

CHAPTER 7
TESTAMENTARY ADDITIONS TO TRUSTS, LIFE INSURANCE AND
OTHER TRUSTS; BEQUESTS TO MINORS; DISCLAIMER
OF TESTAMENTARY AND OTHER INTERESTS

SUBCHAPTER A
TESTAMENTARY ADDITIONS TO TRUSTS

- § 701. Authority; Amendability or Revocability of Trust; Manner of Holding, Administering and Disposing of Property Devised or Bequeathed; Lapse.
- § 703. Effect on Prior Wills.
- § 705. Uniform Construction.
- § 707. Short Title.

§ 701. Authority; Amendability or Revocability of Trust; Manner of Holding, Administering and Disposing of Property Devised or Bequeathed; Lapse.

A devise or bequest, the validity of which is determinable by the law of Guam, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will, or in the valid last will of a person who has predeceased the testator (regardless of the existence, size or character of the corpus of the trust). The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed

(a) shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given, and

(b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will) and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination

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of the trust before the death of the testator shall cause the devise or bequest to lapse.

SOURCE: California Probate Code, § 170; Uniform Testamentary Additions to Trusts Act.

COMMENT: The Uniform Testamentary Additions to Trusts Act, which constitutes Subchapter A of Chapter 7, has been adopted in at least 44 States. The purpose of the Act is to permit so-called "pour-over" wills: i.e., to allow a testator to set up a trust prior to his death, and provide in his will that his assets (in whole or in part) will "pour over" into that already-existing trust at the time of this death. Without statutory authorization such as that provided by the Act, the assets which are attempted to be "poured over" in this manner are considered part of the testator's estate, and are administered along with the rest of his estate. Under a statutorily validated "pour-over" will, on the other hand, those assets are not part of the probate estate for purposes of administration: they become part of (are "poured over" into) the previously-established trust, and are administered and disposed of according to the terms of that previously-established trust instead of by the terms of the testator's will. This allows a testator much more flexibility in estate planning than he would otherwise have, and (in jurisdictions having death taxes) might provide a superior tax position.

§ 703. Effect on Prior Wills.

This Subchapter shall not invalidate any devise or bequest made by a will executed prior to the effective date of this Subchapter.

SOURCE: California Probate Code, § 171; Uniform Testamentary Additions to Trusts Act.

§ 705. Uniform Construction.

This Subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those States and United States territories which enact it.

SOURCE: California Probate Code, § 172; Uniform Testamentary Additions to Trusts Act.

§ 707. Short Title.

This Subchapter may be cited as the Guam Uniform Testamentary Additions to Trusts Act.

SOURCE: California Probate Code, § 173; Uniform Testamentary Additions to Trusts Act.

SUBCHAPTER B
LIFE INSURANCE AND OTHER TRUSTS

- § 709. Designation of Trustee as Primary or Contingent Beneficiary, Payee or Owner Under Insurance, Annuity or Endowment, Contract, etc.
- § 711. Necessity of Provisions in Will Creating Trust or Making Valid Disposition Under Section 701.
- § 713. Payability or Transferability of Benefits or Rights Directly to Trustee.
- § 715. Liability of Rights and Benefits to Debts of Designator.
- § 717. Jurisdiction of Court Before or After Payment or Transfer of Benefits.
- § 719. Applicability of Subchapter A of Chapter 33 to Trust.
- § 721. Appeal From Order.
- § 723. Absence of Qualified Trustee to Claim Rights or Benefits; Payment to Personal Representative; Discharge of Obligor From: Liability.
- § 725. Effect of Subchapter on Trusts Not Made Pursuant to Subchapter.

§ 709. Designation of Trustee as Primary or Contingent Beneficiary, Payee or Owner Under Insurance, Annuity or Endowment, Contract, etc.

