CHAPTER 502

POWERS OF APPOINTMENT

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502.59 MS 1941 Supp [Repealed, 1943 c 322 s 1]

502.60 MS 1941 Supp [Repealed, 1943 c 322 s 1]

502.61 MS 1941 Supp [Repealed, 1943 c 322 s 1]

502.62 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.63 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.64 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.65 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.66 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.67 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.68 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.69 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.70 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.71 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.72 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.73 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.74 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.75 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.76 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.77 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.78 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.79 MS 2014 [Repealed, 2015 c 5 art 14 s 11]

502.80 COMMON LAW OF POWERS RETAINED, EXCEPT AS MODIFIED BY THIS CHAPTER.

(a) The common law of powers remains in full force and effect and supplements the provisions of this chapter, unless explicitly modified or displaced by this chapter.

(b) If any provision of this chapter differs or is inconsistent with any provision in chapter 523 relating to powers of attorney, the provisions of chapter 523 shall prevail to the extent the provisions are different or inconsistent.

History: *2015 c 5 art 14 s 1*

502.81 DEFINITIONS.

Subdivision 1. **Application.** The terms defined in this section apply to this chapter.

Subd. 2. **Appointee.** "Appointee" means the person in whose favor a power of appointment is exercisable.

Subd. 3. **Appointive property.** "Appointive property" means property which is the subject of a power of appointment.

Subd. 4. **Donee.** "Donee" means the person to whom a power is given or in whose favor a power is reserved.

Subd. 5. **Donor.** "Donor" means the person who creates or reserves a power.

Subd. 6. **Power.** "Power" means an authority to do any act in relation to property, including the creation or revocation of an estate therein or a charge thereon, that the donor of the power might do, except that the term, as used in this chapter, does not apply to a power of attorney to convey property in the name of the owner.

History: *2015 c 5 art 14 s 2*

502.82 VARIETIES OF POWER.

Subdivision 1. **Powers of appointment and other powers.** This chapter applies to powers of appointment. A power of appointment, as the term is used in this chapter, is an authority created or reserved by a donor having property subject to the donor's disposition, enabling the donee to designate, within the limits that may be prescribed by the donor, the appointees of the property, the shares, or the manner in which the property shall be received.

Subd. 2. **Classification of powers of appointment as to kind; general and special; exclusive and nonexclusive.** (a) A power of appointment is:

(1) general or special; and

(2) exclusive or nonexclusive.

(b) A power of appointment is general to the extent that it is exercisable wholly in favor of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate.

(c) All other powers of appointment are special.

(d) A special power of appointment is exclusive if it may be exercised in favor of one or more of the appointees to the exclusion of the others.

(e) A special power of appointment is nonexclusive if it must be exercised in favor of all the appointees.

Subd. 3. **Classification of powers of appointment as to time of exercise; presently exercisable, testamentary, and postponed.** (a) A power of appointment, as to the time of its exercise, may be presently exercisable, testamentary, or postponed.

(b) A power of appointment is presently exercisable if it may be exercised by the donee, during the donee's lifetime or by the donee's written will, at any time after its creation, and does not include a postponed power as described in paragraph (d).

(c) A power of appointment is testamentary if it is exercisable only by a written will of the donee.

(d) A power of appointment is postponed if it is exercisable by the donee only after the expiration of a stated time or after the occurrence or nonoccurrence of a specified event.

Subd. 4. **Classification of powers of appointment as to duty to exercise; imperative and discretionary.** (a) A power of appointment is either imperative or discretionary.

(b) A power of appointment is imperative if the instrument creating the power imposes on the donee a duty to exercise it, and the power may be imperative even though it is exclusive.

(c) A power of appointment is discretionary if the donee is authorized to exercise or not to exercise it.

History: *2015 c 5 art 14 s 3*

502.83 RULES FOR CREATION OF A POWER OF APPOINTMENT.

The donor of a power of appointment:

(1) must be a person capable of transferring the appointive property;

(2) must have created or reserved the power by a written instrument executed by the donor in the manner required by law;

(3) must manifest the donor's intention to confer the power on a person capable of holding the appointive property; and

(4) must not nullify or alter the rights of creditors of the donee, as defined in this chapter, by any language in the instrument creating or reserving the power purporting to give the interest of the donee a spendthrift character.

