



## **THE UNIFORM POWERS OF APPOINTMENT ACT**

### *- A Summary -*

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.

Article 1 includes definitions and other general provisions. Article 2 provides rules for the creation, revocation, and amendment of powers of appointment. Article 3 governs the exercise of powers by the powerholder and the distribution of appointive property. Article 4 is concerned with disclaimers, releases, and contracts between a powerholder and permissible beneficiary to appoint or not to appoint property. Article 5 outlines the rights of a powerholder's creditors in appointive property. Finally, Article 6 contains boilerplate provisions common to uniform acts. The act's highlights are summarized below.

### **Article 1**

The Uniform Powers of Appointment Act defines three specific roles: The person who creates a power of appointment is the "Donor." The person who may exercise the power is the "Powerholder" (rather than the more confusing term "donee"). A person who may receive appointive property is a "Permissible appointee" (or just an "Appointee" following receipt).

The uniform act defines a "Power of appointment" as "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." Other definitions describe different types of powers and different methods of exercising a power.

### **Article 2**

Section 201 provides a permissive standard governing creation of powers of appointment: the power must be in a valid governing instrument that transfers the appointive property and must use terms showing the donor's intent to create a power to appoint property. Other provisions state that a power is nontransferable and provide rules and presumptions as to the extent of the power, which are applicable if the terms of the power are not sufficiently clear. Finally, Section 206 states that a power may not be revoked or amended unless either i) the instrument creating the power is revocable, or ii) the donor reserves a power of revocation or amendment.

### **Article 3**

Section 301 sets out the rules for exercising a power of appointment, and sections 302 - 304 apply if the powerholder's intent is unclear. Section 305 clarifies that a powerholder may, unless otherwise prohibited, make an appointment to a permissible appointee in any form, including in trust or by creating a general power of appointment. Other sections govern appointments to deceased or impermissible appointees, disposition of unappointed property, and a powerholder's ability to revoke or amend an exercise of power.

### **Article 4**

Section 401 provides that a state's general law on disclaimers applies to both powerholders and permissible appointees. Section 402 gives a powerholder authority to release a power unless prohibited by the donor, Section 403 provides a method for releasing powers of appointment, and Section 404 provides rules for revoking or amending a release. Finally, Sections 405 and 406 govern contracts to exercise, or not to exercise, a power of appointment.

### **Article 5**

This article governs creditor claims on appointive property. The rules depend on whether the powerholder also created the power, and whether the powerholder has a power to withdraw property from a trust.

### **Conclusion**

Nothing in the Uniform Powers of Appointment Act should be new or controversial. Estate planning attorneys will already be familiar with most provisions. Both attorneys and their clients will benefit from the certainty provided by this codification of common law decisions. The act should be considered by the legislature in every jurisdiction as soon as feasible.

For further information about the Uniform Powers of Appointment Act, please contact ULC Chief Counsel Benjamin Orzeske at 312-450-6621 or [borzeske@uniformlaws.org](mailto:borzeske@uniformlaws.org).