

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Article 1. General provisions.

Section 101. Short title. This Act may be cited as the Uniform Powers of Appointment Act.

Section 102. Definitions. In this Act:

(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 which 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 a 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 writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general 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, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not

include a power of attorney.

(14) "Powerholder" means a person in which a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after 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 which specifically refers to and exercises a particular power of appointment.

(18) "Taker in default of appointment" means a person that takes part or all 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.

Section 103. Governing law. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(2) 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 domicile at the relevant time.

Section 104. Common law and principles of equity. The common law and principles of equity supplement this Act, except to the extent modified by this Act or law of this State other than this Act.

Article 2. Creation, revocation, and amendment of power of appointment.

Section 201. Creation of power of appointment.

(a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection

(b), transfers the appointive property; and

(2) 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.

(b) Subdivision (a) (1) (B) of this Section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Section 202. Nontransferability. A powerholder may not transfer a power of appointment. If the powerholder dies without exercising or releasing the power, the power lapses.

Section 203. Presumption of unlimited authority. Subject to Section 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 204, general.

Section 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.

Section 205. Rules of classification.

(a) In this Section, "adverse party" means a person with a substantial beneficial interest in property which 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.

(b) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Section 206. Power to revoke or amend. A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

Article 3. Exercise of power of appointment.

Section 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) subject to Section 304, 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.

Section 302. Intent to exercise: determining intent from residuary clause.

(a) In this Section:

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

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

(b) 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:

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

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

(3) there is no gift-in-default clause or it is ineffective; and

(4) the powerholder did not release the power.

Section 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 paragraph (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 it is ineffective.

Section 304. Substantial compliance with donor-imposed formal requirement. A powerholder's substantial compliance with a formal requirement of an appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

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

Section 305. Permissible appointment.

(a) 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.

(b) A powerholder of a general power of appointment that

permits appointment only to the creditors of the powerholder or of the powerholder's estate is restricted to appointing to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(1) make an appointment in any form, with any conditions and limitations, including an appointment in trust to any trustee, in favor of a permissible appointee;

(2) create a general or nongeneral power in a permissible appointee that may be exercisable in favor of persons other than permissible appointees of the original nongeneral power; or

(3) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

Section 306. Appointment to deceased appointee. Subject to Section 4-11 of the Probate Act of 1975, an appointment to a deceased appointee is ineffective.

Section 307. Impermissible appointment.

(a) Except as otherwise provided in Section 306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) 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.

Section 308. Selective 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 must be allocated in the permissible manner that best carries out the powerholder's intent.

Section 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 revoke, amend, or withdraw property from 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 living; or

(ii) if the powerholder is an impermissible appointee or not living, the powerholder's estate if the estate is a permissible appointee; or

(B) if there is no taker under subparagraph (A), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 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 revoke, amend, or withdraw property from 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 subparagraph

(B), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or not living, 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 subparagraph (A), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 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 subparagraph (A), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 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.

Section 313. Appointment to taker in default. If a

powerholder of a general power 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 deemed not to have been exercised, and the appointee takes under the gift-in-default clause.

Section 314. Powerholder's authority to revoke or amend exercise. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

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

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Section 315. Disposition of trust property subject to power. In disposing of trust property subject to a power of appointment exercisable by an instrument other than a will, a trustee acting in good faith shall have no liability to any appointee or taker in default of appointment for relying upon an instrument believed to be genuine purporting to exercise a power of appointment or for assuming that there is no

instrument exercising the power of appointment in the absence of actual knowledge thereof within 3 months of the last date on which the power of appointment may be exercised.

Article 4. Disclaimer or release; contract to appoint or not to appoint.

Section 401. Disclaimer. As provided by Section 2-7 of the Probate Act of 1975:

(1) A powerholder may disclaim all or part of a power of appointment.

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

Section 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.

Section 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 an instrument manifesting the powerholder's intent by clear and convincing evidence.

Section 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.

Section 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.

Section 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.

Section 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 is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Article 5. Rights of powerholder's creditors in appointive property.

Section 501. Creditor claim: general power created by powerholder.

(a) 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.