An insurance, annuity, or endowment contract (including any agreement issued or entered into by the insurer in connection therewith, supplemental thereto or in settlement thereof), a pension, retirement benefit, death benefit, stock bonus, profit-sharing or employees' saving plan, or contract created or entered into by an employer for the benefit of some or all of his employees, and a trust, security or account established or held pursuant to the Self Employed Individuals' Tax Retirement Act of 1962 (Pub.L. 87-792)¹ may designate as a primary or contingent beneficiary, payee or owner a trustee named or to be named in the will of the person entitled to designate such beneficiary, payee, or owner. The designation shall be made in accordance with the provisions of the contract or plan or in the absence of such provisions, in a manner approved by the insurer if an insurance, annuity, or endowment contract is involved, and by the trustee, custodian, or person or entity

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administering the contract or plan, if any. The designation may be made before or after the execution of the designator's will and shall not be required to comply with the formalities for execution of a will.

¹ 26 U.S.C. § 401 note.

SOURCE: California Probate Code, § 175.

§ 711. Necessity of Provisions in Will Creating Trust or Making Valid Disposition Under Section 701.

The designation referred to in Section 709 of this Title shall be ineffective unless the designator's will contains provisions creating the trust or makes a disposition valid under the provisions of Section 701 of this Title.

SOURCE: California Probate Code, § 176.

§ 713. Payability or Transferability of Benefits or Rights Directly to Trustee.

Subject to the provisions of Section 717 of this Title, the benefits or rights resulting from the designation referred to in Section 709 of this Title shall be payable or transferable directly to the trustee, without becoming subject to administration, upon or at any time after admission of the designator's will to probate. A designation pursuant to this Subchapter shall not be deemed to have the effect of naming a trustee of a separate inter vivos trust but the rights and benefits or the proceeds thereof when paid to such trustee shall be or become a part of, the testamentary trust or trusts established pursuant to the designator's will or shall be added to an inter vivos trust or trusts if the disposition is governed by Section 701 of this Title.

SOURCE: California Probate Code, § 177.

§ 715. Liability of Rights and Benefits to Debts of Designator.

Except as otherwise provided in the designator's will, the rights and benefits and their proceeds transferred to the trustee shall not be subject to the debts of the designator to any greater extent than if they were paid or transferred to a named beneficiary, payee, or owner other than the estate of the designator.

SOURCE: California Probate Code, § 178.

§ 717. Jurisdiction of Court Before or After Payment or Transfer of

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Benefits.

The Superior Court of Guam shall have jurisdiction, before or after payment or transfer of benefits and rights or their proceeds to the trustee, to:

- (a) Determine the validity of the trust.
- (b) Determine the terms of such trust.
- (c) Fill vacancies in the office of trustee.
- (d) Require an undertaking of a trustee or successor trustee in its discretion and in such amount as it may determine for the faithful performance of duties as trustee.
- (e) Grant additional powers to the trustee, as provided in Section 3305 of this Title.
- (f) Instruct the trustee.
- (g) Determine, fix or allow payment of compensation of a trustee as provided in Section 3313 of this Title.
- (h) Hear and determine adverse claims to the subject of the trust by the personal representative, surviving spouse, or other third person.
- (i) Determine the identity of the trustee and his acceptance or rejection of the office, and upon request, furnish evidence of trusteeship to a trustee.
- (j) Order postponement of the payment or transfer of the benefits and rights or their proceeds.
- (k) Make any order incident to the foregoing or to the accomplishment of the purposes of this Subchapter.
- (l) Authorize or direct removal of the trust or assets of the trust to another jurisdiction pursuant to the procedure provided in Subchapter B of Chapter 33 of this Title.

The personal representative of the designator's estate, any trustee named in the will or designation or successor to such trustee, or any person interested in such estate or trust may petition the Superior Court of Guam to exercise the jurisdiction provided in this Section. Notice of hearing of the petition shall be given in the manner provided in Section

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3301 of this Title, except as the Superior Court of Guam may otherwise order.

SOURCE: California Probate Code, § 179 (as amended).