History: *2015 c 5 art 14 s 4*

502.84 EXTENT OF DONEE'S AUTHORITY TO APPOINT OR CONTRACT TO APPOINT AN ESTATE IN APPOINTIVE PROPERTY.

Subdivision 1. **Scope of the authority of the donee.** The scope of the donee's authority as to appointees and as to the time and manner of the appointment is unlimited except as the donor manifests a contrary intention.

Subd. 2. **Contract to appoint; power presently exercisable.** The donee of a power of appointment which is presently exercisable, or of a postponed power which has become exercisable, can contract to make an appointment to the extent that the contract or the promised appointment does not confer a benefit upon a person who is not a permissible appointee under the power.

Subd. 3. **Contract to appoint; power not presently exercisable.** (a) The donee of a power of appointment which is not presently exercisable, or of a postponed power which has not become exercisable, must not contract to make an appointment, except that this prohibition shall not apply if the donor and donee are the same person. A prohibited contract under this subdivision, if made, must not be the basis of an action for

specific performance or damages, but the promisee may obtain restitution of the value given by the promisee for the promise unless the donee has exercised the power pursuant to the contract.

(b) The provisions of this section do not abridge the ability of the donee of a power of appointment, which is not presently exercisable, to release the power pursuant to section 502.87, subdivision 2, except that where the donor designated persons or a class to take in default of the donee's exercise of the power, a release with respect to appointive property must serve to benefit all those so designated as provided by the donor.

Subd. 4. **Priority.** With respect to real property subject to a power of appointment, the interest of a donee and any appointee has priority as against creditors, purchasers, or encumbrancers of the real property, or as against a person having an estate in the real property, only from the time at which the instrument creating the power is duly recorded, but only if the creditors, purchasers, encumbrancers, and estate holders act in good faith or without notice. As against all other persons, this interest has priority from the time at which the instrument creating the power takes effect.

History: *2015 c 5 art 14 s 5*

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*

502.851 TRUST DECANTING.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Appointed trust" means an irrevocable trust which receives principal from an invaded trust under subdivision 3 or 4, including another trust created by the settlor of the invaded trust, under the terms of the invaded trust or any other trust instrument, or by the trustees, in that capacity, of the invaded trust. For purposes of creating another trust, any requirement that a trust instrument be signed by the settlor shall be deemed satisfied by the signature of the trustee of the appointed trust. In the discretion of the authorized trustee, the appointed trust may be the same trust as the invaded trust with modified terms which does not require the trustee of the appointed trust to refer to the trust by a different name or obtain a separate tax identification number when applicable.

(c) "Authorized trustee" means, as to an invaded trust, any trustee or trustees with authority to pay trust principal to or for one or more current beneficiaries other than a trustee who is the settlor, or a beneficiary to whom income or principal must be paid currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee, other than by the exercise of a power of appointment held in a nonfiduciary capacity.

(d) "Current beneficiary" or "beneficiaries" means the person or persons, or as to a class, any person or persons who are or will become members of that class, to whom the trustees may distribute principal at the time of the exercise of the power, provided that the interest of a beneficiary to whom income, but not principal, may be distributed at the discretion of the trustee of the invaded trust, may be continued in the appointed trust.

(e) "Invade" means the power to pay directly to the beneficiary of a trust or make application for the benefit of the beneficiary.

(f) "Invaded trust" means any existing irrevocable inter vivos or testamentary trust whose principal is appointed under subdivision 3 or 4.

(g) "Person or persons interested in the invaded trust" means all qualified beneficiaries as defined in section 501C.0103, paragraph (m).

(h) "Principal" includes the income of the trust at the time of the exercise of the power that is not currently required to be distributed, including accrued and accumulated income.

(i) "Unlimited discretion" means the unlimited power to distribute principal. A power to distribute principal that includes words such as best interests, welfare, comfort, or happiness shall not be considered a limitation of the power to distribute principal.

