



No. A11-110

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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In re: Matter of the S. H. Bowman Trust  
for the benefit of Anne B. McCourt  
Under Agreement dated November 23, 1934, as Amended

Wells Fargo Bank, National Association,

Appellant.

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**BRIEF OF APPELLANT AND ADDENDUM**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE CASE

This is an appeal from the District Court's order on the Petition of Wells Fargo Bank, National Association ("Appellant"). This case involves a disclaimer of an interest in a trust by Anne B. McCourt ("Ms. McCourt"). Ms. McCourt is the sole current beneficiary of a trust established for her benefit by Samuel H. Bowman, Jr. (the "Trust"). On or about March 10, 2010, Ms. McCourt delivered to Appellant, as Trustee, a disclaimer (the "Disclaimer") by which she disclaimed a fractional share of the Trust pursuant to Minnesota's new Uniform Disclaimer of Property Interests Act, Minn. Stat. §§ 524.2-1101 through 524.2-1116 (the "Act"). As the title indicates, Minnesota's Act was modeled after the Uniform Disclaimer of Property Interests Act (the "Uniform Act"). Minnesota's Act became effective January 1, 2010, superseding the prior Minnesota disclaimer statutes found in Minn. Stat. §§ 501B.86 and 525.532. Appellant petitioned the District Court to determine the validity of the Disclaimer under the Act. The Petition was brought pursuant to Minn. Stat. § 501B.16, and sought (1) a determination regarding the validity of the Disclaimer, (2) approval of and instructions regarding the distribution of the trust property in accordance with the Disclaimer and the trust instrument pursuant to the Act, and (3) a release of Wells Fargo Bank, National Association, and its officers, directors, employees and agents, from any and all liability in connection with the distribution of the trust property in accordance with the Disclaimer, the trust instrument and the order of the District Court.

Ms. McCourt and her adult issue are in agreement with Appellant's Petition, and there is no dispute about the facts or the relevant statutes. Further, the Disclaimer meets

the statutory requirements for a valid disclaimer, as set forth in Minn. Stat. § 524.2-1107. The two issues addressed by the District Court were (1) whether Ms. McCourt accepted the portion of the interest she wishes to disclaim, and (2) whether Minn. Stat. § 524.2-1116 affects the Disclaimer. The District Court ordered that the Disclaimer is invalid. This appeal followed.

### ISSUES PRESENTED

1. The District Court concluded that the Disclaimer “of Ms. McCourt was barred by her acceptance of the gift. § 524.2-1106(b)(1).” Did Ms. McCourt accept “the portion of the interest sought to be disclaimed,” such that the Disclaimer is barred by Minn. Stat. § 524.2-1106(b)(1)?

Most apposite authority:

- Uniform Disclaimer of Property Interests Act, Minn. Stat. §§ 524.2-1101 through 524.2-1116
- Minn. Stat. §§ 645.08 and 645.16
- Amaral v. The Saint Cloud Hosp., 598 N.W.2d 379 (Minn. 1999)
- Layne-Minnesota Co. v. Regents of the Univ. of Minnesota, 123 N.W.2d 371 (Minn. 1963)

2. The District Court concluded that the Disclaimer “of Ms. McCourt was barred by § 524.2-1116.” Had “the time for delivery or filing a disclaimer under the laws superseded by sections 524.2-1101 to 524.2-1116” expired, such that the Disclaimer is barred by Minn. Stat. § 524.2-1116? That is, had nine months elapsed since Ms. McCourt’s interest had “become indefeasibly fixed both in quality and in quantity”?

Most apposite authority:

- Uniform Disclaimer of Property Interests Act, Minn. Stat. §§ 524.2-1101 through 524.2-1116
- Minn. Stat. § 501B.86 (repealed).
- Amaral v. The Saint Cloud Hosp., 598 N.W.2d 379 (Minn. 1999)
- Layne-Minnesota Co. v. Regents of the Univ. of Minnesota, 123 N.W.2d 371 (Minn. 1963)

**STATEMENT OF FACTS**

The petition contains the undisputed facts, and “[t]here is no dispute about the facts or the relevant statutes.” (Add<sup>1</sup>-01; see also Tr.<sup>2</sup> at 7:21-8:4, 8:13-21, 24:13-25:9.)

**I. THE TRUST AND ITS BENEFICIARIES.**

The Trust was established by Samuel H. Bowman, Jr., as Trustor, by agreement executed on November 23, 1934, as amended by amendments dated December 28, 1937, November 7, 1939, and November 15, 1940, (collectively, the “Trust Instrument”). (AA<sup>3</sup>-8-31; see also Tr. at 4:9-14.) Appellant has served as the Trustee of the Trust since its inception. (Tr. at 3:24-4:5.)

The Trustor and his spouse, Jessie Bowman, are both deceased. (Tr. at 4:15-17.) Pursuant to Article VII, Section 2 of the Trust Instrument, the passing of the Trustor’s spouse triggered the creation of the Trust for the benefit of Ms. McCourt. (Tr. at 4:18-22; AA-26-27.)

