

59-2293. Same; effect of disclaimer; disclaimer barred, when; limit on disclaimant's interest of no effect; interests subject to disclaimer; disclaimer applicable to income from property disclaimed.

(a) Unless the decedent or donee of the power has otherwise provided, the property, interest or power disclaimed as provided in K.S.A. 59-2291 and amendments thereto shall descend or be distributed as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take pursuant to a power of appointment exercised by or under a testamentary instrument, as if the disclaimant had predeceased the donee of the power. In every case, the disclaimer shall relate back for all purposes to the date of death of the decedent or the donee, as the case may be, except that, in the case of a beneficiary under the terms of an inter vivos trust, the disclaimer shall relate back to the date of the transfer.

(b) Any conveyance of or contract to convey real property or any interest therein, any assignment or transfer of or contract to assign or transfer personal property, any written waiver of the right to disclaim the taking of or power over real or personal property or any sale or other disposition of real or personal property pursuant to judicial process by a person attempting to disclaim the taking of or power over property bars the right of such person to disclaim as to the power, property or interest.

(c) The right to disclaim shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) A disclaimer when filed and recorded or a written waiver of the right to disclaim shall be final, and the disclaimer or waiver cannot be revoked and shall be binding upon the disclaimant or person waiving, the personal representative of the disclaimant or person waiving and all parties claiming the right to disclaim or waive by, through or under the disclaimant or person waiving, except that, in the case of disclaimer, the interest in or power over the property shall pass as provided in subsection (a) unless otherwise provided by the instrument creating the interest or power or unless the interest or power is further disclaimed by the person succeeding to the disclaimed interest or power.

(e) Any interest in real or personal property which exists on the effective date of this act, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after the effective date of this act in the manner provided herein, but no interest which has become fixed prior to the effective date of this act in any person other than the disclaimant shall be destroyed or diminished by any action of the disclaimant taken pursuant to this act.

(f) Any interest, rents, profits or other income which arises from an interest in property disclaimed pursuant to this act and which accrues between the date of the death of the decedent or donee and the date of the disclaimer shall be the property of the person entitled to receive the disclaimed interest in the property and the person shall have a right of action against the disclaimant to recover that income.

History: L. 1968, ch. 367, § 3; L. 1980, ch. 168, § 3; L. 1982, ch. 236, § 1; July 1.