§ 719. Applicability of Subchapter A of Chapter 33 to Trust.

As to matters not specifically provided in Section 717 of this Title, the provisions of Subchapter A of Chapter 33 of this Title shall apply to the trust.

SOURCE: California Probate Code, § 180.

§ 721. Appeal from Order.

An appeal may be taken from any order described in Section 3433 of this Title made pursuant to the provisions of this Subchapter, and, in addition, from an order making or refusing to make a determination specified in subsection (a), (b) or (h) of Section 717 of this Title.

SOURCE: California Probate Code, § 181.

§ 723. Absence of Qualified Trustee to Claim Rights or Benefits; Payment to Personal Representative; Discharge of Obligor from Liability.

If no qualified trustee makes claim to the benefits or rights or proceeds within one (1) year after the death of the designator, or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive them, payment or transfer may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor shall be discharged from liability.

SOURCE: California Probate Code, § 182.

§ 725. Effect of Subchapter on Trusts Not Made Pursuant to Subchapter.

Enactment of this Subchapter shall not invalidate trusts, otherwise valid, not made pursuant to the provisions of this Subchapter.

SOURCE: California Probate Code, § 184.

COMMENT: § 184 of the California Probate Code contains a second clause concerning the effect of Subchapter B on the construction of inheritance tax laws. The Commission has omitted this clause from Subchapter B as unnecessary in Guam. Similarly, § 183 of the California Probate Code, entitled "Liability of

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insurance policy proceeds to inheritance tax," has been omitted from Subchapter B as unnecessary in Guam.

**SUBCHAPTER C
BEQUESTS TO MINORS**

- § 727. Authorization; Securities, Money, Life or Endowment Policies and Annuity Contracts.
- § 729. Bequest to Custodian; Applicability of Uniform Gifts to Minors Act.
- § 731. Designation of Adult Person or Trust Company as Custodian; Form.
- § 733. Bequest Not In Compliance With Sections 727, 729, 731, or to Person Who Becomes Adult Prior to Distribution as Direct Bequest to Person Named as Minor.
- § 735. Distribution by Personal Representative.
- § 737. Designation by Testator; Successor or Alternate Custodians; Compensation of Custodian.
- § 739. Appointment to Vacancy in Custodianship Prior to Full Distribution.
- § 741. Custodian and Beneficiary as Legatees for Purpose of Receiving Notices; Duty of Custodian to Participate in Probate Proceedings.
- § 743. Jurisdiction of Court.
- § 745. Non-Exclusiveness of Subchapter.

§ 727. Authorization; Securities, Money, Life or Endowment Policies and Annuity Contracts.

A testator may bequeath securities, money, life or endowment policies, and annuity contracts, as such terms are defined or used in the Guam Uniform Gifts to Minors Act (Article IV (commencing with Section 1154) of Chapter III of Title IV of Part IV of Division Second of the Civil Code of Guam), to a person who is a minor as provided in this Subchapter.

SOURCE: California Probate Code, § 186.

§ 729. Bequest to Custodian; Applicability of Uniform Gifts to Minors Act.

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If a testator provides in his will that a bequest shall be paid or delivered to a custodian subject to the Guam Uniform Gifts to Minors Act, then, all of the provisions of that Act including, but not limited to, the provisions of such Act as to definitions and the respective powers, rights and immunities therein contained, shall be applicable to such bequest, during the period prior to distribution of the property.

SOURCE: California Probate Code, § 186.1.

§ 731. Designation of Adult Person or Trust Company as Custodian; Form.

The bequest shall be to a designated adult person or trust company qualified to act as a fiduciary under the law of the territory of Guam with the words, in substance, "as custodian for (name of minor) under the Guam Uniform Gifts to Minors Act." Failure to name a qualified custodian shall not invalidate the bequest as a bequest permitted by this Subchapter. A variation in the wording of the bequest from the wording set forth in this Section shall be disregarded if the testator's intent to make a bequest pursuant to this Subchapter appears from the will as a whole or in the wording of the bequest.

