



Practitioners will have noted the practice note from the Taxation Committee in the Gazette of August/September 1997 arising from section 72A of the Succession Act, 1965 (as inserted by section 6 of the Family Law (Miscellaneous Provisions) Act, 1997).

A precedent disclaimer on intestacy as drafted by the Conveyancing Committee appears below. A number of points should be noted in relation to the execution of such a disclaimer:

1. It is desirable that the person disclaiming should be advised by an independent solicitor which will usually mean a solicitor who is not acting for either the personal representative or any person who will benefit from the execution of the disclaimer. Such solicitor, should, if possible, witness the execution of the disclaimer
2. The independent solicitor should explain the implications of the disclaimer and, ideally, should confirm his advice in writing. This will involve inquiries being made by the solicitor as to the assets and next of kin of the deceased. The person disclaiming should be made aware of:
 - a) The share of the estate to which he is entitled
 - b) The assets owned by the deceased, an estimate of their value and the approximate value of the share being disclaimed
 - c) Any relevant tax liabilities which might arise if the disclaimer was not signed
 - d) The effect of signing the disclaimer (and, in particular, to whom the disclaimed share will pass pursuant to section 72A)

It should be noted that apart from losing an entitlement to a share of the estate, the person disclaiming will also lose any right he may have to extract a grant of representation to the estate of the deceased in accordance with rule 79(5) RSC 1986 – unless a grant has been extracted before the disclaimer is signed. In the event of a disclaimer being signed after the person disclaiming has applied for a grant but before the grant has issued, the application should be withdrawn as the applicant would no longer be one of ‘the persons having a beneficial interest’ as provided for in rule 79(5).

It should also be noted that if an applicant’s right to a grant arises from a disclaimer having been signed by a person who had a prior right, then the original of such disclaimer must be exhibited with the oath for administrator and lodged in the Probate Office.

If a husband, separated from his wife, does not wish to benefit from her estate, and there being no issue, he should sign a disclaimer which should be exhibited in the Oath for Administrator and lodged in the Probate Office who can then proceed on the basis that he predeceased his wife. (They could not proceed on that basis if only a renunciation was filed: in this example, there would then be no person next in order of priority to extract a grant.) It would not be necessary to refer to a disclaimer if the person disclaiming had an equal right, rather than a prior right, to apply for a grant – being one of a number of children, for example.

DISCLAIMERS ON INTESTACY



**DISCLAIMERS ON
INTESTACY**

(Contd.)

If an original disclaimer is required for some other purpose, it would be desirable to have the disclaimer executed in duplicate.

As a person disclaiming is probably doing so to benefit another person, it is important to read section 72A carefully. (It would be a mistake, for example, for the brother of a deceased person to think he could benefit his own children by disclaiming a benefit to which he is entitled under the deceased's intestacy.)

**DISCLAIMER OF AB¹ ON DEATH
INTESTATE OF CD**

Obit day of 19

This **deed of disclaimer** is made this day of 19 by me AB (**occupation**) of in the County of

WHEREAS:

- 1 CD late of (hereinafter called 'the deceased') died on the day of 19 having died intestate as to the interest hereby disclaimed.
- 2 The deceased was (**marital status**) and (**occupation**) and was survived by (state if survived by, for example, a spouse and two children or as the case may be).
- 3 I was a (**relationship**) of the deceased and, as such, I am entitled to a (for example, one sixth or as the case may be) share of the deceased's estate (or of that part of the deceased's estate as to which he died intestate) (hereinafter called 'the said share') under the rules for distribution on intestacy set out in the Succession Act, 1965.
- 4 I have not accepted the said share from the personal representative of the deceased or otherwise nor have I exercised any degree of beneficial ownership, control or possession in respect of the said share.

Now it is hereby witnessed that I **hereby irrevocably disclaim** absolutely all my right to the said share

(Insert the following paragraph unless a grant has already issued to person disclaiming or he has already signed a renunciation.)

And I hereby acknowledge that on the execution by me of this disclaimer I will lose any right I may have (by virtue of my entitlement to the said share) to extract a grant of administration to the estate of the deceased.

In witness whereof I have hereunto set my hand and affixed my seal the day and year first above written.

Signed, sealed and delivered
by the said AB in the presence of:

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*1. See page 13.92 hereof for
precedent disclaimer by
several beneficiaries.*