

Effective 5/9/2017

Chapter 10 Uniform Powers of Appointment Act

Part 1 General Provisions

Repealed 9/1/2024

75-10-101 Title.

This chapter is known as the "Uniform Powers of Appointment Act."

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-102 Definitions.

As used in this chapter:

- (1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.
- (2) "Appointive property" means the property or property interest subject to a power of appointment.
- (3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:
 - (a) expressly uses the words "any power" in exercising any power of appointment the powerholder has;
 - (b) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
 - (c) disposes of all property subject to disposition by the powerholder.
- (4) "Donor" means a person that creates a power of appointment.
- (5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.
- (6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.
- (7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
- (8) "Impermissible appointee" means a person that is not a permissible appointee.
- (9) "Instrument" means a record.
- (10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment. The terms "special power of appointment," "limited power of appointment," or similar terminology used in an instrument creating a power that does not grant powers making it a general power of appointment as defined in this chapter mean the same as and may be used interchangeably with the term nongeneral power of appointment.
- (11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.
- (12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.
- (13) "Powerholder" means a person in whom a donor creates a power of appointment.

- (14) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of appointment over, the appointive property. The term does not include a power of attorney.
- (15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at a relevant time. The term:
 - (a) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:
 - (i) the occurrence of the specified event;
 - (ii) the satisfaction of the ascertainable standard; or
 - (iii) the passage of the specified time; and
 - (b) does not include a power exercisable only at the powerholder's death.
- (16) "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.
- (17) "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.
- (18) "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.
- (19) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-103 Governing law.

- (1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent:
 - (a) the creation, revocation, amendment, interpretation and definition of terms, or the determination of the rights of the appointee of the power is governed by the law of the donor's domicile at the relevant time; and
 - (b) the formalities for the exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power is governed by the law of the powerholder's state of domicile at the relevant time.
- (2) The law of the powerholder's state of domicile may not govern the interpretation and definition of terms, or the determination of the rights of the appointee of the power, which shall be governed by the law of the donor's domicile at the relevant time.
- (3) Claims of creditors, including creditor claims regarding a power not created by a powerholder as set forth in Section 75-10-502, and other parties claiming an interest in property or rights subject to a power will be governed by the laws of the donor's domicile at the time of the creation of the power and not the powerholder's state of domicile either at the time of the creation of the power or at the time of exercise of the power.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-104 Common law and principles of equity.

The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or laws of this state other than this chapter.

Enacted by Chapter 125, 2017 General Session

Part 2

Creation, Revocation, and Amendment of Power of Appointment

Renumbered 9/1/2024

75-10-201 Creation of power of appointment.

- (1) A power of appointment is created only if:
 - (a) the instrument creating the power is valid under applicable law; and
 - (b) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.
- (2) A power of appointment may be created by the exercise of a power of appointment.
- (3) A power of appointment may not be created in a deceased individual.
- (4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Amended by Chapter 244, 2018 General Session

Renumbered 9/1/2024

75-10-202 Nontransferability.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-203 Presumption of unlimited authority.

Subject to Section 75-10-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

- (1) presently exercisable;
- (2) exclusionary; and
- (3) except as otherwise provided in Section 75-10-204, general.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-204 Exception to presumption of unlimited authority.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

- (1) the power is exercisable only at the powerholder's death; and
- (2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-205 Rules of classification.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-206 Donor's power to revoke or amend.

A donor may revoke or amend a power of appointment unless or to the extent the instrument creating the power is made irrevocable by the donor or the exercise of a presently exercisable power has been irrevocably made or effected.

Enacted by Chapter 125, 2017 General Session

**Part 3
Exercise of Power of Appointment**

Renumbered 9/1/2024

75-10-301 Requisites for exercise of power of appointment.

A power of appointment is exercised only:

- (1) if the instrument exercising the power is valid under applicable law;
- (2) if the terms of the instrument exercising the power:
 - (a) manifest the powerholder's intent to exercise the power; and
 - (b) satisfy the requirements of exercise, if any, imposed by the donor; and
- (3) to the extent the appointment is a permissible exercise of the power.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-302 Intent to exercise -- Determining intent from residuary clause.

- (1) As used in this section:
 - (a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.
 - (b) "Will" includes a codicil and a testamentary instrument that revises another will.
- (2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:
 - (a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;
 - (b) the power is a general power exercisable in favor of the powerholder's estate;

- (c) there is no gift-in-default clause or the clause is ineffective; and
- (d) the powerholder did not release the power.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-303 Intent to exercise -- After-acquired power.

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

- (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and
- (2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-304 Compliance with donor-imposed formal requirements.

- (1) A powerholder's compliance with formal requirements of appointment imposed by the donor is sufficient only if the powerholder substantially complies with the conditions, requirements, and formalities set forth in the power of appointment, including complying with all the requirements for making specific reference to the power, that the power shall be exercised in a specific document such as a will, or that the document exercising the power shall be witnessed or notarized. If the donor limited the powerholder's exercise to a validly executed will, substantial compliance may not include the exercise of the power by a trust or another document not meeting the requirements of a properly executed will.
- (2) Unless required by the instrument creating the power, the probate of a properly executed will is not required for the exercise of a power to be valid and complete.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-305 Permissible appointment.