Subd. 2. **Savings provision.** (a) If exercise of the power to invade trust principal under subdivision 3 or 4 would be effective under this section except that the appointed trust instrument in part does not comply with this section, the exercise of the power is effective and the following rules apply with respect to the principal of the appointed trust attributable to the exercise of the power:

(1) a provision in the appointed trust instrument that is not permitted under this section is void to the extent necessary to comply with this section; and

(2) a provision required by this section to be in the appointed trust instrument that is not contained in the trust instrument is deemed to be included in the trust instrument to the extent necessary to comply with this section.

(b) If a trustee or other fiduciary of an appointed trust determines that paragraph (a) applies to a prior exercise of the power to invade trust principal under subdivision 3 or 4, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Subd. 3. **Authorized trustee with unlimited discretion.** (a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of the principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one, or all of the current beneficiaries of the invaded trust, to the exclusion of any one or more of the current beneficiaries. The successor and remainder beneficiaries of the appointed trust must be one, more than one, or all of the successor and remainder beneficiaries of the invaded trust, and may be to the exclusion of any one, more than one, or all of such successor and remainder beneficiaries.

(b) An authorized trustee exercising the power under paragraph (a) may grant a discretionary power of appointment in the appointed trust to one or more of the current beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint may receive principal outright under the terms of the invaded trust.

(c) If the authorized trustee grants a power of appointment, the class of permissible appointees in favor of whom the beneficiary may exercise the power of appointment granted in the appointed trust may be broader or otherwise different from the current, successor, and remainder beneficiaries of the invaded trust.

(d) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust may include present or future members of the class.

Subd. 4. **Authorized trustee without unlimited discretion.** (a) An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided that the current beneficiaries of the appointed trust shall be the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries shall be the same as the successor and remainder beneficiaries of the invaded trust.

(b) If the authorized trustee exercises the power under this subdivision, the appointed trust shall include the same language authorizing the trustee to distribute the income or invade the principal of the appointed trust as in the invaded trust.

(c) If the authorized trustee exercises the power under this subdivision to extend the term of the appointed trust beyond the term of the invaded trust, for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust pursuant to paragraph (b), may also include language providing the trustee with unlimited discretion to invade the principal of the appointed trust during this extended term.

(d) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust shall include present and future members of the class.

(e) If the authorized trustee exercises the power under this subdivision and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust shall grant the power of appointment in the appointed trust and the class of permissible appointees shall be the same as in the invaded trust.

Subd. 5. **Special power of appointment.** An exercise of the power to invade trust principal under subdivision 3 or 4 shall be considered the exercise of a special power of appointment.

Subd. 6. **Term of appointed trust.** The appointed trust to which an authorized trustee appoints the assets of the invaded trust may have a term that is longer than the term set forth in the invaded trust, including, but not limited to, a term measured by the lifetime of a current beneficiary.

Subd. 7. **Unlimited discretion governs.** If an authorized trustee has unlimited discretion to invade the principal of a trust, and the same trustee or another trustee has the power to invade principal under the trust instrument and that power is not subject to unlimited discretion, the authorized trustee having unlimited discretion may exercise the power of appointment under subdivision 3.

Subd. 8. **Current need to invade principal.** An authorized trustee may exercise the power to appoint in favor of an appointed trust under subdivision 3 or 4 whether or not there is a current need to invade principal under the terms of the invaded trust.

Subd. 9. **Fiduciary duty.** An authorized trustee exercising the power under this section has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances.

Subd. 10. **Subsequently discovered assets.** Unless the authorized trustee provides otherwise:

(1) the appointment of all the assets comprising the principal of the invaded trust to an appointed trust shall include subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust; and

(2) the appointment of part but not all of the assets comprising the principal of the invaded trust to an appointed trust shall not include subsequently discovered assets belonging to the invaded trust and principal

paid to or acquired by the invaded trust after the appointment to the appointed trust. These assets shall remain the assets of the invaded trust.

