

HOUSE BILL REPORT

SB 6138

As Passed House:
February 29, 2000

Title: An act relating to disclaimers of interests.

Brief Description: Modifying disclaimer of interests under the probate and trust laws.

Sponsors: Senators Johnson, Heavey and Gardner.

Brief History:

Committee Activity:

Judiciary: 2/22/00, 2/25/00 [DP].

Floor Activity:

Passed House: 2/29/00, 97-0.

Brief Summary of Bill

- Allows an owner of jointly owned property to use his or her own portion of the property and still disclaim his or her interest in another portion he or she may have acquired.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Bill Perry (786-7123).

Background:

A person may refuse to accept an interest acquired as a gift, or through intestate succession, will, community property agreement, trust, insurance policy, or other mechanism. The "disclaimer of interests" statute allows a person to execute a written "disclaimer" in which the person refuses or renounces such an interest.

Unless the instrument creating an interest directs otherwise, a beneficiary's disclaimer has the effect of passing the disclaimed interest as though that beneficiary had died immediately before the interest was to be transferred. Thus a disclaimer may operate to pass an interest directly to a succeeding beneficiary without causing tax consequences for the original beneficiary.

There are limitations on the ability of a beneficiary to disclaim an interest. For example, once a beneficiary has accepted an interest or transferred it, that beneficiary can no longer disclaim the interest. These limitations may create problems for the surviving joint owner of property when the other joint owner dies.

Under the community property law, for example, a married couple's bank account is presumably community property. If one spouse dies, a survivor who withdraws money from a joint account may forfeit the right to disclaim his or her acquired interest in the deceased spouse's portion of the account.

Summary of Bill:

A joint owner of property may use his or her own portion of that property without forfeiting the right to disclaim another interest he or she acquires in the property. This right to disclaim exists notwithstanding the normal rule that use of an interest bars subsequent disclaiming of that interest. The exception applies only if a person already owned an interest in the jointly held property before the interest to be disclaimed was transferred to him or her.

Unless there is clear and convincing evidence to the contrary, any use of the property by a joint owner is presumed to be taken from that owner's portion. Only after that owner's portion has been exhausted will use be attributed to any portion of the property which might otherwise be disclaimed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This change will help people avoid the trap of unwittingly forfeiting a right to disclaim an interest in jointly held property. The bill makes no substantive change in the intent of the current law.

Testimony Against: None.

Testified: Senator Johnson, prime sponsor; and Al Montgomery, Washington State Bar Association.