

CHAPTER 197

DISCLAIMER OF SUCCESSION TO PROPERTY

H. F. 778

AN ACT relating to the disclaimer of succession to property and providing a January 1 effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.704, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

633.704 DISCLAIMER.

1. RIGHT OF DISCLAIMER. A person, including a person designated to take pursuant to a power of appointment, is not required to take as a distributee, as a beneficiary, as an annuitant, or as a transferee including as a transferee in joint tenancy, or otherwise, and a person, as a donee of a power, is not required to accept any right of appointment. If the requirements of this section are met, a person may disclaim, in whole or in part, the transfer of a power, or the transfer, receipt of, or entitlement or succession to, any property, real or personal, or any interest in property, including but not limited to an interest in trust, and including but not limited to ownership, proceeds of, or other benefits to or under a life insurance policy or annuity contract, by delivering a written instrument of disclaimer within the time and in the manner provided in this section. The instrument shall:

- a. Describe the property, interest, or right disclaimed.
- b. Declare the disclaimer and the extent of the disclaimer.
- c. Be signed and acknowledged by the disclaimant.

2. TIME OF DISCLAIMER--FILING--IRREVOCABILITY.

a. TIME OF DISCLAIMER. The disclaimer instrument shall be received by the transferor of the property, interest, or right, the transferor's fiduciary, or the holder of the legal title to which the property, interest, or right relates, not later than the date which is nine months after the later of the date on which the transfer of the property, interest, or right is made, or the date on which the disclaimant attains eighteen years of age. The nine-month period for making a disclaimer shall be determined with reference to each transfer. With respect to a testamentary transfer, the transfer occurs upon the date of the decedent's death. Any property, interest, or right may be disclaimed nine months after the date of the disclaimant's eighteenth birthday even though the disclaimant received benefits from the property, interest, or right without any action on the disclaimant's part before attaining eighteen years of age. However, if a person entitled to disclaim does not have actual knowledge of the existence of the transfer, the disclaimer may be made not later than nine months after the person has actual knowledge of the existence of the transfer.

b. **FILING.** A copy of an instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file with the county recorder within the time permitted for disclaimer does not invalidate the disclaimer. A copy of an instrument of disclaimer, regardless of subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

c. **IRREVOCABILITY.** An instrument of disclaimer shall be unqualified and is irrevocable from and after the date of its receipt.

3. **EFFECTIVE DISCLAIMER.**

a. **PASSAGE OF DISCLAIMED INTEREST OR PROPERTY.** Unless the transferor has otherwise provided, the property, interest, or right disclaimed, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest or right disclaimed, descends or shall be distributed as if the disclaimant has died prior to the date of the transfer, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power unless the donee of the power has otherwise provided. In every case, the disclaimer relates back for all purposes to the date of the transfer. In the case of a disclaiming beneficiary under a will, other than a spouse, the property, interest, or right disclaimed passes to the heirs of the disclaimant unless from the terms of the transferor's will the intent is clear and explicit to the contrary, in which event the property, interest, or right disclaimed passes pursuant to the will. In the case of a disclaimer under a will by a spouse the property, interest, or right disclaimed lapses unless from the terms of the transferor's will the intent is clear and explicit to the contrary.

b. **FUTURE INTEREST.** A person who has a present and a future interest in property and who disclaims the present interest, in whole or in part, shall be deemed to have disclaimed the future interest to the same extent. However, if such person disclaims only the future interest, in whole or in part, that person shall retain the present interest, and the disclaimer shall only effect the future interest involved.

c. **DEATH OR DISABILITY OF DISCLAIMED.** If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant and may disclaim on behalf of his or her decedent. If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person's best interests.

4. **WAIVER AND BAR.** An assignment, conveyance, encumbrance, pledge, or transfer of any property, interest, or right, or a contract therefor, or a written waiver of the right to disclaim, or an acceptance of any property, interest, or right, by an heir, devisee, donee, transferee, joint owner, person succeeding to a disclaimed interest, annuitant, beneficiary under a life insurance policy, or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or a sale of property by

execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 through 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of the property, interest, or right. A fiduciary, however, does not retain discretionary power to direct the enjoyment of the disclaimed property, interest, or right.

5. EXCLUSIVENESS OF REMEDY. This section does not abridge the right of a person to assign, convey, release, or renounce any property, interest, or right arising under any other statute.

6. EFFECTIVE DATE--REPEAL. This section applies only to transfers occurring on or after the effective date of this Act.

Sec. 2. Section 1 of this Act does not apply to any transfer occurring prior to the effective date of this Act. A transfer occurring prior to the effective date of this Act shall be governed by the law as it existed prior to the effective date of this Act.

Approved May 5, 1981

CHAPTER 198
POSTCONVICTION PROCEDURE
H. F. 765

AN ACT relating to the use of chapters 663 and 663A of the Code by persons convicted of, or sentenced for, a public offense.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 663A.2, Code 1981, is amended by adding the following new subsection following subsection 5 and renumbering the remaining subsection:

NEW SUBSECTION. 6. The person's reduction of sentence pursuant to section 246.39 or section 246.43 has been unlawfully forfeited; or

Sec. 2. Section 663A.2, subsection 5, Code 1981, is amended to read as follows:

5. ~~His~~ The person's sentence has expired, ~~his~~ or probation, parole, or conditional release has been unlawfully revoked, or ~~he~~ the person is otherwise unlawfully held in custody or other restraint; ~~or~~