

Uniform Powers of Appointment Act

Powers of Appointment are routinely included in trusts drafted throughout the United States, but there is little statutory law governing their use. Instead, estate-planning attorneys rely on a patchwork of common-law decisions. The Uniform Powers of Appointment Act codifies the law on powers of appointment, relying heavily on the Restatement (Third) of Property: Wills and Other Donative Transfers, published in 2011 by the American Law Institute. Therefore, estate planners will already be familiar with the provisions of this uniform act.

Submitted as:

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Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]
- 2 In this article:
- 3 (1) “Appointee” means a person to whom a powerholder makes an appointment of appointive
- 4 property.
- 5 (2) “Appointive property” means property or property interest subject to a power of
- 6 appointment.
- 7 (3) “Blanket-exercise clause” means a clause in an instrument, which clause exercises a power of
- 8 appointment and is not a specific-exercise clause. the term includes a clause that:
- 9 (a) Expressly uses the words “any power” in exercising any power of appointment the
- 10 powerholder has;
- 11 (b) Expressly uses the words "any property" in appointing any property over which the
- 12 powerholder has a power of appointment; or
- 13 (c) Disposes of all property subject to disposition by the powerholder.
- 14 (4) “Donor” means a person who creates a power of appointment.
- 15 (5) “Exclusionary power of appointment” means a power of appointment exercisable in favor of
- 16 any one or more of the permissible appointees to the exclusion of the other permissible
- 17 appointees.
- 18 (6) “General power of appointment” means a power of appointment exercisable in favor of the
- 19 powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the
- 20 powerholder's estate.
- 21 (7) “Gift-in-default clause” means a clause identifying a taker in default of appointment.
- 22 (8) “Impermissible appointee” means a person who is not a permissible appointee.
- 23 (9) “Instrument” means a record.
- 24 (10) “Nongeneral power of appointment” means a power of appointment that is not a general
- 25 power of appointment.
- 26 (11) “Permissible appointee” means a person in whose favor a powerholder may exercise a
- 27 power of appointment.

- 1 (12) “Person” means an individual; estate; trust; business or nonprofit entity; public
2 corporation; government or governmental subdivision, agency, or instrumentality; or other
3 legal entity.
- 4 (13) “Powerholder” means a person in whom a donor creates a power of appointment.
- 5 (14) “Power of appointment” means a power that enables a powerholder acting in a
6 nonfiduciary capacity to designate a recipient of an ownership interest in or another power of
7 appointment over the appointive property. The term does not include a power of attorney.
- 8 (15) “Presently exercisable power of appointment” means a power of appointment exercisable
9 by the powerholder at the relevant time. the term:
- 10 (a) Includes a power of appointment not exercisable until the occurrence of a specified event,
11 the satisfaction of an ascertainable standard, or the passage of a specified time only after:
- 12 (I) The occurrence of the specified event;
13 (II) The satisfaction of the ascertainable standard; or
14 (III) The passage of the specified time; and
- 15 (b) Does not include a power exercisable only at the powerholder's death.
- 16 (16) “Record” means information that is inscribed on a tangible medium or that is stored in an
17 electronic or other medium and is retrievable in perceivable form.
- 18 (17) “Specific-exercise clause” means a clause in an instrument, which clause specifically
19 refers to and exercises a particular power of appointment.
- 20 (18) “Taker in default of appointment” means a person who takes all or part of the appointive
21 property to the extent the powerholder does not effectively exercise the power of
22 appointment.
- 23 (19) “Terms of the instrument” means the manifestation of the intent of the maker of the
24 instrument regarding the instrument's provisions as expressed in the instrument or as may be
25 established by other evidence that would be admissible in a legal proceeding.

26
27 Section 2. [*Governing Law.*]

- 28 (1) Unless the terms of the instrument creating a power of appointment manifest a contrary
29 intent:
- 30 (a) The creation, revocation, or amendment of the power is governed by the law of the
31 donor's domicile at the relevant time; and
- 32 (b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the
33 exercise, release, or disclaimer of the power, is governed by the law of the powerholder's
34 domicile at the relevant time.

35
36 Section 3. [*Supplementation by common law and principles of equity.*]

37 Unless displaced by the particular provisions of this article, the principles of law and equity
38 supplement its provisions.

39
40 Part 2: Creation, Revocation, and Amendment of Power of Appointment

41 Section 4. [*Creation of power of appointment.*]

- 42 (1) A power of appointment is created only if
- 43 (a) The instrument creating the power:
- 44 (I) Is valid under applicable law; and
- 45 (II) Except as otherwise provided in subsection (b) of this section, transfers the
46 appointive property; and

- 1 (b) The terms of the instrument creating the power manifest the donor's intent to create in a
2 powerholder a power of appointment over the appointive property exercisable in favor of
3 a permissible appointee.
- 4 (2) Subparagraph (II) of paragraph (a) of subsection (1) of this section does not apply to the
5 creation of a power of appointment by the exercise of a power of appointment.
- 6 (3) A power of appointment may not be created in a deceased individual.
- 7 (4) Subject to an applicable rule against perpetuities, a power of appointment may be created in
8 an unborn or unascertained powerholder.