SOURCE: California Probate Code, § 186.2.

§ 733. Bequest Not in Compliance With Sections 727, 729, 731, or to Person Who Becomes Adult Prior to Distribution as Direct Bequest to Person Named as Minor.

Unless the will clearly requires otherwise, a bequest which does not comply with the provisions of Sections 727, 729 and 731 of this Title, or a bequest to a person who becomes an adult prior to the order for distribution, shall be deemed to be a direct bequest to the person named as the minor for whom the property was to be held.

SOURCE: California Probate Code, § 186.3.

§ 735. Distribution by Personal Representative.

If a testator provides for such bequest to be paid or delivered as provided in this Subchapter, the personal representative of his estate, upon entry of an order for distribution, shall make distribution pursuant to the order of distribution by transferring the bequeathed property in the form and manner provided by the Guam Uniform Gifts to Minors Act.

SOURCE: California Probate Code, § 186.4.

§ 737. Designation by Testator; Successor or Alternate Custodians; Compensation of Custodian.

The testator in his will may provide for successor or alternate custodians, and specify the standard of compensation of the custodian.

SOURCE: California Probate Code, § 186.5.

§ 739. Appointment to Vacancy in Custodianship Prior to Full Distribution.

If a vacancy in the custodianship exists prior to full distribution of the bequest by the personal representative, a successor custodian shall be appointed for any undistributed property in the manner provided by the Guam Uniform Gifts to Minors Act.

SOURCE: California Probate Code, § 186.6.

§ 741. Custodian and Beneficiary as Legatees for Purpose of Receiving Notices; Duty of Custodian to Participate in Probate Proceedings.

Except as otherwise provided in the will or ordered by the Superior Court of Guam, each custodian designated in the will and the person for whom the property is to be held shall be deemed a legatee for the purpose of receiving notices which may be required or permitted to be sent to a legatee in the estate of the testator. Unless required by the will or ordered by the Superior Court of Guam a custodian shall not have a duty to participate in the proceedings in the estate on behalf of the minor, and in no event shall he have a duty so to participate unless and until he has filed a written notice of acceptance of the office of custodian with the Clerk of the Superior Court of Guam.

SOURCE: California Probate Code, § 186.7.

§ 743. Jurisdiction of Court.

Until distribution of the property pursuant to an order of distribution is completed, the Superior Court of Guam shall have exclusive jurisdiction over all proceedings and matters concerning undistributed property, including, but not limited to, the appointment, declination, resignation, removal, bonding, compensation of, and delivery or transfer of the undistributed property to a custodian. After the distribution of any property is completed, the Superior Court of Guam shall have no further jurisdiction over the property so distributed, and such property shall be

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held subject to the Guam Uniform Gifts to Minors Act in the same manner as if it had been a lifetime gift.

SOURCE: California Probate Code, § 186.8.

§ 745. Non-Exclusiveness of Subchapter.

This Subchapter shall not be construed as providing an exclusive method of making bequests to or for the benefit of minors.

SOURCE: California Probate Code, § 186.9.

**SUBCHAPTER D
DISCLAIMER OF TESTAMENTARY AND OTHER INTERESTS**

- § 747. Definitions.
- § 749. Beneficiary; Contents of Disclaimer.
- § 751. Infant, Incompetent, or Decedent; Disclaimer by Guardian or Representative.
- § 753. Effectiveness of Disclaimer; Knowledge of Disclaimant; Presumptions of Reasonable Time.
- § 755. Filing of Disclaimers; Place; Disclaimers Affecting Realty.
- § 757. Binding Effect on Beneficiaries and Claimants; Waiver.
- § 759. Effect of Interest Disclaimed.
- § 761. Restriction on Making Disclaimer; Acceptance by Beneficiary; Exception.
- § 763. Right to Disclaim Not Affected by Spendthrift or Other Restrictions.
- § 765. Operative Effect of Subchapter.
- § 767. Savings Clause.