Subd. 11. **Requirements for exercise of power to appoint; notice.** (a) The exercise of the power to appoint to an appointed trust under subdivision 3 or 4 must be evidenced by an instrument in writing, signed and dated by the authorized trustee. The exercise of the power shall be effective 60 days after the date of delivery of notice as specified in paragraph (c), unless each person entitled to notice agrees in writing to an earlier effective date or waives in writing the right to object to the exercise of the power.

(b) An authorized trustee may exercise the power authorized by subdivision 3 or 4 without the consent of the settlor or the persons interested in the invaded trust and without court approval, provided that the authorized trustee may seek court approval for the exercise with notice to all persons interested in the invaded trust.

(c) A copy of the instrument exercising the power, a copy of the appointed trust, and a copy of the invaded trust shall be delivered to:

(1) any person having the right, pursuant to the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under subdivision 3 or 4;

(2) all persons interested in the invaded trust; and

(3) any person who would be considered the owner of all or any portion of the appointed trust under sections 671 to 679 of the Internal Revenue Code.

(d) Notice of an exercise of the power must be given in the same manner as provided in section 501C.0109 and is subject to the provisions of section 501C.0301.

(e) The instrument exercising the power shall state whether the appointment is of all the assets comprising the principal of the invaded trust or only a part of the assets comprising the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is subject to the appointment.

(f) A person entitled to notice may object to the authorized trustee's exercise of the power under this section by serving a written notice of objection upon the authorized trustee prior to the effective date of the exercise of the power. The failure to object shall not constitute a consent.

(g) If the authorized trustee does not receive a written objection to the proposed exercise from a person entitled to notice within the applicable period, the authorized trustee is not liable to any person who received the required notice for the exercise of the power.

(h) If the authorized trustee receives a written objection within the applicable period, either the authorized trustee or any person entitled to notice may petition the court to have the proposed exercise of a power performed as proposed, performed with modifications, or denied. In a proceeding, a person objecting to the proposed exercise has the burden of proof as to whether the authorized trustee's proposed exercise should not be performed. A person who has not objected is not estopped from opposing the proposed exercise in the proceeding. If the authorized trustee decides not to implement the proposed exercise, the trustee shall notify all persons entitled to notice of the decision not to exercise the power and the reasons for the decision, and the authorized trustee's decision not to implement the proposed exercise does not itself give rise to liability to any person interested in the invaded trust. A person entitled to notice may petition the court to have the exercise of a power performed and has the burden of proof as to whether it should be performed.

(i) A copy of the instrument exercising the power and a copy of each of the invaded trust and the appointed trust shall be filed with records of the appointed trust and the invaded trust.

Subd. 12. **Rights of trustee.** This section shall not be construed to abridge the right of any trustee to appoint property in further trust that arises under the terms of the governing instrument of a trust or under any other provision of law or under common law, or as directed by any court having jurisdiction over the trust.

Subd. 13. **No duty to exercise a power to invade.** Nothing in this section is intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety shall be made as a result of an authorized trustee not exercising the power conferred under subdivision 3 or 4.

Subd. 14. **Power clarified.** A power authorized by subdivision 3 or 4 may be exercised, subject to the provisions of subdivision 9, unless expressly prohibited by the terms of the governing instrument, but a general prohibition of the amendment or revocation of the invaded trust or a provision that constitutes a spendthrift clause shall not preclude the exercise of a power under subdivision 3 or 4.

Subd. 15. **Prohibitions.** (a) An authorized trustee may not exercise a power authorized by subdivision 3 or 4 to effect any of the following:

(1) to reduce, limit, or modify any beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a current right to withdraw a percentage of the value of the trust, or a current right to withdraw a specified dollar amount; provided, however, and subject to the other limitations in this section, an authorized trustee may exercise a power authorized by subdivision 3 or 4 to appoint to an appointed trust that is a supplemental needs trust that conforms to the provisions of section 501C.1205;

(2) notwithstanding section 501C.1008, paragraph (b), to decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence, except that the appointed trust may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution trust advisors, investment trust advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted under section 501C.0808;