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<sup>1</sup> Citations to “Add-\_\_” are to Appellant’s Addendum.

<sup>2</sup> Citations to “Tr. at \_\_” are to the Transcript of Proceedings, May 5, 2010.

Pursuant to Article VII, Section 3 of the Trust Instrument, the Trustee is to distribute the net income from the Trust in monthly installments to Ms. McCourt throughout her life. (Tr. at 4:23-25; AA-27.) There is also a discretionary principal distribution provision. (Tr. at 5:1-6.) Pursuant to Article VII, Section 6, if the net income of the trust estate is insufficient, in the opinion of the Trustee, for Ms. McCourt's comfort, maintenance and general welfare, the Trustee may distribute, in its sole discretion, principal. (AA-28-29.) However, pursuant to Article VII, Section 7, Ms. McCourt does not have a transmissible interest in the trust estate or in the income therefrom prior to the actual distribution to her. (Tr. at 5:7-12; AA-29.)

Pursuant to Article VII, Section 3, at Ms. McCourt's death, the trust estate is to be distributed to her issue, by right of representation. (Tr. at 5:13-16; AA-27.) Ms. McCourt's issue consist of her two daughters and their children, as set forth in the Petition. (AA-04-05; see also Tr. at 5:17-19.)

## **II. THE DISCLAIMER.**

On or about March 10, 2010, Ms. McCourt delivered the Disclaimer to Appellant. (Tr. at 5:20-6:4; AA-32-34.) By the Disclaimer, she disclaimed a fractional share of the Trust. (Id.) The motivation for the Disclaimer delivered by Ms. McCourt is the financial distress of her children, which is outlined in her Response to the Petition. (AA-35-36.)

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(continued from previous page)

<sup>3</sup> Citations to "AA-\_\_" are to Appellant's Appendix.

The Act, which became effective January 1, 2010, applies to disclaimers of any interest in or power over property, whenever created, except as provided in section 524.2-1116. Minn. Stat. § 524.2-1103.

The Act provides that a person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. § 524.2-1107(a). A person may make a partial disclaimer “expressed as a fraction, percentage, monetary amount, term of years, limitation of power, or any other interest or estate in the property.” § 524.2-1107(d).

To be effective, a disclaimer must (1) be in writing, (2) declare the writing as a disclaimer, (3) describe the interest or power disclaimed, (4) be signed by the disclaimant, (5) be acknowledged, and (6) be delivered or filed as provided under the Act. § 524.2-1107(c). In the case of a disclaimer of an interest created under an inter vivos trust, after it has become irrevocable, the disclaimer must be delivered to the then serving trustee of the trust, or, if none, the disclaimer must be filed with the clerk of the court. § 524.2-1114(d). On its face, the Disclaimer meets these statutory requirements. (AA-32-33; see also Tr. at 6:12-15.)

There is no time limit for making a disclaimer under the Act, as there was under prior law. Compare Minn. Stat. §§ 524.2-1101 through 524.2-1116 with Minn. Stat. § 501B.86, Subd. 3 (repealed). Under section 524.2-1105 of the Act, a disclaimer may be made at any time, unless it is barred by section 524.2-1106. Section 524.2-1106 provides in part:

- (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 portion of the interest sought to be disclaimed*;
  - (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the portion of the interest sought to be disclaimed or contracts to do so;
  - (3) the portion of the interest sought to be disclaimed is sold pursuant to a judicial sale; or
  - (4) the disclaimant is insolvent when the disclaimer becomes irrevocable.

...

(emphasis added).

Finally, section 524.2-1116 of the Act provides that, “[e]xcept as otherwise provided in section 524.2-1106, an interest in or power over property existing on January 1, 2010, *as to which the time for delivery or filing a disclaimer* under laws superseded by sections 524.2-1101 to 524.2-1116 *has not expired*, may be disclaimed after January 1, 2010.” (emphasis added).

The District Court concluded that the Disclaimer was barred by Ms. McCourt’s “acceptance of the gift,” and by Minn. Stat. § 524.2-1116. (Add-04.)

### ARGUMENT

The issues presented in this case involve statutory interpretation. Specifically, interpretation of what the Legislature meant:

1. by “the disclaimant accepts the portion of the interest sought to be disclaimed” in Minn. Stat. § 524.2-1106(b)(1);

2. by “as to which the time for delivery or filing a disclaimer . . . has not expired” in Minn. Stat. § 524.2-1116; and
3. by “the disclaimant’s interest has not then become indefeasibly fixed both in quality and in quantity” in Minn. Stat. § 501B.86, Subd. 3 (repealed).

The District Court observed that “Ms. McCourt has been receiving payments from the trust for many years[, and her] disclaimer relates to future payments.” (Add-02.) The District Court properly recognized that the Act changed prior law, particularly in that “[a] disclaimer may be made at any time unless it is barred under section 524.2-1106.” (Id. (alteration in original) (citing Minn. Stat. § 524.2-1105)). Further, the District Court properly addressed the only potentially applicable bar in this case: “if the ‘disclaimant accepts the portion of the interest sought to be disclaimed.’” (Id. (citing Minn. Stat. § 524.2-1106(b)(1))).

The District Court seemed to read an acceptance bar into the prior disclaimer statute and then noted that the term “portion” does not appear in the prior act. (Id.) However, the District Court’s interpretation ignores the phrase “the portion of the interest sought to be disclaimed,” and instead asks the question “what is the gift [that] was accepted?” (Id.) The District Court then answered that “the accepted gift was precisely what the trust offered: the right to receive income and, if needed, principal payments from this trust.” (Id.) Based on its answer to that question, and without analyzing the statutory language prescribed by the Act, the District Court deemed “the gift – the payments referred to in the trust instrument – to have been accepted and conclude[d] that the disclaimer is invalid.” (Id.)

In reaching the conclusion that the Disclaimer was barred by Minn. Stat. § 524.2-1106(b)(1) by Ms. McCourt's "acceptance of the gift," the District Court substituted its own term, "gift," for the Act's term, "interest." Further, the District Court's conclusion renders superfluous the statutory language "the portion of the," which precedes the term "interest," thereby ignoring the Legislature's deliberate insertion of this language.

Likewise, in reaching the conclusion that the Disclaimer was barred by Minn. Stat. § 524.2-1116, the District Court failed to address how the time for delivery of the Disclaimer had expired or how Ms. McCourt's non-transferable interest had become indefeasibly fixed in both quality and quantity.

In doing so, the District Court violated the canons of statutory construction and reached an erroneous result. "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Amaral v. The Saint Cloud Hospital, 598 N.W.2d 379, 384 (Minn. 1999) (quoting Minn. Stat. § 645.16); see also Butler v. Goldetsky, 552 N.W.2d 226, 231 (Minn. 1996). When the Act is properly applied to the undisputed facts, the Disclaimer is valid.

#### **I. STANDARD OF REVIEW.**

The Court reviews questions of statutory interpretation *de novo*. See Illinois Farmers Ins. Co. v. Glass Service Co., 683 N.W.2d 792, 803 (Minn. 2004) (citation omitted); Nash v. Wollan, 656 N.W.2d 585, 589 (Minn. App. 2003). Further, "in applying statutory language to undisputed facts," the district court makes a conclusion of law, which is reviewed *de novo*. In re Daniel, 656 N.W.2d 543, 545 (Minn. 2003); see

also Gilder v. Auto-Owners Ins. Co., 659 N.W.2d 804, 807 (Minn. App. 2003) (citations omitted).

## II. DID MS. MCCOURT ACCEPT THE PORTION OF THE INTEREST SOUGHT TO BE DISCLAIMED?

The District Court's interpretation of section 524.2-1106(b)(1) of the Act re-writes the statutory exception to state that the disclaimer is barred if the "disclaimant accepts *the gift* sought to be disclaimed." This changes the Legislature's word "interest" to the District Court's term "gift" and renders the phrase "the portion of" superfluous. For both of those reasons, the District Court erred in concluding that the Disclaimer is barred by acceptance. Minnesota's Legislature configured the Act such that an interest could be split up into any number of portions. It selected the word interest, not gift, signaling a focus on the disclaimant, rather than the donor. Then, in a departure from the Uniform Act, the Legislature went on to limit acceptance as a bar to disclaimers only to situations where the disclaimant had accepted the portion of the interest sought to be disclaimed. When the words and phrases utilized by the Legislature in the Act are given their usual and customary meaning, it is clear that Ms. McCourt has not accepted the portion of the interest sought to be disclaimed.

### A. The Act Asks Whether "The Portion of the Interest Sought to be Disclaimed" Has Been Accepted.

Under basic canons of statutory construction, the Court is to construe words and phrases "according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature." Amaral v. The Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999) (citing Minn. Stat. § 645.08(1)). The unambiguous meaning of

section 524.2-1106(b)(1) of the Act allows a person to make an effective disclaimer even after having accepted any other portion of the interest she is not seeking to disclaim.

**1. The Legislature clearly contemplated fractional “interests.”**

The Act expressly defines “disclaimed interest” to mean “the portion of the interest that would have passed to the disclaimant had the disclaimer not been made.” Minn. Stat. § 524.2-1102(4). From the outset, the Legislature emphasizes that “interests” under the Act are intended to be comprised of portions and fractional in nature. The fractional nature of “interests” is seen throughout the Act. The Act clearly allows for the disclaimer of partial interests, which may be expressed as a “fraction, percentage, monetary amount, *term of years*,<sup>4</sup> limitation of a power, or any other interest or estate in the property.” § 524.2-1107(d) (emphasis added). As a result of the fractional nature of “interests,” the Act only bars disclaimers if “the disclaimant accepts the *portion* of the interest sought to be disclaimed.” § 524.2-1106(b)(1) (emphasis added). These “[v]arious provisions of the same statute must be interpreted in light of each other, and the legislature must be presumed to have understood the effect of its words and to have intended the entire statute to be effective and certain.” Wolfer v. Microboards Mfg., LLC, 654 N.W.2d 360, 364 (Minn. App. 2002) (citing Van Asperen v. Darling Olds, Inc., 93 N.W.2d 690, 698 (Minn. 1958)).