9
10 Section 5. [*Nontransferability.*]

11 A powerholder may not transfer a power of appointment. If a powerholder dies without
12 exercising or releasing a power, the power lapses.

13
14 Section 6. [*Presumption of unlimited authority.*]

- 15 (1) Subject to Section 8, and unless the terms of the instrument creating a power of appointment
16 manifest a contrary intent, the power is:
17 (a) Presently exercisable;
18 (b) Exclusionary; and
19 (c) Except as otherwise provided in Section 7.

20
21 Section 7. [*Exception to presumption of unlimited authority.*]

- 22 (1) Unless the terms of the instrument creating a power of appointment manifest a contrary
23 intent, the power is nongeneral if:
24 (a) The power is exercisable only at the powerholder's death; and
25 (b) The permissible appointees of the power are a defined and limited class that does not
26 include the powerholder's estate, the powerholder's creditors, or the creditors of the
27 powerholder's estate.

28
29 Section 8. [*Rules of classification - definitions.*]

- 30 (1) In this section, "adverse party" means a person with a substantial beneficial interest in
31 property, which interest would be affected adversely by a powerholder's exercise or
32 nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate,
33 a creditor of the powerholder, or a creditor of the powerholder's estate.
- 34 (2) If a powerholder may exercise a power of appointment only with the consent or joinder of an
35 adverse party, the power is nongeneral.
- 36 (3) If the permissible appointees of a power of appointment are not defined and limited, the
37 power is exclusionary.

38
39 Section 9. [*Power of the donor to revoke or amend.*]

- 40 (1) A donor may revoke or amend a power of appointment only to the extent that:
41 (a) The instrument creating the power is revocable by the donor; or
42 (b) The donor reserves a power of revocation or amendment in the instrument creating the
43 power of appointment.

1 Part 3: Exercise of Power of Appointment

2 Section 10. [*Requisites for exercise of power of appointment.*]

3 (1) A power of appointment may be exercised only:

4 (a) If the instrument exercising the power is valid under applicable law;

5 (b) If the terms of the instrument exercising the power:

6 (I) Manifest the powerholder's intent to exercise the power; and

7 (II) Subject to Section 13, satisfy the requirements of exercise, if any, imposed by the
8 donor; and

9 (c) To the extent the appointment is a permissible exercise of the power.

10
11 Section 11. [*Intent to exercise - determining intent from residuary clause.*]

12 (1) In this section:

13 (a) "Residuary clause" does not include a residuary clause containing a blanket-exercise
14 clause or a specific-exercise clause.

15 (b) "Will" includes a codicil and a testamentary instrument that revises another will.

16 (2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's
17 revocable trust, manifests the powerholder's intent to exercise a power of appointment only
18 if:

19 (a) The terms of the instrument containing the residuary clause do not manifest a contrary
20 intent;

21 (b) The power is a general power exercisable in favor of the powerholder's estate;

22 (c) There is no gift-in-default clause or the clause is ineffective; and

23 (d) The powerholder did not release the power.

24
25 Section 12. [*Intent to exercise - after-acquired power.*]

26 (1) Unless the terms of the instrument exercising a power of appointment manifest a contrary
27 intent:

28 (a) Except as otherwise provided in paragraph (b) of this subsection (1), a blanket-exercise
29 clause extends to a power acquired by the powerholder after executing the instrument
30 containing the clause; and

31 (b) If the powerholder is also the donor of the power, the clause does not extend to the power
32 unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

33
34 Section 13. [*Substantial compliance with donor-imposed formal requirement.*]

35 (1) A powerholder's substantial compliance with a formal requirement of appointment imposed
36 by the donor, including a requirement that the instrument exercising the power of
37 appointment make reference or specific reference to the power, is sufficient if:

38 (a) The powerholder knows of and intends to exercise the power; and

39 (b) The powerholder's manner of attempted exercise of the power does not impair a material
40 purpose of the donor in imposing the requirement.

41
42 Section 14. [*Permissible appointment.*]

43 (1) A powerholder of a general power of appointment that permits appointment to the
44 powerholder or the powerholder's estate may make any appointment, including an
45 appointment in trust or creating a new power of appointment, that the powerholder could
46 make in disposing of the powerholder's own property.

