

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.2908 Disposition of disclaimed joint interest, trust interest, and fiduciary power.

Sec. 2908. (1) If a disclaimed interest arises out of joint property created by a governing instrument, testamentary or nontestamentary, the following apply:

(a) If the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners.

(b) If the disclaimant is not the only living owner, the disclaimed interest devolves to the other living joint owners equally or, if there is only 1 living owner, all to the other living owner.

(2) If the donee of a power of appointment or other power not held in a fiduciary capacity disclaims the power, all of the following apply:

(a) If the donee has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes effective.

(b) If the donee has exercised the power, the disclaimer takes effect immediately after the last exercise of the power.

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

(3) If all incumbent trustees disclaim a disclaimable interest, and the governing instrument does not provide for another disposition of the disclaimed interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, then the disclaimed interest devolves as if the trust with respect to which the disclaimer was made never existed. If less than all incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest under those circumstances, then the trustee who disclaims is treated as never having had any interest in or power over the disclaimed interest.

(4) If a fiduciary disclaims a fiduciary power, the fiduciary power ceases to exist as of the effective date of the disclaimer. A disclaimer of a fiduciary power by 1 of multiple incumbent fiduciaries is binding only on the fiduciary who disclaims and is not binding on the other incumbent fiduciaries or on successor fiduciaries. A disclaimer of a fiduciary power by all incumbent fiduciaries is binding on all successor fiduciaries, unless the disclaimer states otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC