COMMITTEE ON RULES AND JUDICIARY

BILL NO. 32-0327

Thirty-Second Legislature of the Virgin Islands

October 17, 2018

An Act benefitting especially Senior Citizens of the Virgin Islands amending the Virgin Islands Code title 15, chapter 13 and adding chapter 60; and amending title 28, to enact to Uniform Nonprobate Transfer Act, the Uniform Transfer on Death Act; the Uniform Disclaimer of Property Interest Act, the Uniform Custodial Trust Act; and the Uniform Partition of Heirs Property Act

PROPOSED BY: Senators Myron D. Jackson and Novelle E. Francis, Jr.

Be it enacted by the Legislature of the Virgin Islands:

CHAPTER I NONPROBATE MATTERS

SECTION 1. Title 15 Virgin Islands Code, chapter 13 is amended by designating the existing provisions as subchapter I and adding subchapters II, III, and IV to read as follows:

"*SUBCHAPTER II.* NONPROBATE TRANSFERS ON DEATH

§201. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This section includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

§ 200a. Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances.

(a) In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in the Virgin Islands to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate that estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(c) Nonprobate transferees are liable for the insufficiency described in subsection (b) in the following order of priority:

(1) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(2) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(3) other nonprobate transferees, in proportion to the values received.

(d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

(e) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(f) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in the Virgin Islands, whether or not the transferee is located in the Virgin Islands.

(g) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining

(h) A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(i) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

SUBCHAPTER III. REAL PROPERTY TRANSFER ON DEATH

§201. Short Title. This chapter may be cited as the Virgin Islands Uniform Real Property Transfer on Death Act.

§202. Definitions

In this subchapter:

(a) "Beneficiary" means a person that receives property under a transfer on death deed.

(b) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(c) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant and tenant by the entirety. The term does not include a tenant in common.

(d) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(e) "Property" means an interest in real property located in the Virgin Islands which is transferable on the death of the owner.

(f) "Transfer on death deed" means a deed authorized under this subchapter.

(g) "Transferor" means an individual who makes a transfer on death deed.

§203. Applicability

This chapter applies to a transfer on death deed made before, on, or after the effective date of this Chapter by a transferor dying on or after the effective date of this subchapter.

§204. Nonexclusivity

This subchapter does not affect any method of transferring property otherwise permitted under the law of this Territory.

§205. Transfer on death deed authorized

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

§206. Transfer on death deed revocable

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§207. Transfer on death deed nontestamentary

A transfer on death deed is non-testamentary.

§208. Capacity of Transferor

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

§209. Requirements

A transfer on death deed:

(a) except as otherwise provided in subsection (b) of this Section, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(b) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(c) must be recorded before the transferor's death in the public records in the Office of the Recorder of Deeds for the District where the property is located as a TOD Deed.

§210. Notice, delivery, acceptance, consideration not required

A transfer on death deed is effective without:

(a) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(b) consideration.

§211. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(l) is one of the following:

(A) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) an instrument of revocation that expressly revokes the deed or part of the deed; or

(C) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the Office of the Recorder of Deeds for the District where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(l) revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

§212. Effect of transfer on death deed during transferor's life During a transferor's life, a transfer on death deed does not:

(l) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

§213. Section 63. Effect of Transfer on Death Deed at Transferor's Death.

(a) Except as otherwise provided in this Section or:

(i) the transfer on death deed;

(ii) the anti-lapse provisions of Section 21 of Title 15;

(iii) the revocation by divorce provisions of section 87 of this title;

(iv) the doctrine of revocation by homicide as provided in the Common Law;

(v) the simultaneous death provisions of section 88 of this title; or

(vi) the elective share provisions of Section 10 of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to paragraph (2), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses. Subject to paragraph (4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship. If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to Title 28, Chapter 7, Virgin Islands Code, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 28, Chapter 7, Virgin Islands Code, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is:

(1) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) the last surviving joint owner, the transfer on death deed is effective. (d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§214. Disclaimer

A beneficiary may disclaim all or part of the beneficiary's interest as provided by _ subchapter iv of this chapter

§215. Delivery or filing

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(l) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(l) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust :

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(1) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest.; and

(2) the disclaimer of an interest in real property must be recorded in the Office of the Recorder of Deeds for the District where the real property that is the subject of the disclaimer is located.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a non-fiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(ℓ) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§216. Section 66. Recording of disclaimer

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Section 215 of this subchapter, failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§217. Section 67. Liability for Creditor Claims and Statutory Allowances.

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in Section 352 of this title.

§218. Optional form of transfer on death deed.

The following form may be used to create a transfer on death deed. The other sections of this subchapter govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form.

<u>You May Want to Consult a Lawyer Before Using This Form.</u>

This form must be recorded before your death, or it will not be effective.

IDENTIFYNG INFORMATION

Owner(s) Making This Deed:

______________________________ ______________________________

Printed name Mailing address

Legal description of the property:

____

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

______________________ ______________________

Printed name Mailing address, if available

ALTERNATE BENEFICIARY Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

______________________ ______________________

Printed name Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER(S) MAKNG THIS DEED

______________________________ (SEAL)]________________
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in the District where the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the Office of the Recorder of Deeds for the District where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the Office of the Recorder of Deeds for the District where the property is located. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (l) Complete and acknowledge a revocation form, and record it with the Recorder of Deeds in the District where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in the District where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

ACKNOWLEDGMENT

(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the Office of the Recorder of Deeds for the District where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the Office of the Recorder of Deeds for the District where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the Office of the Recorder of Deeds for the District where the property is located. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer. I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

§219. Section 70. Uniformity of application and construction

In applying and construing this Chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states and territories that enact it.

SECTION 2. (a) The provisions of section 1 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001 (c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

beneficiary of an instrument in substantially the following form:

Section 3. Section 1 takes effect 90 days after enactment.

SUBCHAPTER IV DISCLAIMER OF PROPERTY INTERESTS

§ 211. (a) This subchapter may be cited as the Virgin Islands Uniform Disclaimer of Property Interests Act.

Definitions.

In this subchapter:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation or any legal or commercial entity.

(7) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a State.

(8) "Trust" means:

(A) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

(c) Scope. This section applies to disclaimers of any interest in or power over property, whenever created.

(d) Subchapter Supplemented By Other Law.

Unless displaced by a provision of this subchapter the principles of law and equity supplement this subchapter. This subchapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this subchapter.

§212. Power to disclaim; general requirements; When Irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of the Virgin Islands or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 219. In this subsection:

(1) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(2) "signed" means, with present intent to authenticate or adopt a record, to;

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic sound, symbol, or process.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 219 or when it becomes effective as provided in sections 213 through 219, whichever occurs later.

(f) A disclaimer made under this subchapter is not a transfer, assignment, or release.

§213. Disclaimer Of Interest In Property.

(a) In this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

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

(b) Except for a disclaimer governed by section 214 or 215, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(C) 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.

(D) 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 Virgin Islands, 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.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person 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.

§214. Disclaimer Of Rights Of Survivorship In Jointly Held Property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§215. Disclaimer Of Interest By Trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§216. Disclaimer Of Power Of Appointment Or Other Power Not Held In Fiduciary Capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§217. Disclaimer By Appointee, Object, Or Taker In Of Exercise Of Power Of Appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§218. Disclaimer Of Power Held In Fiduciary Capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

§219. Delivery or Filing.

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a Court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is serving, it must be filed with a Court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a Court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a Court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a Court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§220. When Disclaimer Barred or Limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) a judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this subchapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this subchapter had the disclaimer not been barred.

§221. Tax Qualified Disclaimer.

