Describe the interest to be disclaimed.
- (3) State the extent of the disclaimer.
- (4) Identify the person or persons the petitioner believes would take the interest in the event of the disclaimer.

(e) Notice of the hearing on the petition shall be given as follows:

(1) If the petition is for an order authorizing or requiring the guardian of the estate of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 of Division 4 to all of the persons (other than the petitioner or persons joining in the petition) required to be given notice under that chapter.

(2) If the petition is for an order authorizing or requiring the personal representative of a decedent to execute and file the disclaimer, notice of the hearing on the petition shall be given for the period and in the manner provided in Section 1200.5.

(3) If the petition is for an order authorizing or requiring a guardian ad litem of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given to the persons and in the manner that the court shall by order direct.

(4) The court may require that additional notice be given in such manner as the court directs.

(f) After hearing, the court in its discretion may make an order authorizing or requiring the guardian or personal representative to execute and file the disclaimer if the court determines, taking into consideration all of the relevant circumstances, that the minor or

decendent as a prudent person would disclaim the interest if he or she had the capacity to do so.

Comment. Subdivision (a) of Section 112.230 continues the substance of a portion of former Section 190.2 but adds a reference to a guardian ad litem. Subdivision (b) continues the substance of a portion of former Section 190.2. Subdivisions (c), (d), (e), and (f) are new. Paragraph (1) of subdivision (e) is drawn from Civil Code Section 1388.3 (release of power of appointment on behalf of minor donee). Subdivision (f) adopts the standard provided by Civil Code Section 1388.3 for release of a power of appointment on behalf of a minor donee.

28451

§ 112.240. Contents of disclaimer

112.240. The disclaimer shall be in writing and be signed by the disclaimant and shall:

- (a) Identify the creator of the interest.
- (b) Describe the interest to be disclaimed.
- (c) State the disclaimer and the extent thereof.

Comment. Section 112.240 continues the substance of the second sentence of former Section 190.1.

28458

§ 112.250. Time within which disclaimer must be filed

112.250. (a) A disclaimer is effective upon being filed within a reasonable time after the person able to disclaim acquires knowledge of the interest.

(b) In the case of any of the following interests, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after the death of the creator of the interest or within nine months after the interest becomes indefeasibly vested, whichever occurs later:

- (1) An interest created under a will.
- (2) An interest created by intestate succession.
- (3) An interest created pursuant to the exercise or nonexercise of a testamentary power of appointment.
- (4) An interest created by a trust account.
- (5) An interest created under a life insurance or annuity contract.
- (6) An interest created by a joint tenancy.

(7) An interest created under an employee benefit plan.

(8) An interest created under an individual retirement account, annuity, or bond.

(c) In the case of an interest created by an inter vivos trust, an interest created by the exercise of a presently exercisable power of appointment, an outright inter vivos gift, a power of appointment, or an interest created or increased by succession to a disclaimed interest, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after whichever of the following times occurs latest:

(1) The time of the creation of the trust, the exercise of the power of appointment, the making of the gift, the creation of the power of appointment, or the disclaimer of the disclaimed property.

(2) The time the first knowledge of the interest is acquired by the person able to disclaim.

(3) The time the interest becomes indefeasibly vested.

(d) In case of an interest not described in subdivision (b) or (c), a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after whichever of the following times occurs later:

(1) The time the first knowledge of the interest is acquired by the person able to disclaim.

(2) The time the interest becomes indefeasibly vested.

(e) In the case of a future estate, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within whichever of the following times occurs later:

(1) Nine months after the time the interest becomes an estate in possession.

(2) The time specified in subdivision (b), (c), or (d), whichever is applicable.

(f) If the disclaimer is not filed within the time provided in subdivision (b), (c), (d), or (e), the disclaimant has the burden of establishing that the disclaimer was filed within a reasonable time after he or she acquired knowledge of the interest.

Comment. Section 112.250 supersedes former Section 190.3.

§ 112.260. Filing of disclaimer; recording of disclaimers affecting real property

112.260. (a) A disclaimer shall be filed with any of the following:

(1) The superior court in the county in which the estate of the decedent is administered or, if there is no administration of the decedent's estate, the superior court in any county in which administration would be proper.

(2) The trustee, personal representative, other fiduciary, or person responsible for distributing the interest to the beneficiary.

(3) Any other person having custody or possession of or legal title to the interest.

