

CHAPTER 502

POWERS OF APPOINTMENT

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502.01-502.61 [Repealed, 1943 c 322 s 1]

502.62 COMMON LAW OF POWERS IS LAW OF STATE; EXCEPTIONS.

The common law of powers is hereby declared to be the law in this state, except as modified by statute.

History: 1943 c 322 s 2

502.63 DONOR MAY CREATE POWER OF APPOINTMENT.

A donor may create a power of appointment only by an instrument executed with the same formalities as one which would pass title to the property covered by the power.

History: 1943 c 322 s 3

502.64 DONEE MAY EXERCISE POWER OF APPOINTMENT.

A donee may exercise a power of appointment only by an instrument executed with sufficient formalities to pass title to the property covered by the power. When a power of appointment is exercisable only by will, a donee may not exercise it by deed. When a power of appointment is exercisable by deed, a donee may exercise it by will.

History: 1943 c 322 s 4

502.65 POWER, WHEN NOT VOID.

A power of appointment authorized to be exercised by an instrument which would not be sufficient to transfer title to the property covered by the power is not void, but its execution must conform to the provisions of this chapter. When the power of appointment directs that formalities in addition to those prescribed in this chapter be observed in the execution of the power, the direction may be disregarded.

History: 1943 c 322 s 5

502.66 POWER OF APPOINTMENT, WHO MAY EXERCISE.

Any donee, except a minor, who would be capable of conveying the property covered by the power may exercise a power of appointment.

History: 1943 c 322 s 6

502.67 POWER OF APPOINTMENT WHEN VESTED IN TWO OR MORE.

When a power of appointment is vested in two or more persons, all must unite in its exercise; provided, if one or more of such persons die, become legally incapable of exercising the power, or renounce such power, the power may be exercised by the others.

History: 1943 c 322 s 7

502.68 CONSENTS MUST BE IN WRITING.

When the consent of the donor, or of any other person is required by the donor for the exercise of a power of appointment, this consent must be in writing. To entitle the instrument exercising the power to be recorded, the signature of any person consenting must be acknowledged; and, if the consent be given in a separate instrument, that instrument must be attached to the instrument exercising the power. If any person whose consent is required dies or becomes legally incapable of consenting, the donee may exercise the power with the consent of the other persons whose consent is required. If there be no such person, the donee may exercise the power in the manner provided by section 502.64, unless the donor has manifested a contrary intent in the instrument creating the power.

History: 1943 c 322 s 8

502.69 INTENT OF POWER.

Unless a contrary intent is manifest in the instrument creating the power, the donee may appoint all of the property to one or more of the objects to the exclusion of the others. A direction to appoint "to," "among," or "between" two or more objects is not a sufficient manifestation of a contrary intent; provided, that when the donee is prevented from excluding any object by the instrument creating the power, each object must receive an equal share, unless the instrument creating the power manifests an intent that some other division may be made.

History: 1943 c 322 s 9

502.70 POWERS OF CREDITOR OF DONEE.

When a donee is authorized either to appoint to the donee or to appoint to the donee's estate all or part of the property covered by a power of appointment, a creditor of the donee, during the life of the donee, may subject to the creditor's claim all property which the donee could then appoint to the donee and, after the death of the donee, may subject to the creditor's claim all property which the donee could at death have appointed to the donee's estate, but only to the extent that other property available for the payment of the creditor's claim is insufficient for such payment. When a donee has exercised such a power by deed, the rules relating to fraudulent conveyances shall apply as if the property transferred to the appointee had been owned by the donee. When a donee has exercised such a power by will in favor of a taker without value or in favor of a creditor, a creditor of the donee or a creditor of the donee's estate may subject such property to the payment of the creditor's claim, but only to the extent that other property available for the payment of the claim is insufficient for such payment.

History: 1943 c 322 s 10; 1947 c 206 s 1; 1986 c 444

502.71 EFFECT OF DEED.

When the donee of a power of appointment makes a deed purporting to transfer all of the donee's property, the property covered by the power is included in such transfer unless it be shown that the donee did not so intend.

History: 1943 c 322 s 11; 1975 c 347 s 8; 1986 c 444

502.72 CONVEYANCE.

A deed either creating or exercising a power of appointment over real property is a conveyance within the meaning of section 507.01. A will appointing real property is a devise within section 524.1-201.