**2. The Act uses the term “interest” not “gift.”**

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<sup>4</sup> The Legislature’s inclusion of “term of years” clearly indicates that the portion of an interest disclaimed may be expressed in temporal terms.

As noted above, in substituting the term “gift” for the term “interest” in its analysis, the District Court improperly altered the words, and thus the intention, of the Act. The District Court’s term “gift” differs from the Act’s term “interest” in two material respects. First, the term “gift” focuses on the donor, instead of the disclaimant. Second, gifts are not typically understood in fractional terms, whereas interests generally are – and specifically are under the Act.

A “gift” is “[t]he voluntary transfer of property to another without compensation,” or “[the] thing so transferred.” BLACK’S LAW DICTIONARY 757 (9<sup>th</sup> ed. 2009). As this definition makes apparent, the donor and the property as a whole are the focus of the term “gift.” Because section 524.2-1106(b)(1)’s focus is on the disclaimant, the disclaimant’s interest in property, and the fractional nature of that interest, the District Court’s reliance on the term “gift” is inappropriate.

Here, the Disclaimer is regarding property held in trust, and the “gift” referenced by the District Court was the Trustor’s act of transferring property to the Trust, to be held and administered pursuant to the terms of the Trust Instrument. (Add-02.) A “gift in trust” is “[a] gift of legal title to someone who will act as trustee for the benefit of a beneficiary.” BLACK’S LAW DICTIONARY at 758. The beneficiary does not receive the gift, the trust does. Rather, the beneficiary has an equitable interest in the trust. As set forth in the Trust Instrument, the Trustor’s gift to the Trust actually created multiple interests for multiples beneficiaries. (AA-10, 26-29.)

An “interest” is “[a] legal share in something; all or part of a legal or equitable claim to or right in property.” BLACK’S LAW DICTIONARY at 885. In its ordinary usage, the

word interest focuses on the holder of the interest, rather than the person who transferred that interest. Further, this common definition makes clear, that “interests” are understood to be fractional. “The legislature must be presumed to have understood the effect of its words and these words must be given their normal and natural meaning.” In re Trust Created by Phillips, 90 N.W.2d 522, 527 (Minn. 1958) (citing Minn. Stat. § 645.08). Based on their ordinary usage, it can be inferred that the term “interest,” rather than the term “gift,” was selected for use in an Act that allows interests to be disclaimed, at any time, in any portion, which may be expressed as a fraction, percentage, monetary amount, term of years, or any other interest in the trust. Minn. Stat. §§ 524.2-1102(4), 1105, 1107(a), 1107(d).

**3. The phrase “the portion of the” cannot be ignored.**

The District Court seems to read an acceptance bar into the prior disclaimer statute. (Add-02.) The prior disclaimer statute did not include an acceptance bar. See generally Minn. Stat. § 501B.86 (repealed). It is unclear whether the District Court was referring to the Uniform Act, which does include an acceptance bar. In any event, the District Court notes that the term “portion” does not appear in the prior act. Likewise, Minnesota’s Act deviates from the Uniform Act with the addition of the phrase “the portion of.” However, the District Court’s interpretation of section 524.2-1106(b)(1) ignores this deviation, and renders the phrase “the portion of the” superfluous by treating all of Ms. McCourt’s interest as a single “gift.”

**i. No portion of the statute can be rendered superfluous.**

Under basic canons of statutory construction, “[e]very law shall be construed, if possible, to give effect to all its provisions.” Amaral v. The Saint Cloud Hosp., 598 N.W.2d 379, 384 (citing Minn. Stat. § 645.16). “Whenever it is possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” Id. (citing Owens v. Federated Mut. Implement & Hardware Ins. Co., 328 N.W.2d 162, 164 (Minn. 1983)). As noted above, the Act repeatedly uses the phrase “the portion of,” indicating the Legislature’s intention that “interests” under the Act are fractional in nature. Yet, by treating Ms. McCourt’s interests, even the portions of those interests that, by the terms of the Trust Instrument, are not hers until distribution, as a single “gift,” the District Court renders every instance of “the portion of the” in the Act superfluous.

**ii. Deviation from the Uniform Act has meaning.**

Minnesota’s Act was modeled after the Uniform Act. Thus, “[t]he intention of the drafter[s] of [the Uniform Act] becomes the legislative intent upon enactment.” Mohs v. Aetna Cas. and Sur. Co., 349 N.W.2d 580, 583 n.2 (Minn. App. 1984) (citing Minn. Stat. § 645.22; Layne-Minnesota Co. v. Regents of the Univ. of Minnesota, 123 N.W.2d 371 (1963)). The Uniform Act “is an enabling statute.” UNIF. DISCLAIMER OF PROP. INTERESTS ACT, Prefatory Note, 8A U.L.A. 160 (2003). It “is the most comprehensive disclaimer statute ever written[, and] is designed to allow every sort of disclaimer, including those that are useful for tax planning purposes.” Id. Consistent with that intent, Minnesota’s Act should be interpreted broadly to allow disclaimers.