Notwithstanding any other provision of this subchapter f as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, or any successor statute thereto, and the regulations promulgated that statute, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this subchapter

§222. Recording Of Disclaimer.

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§§223. Application To Existing Relationships.

Except as otherwise provided in section 220, an interest in or power over property existing on the effective date of this subchapter as to which the time for delivering or filing a disclaimer under law superseded by this subchapter has not expired may be disclaimed after the effective date of this subchapter

§224. Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Ac[t], 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede § 101(c) of that act 15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of the act 15 U.S.C. § 7003(b)).

§225. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this subchapter consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

§226. SEVERABILITY CLAUSE. If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable."

CHAPTER 2. CUSTODIAL TRUSTS

SECTION 1. Title 15 Virgin Islands Code is amended by adding chapter 60 to read as follows:

"CHAPTER 60 UNIFORM CUSTODIAL TRUST

§1231. Short title. This chapter may be cited as the Virgin Islands Uniform Custodial Trust Act.

§1232. DEFINITIONS. As used in this chapter

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the Superior Court of the Virgin Islands.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, including the Commonwealth of Puerto Rico and the Virgin Islands.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

§1233. CUSTODIAL TRUST; GENERAL.

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the Virgin Islands Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the Virgin Islands Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e), a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to this chapter.

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This chapter does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this chapter may be enforceable according to its terms under other law.

§1234. CUSTODIAL TRUSTEE FOR FUTURE PAYMENT OR TRANSFER.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act."

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

§1235. FORM AND EFFECT OF RECEIPT AND ACCEPTANCE BY CUSTODIAL TRUSTEE, JURISDICTION.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

'CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for (name of beneficiary under the Virgin Islands Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Virgin Islands Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of.

Dated:

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.'

§1236. TRANSFER TO CUSTODIAL TRUSTEE BY FIDUCIARY OR OBLIGOR; FACILITY OF PAYMENT.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to section 1234, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $ 20,000, the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

§1237. MULTIPLE BENEFICIARIES; SEPARATE CUSTODIAL TRUSTS; SURVIVORSHIP.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(b) Custodial trust property held under this chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to section 1238 for the administration of the custodial trust.

§ §1238. GENERAL DUTIES OF CUSTODIAL TRUSTEE.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance:

"as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

§ §1239. GENERAL POWERS OF CUSTODIAL TRUSTEE.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section1238.

§ §1240. USE OF CUSTODIAL TRUST PROPERTY.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

§ §1241. DETERMINATION OF INCAPACITY; EFFECT.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if

(1) the custodial trust was created under section1236,

(2) the transferor has so directed in the instrument creating the custodial trust, or

(3) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

(1) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney,

(2) the certificate of the beneficiary's physician, or

(3) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d), a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate

(1) the custodial trust,

(2) any designation of a successor custodial trustee,

(3) rights or powers of the custodial trustee, or

(4) any immunities of third persons acting on instructions of the custodial trustee.

§ §1242. EXEMPTION OF THIRD PERSON FROM LIABILITY. A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

(1) the validity of the purported custodial trustee's designation;

(2) the propriety of, or the authority under this chapter for, any action of the purported custodial trustee;

(3) the validity or propriety of an instrument executed or instruction given pursuant to this chapter either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or

(4) the propriety of the application of property vested in the purported custodial trustee.

§ §1243. LIABILITY TO THIRD PERSON.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person:

(1) on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

§ §1244. DECLINATION, RESIGNATION, INCAPACITY, DEATH, OR REMOVAL OF CUSTODIAL TRUSTEE, DESIGNATION OF SUCCESSOR CUSTODIAL TRUSTEE.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section 1234 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 1234. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by

(1) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and

(2) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 1233 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) if a successor custodial trustee is not designated pursuant to subsection (c), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief

§ §1245. EXPENSES, COMPENSATION, AND BOND OF CUSTODIAL TRUSTEE.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

§ §1246. REPORTING AND ACCOUNTING BY CUSTODIAL TRUSTEE; DETERMINATION OF LIABILITY OF CUSTODIAL TRUSTEE.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

§ §1247. LIMITATIONS OF ACTION AGAINST CUSTODIAL TRUSTEE.

