502.85 EXERCISE OF A POWER OF APPOINTMENT.

Subdivision 1. **Manifestation of intention of donee.** (a) Subject to paragraph (b), an effective exercise of a power of appointment does not require an express reference to the power. A power is effectively exercised if the donee manifests the donee's intention to exercise the power. A manifestation of the donee's intent exists when the donee:

(1) declares in substance that the donee is exercising all of the donee's powers;

(2) sufficiently identifying the appointive property or any part thereof, executes an instrument purporting to dispose of the property or part thereof; or

(3) makes a disposition which, when read with reference to the property the donee owned and the circumstances existing at the time of its making, manifests the donee's understanding that the donee was disposing of the appointive property.

(b) If the donor has expressly directed that no instrument is effective to exercise the power unless the instrument contains a specific reference to the power, an instrument not containing this reference does not validly exercise the power.

Subd. 2. **Conformity to directions of donor.** The directions of the donor as to the manner, time, and conditions of the exercise of a power must be observed, except that:

(1) where the donor has authorized a power of appointment to be exercised by an instrument legally insufficient to dispose of the appointive property, the manner of exercise is to be determined by the provisions of this chapter;

(2) where the donor has directed any formality to be observed in the exercise of a power of appointment in addition to those which would be legally sufficient to dispose of the appointive property, no additional formality is necessary to a valid exercise of the power;

(3) where the donor has made a power of appointment exercisable only by deed, it is also exercisable by a written will unless exercise by will is expressly excluded; and

(4) where the donor of a general power of appointment has not expressly imposed a requirement of good faith or of reasonableness with respect to the donee's exercise of the power, neither requirement shall be implied.

Subd. 3. **Type of instrument.** 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.

Subd. 4. **Required consents.** (a) When the consent of the donor or of a third person to the exercise of a power of appointment is required, the consent must be expressed in a written instrument, subscribed by the person whose consent is required. To entitle the instrument of exercise to be recorded, the signatures of the donee and of the person consenting must be acknowledged or proved in the manner required by the laws of this state for the recording of a deed of real property.

(b) Unless the donor expressly provides otherwise:

(1) When the consents of two or more persons are required for the exercise of a power of appointment, all must consent.

(2) If before the exercise of the power:

(i) one or more of the persons required to consent die, the consent of the survivor is sufficient; or

(ii) one or more of the persons required to consent become incompetent, the consent of the competent person is sufficient.

Subd. 5. **Exercise of exclusive and nonexclusive power of appointment.** Unless the donor expressly provides otherwise:

(1) the donee of an exclusive power may appoint all or any part of the appointive property to one or more of the appointees to the exclusion of the others; or

(2) the donee of a nonexclusive power must appoint in favor of all of the appointees equally, unless the instrument creating the power manifests an intent that some other division be made.

Subd. 6. **Exercise by all donees; exceptions.** Except as provided in section 502.851, whenever a power of appointment is created in two or more donees, all must unite in the exercise of the power of appointment, unless the instrument creating the power provides otherwise. If, before its execution, one or more of the donees dies or becomes incompetent, the power may be exercised by the survivor or the competent donee, unless this exercise is explicitly barred by the terms of the instrument creating the power.

Subd. 7. **Imperative power of appointment; effectuation.** (a) The exercise of an imperative power of appointment devolves upon a court having jurisdiction over the instrument creating the power of appointment in the following cases:

(1) failure to designate the donee;

(2) death of the designated donee without exercising the power;

(3) incompetence of the sole donee; or

(4) defective exercise of the power, either wholly or in part, by the donee.

(b) Where an imperative power of appointment:

(1) is exclusive, and the donee dies without exercising the power, the power must be exercised for the benefit of all the appointees equally;

(2) has been exercised defectively by the donee, it may be properly exercised in favor of persons intended to be benefited by the donee;

(3) has been exercised defectively by the donee, a purchaser for a valuable consideration claiming under the defective exercise is entitled to the same relief as a similar purchaser claiming under a defective disposition from an actual owner;

(4) is nonexclusive, and the right of the appointee is assignable, creditors or assignees of the appointee can compel the exercise of the power for their benefit; or

(5) is nonexclusive, an appointee's guardian or estate conservator, as the case may be, can compel the exercise of the power.

Subd. 8. **Exercise of a power of appointment in further trust.** If the donee of a power of appointment exercises the power in favor of the trustee of a trust under a will or deed other than that under which the power was created, and, if the exercise is otherwise valid, the appointive property shall be distributed to the

trustee of, and administered under the terms of, the trust under the will or deed, and jurisdiction over the appointive property must thereafter be in the court having jurisdiction over the trust created by the will or deed.

History: *2015 c 5 art 14 s 6*