

Title

FREQUENTLY ASKED ^ QUESTIONS

August 2010

Can a surviving Tenant by the Entireties or Joint Tenant disclaim the interest which devolves to them by the death of their co-tenant?

Yes. As you know, a disclaimer is a statutory means by which an heir, devisee, beneficiary or surviving co-owner can decline to accept any interest in real or personal property which he/she would otherwise receive by devise, descent or survivorship. (N.J.S.A. 3B:9-1 et seq.)

N.J.S.A. 3B:9-2(c) provides that any person who is a "...surviving joint tenant ... may disclaim in whole or in part any such property or interest therein ...". "Joint tenant" is defined as the co-owner of joint property which specifically includes tenancies by the entireties and joint tenancies. A disclaimer can be of an entire interest or of a partial interest.

A disclaimer must be in writing and must be signed and acknowledged by the person disclaiming the interest. It must describe the property being disclaimed (including municipality and county in which the real property is situated) and declare the disclaimer and its extent. (N.J.S.A. 3B:9-3)

A disclaimer of an interest in real estate must be delivered to the decedent's personal representative, filed with the surrogate or the clerk of the superior court and filed in the county clerk of the county in which the real property is located.

Under previous law, there were very specific time periods within which a disclaimer must be effectuated. Under current law, there is no specific time; rather, the disclaimer must be made before it is barred by one or more of the acts set forth in N.J.S.A. 3B:9-9, all of which are acts which are inconsistent with the intent to disclaim. It is important to note that one of the identified acts barring the right to disclaim is "a fraud on the individual's creditors as set forth in the 'Uniform Fraudulent Transfer Act'."

Practically, the effect of a properly executed disclaimer is as if the person disclaiming the interest predeceased the decedent. From an underwriting standpoint, one must review the disclaimer to confirm that it meets statutory requirements and confirm that it was properly served and filed. In addition, the title examiner must confirm that none of the acts specified in N.J.S.A. 3B:9-9 which would bar the right to disclaim have occurred.

As always, if you have any questions on this or any other matters, please contact a member of our underwriting staff.