(4) The creator of the interest.

(b) If a disclaimer made pursuant to this chapter affects real property or an obligation secured by real property and the disclaimer is acknowledged and proved in like manner as a grant of real property, the disclaimer may be recorded in like manner and with like effect as a grant of real property, and all statutory provisions relating to the recordation or nonrecordation of conveyances of real property and to the effect thereof apply to the disclaimer with like effect, without regard to the date when the disclaimer was filed pursuant to subdivision (a). Failure to file a disclaimer pursuant to subdivision (a) which is recorded pursuant to this subdivision does not affect the validity of any transaction with respect to the real property or the obligation secured thereby, and the general laws on recording and its effect govern any such transaction.

Comment. Subdivision (a) of Section 112.260 supersedes the first paragraph of former Section 190.4 and is less restrictive than the former law. Subdivision (b) supersedes the second paragraph of former Section 190.4 and makes clear that acknowledgment of a disclaimer affecting real property is permissible but is not a prerequisite to the effectiveness of the disclaimer. However, acknowledgment of a disclaimer affecting real property remains a prerequisite to recording the disclaimer under subdivision (b).

§ 112.270. Disclaimer irrevocable and binding

112.270. A disclaimer, when effective, is irrevocable and binding upon the beneficiary and all persons claiming by, through, or under the beneficiary, including creditors of the beneficiary.

Comment. Section 112.270 continues the substance of the first sentence of former Section 190.5 and also makes clear the effect of a disclaimer on creditors of the beneficiary. See also Section 112.290 (disclaimer not a fraudulent conveyance).

998/832

§ 112.280. Effect of disclaimer

112.280. (a) Unless the creator of the interest provides for a specific disposition of the interest in the event of a disclaimer, the interest disclaimed shall descend, go, be distributed, or continue to be held (1) as to a present interest, as if the disclaimant had predeceased the creator of the interest or (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of the interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the creator of the disclaimed interest or the determinative event, as the case may be.

(b) Notwithstanding subdivision (a):

(1) If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate is to be made under Section 220.060.

(2) The beneficiary of a disclaimed interest is not treated as having predeceased the decedent for the purpose of applying subdivision (d) of Section 220.100 or subdivision (b) of Section 220.110.

Comment. Subdivision (a) of Section 112.280 supersedes former Section 190.6. The introductory clause of subdivision (a) makes clear that a condition of survivorship is not a contingency otherwise provided in the will, disapproving dictum in Estate of Murphy, 92 Cal. App.3d 413, 154 Cal. Rptr. 859 (1979).

The second clause of subdivision (a) is a new provision making clear that a disclaimer has the effect of accelerating the possession and enjoyment of subsequent interests. This provision is drawn from Section 3 of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978) and Section 3 of the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978). The pertinent portion of the Uniform Commissioners' Comment to Section 3 of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act explains the provision in the second clause of subdivision (a) as follows:

Acceleration of Future Interests: If a life estate or other future interest is disclaimed, the problem is raised of whether succeeding interests or estates accelerate in possession or enjoy-

ment or whether the disclaimed interest must be marshalled to await the actual happening of the contingency. Section 3 provides that remainder interests are accelerated, the second clause specifically stating that any future interest which is to take effect in possession or enjoyment after the termination of the estate or interest disclaimed, takes effect as if the disclaimant had predeceased the event which determines that the taker has become finally ascertained and his interest indefeasibly vested. Thus, unless the decedent or donor of the power has otherwise provided, if T leaves his estate in trust to pay the income to his son S for life, remainder to his son's children who survive him, and S disclaims with two children then living, the remainder in the children accelerates; the trust terminates and the children receive possession and enjoyment, even though the son may subsequently have other children or one or more of the living children may die during their father's lifetime. The will or instrument of transfer may be drafted to avoid acceleration if desired.

Paragraph (1) of subdivision (b) is a new provision added to prevent an heir from disclaiming property for the purpose of increasing the intestate share of his or her line at the expense of other lines of the decedent's descendants. For example, suppose the decedent has two children: The disclaimant (C-1) is living and has two children (GC-1 and GC-2, the decedent's grandchildren). The decedent's other child (C-2) has predeceased the decedent leaving one child (GC-3). But for the disclaimer, C-1's share is one-half and GC-3 takes the other half. See Section 220.060. If the disclaimant (C-1) is treated as having predeceased the decedent as provided in subdivision (a) of Section 112.280 and the per capita rule of Section 220.060 is applied, the estate would be divided at the grandchildren's generation, with GC-1, GC-2, and GC-3 each taking one-third. Paragraph (1) of subdivision (b) precludes the disclaimer from reducing the estate to which GC-3 would otherwise be entitled were the disclaimer not exercised.

