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HOUSE BILL 112

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Al Park

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM DISCLAIMER OF  
PROPERTY INTERESTS ACT; REPEALING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Uniform Disclaimer of Property Interests Act".

Section 2. DEFINITIONS.--As used in the Uniform  
Disclaimer of Property Interests Act:

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

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

(3) "disclaimer" means the refusal to accept an

1 interest in or power over property;

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

6 (5) "jointly held property" means property held in  
7 the name of two or more persons under an arrangement in which  
8 all holders have concurrent interests and under which the last  
9 surviving holder is entitled to the whole of the property;

10 (6) "person" means an individual, corporation,  
11 business trust, estate, trust, partnership, limited liability  
12 company, association, joint venture, government governmental  
13 subdivision, agency or instrumentality, public corporation or  
14 any other legal or commercial entity;

15 (7) "state" means a state of the United States,  
16 the District of Columbia, Puerto Rico, the United States  
17 Virgin Islands or any territory or insular possession subject  
18 to the jurisdiction of the United States. The term includes  
19 an Indian tribe, an Indian band or an Alaskan native village  
20 recognized by federal law or formally acknowledged by a state;  
21 and

22 (8) "trust" means:

23 (A) an express trust, charitable or  
24 noncharitable, with additions thereto, whenever and however  
25 created; and

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1 (B) a trust created pursuant to a statute,  
2 judgment or decree which requires the trust to be administered  
3 in the manner of an express trust.

4 Section 3. SCOPE. -- The Uniform Disclaimer of Property  
5 Interests Act applies to disclaimers of any interest in or  
6 power over property, whenever created.

7 Section 4. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT  
8 SUPPLEMENTED BY OTHER LAW. --

9 (a) Unless displaced by a provision of the Uniform  
10 Disclaimer of Property Interests Act, the principles of law  
11 and equity supplement that act.

12 (b) The Uniform Disclaimer of Property Interests  
13 Act does not limit any right of a person to waive, release,  
14 disclaim or renounce an interest in or power over property  
15 under a law other than that act.

16 Section 5. POWER TO DISCLAIM - GENERAL REQUIREMENTS -  
17 WHEN IRREVOCABLE. --

18 (a) A person may disclaim, in whole or part, any  
19 interest in or power over property, including a power of  
20 appointment. A person may disclaim the interest or power even  
21 if its creator imposed a spendthrift provision or similar  
22 restriction on transfer or a restriction or limitation on the  
23 right to disclaim.

24 (b) Except to the extent a fiduciary's right to  
25 disclaim is expressly restricted or limited by another statute

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

11 (c) To be effective, a disclaimer must be in a  
12 writing or other record, declare the disclaimer, describe the  
13 interest or power disclaimed, be signed by the person making  
14 the disclaimer, and be delivered or filed in the manner  
15 provided in Section 12 of the Uniform Disclaimer of Property  
16 Interests Act. As used in this subsection, "record" means  
17 information that is inscribed on a tangible medium or that is  
18 stored in an electronic or other medium and is retrievable in  
19 perceivable form.

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

24 (e) A disclaimer becomes irrevocable when it is  
25 delivered or filed pursuant to Section 12 of the Uniform

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1 Disclaimer of Property Interests Act or when it becomes  
2 effective as provided in Sections 6 through 11 of that act,  
3 whichever occurs later.

4 (f) A disclaimer made under the Uniform Disclaimer  
5 of Property Interests Act is not a transfer, assignment or  
6 release.

7 Section 6. DISCLAIMER OF INTEREST IN PROPERTY. --

8 (a) As used in this section:

9 (1) "time of distribution" means the time  
10 when a disclaimed interest would have taken effect in  
11 possession or enjoyment; and

12 (2) "future interest" means an interest that  
13 takes effect in possession or enjoyment, if at all, later than  
14 the time of its creation.

15 (b) Except for a disclaimer governed by Section 7  
16 or 8 of the Uniform Disclaimer of Property Interests Act, the  
17 following rules apply to a disclaimer of an interest in  
18 property.

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

23 (2) The disclaimed interest passes according  
24 to any provision in the instrument creating the interest  
25 providing for the disposition of the interest, should it be

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1 disclaimed, or of disclaimed interests in general.

2 (3) If the instrument does not contain a  
3 provision described in Paragraph (2), the following rules  
4 apply.

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

14 (B) If the disclaimant is not an  
15 individual, the disclaimed interest passes as if the  
16 disclaimant did not exist.