- 1 (2) A powerholder of a general power of appointment that permits appointment only to the
2 creditors of the powerholder or of the powerholder's estate may appoint only to those
3 creditors.
- 4 (3) Unless the terms of the instrument creating a power of appointment manifest a contrary
5 intent, the powerholder of a nongeneral power may:
- 6 (a) Make an appointment in any form, including an appointment in trust, in favor of a
7 permissible appointee;
- 8 (b) Create a general or nongeneral power in a permissible appointee; or
- 9 (c) Create a nongeneral power in an impermissible appointee to appoint to one or more of the
10 permissible appointees of the original nongeneral power.

11
12 Section 15. [*Appointment to deceased appointee or permissible appointee's descendant.*]

- 13 (1) An appointment to a deceased appointee is ineffective.
- 14 (2) Unless the terms of the instrument creating a power of appointment manifest a contrary
15 intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a
16 new power of appointment in, a descendant of a deceased permissible appointee, which
17 deceased appointee is a descendant of one or more of the grandparents of the donor,
18 regardless of whether the descendant is described by the donor as a permissible appointee.

19
20 Section 16. [*Impermissible appointment.*]

- 21 (1) Except as otherwise provided in section 15, an exercise of a power of appointment in favor of
22 an impermissible appointee is ineffective.
- 23 (2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to
24 the extent the appointment is a fraud on the power.

25
26 Section 17. [*Selective allocation doctrine.*]

27 If a powerholder exercises a power of appointment in a disposition that also disposes of property
28 the powerholder owns, the owned property and the appointive property must be allocated in the
29 permissible manner that best carries out the powerholder's intent.

30
31 Section 18. [*Capture doctrine - disposition of ineffectively appointed property under general
32 power.*]

- 33 (1) To the extent a powerholder of a general power of appointment, other than a power to
34 withdraw property from, revoke, or amend a trust, makes an ineffective appointment:
- 35 (a) The gift-in-default clause controls the disposition of the ineffectively appointed property;
36 or
- 37 (b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the
38 ineffectively appointed property:
- 39 (I) Passes to:
- 40 (A) The powerholder if the powerholder is a permissible appointee and living; or
- 41 (B) If the powerholder is an impermissible appointee or deceased, the
42 powerholder's estate if the estate is a permissible appointee; or
- 43 (II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a
44 reversionary interest to the donor or to the donor's transferee or successor in
45 interest.

1 Section 19. [*Disposition of unappointed property under released or unexercised general power.*]

2 (1) To the extent a powerholder releases or fails to exercise a general power of appointment
3 other than a power to withdraw property from, revoke, or amend a trust:

4 (a) The gift-in-default clause controls the disposition of the unappointed property; or

5 (b) If there is no gift-in-default clause or to the extent the clause is ineffective:

6 (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the
7 unappointed property passes to:

8 (A) The powerholder if the powerholder is a permissible appointee and living; or

9 (B) If the powerholder is an impermissible appointee or deceased, the
10 powerholder's estate if the estate is a permissible appointee; or

11 (II) To the extent the powerholder released the power, or if there is no taker under
12 subparagraph (I) of this paragraph (b), the unappointed property passes under a
13 reversionary interest to the donor or to the donor's transferee or successor in
14 interest.
15

16 Section 20. [*Disposition of unappointed property under released or unexercised nongeneral
17 power.*]

18 (1) To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral
19 power of appointment:

20 (a) The gift-in-default clause controls the disposition of the unappointed property; or

21 (b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the
22 unappointed property:

23 (I) Passes to the permissible appointees if:

24 (A) The permissible appointees are defined and limited; and

25 (B) The terms of the instrument creating the power do not manifest a contrary
26 intent; or

27 (II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a
28 reversionary interest to the donor or the donor's transferee or successor in interest.
29

30 Section 21. [*Disposition of unappointed property if partial appointment to taker in default.*]

31 Unless the terms of the instrument creating or exercising a power of appointment manifest a
32 contrary intent, if the powerholder makes a valid partial appointment to a taker in default of
33 appointment, the taker in default of appointment may share fully in unappointed property.
34

35 Section 22. [*Appointment to taker in default.*]

36 If a powerholder makes an appointment to a taker in default of appointment and the appointee
37 would have taken the property under a gift-in-default clause had the property not been appointed,
38 the power of appointment is deemed not to have been exercised and the appointee takes the
39 property under the clause.
40

41 Section 23. [*Powerholder's authority to revoke or amend exercise.*]

42 (1) A powerholder may revoke or amend an exercise of a power of appointment only to the
43 extent that:

44 (a) The powerholder reserves a power of revocation or amendment in the instrument
45 exercising the power of appointment and, if the power is nongeneral, the terms of the
46 instrument creating the power of appointment do not prohibit the reservation; or

- 1 (b) The terms of the instrument creating the power of appointment provide that the exercise
2 is revocable or amendable.
3