Paragraph (2) of subdivision (b) makes clear that the rule governing advancements and the rule governing charging a debt against an intestate share apply notwithstanding a disclaimer.

29637

§ 112.290. Disclaimer not a fraudulent conveyance

112.290. A disclaimer is not a fraudulent conveyance by the beneficiary under Title 2 (commencing with Section 3439) of Part 2 of Division 4 of the Civil Code.

Comment. Section 112.290 rejects the rule of Estate of Kalt, 16 Cal.2d 807, 108 P.2d 401 (1940) that the disclaimer of a legacy after the testator's death may be a fraudulent conveyance. See also Section 112.270 (binding effect of disclaimer).

§ 112.300. Waiver of right to disclaim

112.300. A person who, under this chapter, could file a disclaimer may instead file a written waiver of the right to disclaim. The waiver shall specify the interest to which the waiver applies. Upon being filed as provided in Section 112.260, the waiver is irrevocable and is binding upon the beneficiary and all persons claiming by, through, or under the beneficiary.

Comment. Section 112.300 continues the substance of the second sentence of former Section 190.5.

§ 112.310. Disclaimer not permitted after interest accepted

112.310. (a) A disclaimer may not be made after the beneficiary has accepted the interest sought to be disclaimed.

(b) For the purpose of this section, a beneficiary has accepted an interest if any of the following occurs before a disclaimer is filed with respect to that interest:

(1) The beneficiary, or someone acting on behalf of the beneficiary, makes a voluntary assignment, conveyance, encumbrance, pledge, or transfer of the interest or part thereof, or contracts to do so.

(2) The beneficiary, or someone acting on behalf of the beneficiary, executes a written waiver under Section 112.300 of the right to disclaim the interest.

(3) The beneficiary, or someone acting on behalf of the beneficiary, accepts the interest or part thereof or benefit thereunder.

(4) The interest or part thereof is sold at a judicial sale.

(c) An acceptance does not preclude a beneficiary from thereafter disclaiming all or part of an interest if both of the following requirements are met:

(1) The beneficiary became entitled to the interest because another person disclaimed an interest.

(2) The beneficiary or other person acting on behalf of the beneficiary at the time of the acceptance had no knowledge of the interest to which the beneficiary so became entitled.

Comment. Section 112.310 supersedes former Section 190.7. Subdivision (b) is drawn in part from Section 4(a) of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978).

28752

§ 112.320. Right to disclaim not affected by spendthrift or similar restriction

112.320. The right to disclaim exists regardless of any limitation imposed on the interest of a beneficiary in the nature of an expressed or implied spendthrift provision or similar restriction.

Comment. Section 112.320 continues former Section 190.8. As to the effect of a disclaimer, see Section 112.280.

28753

§ 112.330. Application of chapter to interest created before July 1, 1984

112.330. An interest created before July 1, 1984, that has not been accepted may be disclaimed after June 30, 1984, in the manner provided in this chapter, but no interest that arose before July 1, 1984, in a person other than the beneficiary may be destroyed or diminished by any action of the disclaimant taken pursuant to this chapter.

Comment. Section 112.330 is drawn from former Section 190.9 but the former provision has been revised to insert the operative date of Section 112.330.

28754

§ 112.340. Preexisting rights not affected

112.340. This chapter does not limit or abridge any right a person may have under any other law to assign, convey, release, or disclaim any property or interest.

Comment. Section 112.340 continues former Section 190.10.

Article 3. Disclaimers Effective Under Federal Law

§ 112.510. Disclaimers effective under federal law effective under this chapter

112.510. Notwithstanding any other provision of this chapter, if as a result of a disclaimer the disclaimed interest is treated pursuant to the provisions of Title 26 of the United States Code, as amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the beneficiary, then the disclaimer is effective under this chapter.

Comment. Section 112.510 is a new provision intended to make disclaimers valid under federal law effective under California law even though the disclaimer would not otherwise be effective under this chapter. See, e.g., I.R.C. § 2518 (qualified disclaimers for purposes of federal gift tax).