

CHAPTER 633E

UNIFORM DISCLAIMER OF PROPERTY INTEREST ACT

[SP]

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633E.1 Short title.

This chapter shall be known and may be cited as the “*Iowa Uniform Disclaimer of Property Interest Act*”.

2004 Acts, ch 1015, §8

C2005, §633.901

2005 Acts, ch 38, §52, 53

CS2005, §633E.1

633E.2 Definitions.

For purposes of this chapter, the following definitions shall apply:

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 the disclaimant refuses to accept that would have passed to the disclaimant had the disclaimer not been made.
3. “*Disclaimer*” means the refusal to accept an interest in or power over property.
4. “*Fiduciary*” means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.
5. “*Jointly held property*” means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.
6. “*Person*” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
7. “*State*” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes any Indian tribe or band, or Alaskan village, recognized by federal law or formally acknowledged by a state.
8. “*Trust*” means any of the following:
 - a. An express trust, charitable or noncharitable, with additions thereto, whenever and however created.
 - b. A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

2004 Acts, ch 1015, §9

C2005, §633.902

2005 Acts, ch 38, §52, 53
CS2005, §633E.2

633E.3 Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever and however created.

2004 Acts, ch 1015, §10
C2005, §633.903
2005 Acts, ch 38, §52, 53
CS2005, §633E.3

633E.4 Tax qualified disclaimer.

Except as provided in sections 633E.13 and 633E.15, notwithstanding any other provision of this chapter, any disclaimer or transfer that meets the requirements of section 2518 of the Internal Revenue Code, and the regulations promulgated thereunder, for the purpose of being a tax qualified disclaimer with the effect that the disclaimed or transferred interest is treated as never having been transferred to the disclaimant is effective as a disclaimer under this chapter. For purposes of this section, “*Internal Revenue Code*” means the same as defined in section 422.3.

2004 Acts, ch 1015, §11
C2005, §633.904
2005 Acts, ch 38, §52, 53
CS2005, §633E.4
2010 Acts, ch 1020, §1
[T] Section amended

633E.5 Power to disclaim — general requirements — when irrevocable.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whenever and however acquired. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Except to the extent a fiduciary’s right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, or a disclaimer by a fiduciary would be a breach of trust, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if the creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 633E.12. In this subsection, “*record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

4. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 633E.12 or when it becomes effective as provided in sections 633E.6 through 633E.11, whichever occurs later.

6. A disclaimer made under this chapter is not a transfer, assignment, or release.

2004 Acts, ch 1015, §12
C2005, §633.905
2005 Acts, ch 3, §106; 2005 Acts, ch 38, §52, 53, 55
CS2005, §633E.5

633E.6 Effect of disclaimer of interest in property.

1. As used in this section:

a. “*Future interest*” means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

b. “*Time of distribution*” means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. Except for a disclaimer governed by section 633E.7 or 633E.8, the following rules apply to a disclaimer of an interest in property:

a. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate’s death.

b. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

c. If the instrument does not contain a provision described in paragraph “b”, the following rules shall apply:

(1) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

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

d. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant of the preceding interest is not accelerated in possession or enjoyment.

e. For purposes of this section, if an individual disclaims a future interest not held in trust, the disclaimed future interest passes as if that interest had been held in trust.

2004 Acts, ch 1015, §13

C2005, §633.906

2005 Acts, ch 38, §53, 55

CS2005, §633E.6

633E.7 Disclaimer of rights of survivorship in jointly held property.

1. Upon the death of a holder of jointly held property, either of the following may occur:

a. If, during the deceased holder’s lifetime, the deceased holder could have unilaterally regained a portion of the property attributable to the deceased holder’s contribution without the consent of any other holder, a surviving holder may disclaim, in whole or in part, a fractional share of that portion of the property attributable to the deceased holder’s contributions determined by dividing the number one by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

b. For all other jointly held property, a surviving holder may disclaim, in whole or in part, a fraction of the whole of the property the numerator of which is one and the denominator of which is the product of the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates multiplied by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

2. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

4. A noncitizen spouse who is a surviving joint tenant of real property interests created after July 13, 1988, can disclaim the spouse’s interest to the full extent permitted under section 633E.4.

2004 Acts, ch 1015, §14

C2005, §633.907

2005 Acts, ch 38, §53

CS2005, §633E.7

2010 Acts, ch 1020, §2, 3

[T] Subsection 1 stricken and rewritten

[T] NEW subsection 4

633E.8 Disclaimer of interest by trustee.

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

2004 Acts, ch 1015, §15

C2005, §633.908

2005 Acts, ch 38, §53

CS2005, §633E.8

633E.9 Disclaimer of power of appointment or other power not held in fiduciary capacity.

