

# Disclaimers under the New Texas Uniform Disclaimer of Property Interests Act

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- "Modifying and Terminating Irrevocable Trusts," State Bar of Texas Advanced Estate Planning and Probate Law Course (1999), updated on The Texas Probate Web Site [texasprobate.com]
- "Protecting the Surviving Spouse," State Bar of Texas Advanced Estate Planning and Probate Law Course (2006), updated on The Texas Probate Web Site [texasprobate.com].
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- "Dealing with Dysfunctional Clients," State Bar of Texas Advanced Estate Planning and Probate Course (2010).
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- Co-Author, "Foreign Account Tax Compliance Act and Other Foreign Reporting," 31st Annual Advanced Tax Law, State Bar of Texas, Houston, Texas (2013)
- Co-Author, "Offshore Account Reporting Requirements," 59th Annual Texas CPA Tax Institute, Texas Society of Certified Public Accountants, Dallas, Texas (2012)

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# Disclaimers under the New Texas Uniform Disclaimer of Property Interests Act<sup>1</sup>

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Like many states, Texas enacted a disclaimer statute in the 1970s as tax-motivated disclaimers became more prevalent. Over the years, the disclaimer statute expanded and spawned a trust-related offspring. Because of this piecemeal development, the existing Texas disclaimer statutes (Chapter 122 of the Estates Code and Section 112.010 of the Trust Code) grew quirky and difficult to follow and created traps for the user. Disclaimers were possible under federal tax law that were not expressly allowed by Texas law.

In 2015, the 84<sup>th</sup> Texas Legislature enacted the Texas Uniform Disclosure of Property Interests Act,<sup>2</sup> which becomes effective September 1, 2015. This paper briefly discusses the background of Texas's disclaimer statutes and some of the problems under the former statutes. It then discusses the new Texas disclaimer law and offers a guide to using it. Finally, it discusses issues related to federal law which may affect Texas disclaimers. **Appendix 1** is a table with the statutory language and a section-by-section commentary. Forms implementing the new Texas disclaimer law are attached as **Appendix 2** and are available in Word format at [texasprobate.com](http://texasprobate.com).

Tom Featherston wrote selected portions of this paper, all of which are cogent and insightful. Glenn Karisch and Julia Jonas wrote the other, messier parts.

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<sup>2</sup> HB 2428.



## 1. Background of the Texas disclaimer statutes and problems under prior law

Enacted in 1971 and amended by nine legislatures, Texas Probate Code Section 37A (“Section 37A”) had been modified in a piecemeal manner for over three decades. The result is currently codified in Texas Estates Code Chapter 122, subchapters A - D (“Chapter 122”). As discussed below, Chapter 122 could be difficult to utilize for several reasons, including the fact that the effectiveness of a disclaimer depends on compliance with technicalities, and that some of the provisions are not consistent with federal law concerning qualified disclaimers for tax purposes.

### A. History of Texas Disclaimer Statutes

Many of the idiosyncrasies of Chapter 122 can be explained through a review of the legislative history of Section 37A. Additionally, the legislative history provides insight about the administrative challenges that arose under different configurations of the disclaimer statute.

#### 1. *Enactment – 1971*

Section 37A was enacted in 1971 as HB 728. The stated purpose of HB 728 was “to clarify the disclaimer law in Texas” because existing disclaimer law was “vague and unclear.”<sup>3</sup> As originally enacted, Section 37A consisted of subsections (a) through (f). Fiduciary disclaimers were not addressed under the original statute.

The introductory language in the original statute included the following statement: “Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent.”<sup>4</sup> Accordingly, to be effective, a disclaimer had to adhere to the technical requirements of each of the six existing subsections, as applicable.

#### 2. *Amendments*

##### a. *1977 amendment: coordination with federal tax law*

Section 37A was significantly revised in 1977 in response to the Tax Reform Act of 1976.<sup>5</sup> The previous version of Section 37A had permitted disclaimers only within six months after a transfer, but the 1977 amendment extended the deadline to nine months to conform with federal tax law.<sup>6</sup> Additionally, under the original language, a disclaimer could be revoked with judicial approval within nine months after the date

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<sup>3</sup> Bill Analysis, Committee on Judiciary, H.B. 728, 62nd Leg., R.S.

<sup>4</sup> Tex. Prob. Code § 37A (1971) (third sentence).

<sup>5</sup> Bill Analysis, Committee on Judiciary, S.B. 791, 75th Leg., R.S.

<sup>6</sup> Tex. Prob. Code § 37A(a) (1977).