(a) Except as provided in subsection (c), unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

(1) who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or

(2) who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

(1) is a minor, until the earlier of two years after the claimant becomes an adult or dies;

(2) is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or

(3) was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

§ §1248. DISTRIBUTION ON TERMINATION.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) to the beneficiary, if not incapacitated or deceased;

(2) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(3) upon the beneficiary's death, in the following order:

(A) as last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(B) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to section1237;

(C) as designated in the instrument creating the custodial trust; or

(D) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

§ §1249. METHODS AND FORMS FOR CREATING CUSTODIAL TRUSTS.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 1233 are satisfied by:

(1) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE VIRGIN ISLANDS UNIFORM CUSTODIAL TRUST ACT

I, (name of transferor or name and representative capacity if a fiduciary), transfer to (name of trustee other than transferor), as custodial trustee for (name of beneficiary) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the Virgin Islands Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:

(Signature); or

(2) the execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE VIRGIN ISLANDS UNIFORM CUSTODIAL TRUST ACT

I, (name of owner of property), declare that henceforth I hold as custodial trustee for (name of beneficiary other than transferor) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the Virgin Islands Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(2) delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);

(3) payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an

account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(4) registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(5) delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(6) irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(7) delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(8) execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as

custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act";

(9) issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(i) issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act"; or

(ii) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act"; or

(10) execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Virgin Islands Uniform Custodial Trust Act."

§§1250. APPLICABLE LAW.

(a) This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in the Virgin Islands or custodial trust property is located in the Virgin Islands. The custodial trust remains subject to this chapter despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from the Virgin Islands.

(b) A transfer made pursuant to an act of another state substantially similar to this chapter is governed by the law of that state and may be enforced in the Virgin Islands.

§1251. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§1252. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§1253. APPLICABILITY

(a) Except as provided elsewhere in this Act, on the effective date of this chapter

(1) This chapter applies to governing instruments executed by decedents dying thereafter;

(2) This chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the Court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

(b) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this chapter and is subject to the duties imposed with respect to any act occurring or done thereafter;

(c) An act done before the effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

(d) Any rule of construction or presumption provided in this Code applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent.

SECTION 2. section 1 takes effect sixty 90 days after enactment.

CHAPTER 3 PARTITION OF HEIRS PROPERTY

SECTION 1. Title 28 Virgin Islands Code, chapter 21 is amended by designating the existing provisions as subchapter I and adding subchapter II to read as follows:

"SUBCHAPTER II UNIFORM PARTITION OF HEIRS PROPERTY

511. Short title. This subchapter may be cited as the Uniform Partition of Heirs Property Act.

§512. Definitions. In this subchapter:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under Section 5416 or 5420 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(A) there is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under section 520.

(7) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this subchapter.

§513. Applicability; Relation to other law.

(a) This subchapter applies to partition actions filed on or after the effective date of this subchapter .

(b) In an action to partition real property under subchapter I, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this subchapter unless all of the cotenants otherwise agree in a record.

(c) This subchapter supplements subchapter I of this chapter and, if an action is governed by this subchapter, replaces provisions of subchapter which are inconsistent with this subchapter.

§514. Service; notice BY POSTING.

(a) This subchapter does not limit or affect the method by which service of a [complaint] in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

§515. Referees. If the court appoint referees pursuant to section 458, each referee, in addition to the requirements and disqualifications applicable to referees in general, referees must be disinterested and impartial and not a party to or a participant in the action.

§516. Determination of value.

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (e), whether or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

§517. Cotenant buyout.

(a) If any cotenant requested partition by sale, after the determination of value under section 416, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than 45 days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section 416 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), the following rules apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under section 518.