(b) 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 the Uniform Fraudulent Transfer Act.

(c) Subject to subsection (b), 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.

(d) Subject to subsections (b) and (c), 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:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) 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.

Section 502. Creditor claim: general power not created by powerholder.

(a) Except as otherwise provided in subsection (b), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(2) the powerholder's estate if the power is exercised at the powerholder's death, to the extent the estate is

insufficient, subject to the right of the deceased powerholder to direct the source from which liabilities are paid.

(b) Subject to subsection (c) of Section 504, a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1), as amended, is treated for purposes of this Article as a nongeneral power.

Section 503. Power to withdraw.

(a) For purposes of this Article, and except as otherwise provided in subsection (b), 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.

(b) A power to withdraw property from a trust ceases to be treated as a presently exercisable general power of appointment upon its lapse, release, or waiver.

Section 504. Creditor claim: nongeneral power.

(a) Except as otherwise provided in subsections (b) and (c), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act.

(c) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this Section as a general power.

Article 6. Miscellaneous provisions.

Section 601. Uniformity of application and construction. In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 602. (Blank).

Section 603. Application to existing relationships.

(a) Except as otherwise provided in this Act, on and after the effective date of this Act:

(1) this Act applies to a power of appointment created before, on, or after its effective date;

(2) this Act applies to a judicial proceeding

concerning a power of appointment commenced on or after its effective date;

(3) this Act applies to a judicial proceeding concerning a power of appointment commenced before its effective date unless the court finds that application of a particular provision of this Act would substantially interfere with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this Act does not apply and the superseded law applies;

(4) a rule of construction or presumption provided in this Act applies to an instrument executed before the effective date of the Act unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) an act done before the effective date of this Act is not affected by this Act.

(b) 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 Act before the effective date of this Act, the law continues to apply to the right.

(c) No trustee is liable to any person in whose favor a power of appointment may have been exercised for any distribution of property made to persons entitled to take in default of the effective exercise of the power of appointment to the extent that the distribution shall have been completed

prior to the effective date of this Act.

Section 604. The Probate Act of 1975 is amended by changing Section 2-7 as follows:

(755 ILCS 5/2-7) (from Ch. 110 1/2, par. 2-7)

Sec. 2-7. Disclaimer. (a) Right to Disclaim Interest in Property. A person to whom any property or interest therein passes, by whatever means, may disclaim the property or interest in whole or in part by delivering or filing a written disclaimer as hereinafter provided. A disclaimer may be of a fractional share or undivided interest, a specifically identifiable asset, portion or amount, any limited interest or estate or any property or interest derived through right of survivorship. A powerholder, as that term is defined in Section 102 of the Uniform Powers of Appointment Act, ~~power (as defined in "An Act Concerning Termination of Powers", approved May 25, 1943, as amended)~~ with respect to property shall be deemed to be a holder of an interest in such property.

The representative of a decedent or ward may disclaim on behalf of the decedent or ward with leave of court. The court may approve the disclaimer by a representative of a decedent if it finds that the disclaimer benefits the estate as a whole and those interested in the estate generally even if the disclaimer alters the distribution of the property, part or interest disclaimed. The court may approve the disclaimer by a

representative of a ward if it finds that it benefits those interested in the estate generally and is not materially detrimental to the interests of the ward. A disclaimer by a representative of a decedent or ward may be made without leave of court if a will or other instrument signed by the decedent or ward designating the representative specifically authorizes the representative to disclaim without court approval.

The right to disclaim granted by this Section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(b) Form of Disclaimer. The disclaimer shall (1) describe the property or part or interest disclaimed, (2) be signed by the disclaimant or his representative and (3) declare the disclaimer and the extent thereof.

(c) Delivery of Disclaimer. The disclaimer shall be delivered to the transferor or donor or his representative, or to the trustee or other person who has legal title to the property, part or interest disclaimed, or, if none of the foregoing is readily determinable, shall be either delivered to a person having possession of the property, part or interest or who is entitled thereto by reason of the disclaimer, or filed or recorded as hereinafter provided. In the case of an interest passing by reason of the death of any person, an executed counterpart of the disclaimer may be filed with the clerk of the circuit court in the county in which the estate of the

decedent is administered, or, if administration has not been commenced, in which it could be commenced. If an interest in real property is disclaimed, an executed counterpart of the disclaimer may be recorded in the office of the recorder in the county in which the real estate lies, or, if the title to the real estate is registered under "An Act concerning land titles", approved May 1, 1897, as amended, may be filed in the office of the registrar of titles of such county.

