

CHAPTER 502

POWERS OF APPOINTMENT

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502.01-502.61 [Repealed by 1943 c. 322 s. 1]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.

[1943 c. 322 s. 2]

502.63 DONOR MAY CREATE POWER OF APPOINTMENT, HOW. 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.

[1943 c. 322 s. 3]

502.64 DONEE MAY EXERCISE POWER OF APPOINTMENT, HOW. 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.

[1943 c. 322 s. 4]

502.65 POWER IS NOT VOID, WHEN. 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.

[1943 c. 322 s. 5]

502.66 WHO MAY EXERCISE POWER OF APPOINTMENT. Any donee, except a minor, who would be capable of conveying the property covered by the power may exercise a power of appointment.

[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.

[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.

[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.

[1943 c. 322 s. 9]

502.70 POWERS OF CREDITOR OF DONEE. When a donee is authorized to appoint to himself all or part of the property covered by any power of appointment, a creditor of the donee may subject to his claim all property which the donee could then appoint to himself only to the extent that other property available for the payment of his 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 a creditor, a creditor of the donee, or of his estate, may subject such property to the payment of his claim only to the extent that other property available for the payment of the claim is insufficient for such payment.

[1943 c. 322 s. 10]

502.71 EFFECT OF DEED OR WILL. When the donee of a power of appointment makes a deed or a will purporting to transfer all of his property, the property covered by the power is included in such transfer unless it be shown that the donee did not so intend.

[1943 c. 322 s. 11]

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 525.18.

[1943 c. 322 s. 12]

502.73 RIGHT OF ALIENATION SUSPENDED, WHEN. The period during which the absolute right of alienation 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.

[1943 c. 322 s. 13]

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

[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 he is authorized to appoint the property to himself passes to the assignee.

[1943 c. 322 s. 15]

502.76 POWER OF REVOCATION. When the grantor in a conveyance reserves to himself, for his 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.

[1943 c. 322 s. 16]

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.

[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.

[1943 c. 322 s. 18]