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

23 Section 7. DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN  
24 JOINTLY HELD PROPERTY. --

25 (a) Upon the death of a holder of jointly held

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1 property, a surviving holder may disclaim, in whole or part,  
2 the greater of:

3 (1) a fractional share of the property  
4 determined by dividing the number one by the number of joint  
5 holders alive immediately before the death of the holder to  
6 whose death the disclaimer relates; or

7 (2) all of the property except that part of  
8 the value of the entire interest attributable to the  
9 contribution furnished by the disclaimant.

10 (b) A disclaimer under Subsection (a) takes effect  
11 as of the death of the holder of jointly held property to  
12 whose death the disclaimer relates.

13 (c) An interest in jointly held property  
14 disclaimed by a surviving holder of the property passes as if  
15 the disclaimant predeceased the holder to whose death the  
16 disclaimer relates.

17 Section 8. **DISCLAIMER OF INTEREST BY TRUSTEE.** --If a  
18 trustee disclaims an interest in property that otherwise would  
19 have become trust property, the interest does not become trust  
20 property.

21 Section 9. **DISCLAIMER OF POWER OF APPOINTMENT OR OTHER**  
22 **POWER NOT HELD IN FIDUCIARY CAPACITY.** --If a holder disclaims a  
23 power of appointment or other power not held in a fiduciary  
24 capacity, the following rules apply.

25 (1) If the holder has not exercised the power, the

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1 disclaimer takes effect as of the time the instrument creating  
2 the power becomes irrevocable.

3 (2) If the holder has exercised the power and the  
4 disclaimer is of a power other than a presently exercisable  
5 general power of appointment, the disclaimer takes effect  
6 immediately after the last exercise of the power.

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

9 Section 10. DISCLAIMER BY APPOINTEE, OBJECT OR TAKER IN  
10 DEFAULT OF EXERCISE OF POWER OF APPOINTMENT. --

11 (a) A disclaimer of an interest in property by an  
12 appointee of a power of appointment takes effect as of the  
13 time the instrument by which the holder exercises the power  
14 becomes irrevocable.

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

19 Section 11. DISCLAIMER OF POWER HELD IN FIDUCIARY  
20 CAPACITY. --

21 (a) If a fiduciary disclaims a power held in a  
22 fiduciary capacity that has not been exercised, the disclaimer  
23 takes effect as of the time the instrument creating the power  
24 becomes irrevocable.

25 (b) If a fiduciary disclaims a power held in a



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1 fiduciary capacity that has been exercised, the disclaimer  
2 takes effect immediately after the last exercise of the power.

3 (c) A disclaimer under this section is effective  
4 as to another fiduciary if the disclaimer so provides and the  
5 fiduciary disclaiming has the authority to bind the estate,  
6 trust or other person for whom the fiduciary is acting.

7 Section 12. DELIVERY OR FILING. --

8 (a) As used in this section, "beneficiary  
9 designation" means an instrument, other than an instrument  
10 creating a trust, naming the beneficiary of:

- 11 (1) an annuity or insurance policy;  
12 (2) an account with a designation for payment  
13 on death;  
14 (3) a security registered in beneficiary  
15 form;  
16 (4) a pension, profit-sharing, retirement or  
17 other employment-related benefit plan; or  
18 (5) any other nonprobate transfer at death.

19 (b) Subject to Subsections (c) through (l),  
20 delivery of a disclaimer may be effected by personal delivery,  
21 first-class mail or any other method likely to result in its  
22 receipt.

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

1 (1) a disclaimer must be delivered to the  
2 personal representative of the decedent's estate; or

3 (2) if no personal representative is then  
4 serving, it must be filed with a court having jurisdiction to  
5 appoint the personal representative.

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

8 (1) a disclaimer must be delivered to the  
9 trustee then serving or, if no trustee is then serving, to the  
10 personal representative of the decedent's estate; or

11 (2) if no personal representative is then  
12 serving, it must be filed with a court having jurisdiction to  
13 enforce the trust.

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

16 (1) a disclaimer must be delivered to the  
17 trustee then serving;

18 (2) if no trustee is then serving, it must be  
19 filed with a court having jurisdiction to enforce the trust;  
20 or

21 (3) if the disclaimer is made before the time  
22 the instrument creating the trust becomes irrevocable, it must  
23 be delivered to the settlor of a revocable trust or the  
24 transferor of the interest.

