

UNIFORM POWERS OF APPOINTMENT ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

LONG TITLE**Committee Note:**

The Judiciary Interim Committee recommended this bill.

General Description:

This bill modifies provisions related to powers of appointment.

Highlighted Provisions:

This bill:

- ▶ addresses compliance with specific reference requirements;
- ▶ enacts the Uniform Powers of Appointment Act, including:
 - general provisions, definitions, governing law, and the relationship of common law and principles of equity;
 - providing for the creation, revocation, and amendment of the power of appointment;
 - addressing the exercise of a power of appointment;
 - addressing disclaimer or release and the contract to appoint or not appoint;
 - addressing the rights of a powerholder's creditors in appointive property; and
 - miscellaneous provisions; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **75-2-208**, as last amended by Laws of Utah 1999, Chapter 142

32 **75-7-505**, as enacted by Laws of Utah 2004, Chapter 89

33 ENACTS:

34 **75-10-101**, Utah Code Annotated 1953

35 **75-10-102**, Utah Code Annotated 1953

36 **75-10-103**, Utah Code Annotated 1953

37 **75-10-104**, Utah Code Annotated 1953

38 **75-10-201**, Utah Code Annotated 1953

39 **75-10-202**, Utah Code Annotated 1953

40 **75-10-203**, Utah Code Annotated 1953

41 **75-10-204**, Utah Code Annotated 1953

42 **75-10-205**, Utah Code Annotated 1953

43 **75-10-206**, Utah Code Annotated 1953

44 **75-10-301**, Utah Code Annotated 1953

45 **75-10-302**, Utah Code Annotated 1953

46 **75-10-303**, Utah Code Annotated 1953

47 **75-10-304**, Utah Code Annotated 1953

48 **75-10-305**, Utah Code Annotated 1953

49 **75-10-306**, Utah Code Annotated 1953

50 **75-10-307**, Utah Code Annotated 1953

51 **75-10-308**, Utah Code Annotated 1953

52 **75-10-309**, Utah Code Annotated 1953

53 **75-10-310**, Utah Code Annotated 1953

54 **75-10-311**, Utah Code Annotated 1953

55 **75-10-312**, Utah Code Annotated 1953

56 **75-10-313**, Utah Code Annotated 1953

57 **75-10-314**, Utah Code Annotated 1953

58 **75-10-401**, Utah Code Annotated 1953

59 **75-10-402**, Utah Code Annotated 1953
60 **75-10-403**, Utah Code Annotated 1953
61 **75-10-404**, Utah Code Annotated 1953
62 **75-10-405**, Utah Code Annotated 1953
63 **75-10-406**, Utah Code Annotated 1953
64 **75-10-407**, Utah Code Annotated 1953
65 **75-10-501**, Utah Code Annotated 1953
66 **75-10-502**, Utah Code Annotated 1953
67 **75-10-503**, Utah Code Annotated 1953
68 **75-10-601**, Utah Code Annotated 1953
69 **75-10-602**, Utah Code Annotated 1953
70 **75-10-603**, Utah Code Annotated 1953

71 REPEALS:

72 **75-2-608**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
73 **75-2-704**, as enacted by Laws of Utah 1998, Chapter 39

74

75 *Be it enacted by the Legislature of the state of Utah:*

76 Section 1. Section **75-2-208** is amended to read:

77 **75-2-208. Exclusions, valuation, and overlapping application.**

78 (1) The value of any separate property of the decedent or the decedent's surviving
79 spouse is excluded from the augmented estate even if it otherwise would be included in the
80 augmented estate under Sections **75-2-204**, **75-2-205**, **75-2-206**, and **75-2-207**. Property is
81 separate property if it was:

82 (a) owned at the date of the most recent marriage of the decedent and the decedent's
83 surviving spouse;

84 (b) acquired by gift or disposition at death from a person other than the decedent or the
85 decedent's surviving spouse;

86 (c) subject to a presently exercisable power of appointment not created by the decedent
87 or the decedent's spouse that is exempt under Section **75-10-502**;

88 ~~[(c)]~~ (d) acquired in exchange for or with the proceeds of other separate property;

89 ~~[(d)]~~ (e) designated as separate property by written waiver under Section **75-2-213**; or

90 ~~[(e)]~~ (f) acquired as a recovery for personal injury but only to the extent attributable to
91 expenses paid or otherwise satisfied from separate property.

92 (2) Income attributable to investment, rental, licensing or other use of separate property
93 during the most recent marriage of the decedent and the decedent's surviving spouse is separate
94 property.

95 (3) Appreciation in the value of separate property during the most recent marriage of
96 the decedent and the decedent's surviving spouse is separate property.

