

Enrolled
House Bill 2357

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Estate Planning Section)

CHAPTER

AN ACT

Relating to disclaimers; creating new provisions; and amending ORS 105.633.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 105.633 is amended to read:

105.633. (1) For the purposes of this section:

(a) "Time of distribution" means the time when a disclaimed interest would have taken effect through possession or enjoyment.

(b) "Future interest" means an interest that takes effect through possession or enjoyment, if at all, at a time later than the time that the interest is created.

(2) Except for a disclaimer governed by ORS 105.634 or 105.636, the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect when the instrument creating the interest becomes irrevocable or, if the interest arises under the law of intestate succession, when the decedent dies.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the specific interest in the event the interest is disclaimed, or according to any provision in the instrument creating the interest providing for the disposition of interests in general in the event the interests created by the instrument are disclaimed.

[(c)] **(3)** If the instrument creating the interest does not contain a provision described in subsection (2)**(b)** of this section, **or if the interest arises under the law of intestate succession**, the following rules apply:

(a)(A) If the disclaimant is an individual, **except as otherwise provided in subparagraphs (B) and (C) of this paragraph**, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. *[However,]*

(B) If by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(C) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state, but excluding the disclaimant, and in such shares, as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the

transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

[(B)] (b) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

[(d)] (4) 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 is not accelerated in possession or enjoyment.

SECTION 2. The amendments to ORS 105.633 by section 1 of this 2009 Act apply only to disclaimers made on or after the effective date of this 2009 Act.

Passed by House February 5, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate February 25, 2009

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President of Senate

Received by Governor:

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Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State