(e) If the court sends notice to the parties under subsection (d)(1) or (2), the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under section 518(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than 20 days after the court gives notice pursuant to subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under section 518(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) Not later than 45 days after the court sends notice to the Parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under section 516.

§518. Partition alternatives.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to section 517, or if after conclusion of the buyout under section 517, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in section 419, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to section 5420 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to section 517, a part of the property representing the combined interests of these cotenants as determined by the court and this subchapter of the property must remain undivided.

§519. CONSIDERATIONS FOR PARTITION IN KIND.

(a) In determining under section 518(a) whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs property practicably can be divided among the cotenants;

(2) whether partition in kind would apportion the property in such a way that the

aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor.

(b) The court may not consider any one factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

§520. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION.

(a) Notwithstanding section If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements in Section 11; and

(2) the sale may be completed in accordance with state law other than this subchapter.

(d) If the broker appointed under subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under [insert reference to general partition statute or, if there is none, insert reference to foreclosure sale].

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

§521.. REPORT OF OPEN-MARKET SALE.

(a) Unless required to do so within a shorter time by subchapter 1, a broker appointed under Section 520(b) to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 516 or 520.

(b) The report required by subsection (a) must contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

§522. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§523. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 2. Section 2 takes effect 90 days after enactment.

BILL SUMMARY

This bill is intended to enact five uniform laws, the Uniform Nonprobate Transfer Act, Uniform Real Property Transfer on Death Act, The Uniform Disclaimer of Property Interest Act, the Uniform Custodial Trust Act, and the Uniform Partition of Heirs Property. These acts are intended to benefit especially the senior citizens of the Virgin Islands.

The bill is divided into three chapters. Chapter 1 enacts three uniform laws that govern nonprobate transactions. The Frist of the three acts, the **Uniform Nonprobate Transfers on Death Act.** The primary purpose of this act is to prevent the transfers authorized by the act from being treated as testamentary.

The National Conference of Commissioners of Uniform State Laws (Uniform Law Commission) has explained **Uniform Real Property Transfer on Death Act as** follows:

The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate. The property passes by operation of law by means of a recorded transfer on death (TOD) deed.

URPTODA is an alternative to expensive estate planning for simple estates. People with a high net worth or a complex estate often use trusts and gifting strategies to transfer wealth outside of probate, but those strategies are prohibitively expensive for smaller estates. Many lower income families can avoid probate for their personal property using simpler means, such as adding an heir's name to a bank account as a "payable on death" (POD) beneficiary. However, in many states there is no such method available for real estate. URPTODA fills the gap by providing a way for families, with the aid of an advisor, to easily transfer real property outside of probate.

URPTODA allows owners to retain control of their property. Some families attempt to pass real property to a family member by adding the recipient's name to the title as a joint tenant with rights of survivorship. The property will pass to the recipient at the death of the joint owner, but there are also significant consequences during the owner's life. Joint titling exposes the property to the joint tenant's creditors, and gives the joint tenant the power to approve or disapprove a sale. Under URPTODA, the owner retains all rights in the property, including the right to change his or her mind and revoke the deed or sell the property. The TOD beneficiary has no interest until the owner's death.

URPTODA has been proven effective in other states. TOD titling for real estate is a relatively new concept; Missouri became the first state to allow TOD deeds in 1989. Since then, nineteen other states and the District of Columbia have enacted URPTODA or a substantially similar law. Despite some initial resistance in those states to the new procedure, over time the TOD titling process has been well received by recording officers, real estate attorneys, and the title insurance industry. TOD deeds are no longer novel and the citizens of the remaining states should also benefit from the opportunity to transfer real property outside of probate simply and effectively.

The Uniform Law Commission further explained that thee Uniform Real Property Transfer on Death Act (URPTODA) "enables an owner to pass real property to a beneficiary at the owner's death simply, directly, and without probate by executing and recording a TOD deed. Just as importantly, URPTODA permits the owner to retain all ownership rights in the property while living, including the right to sell the property, revoke the deed, or name a different beneficiary."