History: 1943 c 322 s 12; 1987 c 384 art 2 s 1

502.73 RIGHT OF ALIENATION SUSPENDED, WHEN.

The period during which the power of alienation, within the meaning of section 501B.09, may be suspended by any instrument in execution of a power is to be

computed from the time of the creation of the power and not from the date of the instrument, except that in the case of a general power presently exercisable, the period is to be computed from the date of the instrument.

History: 1943 c 322 s 13; 1989 c 340 art 1 s 74

502.74 ADVANCEMENTS.

Every estate or interest given to a descendant of the donee by the exercise of a power is an advancement to such descendant to the same extent that a gift of property owned by the donee would be an advancement.

History: 1943 c 322 s 14

502.75 POWER PASSES TO ASSIGNEE.

Under a general assignment for the benefit of creditors, a power of appointment in the assignor by which the assignor is authorized to appoint the property to the assignor passes to the assignee.

History: 1943 c 322 s 15; 1986 c 444

502.76 POWER OF REVOCATION.

When the grantor in a conveyance personally reserves, for the grantor's own benefit, an absolute power of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

History: 1943 c 322 s 16; 1986 c 444

502.77 POWER IF PART OF SECURITY.

When a power to sell lands is given to the grantee in a mortgage, or other conveyance intended to secure the payment of money, the power is a part of the security and vests in, and may be executed by, any person who becomes entitled to the money so secured to be paid.

History: 1943 c 322 s 17

502.78 ABSOLUTE POWER OF DISPOSITION.

Where an absolute power of disposition is given to a grantee or devisee of real or personal property and no reversion, remainder, or gift in default of the property undisposed of by the grantee or devisee is expressed in the instrument creating the power, the grantee or devisee is the absolute owner of the property.

History: 1943 c 322 s 18

502.79 RELEASE OF POWERS OF PROPERTY HELD IN TRUST.

Subdivision 1. **Releasable powers.** A power of appointment over property held in trust, whether or not coupled with an interest, and whether or not existing on the effective date of Laws 1949, Chapter 607, and whether the power is held by the donee in an individual or in a fiduciary capacity, may be released, wholly or partially, by the donee thereof, unless otherwise expressly provided in the instrument creating the power; provided, however, that a power of appointment held by a person by reason of being a trustee of an express trust shall not be releasable hereunder unless (1) the release is approved by a court of competent jurisdiction on the ground that it is for the best interests of the trust estate and of the beneficiaries thereof as a whole, or (2) the trustee or trustees having the power could exercise it only in their own favor at the time the power was released. As used in this section, the term "power of appointment" shall include all powers in respect of any kind of property, real or personal, held in trust which are in substance and effect powers of appointment, all powers to alter, amend, revoke or terminate an express trust, and all powers by the exercise of which the possession or enjoyment of property held in trust may be changed, regardless of the language used in creating them.

Subd. 2. **Delivery of release.** A power releasable according to subdivision 1 may hereafter be released, wholly or partially, only by the delivery to the trustee of a written release executed by the donee of the power.

Subd. 3. **Extent of release.** A release executed by the donee of a power releasable according to subdivision 1 and delivered in accordance with subdivision 2, whether heretofore or hereafter executed, shall be, and if heretofore executed and delivered shall be deemed to have been effective to release the power to the extent provided in such release.

Subd. 4. **Release by one of several persons.** If a power of appointment releasable according to subdivision 1 is or may be exercisable by two or more persons in conjunction with one another or successively, a release or disclaimer of the power, in whole or in part, executed and delivered in accordance with subdivision 2 by any one of the donees of the power shall, subject to the provisions of subdivision 2, be effective to release or disclaim, to the extent therein provided, all right of such persons to exercise, or to participate in the exercise of, the power, but, unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees thereof.

Subd. 5. **Release defined.** The word "release" as used in subdivisions 2 to 5 shall include (a) an instrument wherein the person who executes it in substance states that that person wholly releases, or agrees in no respect to exercise or participate in the exercise of, a power of appointment; and (b) an instrument wherein the person who executes it in substance states that that person releases all right to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits therein defined, or agrees not to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits there defined.

Subd. 6. **Effect of section.** This section shall not impair the validity of any releases heretofore made, and shall not create any implication that powers other than those specified herein are not releasable.

History: 1949 c 607 s 1-6; 1986 c 444