§ 747. Definitions.

As used in this Subchapter, unless otherwise clearly required by the context:

(a) *Beneficiary* means and includes any person entitled, but for his disclaimer, to take an interest (1) by intestate succession, (2) by devise, (3) by legacy or bequest, (4) by succession to a disclaimed interest, (5) by virtue of an election to take against a will, (6) as beneficiary of a testamentary trust, (7) pursuant to the exercise or

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nonexercise of a power of appointment, (8) as donee of any power of appointment, or (9) as beneficiary of an inter vivos gift, whether outright or in trust;

(b) *Interest* means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof, or any estate in any such property, or power to appoint, consume, apply or expend property, or any other right, power, privilege or immunity relating thereto;

(c) *Disclaimer* means a written instrument which declines, refuses, renounces or disclaims any interest which would otherwise be succeeded to by a beneficiary;

(d) *Disclaimant* means a person who executes a disclaimer on his own behalf or on behalf of another.

SOURCE: California Probate Code, § 190.

§ 749. Beneficiary; Contents of Disclaimer.

A beneficiary may disclaim any interest, in whole or in part, by filing a disclaimer as provided in this Subchapter. The disclaimer shall (a) identify the decedent or donor, (b) describe the property or part thereof or interest therein disclaimed, (c) declare the disclaimer and the extent thereof, and (d) be signed by the disclaimant.

SOURCE: California Probate Code, § 190.1.

§ 751. Infant, Incompetent, or Decedent; Disclaimer by Guardian or Representative.

A disclaimer on behalf of an infant, incompetent or decedent shall be made by the guardian of the estate of the infant, the guardian of the estate of the incompetent, or the personal representative of the decedent.

SOURCE: California Probate Code, § 190.2.

COMMENT: Section 190.2 of the California Probate Code also includes provision for the making of a disclaimer for a conservatee by his conservator. Guam law currently contains no conservatorship provisions, and thus a provision such as that referred to above is unnecessary in Guam. If conservatorship provisions are added to the revised Codes of Guam, however, then § 751 should be amended to reflect the further provisions included in § 190.2 of the California Probate Code.

§ 753. Effectiveness of Disclaimer; Knowledge of Disclaimant; Presumptions of Reasonable Time.

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A disclaimer to be effective shall be filed within a reasonable time after the person able to disclaim acquires knowledge of the interest.

(a) Except as otherwise provided in subsection (c) of this Section, a disclaimer shall be conclusively presumed to have been filed within a reasonable time if filed as follows:

(1) In case of interests created by will, within nine (9) months after the death of the person creating the interest, or within nine (9) months after the interest becomes indefeasibly vested, whichever occurs later. Interests resulting from the exercise or nonexercise of a testamentary power of appointment shall be deemed created by the donee of the power for purposes of this Subchapter.

(2) In the case of interests arising from intestate succession, within nine (9) months after the death of the person dying intestate.

(3) In the case of interests created by inter vivos trusts, within nine (9) months after the interest becomes indefeasibly vested. Interests resulting from the exercise or nonexercise of a nontestamentary power of appointment shall be deemed created by the donee of the power for purposes of this Subchapter.

(4) In other cases within nine (9) months after the first knowledge of the interest is obtained by the person able to disclaim, or within nine (9) months after the interest becomes indefeasibly vested, whichever occurs later.

(b) If the disclaimer is not filed within the time set forth in subsection (a) of this Section, the disclaimant shall have the burden to establish the disclaimer was filed within a reasonable time after he acquired knowledge of the interest.

(c) A disclaimer shall be conclusively presumed not to have been filed within a reasonable time after the person able to disclaim acquired knowledge of the interest if:

(1) an interest in the property which is in whole or in part sought to be disclaimed has been acquired by a purchaser or encumbrancer for value subsequent to or concurrently with the creation of the interest sought to be disclaimed and prior to such disclaimer, and

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(2) one year has elapsed from the death of the person dying intestate or creating by will the interest sought to be disclaimed, or from the date of the transfer by inter vivos gift, whether outright or in trust.