25 (f) In the case of an interest created by a

1 beneficiary designation made before the time the designation  
2 becomes irrevocable, a disclaimer must be delivered to the  
3 person making the beneficiary designation.

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

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

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

15 (1) the disclaimer must be delivered to the  
16 holder of the power or to the fiduciary acting under the  
17 instrument that created the power; or

18 (2) if no fiduciary is then serving, it must  
19 be filed with a court having authority to appoint the  
20 fiduciary.

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

23 (1) the disclaimer must be delivered to the  
24 holder, the personal representative of the holder's estate or  
25 to the fiduciary under the instrument that created the power;

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1 or

2 (2) if no fiduciary is then serving, it must  
3 be filed with a court having authority to appoint the  
4 fiduciary.

5 (k) In the case of a disclaimer by a fiduciary of  
6 a power over a trust or estate, the disclaimer must be  
7 delivered as provided in Subsection (c), (d) or (e), as if the  
8 power disclaimed were an interest in property.

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

12 Section 13. WHEN DISCLAIMER BARRED OR LIMITED. --

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

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

18 (1) the disclaimant accepts the interest  
19 sought to be disclaimed;

20 (2) the disclaimant voluntarily assigns,  
21 conveys, encumbers, pledges or transfers the interest sought  
22 to be disclaimed or contracts to do so; or

23 (3) a judicial sale of the interest sought to  
24 be disclaimed occurs.

25 (c) A disclaimer, in whole or part, of the future

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1 exercise of a power held in a fiduciary capacity is not barred  
2 by its previous exercise.

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

7 (e) A disclaimer is barred or limited if so  
8 provided by law other than the Uniform Disclaimer of Property  
9 Interests Act.

10 (f) A disclaimer of a power over property that is  
11 barred by this section is ineffective. A disclaimer of an  
12 interest in property that is barred by this section takes  
13 effect as a transfer of the interest disclaimed to the persons  
14 who would have taken the interest under the Uniform Disclaimer  
15 of Property Interests Act had the disclaimer not been barred.

16 Section 14. TAX QUALIFIED DISCLAIMER. -- Notwithstanding  
17 any other provision of the Uniform Disclaimer of Property  
18 Interests Act, if as a result of a disclaimer or transfer, the  
19 disclaimed or transferred interest is treated pursuant to the  
20 provisions of Title 26 of the United States Code, as now or  
21 hereafter amended, or any successor statute thereto, and the  
22 regulations promulgated thereunder, as never having been  
23 transferred to the disclaimant, then the disclaimer or  
24 transfer is effective as a disclaimer under the Uniform  
25 Disclaimer of Property Interests Act.

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1           Section 15.   RECORDING OF DISCLAIMER. --If an instrument  
2 transferring an interest in or power over property subject to  
3 a disclaimer is required or permitted by law to be filed,  
4 recorded or registered, the disclaimer may be so filed,  
5 recorded or registered. Failure to file, record or register  
6 the disclaimer does not affect its validity as between the  
7 disclaimant and persons to whom the property interest or power  
8 passes by reason of the disclaimer.

9           Section 16.   APPLICATION TO EXISTING RELATIONSHIPS. --  
10 Except as otherwise provided in Section 13 of the Uniform  
11 Disclaimer of Property Interests Act, an interest in or power  
12 over property existing on the effective date of that act as to  
13 which the time for delivering or filing a disclaimer under law  
14 superseded by that act has not expired may be disclaimed after  
15 the effective date of that act.

16           Section 17.   UNIFORMITY OF APPLICATION AND  
17 CONSTRUCTION. --In applying and construing the Uniform  
18 Disclaimer of Property Interests Act, consideration must be  
19 given to the need to promote uniformity of the law with  
20 respect to its subject matter among states that enact it.

21           Section 18.   REPEAL. --Section 45-2-801 NMSA 1978 (being  
22 Laws 1993, Chapter 174, Section 60, as amended) is repealed.

23           Section 19.   SEVERABILITY CLAUSE. --If any provision of  
24 the Uniform Disclaimer of Property Interests Act or its  
25 application to any person or circumstance is held invalid, the

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1     invalidity does not affect other provisions or applications of  
2     the act which can be given effect without the invalid  
3     provision or application, and to this end the provisions of  
4     that act are severable.

5             Section 20.   EFFECTIVE DATE. --The effective date of the  
6     provisions of this act is July 1, 2001.

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