As the Uniform Law Commission points out, the key elements of URPTODA include:

The TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate.

The TOD deed must contain all of the essential elements and formalities of a properly recordable *inter vivos* deed.

The TOD deed must be signed by the transferor and properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.

The capacity required to create a TOD deed is the same as the capacity to make a will.

A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while living, the TOD deed is ineffective.

Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the designated beneficiary's eligibility for public assistance; it does not subject the property to the designated beneficiary's creditors.

At the time of the transferor's death, title to the property is transferred automatically to the beneficiary, subject to any conveyances, encumbrances, assignments, liens, or other interests in the property. In other words, the beneficiary receives only the interest that the transferor owned at the time of death, and the holders of any security interests in the property are protected.

The beneficiary is liable for claims against the transferor's estate only when the estate is insolvent.

The beneficiary may disclaim all or part of the transferred interest in the same manner as state law permits for any other testamentary devise.

URPTODA includes optional TOD deed and revocation forms that each state legislature may choose whether to enact.

The **Uniform Disclaimer of Property Interests Act** makes important changes and updates to the law of disclaimers to better reflect the current use of this estate planning tool. It should be uniformly enacted in every jurisdiction as soon as possible.

The **Uniform Disclaimer of Property Interests Act** provides definite, tax-sensitive rules governing refusals to accept transfers of property by gift or inheritance and identifying who takes in the event of disclaimer. Under the Uniform Disclaimer of Property Interest Act, a disclaimer is simply a declaration by a person entitled to property that the interest in that property is renounced or extinguished as if the interest had never been granted. Disclaimers are used to reallocate interests in estates, trusts and other kinds of property holdings in which benefits may be allocated at death. This Act makes it clearer that trustees and other fiduciaries may use disclaimers, that powers of appointment may be disclaimed, and that unfair distributions of interests are avoided when disclaimers are used.

On its website the Uniform Law Commission lists numerous reasons why every jurisdiction should adopt the **Uniform Disclaimer of Property Interests Act** substantially updates the law. It expands the prior definition of "disclaimer" to include a broader range of property such as a power of appointment or a fiduciary's management power over property.

The Act provides clear instructions for when a disclaimer is delivered and under what circumstances it becomes effective. The Uniform Disclaimer of Interest in Real Property clarifies the results of refusing property or powers through a disclaimer. And establishes ules for several types of disclaimers that have not been explicitly addressed in prior Uniform Acts, such as disclaimers for jointly held property. Because there have changes in the law of qualified disclaimers of jointly held property fuller treatment of such disclaimers is necessary.

As, the Uniform Law Commission explains: The Uniform Disclaimer of Property Interest Act:

(1) "treats the issue of disclaimers of a power of appointment and a taker in default or permissible appointee, particularly the issue of when the interest can be disclaimed.

(2) provides rules for the disclaimer of powers held in a fiduciary capacity, including a right to remove and replace a trustee or a trustee's power to make decision

(3) specifically allows a partial disclaimer of an interest in property or a power over property, and give the disclaimant wide latitude in describing the portion disclaimed.

(4) clarifies that the disclaimed interest passes without direction by the disclaimant, a requirement for tax qualification.

(5) acknowledges current technology the ability to make a disclaimer through electronic means.