4 Part 4: Disclaimer or Release; Contract to Appoint or Not to Appoint

5 Section 24. [*Disclaimer.*]

6 (1) Subject to the “Uniform Disclaimer of Property Interests Act”, [Insert citation.]:

- 7 (a) A powerholder may disclaim all or part of a power of appointment; and
8 (b) A permissible appointee, appointee, or taker in default of appointment may disclaim all
9 or part of an interest in appointive property.
10

11 Section 25. [*Authority to release.*]

12 A powerholder may release a power of appointment, in whole or in part, except to the extent the
13 terms of the instrument creating the power prevent the release.
14

15 Section 26. [*Method of release.*]

16 (1) A powerholder of a releasable power of appointment may release the power in whole or in
17 part:

- 18 (a) By substantial compliance with a method provided in the terms of the instrument creating
19 the power; or
20 (b) If the terms of the instrument creating the power do not provide a method, or the method
21 provided in the terms of the instrument is not expressly made exclusive, by:
22 (I) Delivering a writing declaring the extent to which the power is released to a
23 person who could be adversely affected by an exercise of the power;
24 (II) Joining with some or all of the takers in default in making an otherwise-effective
25 transfer of an interest in the property that is subject to the power, in which case
26 the power is released to the extent that a subsequent exercise of the power would
27 defeat the interest transferred;
28 (III) Contracting with a person who could be adversely affected by an exercise of the
29 power not to exercise the power, in which case the power is released to the extent
30 that a subsequent exercise of the power would violate the terms of the contract; or
31 (IV) Communicating in any other appropriate manner an intent to release the power, in
32 which case the power is released to the extent that a subsequent exercise of the
33 power would be contrary to manifested intent.
34

35 Section 27. [*Revocation or amendment of release.*]

36 (1) A powerholder may revoke or amend a release of a power of appointment only to the extent
37 that:

- 38 (a) The instrument of release is revocable by the powerholder; or
39 (b) The powerholder reserves a power of revocation or amendment in the instrument of
40 release.
41

42 Section 28. [*Power to contract - presently exercisable power of appointment.*]

43 (1) A powerholder of a presently exercisable power of appointment may contract:

- 44 (a) Not to exercise the power if the contract, when made, does not confer a benefit on a
45 person other than a taker in default or a permissible appointee; or

1 (b) To exercise the power if the contract, when made, does not confer a benefit on an
2 impermissible appointee.
3

4 Section 29. [*Power to contract - power of appointment not presently exercisable.*]

5 (1) A powerholder of a power of appointment that is not presently exercisable may contract to
6 exercise or not to exercise the power only if the powerholder:

7 (a) Is also the donor of the power; and

8 (b) Has reserved the power in the instrument creating the power.
9

10 Part 5: Miscellaneous Provisions.

11 Section 30. [*Uniformity of application and construction.*]

12 In applying and construing this article, consideration must be given to the need to promote
13 uniformity of the law with respect to its subject matter among states that enact it.
14

15 Section 31. [*Relation to electronic signatures in global and national commerce act.*]

16 This article modifies, limits, or supersedes the federal “Electronic Signatures in Global and
17 National Commerce Act”, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or
18 supersede section 101 (c) of that act, 15 U.S.C. Section 7001 (c), or authorize electronic delivery
19 of any of the notices described in section 103 (b) of that act, 15 U.S.C. Section 7003 (b).
20

21 Section 32. [*Application to existing relationships.*]

22 (1) Except as otherwise provided in this article, on the effective date of this article or of any
23 amendment to this article:

24 (a) This article or any amendment to this article applies to a power of appointment created
25 before, on, or after the effective date of this article or any amendment to this article;

26 (b) This article or any amendment to this article applies to any proceedings in court then
27 pending or thereafter commenced concerning a power of appointment, except to the
28 extent that in the opinion of the court the former procedure should be made applicable in
29 a particular case in the interest of justice or because of infeasibility of application of the
30 procedure of this article or any amendment to this article, in which case the particular
31 provision of this article does not apply and the superseded law applies;

32 (c) A rule of construction or presumption provided in this article or any amendment to this
33 article applies to an instrument executed before the effective date of this article unless
34 there is a clear indication of a contrary intent in the terms of the instrument;

35 (d) Except as otherwise provided in paragraphs (a) to (c) of this subsection (1), an action
36 done before the effective date of this article is not affected by this article or any
37 amendment to this article; and

38 (e) No provision of this article or of any amendment to this article shall apply retroactively if
39 the court determines that such application would cause the provisions to be retrospective
40 in its operation in violation of section 11 of article ii of the state constitution. (2) if a right
41 is acquired, extinguished, or barred on the expiration of a prescribed period that
42 commenced under law of this state other than this article or any amendment to this article
43 before the effective date of this article, the law continues to apply to the right.
44

45 Section 33. [*Repeals, Conforming Amendments.*]