SOURCE: California Probate Code, § 190.3.

§ 755. Filing of Disclaimers; Place; Disclaimers Affecting Realty.

The disclaimer shall be filed as follows:

(a) In case of interests created by will or arising from intestate succession, with the Superior Court of Guam, whether or not an administration is then pending.

(b) In case of interests created by an inter vivos trust, with the trustee then acting.

(c) In other cases, with the person creating the interest.

Disclaimers made pursuant to this Subchapter which affect real property or obligations secured by real property shall be acknowledged and proved, and may be certified and recorded, in like manner and with like effect as grants of real property, and all statutory provisions relating to the recordation or nonrecordation of conveyances of real property and to the effect thereof shall apply to such disclaimers with like effect, without regard to the date when the disclaimer was filed, if at all, pursuant to subsections (a) through (c) of this Section. Failure so to file a disclaimer which is recorded pursuant to this Section shall not affect the validity of any transaction with respect to such real property or obligation secured thereby, and the general laws of the territory of Guam on recording and its effect shall govern any such transaction.

SOURCE: California Probate Code, § 190.4.

§ 757. Binding Effect on Beneficiaries and Claimants; Waiver.

A disclaimer, when effective, shall be binding upon the beneficiary and all person claiming by, through or under him. A person who, under this Subchapter, could file a disclaimer, may instead file a written waiver of a right to disclaim and such waiver, when filed, shall be binding upon the beneficiary and all persons claiming by, through or under him.

SOURCE: California Probate Code, § 190.5.

§ 759. Effect of Interest Disclaimed.

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Unless otherwise provided in the will, inter vivos trust, exercise of the power of appointment, or other written instrument creating or finally determining an interest, the interest disclaimed and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, shall descend, go, be distributed or continue to be held as if the beneficiary disclaiming had predeceased the person creating the interest. In every case, the disclaimer shall relate back for all purposes to the date of the creation of the interest.

SOURCE: California Probate Code, § 190.6.

§ 761. Restriction on Making Disclaimer; Acceptance by Beneficiary; Exception.

A disclaimer may not be made after the beneficiary has accepted the interest to be disclaimed. An acceptance does not preclude a beneficiary from thereafter disclaiming all or part of any interest to which he became entitled because another person disclaimed an interest and of which interest the beneficiary or person able to disclaim on his behalf had no knowledge. For the purposes of this Subchapter, if a disclaimer has not theretofore been filed, a beneficiary has accepted an interest if he, or someone acting on his behalf, (1) makes a voluntary assignment or transfer of, or contract to assign or transfer, the interest or part thereof, or (2) executes a written waiver of the right to disclaim the interest, or (3) sells or otherwise disposes of the interest or any part thereof pursuant to judicial process.

SOURCE: California Probate Code, § 190.7.

§ 763. Right to Disclaim Not Affected by Spendthrift or Other Restrictions.

The right to disclaim shall exist irrespective of any limitation imposed on the interest of a beneficiary in the nature of an expressed or implied spendthrift provision or similar restriction.

SOURCE: California Probate Code, § 190.8.

§ 765. Operative Effect of Subchapter.

Any interest created prior to the effective date of this Subchapter which has not been accepted, may be disclaimed on or after the effective date of this Subchapter, in the manner provided herein; provided, however, that no interest which has arisen prior to the effective date of this Subchapter in any person other than the beneficiary, shall be

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destroyed or diminished by any action of the disclaimant taken pursuant to this Subchapter.

SOURCE: California Probate Code, § 190.9.

§ 767. Savings Clause.

This Subchapter shall not limit or abridge the presently existing rights of any person to assign, convey, release or disclaim any property or interest therein.

SOURCE: California Probate Code, § 190.10.