(3) to alter or eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under subdivision 3 or 4, unless notice has been provided to the persons under subdivision 11, paragraph (c), or approval is granted by a court having jurisdiction over the trust;

(4) to make a binding and conclusive fixation of the value of any asset for purposes of distribution, allocation, or otherwise;

(5) to extend the term of the appointed trust beyond any permissible period of the rule against perpetuities of the invaded trust, and any exercise of the power which extends the term of the appointed trust beyond the permissible period of the rule against perpetuities of the invaded trust shall void the entire exercise of the power; or

(6) to jeopardize:

(i) the deduction or exclusion originally claimed with respect to any contribution to the invaded trust that qualified for the annual exclusion under section 2503(b) of the Internal Revenue Code; the marital deduction under section 2056(a) or 2523(a) of the Internal Revenue Code; or the charitable deduction under section 170(a), 642(c), 2055(a), or 2522(a) of the Internal Revenue Code;

(ii) the qualification of a transfer as a direct skip under section 2642(c) of the Internal Revenue Code;

(iii) the qualification as a foreign grantor trust under section 672(f)(2)(A) of the Internal Revenue Code; or

(iv) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer purposes under the Internal Revenue Code.

(b) If the property of the invaded trust includes shares of stock in an S corporation, as defined in section 1361 of the Internal Revenue Code, and the invaded trust is, or but for the exercise of power to invade the trust principal under this section would be, a permitted shareholder under any provision of section 1361 of the Internal Revenue Code, the authorized trustee may exercise the power with respect to part or all of the S corporation stock only if any appointed trust receiving the stock is a permitted shareholder under section 1361(c)(2) of the Internal Revenue Code. If the property of the invaded trust includes shares of stock in an S corporation and the invaded trust is, or but for the exercise of power to invade the trust principal under this section would be, a qualified subchapter S trust within the meaning of section 1361(d) of the Internal Revenue Code, the appointed trust instrument must not include or omit a term that prevents the appointed trust from qualifying as a qualified subchapter S trust.

Subd. 16. **Compensation; commissions.** For the purposes of this section, unless a court otherwise directs, an authorized trustee may not exercise a power authorized by subdivision 3 or 4 to change the provisions regarding the determination of the compensation of any trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as in the invaded trust.

Subd. 17. **Application.** Unless the invaded trust expressly provides otherwise, this section applies to any trust governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state.

History: *2015 c 5 art 14 s 7; 2025 c 15 s 22-28*

502.86 RIGHTS OF CREDITORS IN APPOINTIVE PROPERTY.

Subdivision 1. **Special power.** Property that is covered by either a special power of appointment or a general power of appointment that is exercisable solely for the support, maintenance, health, and education of the donee within the meaning of sections 2041 and 2514 of the Internal Revenue Code is not subject to the payment of the claims of creditors of the donee, the donee's estate, or the expenses of administering the donee's estate.

Subd. 2. **General power currently exercisable.** Property that is covered by a general power of appointment, other than one exercisable solely for the support, maintenance, health, and education of the donee within the meaning of sections 2041 and 2514 of the Internal Revenue Code, that is presently exercisable, or of a postponed power that has become exercisable, is subject to the payment of the claims of creditors of the donee, the donee's estate, and the expenses of administering the donee's estate, but only to the extent that other property available for the payment of the creditor's claim is insufficient for this payment. It is immaterial whether the donor of the power is the donee or some other person, or whether the donee has or has not purported to exercise the power.

Subd. 3. **Power subject to a condition.** A general power of appointment may be created subject to a condition precedent or subsequent, and, until the condition is fulfilled, it is not subject to the provisions of subdivision 2.

Subd. 4. **General power not presently exercisable.** Property that is covered by a general power of appointment which, when created, is not presently exercisable, is subject to the payment of the claims of creditors of the donee, the donee's estate, and the expenses of administering the donee's estate only if:

(1) the power was created by the donee in favor of the donee; or

(2) a postponed power becomes exercisable in accordance with the terms of the creating instrument, except in the case of a testamentary general power.