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

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

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

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

2004 Acts, ch 1015, §16

C2005, §633.909

2005 Acts, ch 38, §53

CS2005, §633E.9

633E.10 Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

1. For purposes of this section, all of the following rules shall apply:

a. An appointee is a person to whom a holder of a power has effectively appointed the property subject to the power.

b. An object of a power is a person to whom a holder of a power may appoint the property subject to the power sometime in the future.

c. A taker in default of the exercise of a power of appointment is a person designated by the person creating the power in the holder to take the property subject to the power if the power has not been effectively exercised.

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

3. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

2004 Acts, ch 1015, §17

C2005, §633.910

2005 Acts, ch 38, §53

CS2005, §633E.10

633E.11 Disclaimer of power held in fiduciary capacity.

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

2. If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. A disclaimer under this section is effective as to another fiduciary if the disclaimer so

provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

2004 Acts, ch 1015, §18

C2005, §633.911

2005 Acts, ch 38, §53

CS2005, §633E.11

633E.12 Delivery or filing.

1. For the purposes of this section, “*beneficiary designation*” means an instrument, other than an instrument creating a trust, naming the beneficiary of any of the following:

- a. An annuity or insurance policy.
- b. An account with a designation for payment on death.
- c. A security registered in beneficiary form.
- d. A pension, profit-sharing, retirement, or other employment-related benefit plan.
- e. Any other nonprobate transfer at death.

2. Subject to subsections 3 through 12, delivery of a disclaimer may be effected by personal delivery, first class mail, or any other method likely to result in its receipt.

3. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, the following shall apply:

- a. A disclaimer must be delivered to the personal representative of the decedent’s estate.
- b. If no personal representative is then serving, a disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

4. In the case of an interest in a testamentary trust, one of the following shall apply:

- a. A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent’s estate.
- b. If no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

5. In the case of an interest in an inter vivos trust, one of the following shall apply:

- a. A disclaimer must be delivered to the trustee then serving.
- b. If no trustee is then serving, a disclaimer must be filed with a court having jurisdiction to enforce the trust.
- c. If a disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

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

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

9. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created, one of the following shall apply:

- a. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power.
- b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

10. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, one of the following shall apply:

- a. The disclaimer must be delivered to the holder, the personal representative of the holder’s estate, or to the fiduciary under the instrument that created the power.
- b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

11. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer

must be delivered as provided in subsection 3, 4, or 5, as if the power disclaimed were an interest in property.

12. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

13. In addition to the foregoing, all of the following shall apply:

a. A copy of any 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, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

b. A copy of an instrument of disclaimer, regardless of its subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

2004 Acts, ch 1015, §19

C2005, §633.912

2005 Acts, ch 38, §53

CS2005, §633E.12

633E.13 When disclaimer barred or limited.

1. A disclaimer is barred by a written waiver of the right to disclaim.

2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

a. The disclaimant accepts the interest sought to be disclaimed.

b. The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so.

c. A judicial sale of the interest sought to be disclaimed occurs.

3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

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

5. A disclaimer is barred or limited if so provided by law other than this chapter, except as provided in subsection 7.

6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

7. A disclaimer may be made at any time unless otherwise barred and any other law that would bar a disclaimer due to the passage of time shall not apply under this chapter.

2004 Acts, ch 1015, §20

C2005, §633.913

2005 Acts, ch 38, §52, 53

CS2005, §633E.13

2010 Acts, ch 1020, §4, 5

[T] Subsection 5 amended

[T] NEW subsection 7

633E.14 Chapter supplemented by other law.

1. Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

2. This chapter does not limit any right of a person to disclaim an interest in or power over property under a statute other than this chapter.

2004 Acts, ch 1015, §21

C2005, §633.914

2005 Acts, ch 38, §52, 53

CS2005, §633E.14

2010 Acts, ch 1020, §6

[T] Subsection 2 amended

633E.15 Medical assistance eligibility.

A disclaimer of any property, interest, or right pursuant to the provisions of this chapter constitutes a transfer of assets for the purpose of determining eligibility for medical assistance under chapter 249A in an amount equal to the value of the property, interest, or right disclaimed.

2004 Acts, ch 1015, §22

C2005, §633.915

2005 Acts, ch 38, §52, 53

CS2005, §633E.15

633E.16 Application to existing relationship.

Except as otherwise provided in section 633E.13, an interest in or power over property existing on July 1, 2004, as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after July 1, 2004.

2004 Acts, ch 1015, §23

C2005, §633.916

2005 Acts, ch 38, §52, 53, 55

CS2005, §633E.16

633E.17 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of the chapter are severable.

2004 Acts, ch 1015, §24

C2005, §633.917

2005 Acts, ch 38, §52, 53

CS2005, §633E.17