This bill also contains the **Uniform Custodial Trust Act.** The Prefatory Note to the **Uniform Custodial Trust Act** drafted by the Uniform Law Commission sets forth an explanation and summary of the Act and reads as follows:

This Uniform Act provides for the creation of a statutory custodial trust for adults to be governed by the provisions of the Act whenever property is delivered to another "as custodial trustee under the (Enacting state) Uniform Custodial Trust Act." The provisions of this Act are based on trust analogies to concepts developed and used in establishing custodianships for minors under the Uniform Transfers to Minors Act (UTMA). The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity. The statute will also be available for accomplishing distribution of funds by judgment debtors and others to incapacitated persons for whom a conservator has not been appointed. Since this Act allows any person, competent to transfer property, to create custodial trusts for the benefit of themselves or others, with the beneficial interest in custodial trust property in the beneficiary and not in the custodial trustee, its potential for use is extensive. Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property; or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

This Act follows the approach taken by the Uniform Transfers to Minors Act and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodial trustee for the benefit of a beneficiary. However, the most typical transaction envisioned would involve a person who would transfer intangible property, such as securities or bank accounts, to a custodial trustee but with retention by the transferor of direction over the property. Later, this direction could be relinquished, or it could be lost upon incapacity. The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. The potential for tax problems is minimized by permitting the beneficiary in most instances to retain control while the beneficiary has capacity to manage the assets effectively. The statute contains an asset specific transfer provision that it is believed will be simple to use and will gain the acceptance of the securities and financial industry. A simple transfer document, examples of which are set forth in the Act, and a receipt from the custodian, also in the Act, would provide for identification of beneficiaries or distributees upon death of the beneficiary. Protection is extended to third parties dealing with the custodian. Although the Act is patterned on the Uniform Transfers to Minors Act and meshes into the Uniform Probate Code, it is appropriate for enactment as well in states which have not adopted either UTMA or the UPC.

An adult beneficiary, who is not incapacitated, may: (1) terminate the custodial trust on (2) receive so much of the income or custodial property as he or she may request from time to time and (3) give the custodial trustee binding instructions for investment or management). In the absence of direction by the beneficiary, who is not incapacitated, the custodial trustee manages the property subject to the standard of care that would be observed by a prudent person dealing with the property of another and is not limited by other statutory restrictions on investments by fiduciaries.

A principal feature of the Custodial Trust under this Act is designed to protect the beneficiary and his or her dependents against the perils of the beneficiary's possible future incapacity without the necessity of a conservatorship. Under this Act, the incapacity of the beneficiary does not terminate (1) the custodial trust, (2) the designation of a successor custodial trustee, (3) any power or authority of the custodial trustee, or (4) the immunities of third persons relying on actions of the custodial trustee. The custodial trustee continues to manage the property as a discretionary trust under the prudent person standard for the benefit of the incapacitated beneficiary.

Means of monitoring and enforcing the custodial trust include provisions requiring the custodial trustee to keep the beneficiary informed, requiring accounting by the custodial trustee providing for removal of the custodial trustee), and the distribution of the assets on termination of the custodial trust The custodial trustee is protected by the statutes of limitation on proceedings against the custodial trustee.

Transactions with the custodial trustee should be executed readily and quickly by third parties because their rights and protections are determined by the Act and a third party acting in good faith has no need to determine the custodial trustee's authority to bind the beneficiary with respect to property and investment matters The Act generally limits the claims of third parties to recourse against the custodial property, with the beneficiary insulated against personal liability unless he or she is personally at fault and the custodial trustee is similarly insulated unless the custodial trustee is personally at fault or failed to disclose the custodial capacity when entering into a contract

As a consequence of the mobility of our population, particularly the mature persons who are most likely to utilize this Act, uniformity of the laws governing custodial trusts is highly desirable, and the Act is designed to avoid conflict of laws problems. A custodial trust created under this Act remains subject to this Act despite a subsequent change in the residence of the transferor, the beneficiary, or the custodial trustee or the removal of the custodial trust property from the state of original location."

The Uniform Law Commission further explains why states should enact the Uniform Custodial Trust Act by emphasizing the Act "offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust, making the benefits of trusts available to people without extensive financial assets.