Moreover, Minnesota’s Act may be even broader than the Uniform Act. Section 13 of the Uniform Act provides that a disclaimer is barred if “the disclaimant accepts the interest

sought to be disclaimed.” *Id.* at 183-184. Minnesota’s Legislature altered this provision in adopting section 524.2-1106(b)(1), by inserting “the portion of the” to modify and limit the acceptance that would operate to bar a disclaimer. Minnesota’s Act likewise altered the definition of “disclaimed interest” by inserting “the portion of” to modify interest. Compare UNIF. DISCLAIMER OF PROP. INTERESTS ACT § 2(2), 8A U.L.A. at 164 with Minn. Stat. § 524.2-1102(4). In this regard, Minnesota’s Act provides greater clarity regarding the authority to disclaim partial interests than the Uniform Act. When the Legislature models a statute after a uniform act, but deviates from the particular language, the “[d]eviation from the language of a uniform or model act is presumed to be deliberate.” 2B NORMAN J. SINGER AND J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 52.5 (7th ed. 2008). By modeling the Act after the very broad Uniform Act, and then going further to limit the acceptance bar to apply only if “the disclaimant accepts the portion of the interest sought to be disclaimed,” Minnesota’s Legislature signaled its intention that the Act should be interpreted broadly to allow disclaimers of partial interests.

Finally, under the District Court’s apparent understanding of the prior disclaimer statute, the Legislature’s inclusion of “the portion of” modifies the prior act.<sup>5</sup> If the prior disclaimer statute had an acceptance bar, then because the Legislature adopted the Act to supersede the prior disclaimer statute, “it is reasonable to assume that the Legislature had ‘full knowledge of [its] prior legislation on the same subject’” when it added the “portion of” concept to the acceptance bar. Larson v. State, 790 N.W.2d 700, 705-706 (Minn. 2010) (alteration in original)

(quoting Meister v. W. Nat'l Mut. Ins. Co., 479 N.W.2d 372, 378 (Minn. 1992); also citing Minn. Stat. § 645.16 (which permits courts to look to other laws upon the same or similar subjects when interpreting a statute)).

**iii. The modifier limits the scope of acceptance.**

The canons of statutory construction require that the general word “interest” in the Act must be construed to be restricted in meaning by the preceding particular words “the portion of the.” Minn. Stat. § 645.08(3). “Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others,” and “where a statute designates an exception, proviso, saving clause, or a negative,” the rule operates conversely “so that the exclusion of one thing includes all others.” Maytag Co. v. Comm’r of Taxation, 17 N.W.2d 37, 40 (Minn. 1944).

“Interest” could refer to all or part of the disclaimant’s claim to or right in property. See BLACK’S LAW DICTIONARY 885 (9<sup>th</sup> ed. 2009). Thus, by using the word interest and modifying it with the phrase “the portion of the,” the Legislature clearly intended the scope of acceptance that would bar a disclaimer to be construed narrowly. If the Legislature had intended to include within the acceptance bar any acceptance of any interest, there would have been no necessity to the use of such limiting language as “the portion of the.” Cf. In re Trust Created by Phillips, 90 N.W.2d 522, 527 (Minn. 1958) (“If it was the intent of the legislature to bring within the purview . . . the statute would

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<sup>5</sup> As noted above, the prior act did not include an acceptance bar. See generally Minn. Stat. § 501B.86 (repealed).

obviously have been worded more broadly.”) (relying on Minn. Stat. § 645.08). It follows that a reasonable construction of the clause is to limit its application. Id. This result is particularly apparent when this canon of construction is applied in conjunction with the Legislature’s deliberate decision to deviate from the Uniform Act’s version of the acceptance bar by inserting the modifying phrase, “the portion of the.”

Minnesota courts have long recognized that the Legislature has a purpose when it inserts limiting phrases as modifiers in statutes. For example, when interpreting a statute providing that “Indians hunting, fishing or trapping *off* Indian reservation lands are subject to all provisions,” the Minnesota Supreme Court noted that to “apply that law to Indians *generally*, even when *on* their reservations, is to make the reference to them when *off* their reservation meaningless.” Cohen v. Gould, 225 N.W. 435, 438 (Minn. 1929) (emphases added). To ignore the modifier would violate proper statutory construction. Id.

By contrast, this Court and the Minnesota Supreme Court have refused to read in the phrase “a portion of the” when the Legislature did not include it. See Larson v. State, 790 N.W.2d 700, 703-704 (Minn. 2010) (affirming District Court and Court of Appeals’ decision that Minn. Stat. § 117.225 does not permit the discharge of *a portion of an* easement). In Larson, the Supreme Court declined to read the phrase “a portion of” *into* a statute, because it was limited in interpreting the statute to the plain meaning of the language selected by the Legislature. Id. at 704 (“An easement, as opposed to a portion of an easement, is the entirety of the interest described by the written instrument creating the easement.”). The Supreme Court noted that its interpretation of the plain language of

Minn. Stat. § 117.225 is supported by the language of Minn. Stat. § 161.43, “which permits the Commissioner of Transportation to ‘relinquish and quitclaim to the fee owner an easement *or portion of an easement . . .*’” Id. at 705 (emphasis in original). This “demonstrates that the Legislature refers to ‘a portion of an easement’ when it intends to regulate less than a full easement.” Id. If the statute does not say “the portion of,” that modifier cannot be added. However, for the same reason, if the statute does say “the portion of,” that modifier cannot be ignored.

**B. Ms. McCourt Did Not Accept the Portion of the Interest Sought to be Disclaimed.**

Ms. McCourt’s interests are in property held by the Trust. Her interests are defined by the Trust Instrument. Pursuant to Article VII, Section 3 of the Trust Instrument, she is to receive a series of monthly installments of income from the Trust throughout her life. (AA-27.) Pursuant to Article VII, Section 6, she also *may*, at the Trustee’s sole discretion, receive principal from the Trust. (AA-28-29.) However, pursuant to Article VII, Section 7, these monies are not hers until they are distributed to her. (AA-29.) She has no transmissible interest in these monies, nor can she anticipate or rely on these monies until they are distributed to her. (Id.) Thus, she has no fixed interest in the undistributed portion of her interest in the trust. The result is that Ms. McCourt’s interest is a stream of payments, not a single interest, and she has only accepted the payments that have already been distributed to her. Under the Act, Ms. McCourt can disclaim a portion of the stream of payments, and the disclaimer of payments yet to be received would be allowed as a disclaimer of the *portion* of the interest (the undistributed payments of either income or

principal) that has not been accepted. Cf. UNIF. DISCLAIMER OF PROP. INTERESTS ACT § 5 cmt., 8A U.L.A. 167-168 (“the ability to disclaim interests is comprehensive; it does not matter whether the disclaimed interest is vested, either in interest or in possession. . . . Subsection (d) . . . gives the disclaimant wide latitude in describing the portion disclaimed.”) (Uniform Act § 5 corresponds to Minn. Stat. § 524.2-1107). Because the Act clearly allows partial disclaimers, and because Ms. McCourt has not accepted the portion of the interest sought to be disclaimed, the Disclaimer is not barred by acceptance.

**III. HAD THE TIME FOR DELIVERY UNDER THE PRIOR ACT EXPIRED, SUCH THAT SECTION 524.2-1116 BARS THE DISCLAIMER?**

The District Court reads section 524.2-1116 as a potential bar to disclaimers.<sup>6</sup> However, the District Court did not properly apply this potential bar to the undisputed facts, and incorrectly interpreted the prior law’s timing requirement. By its express terms, section 524.2-1116 is only applicable to disclaimers “as to which the time for delivery or filing a disclaimer” under the prior act had expired. Thus, to determine whether section 524.2-1116 bars Ms. McCourt’s Disclaimer, the timing requirement of the prior act must be examined. When the timing requirement of the prior act is applied

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<sup>6</sup> Appellant argued in the District Court that the plain language of the Act precludes section 524.2-1116 from being applied as a bar to disclaimers. (AA-40-41.) The District Court rejected this argument. (Add-03.) Appellant’s argument is set forth in its Memorandum, which is incorporated herein. (AA-40-41.) However, as set forth herein, because the timing requirement under the prior disclaimer statute had not been triggered for the portion of the interest disclaimed, even if section 524.2-1116 could be applied to bar disclaimers, it does not bar Ms. McCourt’s Disclaimer.

to the Disclaimer, it is clear that her time to deliver the Disclaimer under the prior act had not expired. Accordingly, section 524.2-1116 cannot bar the Disclaimer.

**A. The Prior Act's Timing Requirement Asks When the Disclaimed Interest Became "Indefeasibly Fixed Both in Quality and in Quantity."**

Until December 31, 2009, Minnesota's disclaimer laws provided that a disclaimer must be filed:

within nine months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or the disclaimant's interest has not then become *indefeasibly fixed both in quality and in quantity*, the disclaimer must be filed not later than nine months after the event that would cause the disclaimant to become finally ascertained and the interest to become *indefeasibly fixed both in quality and quantity*.

Minn. Stat. § 501B.86, Subd. 3 (repealed) (emphasis added). Under this standard, as to any undistributed payments of income or principal, the time for disclaiming could not have expired until nine months after the interest is indefeasibly fixed both in quality and quantity.