- (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.
- (2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.
- (3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:
 - (a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;
 - (b) create a general power in a permissible appointee;
 - (c) create a nongeneral power in any person to appoint one or more of the permissible appointees of the original nongeneral power; or
 - (d) create a nongeneral power in a permissible appointee to appoint one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Amended by Chapter 153, 2019 General Session

Renumbered 9/1/2024

75-10-306 Appointment to deceased appointee or permissible appointee's descendant.

- (1) Subject to Sections 75-2-603 and 75-2-604, an appointment to a deceased appointee is ineffective.
- (2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-307 Impermissible appointment.

- (1) Except as otherwise provided in Section 75-10-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.
- (2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-308 Elective allocation doctrine.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-309 Capture doctrine -- Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

- (1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or
- (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:
 - (a) passes to:
 - (i) the powerholder if the powerholder is a permissible appointee and is living; or
 - (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or
 - (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-310 Disposition of unappointed property under released or unexercised general power.

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

- (1) the gift-in-default clause controls the disposition of the unappointed property; or
- (2) if there is no gift-in-default clause or to the extent the clause is ineffective:
 - (a) except as otherwise provided in Subsection (2)(b), the unappointed property passes to:
 - (i) the powerholder if the powerholder is a permissible appointee and is living; or
 - (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or
 - (b) to the extent the powerholder released the power, or if there is no taker under Subsection (2)
 - (a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-311 Disposition of unappointed property under released or unexercised nongeneral power.

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

- (1) the gift-in-default clause controls the disposition of the unappointed property; or
- (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:
 - (a) passes to the permissible appointees if:
 - (i) the permissible appointees are defined and limited; and
 - (ii) the terms of the instrument creating the power do not manifest a contrary intent; or
 - (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-312 Disposition of unappointed property if partial appointment to taker in default.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-313 Appointment to taker in default.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-314 Powerholder's authority to revoke or amend exercise.

Unless the terms of the instrument creating the power of appointment or the instrument exercising the power of appointment provide that the exercise is irrevocable or unamendable, a powerholder may revoke or amend an exercise of a power of appointment made by an instrument effective during the life of the powerholder where the exercise is to become effective at some future time or contingency and where that future time and contingency has not yet occurred, as long as the revocation or amendment is done with the same formality as the original exercise of the power of appointment.

Enacted by Chapter 125, 2017 General Session

Part 4

Disclaimer or Release - Contract to Appoint or Not to Appoint

Renumbered 9/1/2024

75-10-401 Disclaimer.

As provided by Section 75-2-801:

- (1) A powerholder may disclaim all or part of a power of appointment.
- (2) A permissible appointee, an appointee, or a taker in default of appointment may disclaim all or part of an interest in appointive property.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-402 Authority to release.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-403 Method of release.

A powerholder of a releasable power of appointment may release the power in whole or in part:

- (1) by substantial compliance with a method provided in the terms of the instrument creating the power; or
- (2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-404 Revocation or amendment of release.

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

- (1) the instrument of release is revocable by the powerholder; or
- (2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-405 Power to contract -- Presently exercisable power of appointment.

A powerholder of a presently exercisable power of appointment may contract:

- (1) not to exercise the power; or
- (2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-406 Power to contract -- Power of appointment not presently exercisable.

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

- (1) is also the donor of the power; and
- (2) has reserved the power in a revocable trust.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-407 Remedy for breach of contract to appoint or not to appoint.

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Enacted by Chapter 125, 2017 General Session

**Part 5
Rights of Powerholder's Creditors in Appointive Property**

Renumbered 9/1/2024

75-10-501 Creditor claim -- General power created by powerholder.

- (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.
- (2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in Title 25, Chapter 6, Uniform Voidable Transactions Act.
- (3) Subject to Subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the

powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

- (4) Subject to Subsections (2) and (3), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:
- (a) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and
 - (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-502 Creditor claim -- Power not created by powerholder.

- (1) The property subject to a general or a nongeneral power of appointment not created by the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's estate. The powerholder of such a power may not be compelled to exercise the power and the powerholder's creditors may not acquire the power, any rights thereto, or reach the trust property or beneficial interests by any other means. A court may not exercise or require the powerholder to exercise the power of appointment.
- (2) As set forth in Section 75-10-103, the law of the donor's domicile at the time of creation shall govern claims of creditors and other parties claiming an interest in property or rights subject to a power of appointment.

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-503 Power to withdraw.

- (1) For purposes of this part, and except as otherwise provided in Subsection (2), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.
- (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b).

Enacted by Chapter 125, 2017 General Session

**Part 6
Miscellaneous Provisions**

Renumbered 9/1/2024

75-10-601 Uniformity of application and construction.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-602 Relation to Electronic Signatures in Global and National Commerce Act.

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

Enacted by Chapter 125, 2017 General Session

Renumbered 9/1/2024

75-10-603 Application to existing relationships.

- (1) Except as otherwise provided in this chapter, on and after May 9, 2017:
 - (a) this chapter applies to a power of appointment created before, on, or after May 9, 2017;
 - (b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 9, 2017;
 - (c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 9, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and
 - (d) a rule of construction or presumption provided in this chapter applies to an instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument.
- (2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 9, 2017, is not affected by this chapter.
- (3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before May 9, 2017, the law continues to apply to the right.

Enacted by Chapter 125, 2017 General Session