97 (4) Except as provided in this Subsection (4), any increase in the value of separate
98 property due to improvements to or the reduction in debt owed against separate property during
99 the most recent marriage of the decedent and the decedent's surviving spouse is separate
100 property. An amount equal to any payment for improvements to or the reduction in debt owed
101 against separate property of the decedent made during the most recent marriage of the decedent
102 and the decedent's surviving spouse from the joint or commingled funds of the decedent and
103 the decedent's surviving spouse, or from the separate property of the surviving spouse, shall not
104 be separate property to the extent of the amount actually paid for the improvements or the
105 amount actually paid for the reduction in debt, including principal, interest, and other payments
106 under the note, owed against separate property. The amount that is determined not to be
107 separate property may not exceed the value of the separate property.

108 (5) All property of the decedent or the decedent's surviving spouse, whether or not
109 commingled, is rebuttably presumed not to be separate property.

110 (6) The value of any property is excluded from the decedent's nonprobate transfers to
111 others:

112 (a) to the extent the decedent received adequate and full consideration in money or
113 money's worth for a transfer of the property; or

114 (b) if the property was transferred with the written joinder of, or if the transfer was
115 consented to in writing by, the surviving spouse.

116 (7) The value of property:

117 (a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is
118 reduced in each category by enforceable claims against the included property; and

119 (b) includes the commuted value of any present or future interest and the commuted
120 value of amounts payable under any trust, life insurance settlement option, annuity contract,

public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.

(8) In case of overlapping application to the same property of the section or subsections of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Section 2. Section 75-7-505 is amended to read:

75-7-505. Creditor's claim against settlor.

[(+)] Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

[(a)] (1) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

[(b)] (2) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

[(c)] (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

~~[(2) For purposes of this section:]~~

~~[(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and]~~

~~[(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.]~~

Section 3. Section **75-10-101** is enacted to read:

CHAPTER 10. UNIFORM POWERS OF APPOINTMENT ACT

Part 1. General Provisions

75-10-101. Title.

This chapter is known as the "Uniform Powers of Appointment Act."

Section 4. Section **75-10-102** is enacted to read:

75-10-102. Definitions.

As used in this chapter:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person that creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of

183 appointment.

184 (8) "Impermissible appointee" means a person that is not a permissible appointee.

185 (9) "Instrument" means a record.

186 (10) "Nongeneral power of appointment" means a power of appointment that is not a
187 general power of appointment. The terms "special power of appointment," "limited power of
188 appointment," or similar terminology used in an instrument creating a power that does not grant
189 powers making it a general power of appointment as defined in this chapter mean the same as
190 and may be used interchangeably with the term nongeneral power of appointment.

191 (11) "Permissible appointee" means a person in whose favor a powerholder may
192 exercise a power of appointment.

193 (12) "Person" means an individual, estate, trust, business or nonprofit entity, public
194 corporation, government or governmental subdivision, agency, instrumentality, or other legal
195 entity.

196 (13) "Powerholder" means a person in whom a donor creates a power of appointment.

197 (14) "Power of appointment" means a power that enables a powerholder acting in a
198 nonfiduciary capacity to designate a recipient of an interest in, or another power of appointment
199 over, the appointive property. The term does not include a power of attorney.

200 (15) "Presently exercisable power of appointment" means a power of appointment
201 exercisable by the powerholder at a relevant time. The term:

202 (a) includes a power of appointment not exercisable until the occurrence of a specified
203 event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

204 (i) the occurrence of the specified event;

205 (ii) the satisfaction of the ascertainable standard; or

206 (iii) the passage of the specified time; and

207 (b) does not include a power exercisable only at the powerholder's death.

208 (16) "Record" means information that is inscribed on a tangible medium or that is
209 stored in an electronic or other medium and is retrievable in perceivable form.

210 (17) "Specific-exercise clause" means a clause in an instrument that specifically refers
211 to and exercises a particular power of appointment.

212 (18) "Taker in default of appointment" means a person that takes all or part of the
213 appointive property to the extent the powerholder does not effectively exercise the power of

214 appointment.

215 (19) "Terms of the instrument" means the manifestation of the intent of the maker of
216 the instrument regarding the instrument's provisions as expressed in the instrument or as may
217 be established by other evidence that would be admissible in a legal proceeding.

218 Section 5. Section **75-10-103** is enacted to read:

219 **75-10-103. Governing law.**

220 (1) Unless the terms of the instrument creating a power of appointment manifest a
221 contrary intent:

222 (a) the creation, revocation, amendment, interpretation and definition of terms, or the
223 determination of the rights of the appointee of the power is governed by the law of the donor's
224 domicile at the relevant time; and

225 (b) the formalities for the exercise, release, or disclaimer of the power, or the
226 revocation or amendment of the exercise, release, or disclaimer of the power is governed by the
227 law of the powerholder's state of domicile at the relevant time.