There is no legislative history on point to determine what the Legislature meant by "indefeasibly fixed both in quality and in quantity." However, the language found in Minnesota's prior disclaimer law referring to interests that are "indefeasibly fixed both in quality and quantity" was also included in a proposed Model Act regarding disclaimers, promulgated by the ABA Section of Real Property, Probate & Trust Law (the "Model Act"). See Disclaimer of Testamentary and Nontestamentary Dispositions—Suggestions for a Model Act, 3 REAL PROP. PROB. & TR. J. 131 (1968). Because section 501B.86 was based on a model act, "[t]he intention of the drafter[s] of [the Model Act] becomes the legislative intent upon enactment." Mohs v. Aetna Cas. and Sur. Co., 349 N.W.2d 580,

583 n.2 (Minn. App. 1984) (citing Minn. Stat. § 645.22; Layne-Minnesota Co. v. Regents of the Univ. of Minnesota, 123 N.W.2d 371 (1963)); see also Butler v. Goldetsky, 552 N.W.2d 226, 231 (Minn. 1996) (same citations). Further, “resort may be had to the notes of the drafters” to determine what is meant by “indefeasibly fixed both in quality and in quantity.” Butler, 552 N.W.2d at 231; Layne-Minnesota Co., 123 N.W.2d at 376 (“particularly the writings of the chairman of the subcommittee that undertook the drafting of the act”).

The drafters of the Model Act described the phrase “indefeasibly fixed both in quality and quantity” as follows:

The quoted phrase [“indefeasibly fixed both in quality and in quantity”] is intended to gear the commencement of the . . . period to a time when the existence and extent of the disclaimant’s interest are fully established and defined. The verb “fixed” is employed rather than “vested” to avoid the lack of precision in meaning which the term “vest” involves. *The term “quality” is used in the sense of being transmissible in every particular and in every sense.* The term “quantity” is used to indicate that, in class gifts that may increase or decrease, the possibility of further expansion or contraction is at end and the quantum of the disclaimant’s interest is finally determined.

3 REAL PROP. PROB. & TR. J. at 135. This suggests that the term indefeasibly fixed both in quality and quantity provides a high hurdle for determining when an interest is finally established for purposes of disclaiming the interest.

**B. Ms. McCourt’s Interest is not Indefeasibly Fixed in Quality or in Quantity.**

Ms. McCourt’s interest does not meet either of the triggers for the timing requirement under the prior act, and both are required before her time to deliver a disclaimer could have expired under the prior disclaimer statute.

**1. Ms. McCourt's interest is not transferable, and thus not indefeasibly fixed in quality.**

The drafters of the Model Act used the term “quality” to require transmissibility; that is, the interest must be capable of being transmitted—sent or conveyed from one person to another. See THE AMERICAN HERITAGE DICTIONARY OF ENGLISH LANGUAGE 1834 (4th ed. 2006) (defining “transmissible” and “transmit”); see also BLACK’S LAW DICTIONARY 1638 (9th ed. 2009) (defining “transmit”). Thus, an interest in any payment from a trust is not indefeasibly fixed in quality for purposes of a disclaimer until the beneficiary has the right to assign or transfer the interest to another.

Here, Ms. McCourt’s interests cannot be indefeasibly fixed in quality until distributions are made, because the Trustor included a provision in the Trust Instrument mandating that Ms. McCourt’s interests are not transmissible. Article VII, Section 7 of the Trust Instrument provides:

No beneficiary shall have any *transmissible interest* in the trust estate or in the income therefrom and neither the principal nor the income of the trust estate shall be liable for the debts of any beneficiary and *no beneficiary shall have any power to sell, assign, transfer, encumber or in any other manner to anticipate or dispose of his or her interest in the trust or the income produced thereby prior to the actual distribution thereof* by the Trustee to said beneficiary.

(See also Tr. at 5:7-12 (“Ms. McCourt does not have a transmissible interest in the trust estate or in the income therefrom prior to the actual distribution to her”).) The Trustor’s expressed intent that a beneficiary’s interest in undistributed payments from the Trust is not transmissible must be honored and cannot be re-written. In re McCann’s Will, 3 N.W.2d 226, 230 (Minn. 1942). Because Ms. McCourt cannot transfer

or anticipate her interest in future, undistributed payments of income or principal from the Trust until she receives such distributions, her interest is not indefeasibly fixed in quantity. Because her interest is not indefeasibly fixed in quantity, under the prior disclaimer law, the time for disclaiming had not begun to run, and could not yet have expired. Thus, section 524.2-1116 does not bar the Disclaimer.

**2. Until a distribution is made, that portion of Ms. McCourt's interest is not indefeasibly fixed in quantity.**

A review of Minnesota's Uniform Principal and Income Act, Minn. Stat. §§ 501B.59 through 501B.76 (the "UPIA"), supports that under Minnesota law, the right to receive future distributions from a trust does not constitute an indefeasibly fixed interest in quantity. Section 501B.62, Subd. 4 provides:

Subd. 4. **Termination of income interest.** On termination of an income interest, the income beneficiary whose interest is terminated, or the income beneficiary's estate, is entitled to:

- (1) income undistributed on the date of termination;
- (2) income due but not paid to the trustee on the date of termination; and
- (3) income in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

Under the UPIA, therefore, the income beneficiary's interest is indefeasibly fixed in quantity only as to the items of income listed—those that are accrued. The beneficiary is not entitled to future payments of unaccrued income, and cannot have an indefeasibly fixed interest in quantity in such future payments, as her ability to receive such items of income is typically contingent on her survival.