History: *2015 c 5 art 14 s 8*

502.87 REVOCATION AND RELEASE OF A POWER OF APPOINTMENT.

Subdivision 1. **Revocability of a power of appointment.** (a) A power of appointment is irrevocable unless the donor reserves the right to revoke it.

(b) An exercise of power of appointment is irrevocable whenever:

(1) the donor of a special power manifests an intent that the exercise of the special power be irrevocable; or

(2) the donee does not manifest in the instrument exercising the power an intent to reserve a power of revocation.

(c) If the donee in exercising a power reserves a power to revoke the appointment, but does not expressly reserve a power to reappoint, upon the exercise of the power of revocation, the donee may reappoint.

(d) An instrument exercising a power of appointment is affected by fraud in the same manner as a deed or will executed by an owner or by a trustee of property.

Subd. 2. **Release of a power of appointment.** (a) Any power of appointment, whether exercisable only by deed, only by will, or by either deed or will, and whether general or special, exclusive or nonexclusive, is releasable, either with or without consideration, by written instrument signed by the donee of the power and delivered as provided in paragraph (c).

(b) A releasable power of appointment may be released with respect to all or any part of the appointive property and may also be released in a manner as to reduce or limit the appointees, or classes of appointees, in whose favor the power is exercisable.

(c) A release may be delivered to any of the following persons in the order provided:

(1) any person specified for this purpose in the instrument creating the power;

(2) if no person is specified as provided in clause (1), any trustee of the property subject to the power; or

(3) if no person is specified as provided in clause (1) or serving as trustee as provided in clause (2), any person, other than the donee, who might be adversely affected by an exercise of the power.

(d) In addition to the provisions of paragraph (c), a release may be delivered to the county clerk of the county in which the donee resides or has a place of business or in which the instrument creating the power is filed, to be duly filed by the clerk upon the payment of the fees due for the filing or, if the power was created by will, to the clerk of the probate court having jurisdiction over the estate of the donor.

(e) This section applies to releases delivered on or after January 1, 2016.

History: *2015 c 5 art 14 s 9*

502.88 RULE AGAINST PERPETUITIES AND ACCUMULATIONS AS AFFECTED BY POWERS OF APPOINTMENT.

Subdivision 1. **Scope.** Notwithstanding any provision of this section to the contrary, nothing in this section shall be construed, applied, or interpreted to be inconsistent with chapter 501A.

Subd. 2. **Time at which permissible period begins.** (a) If an estate is created by an instrument exercising a power of appointment, the permissible period of the rule against perpetuities begins:

(1) In the case of an instrument exercising either:

(i) a general power which is presently exercisable; or

(ii) any other power, whether presently exercisable, testamentary, or postponed, but only if the exercise of the power makes express reference to this item, section 502.88, subdivision 2, paragraph (a), clause (1), item (ii), in the instrument of exercise,

the period shall begin on the effective date of the instrument of exercise.

(2) In all other cases, the period begins at the time of the creation of the power.

(b) If the creator of a trust reserves an unqualified power to revoke, the permissible period of the rule against perpetuities begins when the power to revoke terminates by reason of the death of the creator, by a release of the power, or otherwise.

Subd. 3. **Law which determines permissible period.** In all cases covered by subdivision 2, the permissible period of the rule against perpetuities is determined by the law in effect when the power is exercised or the unqualified power to revoke is terminated, and not by the law in effect when the power was created.

Subd. 4. **Facts to be considered.** When the permissible period of the rule against perpetuities must be computed from the time of the creation of the power of appointment, facts and circumstances existing on the effective date of the instrument exercising the power must be taken into account in determining the validity of interests created by the instrument exercising the power.

Subd. 5. **Rule against accumulations; law determining validity in exercise of a power of appointment.** When a direction for the accumulation of income is contained in an instrument exercising a power, whether the instrument is created before or after January 1, 2016, the validity of the direction is determined by the law in effect when the power is exercised or the unqualified power to revoke is terminated, and not by the law in effect when the power was created.

History: *2015 c 5 art 14 s 10*