228 (2) The law of the powerholder's state of domicile may not govern the interpretation
229 and definition of terms, or the determination of the rights of the appointee of the power, which
230 shall be governed by the law of the donor's domicile at the relevant time.

231 (3) Claims of creditors, including creditor claims regarding a power not created by a
232 powerholder as set forth in Section [75-10-502](#), and other parties claiming an interest in
233 property or rights subject to a power will be governed by the laws of the donor's domicile at the
234 time of the creation of the power and not the powerholder's state of domicile either at the time
235 of the creation of the power or at the time of exercise of the power.

236 Section 6. Section **75-10-104** is enacted to read:

237 **75-10-104. Common law and principles of equity.**

238 The common law and principles of equity supplement this chapter, except to the extent
239 modified by this chapter or laws of this state other than this chapter.

240 Section 7. Section **75-10-201** is enacted to read:

241 **Part 2. Creation, Revocation, and Amendment of Power of Appointment**

242 **75-10-201. Creation of power of appointment.**

243 (1) A power of appointment is created only if:

244 (a) the instrument creating the power:

(i) is valid under applicable law; and
(ii) except as otherwise provided in Subsection (2), transfers the appointive property;
and
(b) the terms of the instrument creating the power manifest the donor's intent to create
in a powerholder a power of appointment over the appointive property exercisable in favor of a
permissible appointee.

(2) Subsection (1)(a)(ii) does not apply to the creation of a power of appointment by
the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be
created in an unborn or unascertained powerholder.

Section 8. Section **75-10-202** is enacted to read:

75-10-202. Nontransferability.

A powerholder may not transfer a power of appointment. If a powerholder dies without
exercising or releasing a power, the power lapses.

Section 9. Section **75-10-203** is enacted to read:

75-10-203. Presumption of unlimited authority.

Subject to Section [75-10-205](#), and unless the terms of the instrument creating a power
of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in Section [75-10-204](#), general.

Section 10. Section **75-10-204** is enacted to read:

75-10-204. Exception to presumption of unlimited authority.

Unless the terms of the instrument creating a power of appointment manifest a contrary
intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does
not include the powerholder's estate, the powerholder's creditors, or the creditors of the
powerholder's estate.

Section 11. Section **75-10-205** is enacted to read:

75-10-205. Rules of classification.

(1) In this section, "adverse party" means a person with a substantial beneficial interest in property that would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Section 12. Section **75-10-206** is enacted to read:

75-10-206. Donor's power to revoke or amend.

A donor may revoke or amend a power of appointment unless or to the extent the instrument creating the power is made irrevocable by the donor or the exercise of a presently exercisable power has been irrevocably made or effected.

Section 13. Section **75-10-301** is enacted to read:

Part 3. Exercise of Power of Appointment**75-10-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(a) manifest the powerholder's intent to exercise the power; and

(b) satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Section 14. Section **75-10-302** is enacted to read:

75-10-302. Intent to exercise -- Determining intent from residuary clause.

(1) As used in this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of

307 appointment only if:

308 (a) the terms of the instrument containing the residuary clause do not manifest a
309 contrary intent;

310 (b) the power is a general power exercisable in favor of the powerholder's estate;

311 (c) there is no gift-in-default clause or the clause is ineffective; and

312 (d) the powerholder did not release the power.

313 Section 15. Section **75-10-303** is enacted to read:

314 **75-10-303. Intent to exercise -- After-acquired power.**

315 Unless the terms of the instrument exercising a power of appointment manifest a
316 contrary intent:

317 (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to
318 a power acquired by the powerholder after executing the instrument containing the clause; and

319 (2) if the powerholder is also the donor of the power, the clause does not extend to the
320 power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

321 Section 16. Section **75-10-304** is enacted to read:

322 **75-10-304. Compliance with donor-imposed formal requirements.**

323 (1) A powerholder's compliance with formal requirements of appointment imposed by
324 the donor is sufficient only if the powerholder substantially complies with the conditions,
325 requirements, and formalities set forth in the power of appointment, including complying with
326 all the requirements for making specific reference to the power, that the power shall be
327 exercised in a specific document such as a will, or that the document exercising the power shall
328 be witnessed or notarized. If the donor limited the powerholder's exercise to a validly executed
329 will, substantial compliance may not include the exercise of the power by a trust or another
330 document not meeting the requirements of a properly executed will.

331 (2) Unless required by the instrument creating the power, the probate of a properly
332 executed will is not required for the exercise of a power to be valid and complete.

333 Section 17. Section **75-10-305** is enacted to read:

334 **75-10-305. Permissible appointment.**

335 (1) A powerholder of a general power of appointment that permits appointment to the
336 powerholder or the powerholder's estate may make any appointment, including an appointment
337 in trust or creating a new power of appointment, that the powerholder could make in disposing

of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee; or

(c) create a nongeneral power in any person to appoint one or more of the permissible appointees of the original nongeneral power.

