

CHAPTER 467

H.B. No. 368

AN ACT

relating to the acceptance or disclaimer of certain property interests, the effects of acceptance of certain trust interests, and the appointment of a guardian ad litem in certain probate proceedings.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. GUARDIANS AND ATTORNEYS AD LITEM. The judge of a probate court may appoint a guardian ad litem, an attorney ad litem, or, if necessary, both, to represent the interests of a person having a legal disability, a nonresident, *an unborn or unascertained person*, or an unknown heir in any probate proceeding. Each guardian ad litem and attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

SECTION 2. Section 37A, Texas Probate Code, is amended to read as follows:

Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT ~~[UNDER A WILL OR BY AN INHERITANCE]~~. Any person, or the personal representative of an incompetent, deceased, *unborn or unascertained*, or minor person, with prior court approval of the court having, or which would have, jurisdiction over such personal representative, or any independent executor of a deceased person, without prior court approval, who may be entitled to receive any property *as a beneficiary* ~~[from a decedent by an insurance contract or under any will of or by inheritance from a decedent]~~ and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent unless decedent's will provides otherwise. Failure to comply

with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation." *In this section "beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person by inheritance, under a will, by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement, or under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual.* Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer. The following shall apply to such disclaimers:

(a) **Written Memorandum of Disclaimer and Filing Thereof.** In the case of property receivable *by a beneficiary* [~~under a will or by inheritance or by an insurance contract~~], the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate. A written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(b) **Notice of Disclaimer.** Copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the date on which the transfer creating the interest in the disclaiming person is made.

(c) **Power [of Testator] to Provide for Disclaimer.** Nothing herein shall prevent a *person* [~~testator~~] from providing in a will, *insurance policy, employee benefit agreement, or other instrument* for the making of disclaimers by a *beneficiary of an interest receivable under that instrument* [~~legatees, devisees, and beneficiaries~~] and for the disposition of disclaimed property in a manner different from the provisions hereof.

(d) **Irrevocability of Disclaimer.** Any disclaimer filed and served under this section shall be irrevocable.

(e) **Partial Disclaimer.** Any person who may be entitled to receive any property *as a beneficiary* [~~from a decedent by an insurance contract or under any will of or by inheritance from a decedent~~] may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with

respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(f) *Disclaimer After Acceptance.* No disclaimer shall be effective after the acceptance of the property by the [~~heir, legatee, devisee, or~~] beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of [~~heir, legatee, devisee, or~~] beneficiary.

(g) *A beneficiary who accepts an interest in a trust is not considered to have a direct or indirect interest in trust property that relates to a licensed or permitted business and over which the beneficiary exercises no control. Direct or indirect beneficial ownership of not more than five percent of any class of equity securities that is registered under the Securities Exchange Act of 1934 shall not be deemed to be an ownership interest in the business of the issuer of such securities within the meaning of any statute, pursuant thereto.*

SECTION 3. Section 112.010, Property Code, is amended to read as follows:

Sec. 112.010. ACCEPTANCE OR DISCLAIMER BY OR ON BEHALF OF BENEFICIARY. (a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law.

(c) *Except as provided by Subsection (c-1) of this section, the following persons may disclaim an interest in [if] a trust [is] created in any manner other than by will.[,]*

(1) a beneficiary, including a beneficiary of a spendthrift trust;

(2) *the personal representative of an incompetent, deceased, unborn or unascertained, or minor beneficiary, with court approval by the court having jurisdiction over the personal representative; and*

(3) *the independent executor of a deceased beneficiary, without court approval.*

(c-1) *A person authorized to disclaim an interest in a trust under Subsection (c) of this section may not disclaim the interest if the person[,-who] in his capacity as beneficiary, personal representative, or independent executor has either [neither] exercised dominion and control over the interest or [nor] accepted any benefits from the trust.[,]*

(c-2) *A person authorized to disclaim an interest in a trust under Subsection (c) of this section may disclaim an interest in whole or in part by:*

(1) evidencing his irrevocable and unqualified refusal to accept the interest by written memorandum, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate; and

(2) delivering the memorandum to the trustee or, if there is not a trustee, to the transferor of the interest or his legal representative not later than the date that is nine months after the later of:

(A) the day on which the transfer creating the interest in the beneficiary is made;

(B) the day on which the beneficiary attains age 21; or

(C) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

(d) A disclaimer under this section is effective as of the date of the transfer of the interest involved, and the interest that is the subject of the disclaimer passes as if the person disclaiming had predeceased the transfer. A disclaimer under this section is irrevocable.

(e) Failure to comply with this section makes a disclaimer ineffective except as an assignment of the interest to those who would have received the interest being disclaimed had the person attempting the disclaimer died prior to the transferor of the interest.

SECTION 4. This Act takes effect September 1, 1987, and applies to interests of beneficiaries that arise on or after that date. An interest of a beneficiary that arises before the effective date of this Act is covered by the law as it existed when the interest arose, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 368 on May 22, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 20, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.