Applying this same concept to discretionary principal payments, a beneficiary could not have an indefeasibly fixed interest in quantity in principal that she has no right to receive at any time. Until the Trustee exercises discretion to make a principal distribution, there is a contingency on Ms. McCourt's interest in the trust assets, and her interest is subject to total divestment.

For purposes of disclaiming, these rules support the proposition that a stream of payments does not constitute a single, indefeasibly fixed interest both in quality and quantity. Instead, the beneficiary's interests only become indefeasibly fixed both in quality and quantity as income accrues, for a beneficiary entitled to mandatory income, and as discretionary principal distributions are made.

**C. Applying the Clear Language of the Prior Act's Timing Requirement, the Time for Delivery Had Not Expired and Thus Section 524.2-1116 Does Not Bar the Disclaimer.**

The prior disclaimer statute clearly states that the interest has to be "indefeasibly fixed both in quality and in quantity" before the clock begins to run. Minn. Stat. § 501B.86, Subd. 3 (repealed). By the express terms of the Trust Instrument, Ms. McCourt's interest is not transferrable, and thus the undistributed portions of her interest are not indefeasibly fixed in quality. As a result of that fact alone, the timing trigger fails under the prior act and section 524.2-1116 cannot bar the Disclaimer. Likewise, by the terms of the Trust Instrument, Ms. McCourt's interest is not indefeasibly fixed in quantity until income accrues or discretionary principal distributions are made, and thus the undistributed portions of her interest

are not indefeasibly fixed in quantity. This too causes the timing trigger to fail under the prior act and precludes section 524.2-1116 from barring the Disclaimer.

However, the District Court ignored the unambiguous language of the Trust Instrument, the language of section 524.2-1116 and the prior statute, and the drafter's intent. In doing so, the District Court seemed to be concerned with setting a wide precedent. (Tr. at 20:1-3.) However, the application of the timing requirement of the prior statute and section 524.2-1116 to the undisputed facts and the unambiguous express intent of the Trustor are clear. "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16; see also Amaral v. The Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999) ("we may not disregard the letter of the law") (citing Minn. Stat. § 645.16).

Even if there were an ambiguity, the object is to obtain the intention of the Legislature. While the court may consider factors such as "the consequences of a particular interpretation," Minn. Stat. § 645.16(6), here, the Legislature already made the policy decision in support of broad, partial interest disclaimers. Minn. Stat. §§ 524.2-1102(4), 1106(b)(1), 1107(a) & (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."). Likewise, the District Court's concern that following the letter of the law "stands the spendthrift trust on its head," (Add-03), has been overruled by the Legislature. In fact, the Legislature expressly overruled this concern: "A person may disclaim the

interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer . . . .” Minn. Stat. § 524.2-1107(a).

Under the Act, interests can be segregated into multiple, separate disclaimable interests. Thus, the Act clearly contemplates the situation where a current beneficiary wishes to disclaim any right to receive future payments of income or principal. The timing requirements of the prior disclaimer statute must be applied in light of this definition of a disclaimed interest. Therefore, even if there were a question under section 501B.86 regarding whether the interest was indefeasibly fixed both in quality and quantity, the disclaimer of the *portion* of the future payments that has not yet been accepted is permitted under the Act. This is exactly the type of disclaimer delivered by Ms. McCourt.

Whether under prior law or the new Act, a disclaimant of future payments of income or principal from a trust does not have an indefeasibly fixed interest both in quality and quantity in receiving such payments, and such interest only becomes indefeasibly fixed both in quality and quantity when a distribution becomes due, or when income accrues. Thus, even if section 524.2-1116 were a bar to some disclaimers, the disclaimer of future payments would not be barred. Under prior law, the time limit for disclaiming future payments does not begin to run until a discretionary distribution is made, or until mandatory income accrues, because until that time, the interest has not become indefeasibly fixed both in quality and quantity.

## CONCLUSION

For the reasons discussed above, appellant Wells Fargo Bank, National Association urges this Court to reverse the District Court's Order Determining Disclaimer Invalidity, and remand to the District Court for entry of an order determining the validity of the Disclaimer, approving the distribution of the trust property in accordance with the Disclaimer and the Trust Instrument, instructing the Trustee to distribute the trust property in accordance therewith, and releasing the Trustee, and its officers, directors, employees and agents, from any and all liability in connection with the distribution of the trust property in accordance with the Disclaimer, the Trust Instrument and the order of the District Court.

Dated: April 4, 2011

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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In re: Matter of the S. H. Bowman Trust  
for the benefit of Anne B. McCourt  
Under Agreement dated November 23,  
1934, as Amended

Petitioner Wells Fargo Bank, National  
Association

Appellant.

CERTIFICATION OF  
BRIEF LENGTH

Appellate Court  
Case Number: A11-110

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,925 words. This brief was prepared using Microsoft Word 2007 software.

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