

Effective 5/1/2024

**Part 1
General Provisions**

75A-4-101 Reserved.

Reserved.

Enacted by Chapter 364, 2024 General Session

75A-4-102 Definitions for chapter.

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)
 - (a) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause.
 - (b) "Blanket-exercise clause" includes a clause that:
 - (i) expressly uses the words "any power" in exercising any power of appointment the powerholder has;
 - (ii) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
 - (iii) disposes of all property subject to disposition by the powerholder.
- (4) "Descendant" means the same as that term is defined in Section 75-1-201.
- (5) "Donor" means a person that creates a power of appointment.
- (6) "Estate" means the same as that term is defined in Section 75-1-201.
- (7) "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.
- (8) "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.
- (9) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
- (10) "Impermissible appointee" means a person that is not a permissible appointee.
- (11) "Instrument" means a record.
- (12)
 - (a) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.
 - (b) "Nongeneral power of appointment" includes a special power of appointment, a limited power of appointment, or similar terminology that is used in an instrument creating a power that does not grant powers making it a general power of appointment.
- (13) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.
- (14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.
- (15) "Powerholder" means a person in whom a donor creates a power of appointment.
- (16)

- (a) "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.
 - (b) "Power of appointment" does not include a power of attorney.
- (17)
- (a) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at a relevant time.
 - (b) "Presently exercisable power of appointment" 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.
 - (c) "Presently exercisable power of appointment" does not include a power exercisable only at the powerholder's death.
- (18) "Property" means the same as that term is defined in Section 75-1-201.
- (19) "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.
- (20) "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.
- (21) "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.
- (22) "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.
- (23) "Trust" means the same as that term is defined in Section 75-1-201.
- (24) "Will" means the same as that term is defined in Section 75-1-201.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-4-103 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 75A-4-502, 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-4-104 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.

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