As the Uniform Law Commission further explained:

The custodial trust is inexpensive to create. Fees for consultation and drafting will be minimum - and non-existent in many cases. In addition, the UCTA provides an alternative to a costly court-supervised conservator or guardian. It can be used to avoid the costs and delays of probate proceedings at death. Economies can accrue broadly with the use of custodial trusts.

SIMPLE

A custodial trust can be set up by simple language making reference to the statute. No elaborate trust document is necessary. Rights and obligation are derived directly from the statute.

CONTROL

Any person who creates a custodial trust retains complete control over it until incapacity or death. The named trustee manages the property in the case of incapacity, but until then, control remains with the beneficiary - the creator of the trust. The beneficiary directs the management of the property, receives income and principal, and can cancel the trust at any time.

COMPREHENSIVE

Any kind of property, real or personal, tangible or intangible, can be put in a custodial trust. Anybody can be made a beneficiary. Any legally competent person or entity can be appointed as trustee.

The **Uniform Custodial Trust Act** is simple, inexpensive, comprehensive, and complete. The most frequent users of this trust will most likely be senior citizens who want to provide for the management of assets in the event of future incapacity. It is also available for a parent to establish a custodial trust for an adult child who may be incapacitated. Those leaving the country temporarily can also place their property with another for management without relinquishing permanent control of their property."

The last portion of the bill amends tile 28, chapter 21 which governs the partition of real property to add a subchapter to address the partition of heir's property through another uniform law. The **Uniform Partition of Heirs** Generally heirs property is the real estate owned by the legal heirs of a previous owner. The Uniform Partition of Heirs Property defines "Heirs property as 'Heirs property" as meaning "real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(A) there is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives'.

Property **Act.**

The following is the Uniform Law Commission's explanation of the purpose of the Uniform Partition of Real Property Act:

"The Uniform Partition of Heirs Property Act (UPHPA) helps preserve family wealth passed to the next generation in the form of real property. Affluent families can engage in sophisticated estate planning to ensure generational wealth, but those with smaller estates are more likely to use a simple will or to die intestate. For many lower- and middle-income families, the majority of the estate consists of real property. If the landowner dies intestate, the real estate passes to the landowner's heirs as tenants-in-common under state law. Tenants-in-common are vulnerable because any individual tenant can force a partition. Too often, real estate speculators acquire a small share of heirs' property in order to file a partition action and force a sale. Using this tactic, an investor can acquire the entire parcel for a price well below its fair market value and deplete a family's inherited wealth in the process. UPHPA provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds."

In explaining why states and territories should enact the Uniform Partition of Real Property Act, the Uniform Law Commission stated on its website that:

PHPA helps families preserve wealth. Higher-income families often preserve wealth for the next generations through sophisticated estate planning. For many lower- and middle-income families who cannot afford an estate plan, real estate is their most valuable asset. Under current laws heirs' property is vulnerable to a forced partition sale, often for a price below the fair market value. UPHPA establishes a due process designed to preserve wealth for the heirs who want to retain their property ***UPHPA is narrowly focused.*** UPHPA applies only to a small percentage of partition actions: The subject property must be 1) titled as a tenancy-in-common, 2) with at least one co-tenant who acquired title from a relative, 3) with at least 20% of the ownership interests traceable to a family member, and 4) without a written agreement governing partition. Unless all four conditions are present, your state's current partition law will apply.

PHPA protects all owners of heirs' property. Whether a person inherits or purchases a share of heirs' property, the same rules apply to all landowners: Any owner may petition a court for partition, and all the non-petitioning owners have a right of first refusal to purchase the petitioning owner's share at its independently appraised value. If the property is partitioned, all owners are treated equally and will receive an equitable share of the property or the sale proceeds.

UPHPA preserves the independent right to contract. Nothing in UPHPA preven ts a willing buyer and a willing seller from transferring an ownership interest in heirs' property. Furthermore, if all co-tenants of a parcel of heirs' property agree in writing to a plan of partition, UPHPA does not apply.

BR 18-1101/October 17, 2018/YLT