(d) Effect of Disclaimer. Unless expressly provided otherwise in an instrument transferring the property or creating the interest disclaimed, the property, part or interest disclaimed shall descend or be distributed (1) if a present interest (a) in the case of a transfer by reason of the death of any person, as if the disclaimant had predeceased the decedent; (b) in the case of a transfer by revocable instrument or contract, as if the disclaimant had predeceased the date the maker no longer has the power to transfer to himself or another the entire legal and equitable ownership of the property or interest; or (c) in the case of any other inter vivos transfer, as if the disclaimant had predeceased the date of the transfer; and (2) if a future interest, as if the disclaimant had predeceased the event that ~~which~~ determines that the taker of the property or interest has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity; and in each case the disclaimer shall relate back to such date for all purposes.

A disclaimer of property or an interest in property shall not preclude any disclaimant from receiving the same property in another capacity or from receiving other interests in the property to which the disclaimer relates.

Unless expressly provided otherwise in an instrument transferring the property or creating the interest disclaimed, a future interest limited to take effect at or after the termination of the estate or interest disclaimed shall accelerate and take effect in possession and enjoyment to the same extent as if the disclaimant had died before the date to which the disclaimer relates back.

A disclaimer made pursuant to this Section shall be irrevocable and shall be binding upon the disclaimant and all persons claiming by, through or under the disclaimant.

(e) Waiver and Bar. The right to disclaim property or a part thereof or an interest therein shall be barred by (1) a judicial sale of the property, part or interest before the disclaimer is effected; (2) an assignment, conveyance, encumbrance, pledge, sale or other transfer of the property, part or interest, or a contract therefor, by the disclaimant or his representative; (3) a written waiver of the right to disclaim; or (4) an acceptance of the property, part or interest by the disclaimant or his representative. Any person may presume, in the absence of actual knowledge to the contrary, that a disclaimer delivered or filed as provided in this Section is a valid disclaimer that ~~which~~ is not barred by

the preceding provisions of this paragraph.

A written waiver of the right to disclaim may be made by any person or his representative and an executed counterpart of a waiver of the right to disclaim may be recorded or filed, all in the same manner as provided in this Section with respect to a disclaimer.

In every case, acceptance must be affirmatively proved in order to constitute a bar to a disclaimer. An acceptance of property or an interest in property shall include the taking of possession, the acceptance of delivery or the receipt of benefits of the property or interest; except that (1) in the case of an interest in joint tenancy with right of survivorship such acceptance shall extend only to the fractional share of such property or interest determined by dividing the number one by the number of joint tenants, and (2) in the case of a ward, such acceptance shall extend only to property actually received by or on behalf of the ward or his representative during his minority or incapacity. The mere lapse of time or creation of an interest, in joint tenancy with right of survivorship or otherwise, with or without knowledge of the interest on the part of the disclaimant, shall not constitute acceptance for purposes of this Section.

This Section does not abridge the right of any person to assign, convey, release, renounce or disclaim any property or interest therein arising under any other statute or that ~~which~~ arose under prior law.

Any interest in real or personal property that ~~which~~ exists on or after the effective date of this Section may be disclaimed after that date in the manner provided herein, but no interest that ~~which~~ has arisen prior to that date in any person other than the disclaimant shall be destroyed or diminished by any action of the disclaimant taken pursuant to this Section.

(Source: P.A. 83-1362.)

(755 ILCS 5/4-2 rep.)

Section 604.1. The Probate Act of 1975 is amended by repealing Section 4-2.

(765 ILCS 320/Act rep.)

Section 604.2. The Power of Appointment Exercise Act is repealed.

(765 ILCS 325/Act rep.)

Section 604.3. The Termination of Powers Act is repealed.