Section 18. Section **75-10-306** is enacted to read:

75-10-306. Appointment to deceased appointee or permissible appointee's descendant.

(1) Subject to Sections [75-2-603](#) and [75-2-604](#), an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Section 19. Section **75-10-307** is enacted to read:

75-10-307. Impermissible appointment.

(1) Except as otherwise provided in Section [75-10-306](#), an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Section 20. Section **75-10-308** is enacted to read:

75-10-308. Elective allocation doctrine.

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder's intent.

Section 21. Section **75-10-309** is enacted to read:

75-10-309. Capture doctrine -- Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 22. Section **75-10-310** is enacted to read:

75-10-310. Disposition of unappointed property under released or unexercised general power.

To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(a) except as otherwise provided in Subsection (2)(b), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) to the extent the powerholder released the power, or if there is no taker under Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 23. Section **75-10-311** is enacted to read:

75-10-311. Disposition of unappointed property under released or unexercised nongeneral power.

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 24. Section **75-10-312** is enacted to read:

75-10-312. Disposition of unappointed property if partial appointment to taker in default.

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Section 25. Section **75-10-313** is enacted to read:

75-10-313. Appointment to taker in default.

If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is considered not to have been exercised and the appointee takes under the clause.

Section 26. Section **75-10-314** is enacted to read:

75-10-314. Powerholder's authority to revoke or amend exercise.

Unless the terms of the instrument creating the power of appointment or the instrument exercising the power of appointment provide that the exercise is irrevocable or unamendable, a powerholder may revoke or amend an exercise of a power of appointment made by an instrument effective during the life of the powerholder where the exercise is to become

effective at some future time or contingency and where that future time and contingency has not yet occurred, as long as the revocation or amendment is done with the same formality as the original exercise of the power of appointment.

Section 27. Section **75-10-401** is enacted to read:

Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint

75-10-401. Disclaimer.

As provided by Section 75-2-801:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, an appointee, or a taker in default of appointment may disclaim all or part of an interest in appointive property.

Section 28. Section **75-10-402** is enacted to read:

75-10-402. Authority to release.

A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Section 29. Section **75-10-403** is enacted to read:

75-10-403. Method of release.

A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Section 30. Section **75-10-404** is enacted to read:

75-10-404. Revocation or amendment of release.

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Section 31. Section **75-10-405** is enacted to read:

75-10-405. Power to contract -- Presently exercisable power of appointment.

A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Section 32. Section **75-10-406** is enacted to read:

75-10-406. Power to contract -- Power of appointment not presently exercisable.

A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

Section 33. Section **75-10-407** is enacted to read:

75-10-407. Remedy for breach of contract to appoint or not to appoint.

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Section 34. Section **75-10-501** is enacted to read:

Part 5. Rights of Powerholder's Creditors in Appointive Property**75-10-501. Creditor claim -- General power created by powerholder.**

(1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in Title 25, Chapter 6, Uniform Fraudulent Transfer Act.

(3) Subject to Subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to Subsections (2) and (3), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of

493 appointment, appointive property subject to a general power of appointment created by the
494 powerholder is subject to a claim of a creditor of:

495 (a) the powerholder, to the same extent as if the powerholder owned the appointive
496 property, if the power is presently exercisable; and

497 (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim
498 and subject to the right of a decedent to direct the source from which liabilities are paid, if the
499 power is exercisable at the powerholder's death.

500 Section 35. Section **75-10-502** is enacted to read:

501 **75-10-502. Creditor claim -- Power not created by powerholder.**

502 (1) The property subject to a general or a nongeneral power of appointment not created
503 by the powerholder, including a presently exercisable general or nongeneral power of
504 appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's
505 estate. The powerholder of such a power may not be compelled to exercise the power and the
506 powerholder's creditors may not acquire the power, any rights thereto, or reach the trust
507 property or beneficial interests by any other means. A court may not exercise or require the
508 powerholder to exercise the power of appointment.

509 (2) As set forth in Section [75-10-103](#), the law of the donor's domicile at the time of
510 creation shall govern claims of creditors and other parties claiming an interest in property or
511 rights subject to a power of appointment.

512 Section 36. Section **75-10-503** is enacted to read:

513 **75-10-503. Power to withdraw.**

514 (1) For purposes of this part, and except as otherwise provided in Subsection (2), a
515 power to withdraw property from a trust is treated, during the time the power may be exercised,
516 as a presently exercisable general power of appointment to the extent of the property subject to
517 the power to withdraw.

518 (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the
519 power is treated as a presently exercisable general power of appointment only to the extent the
520 value of the property affected by the lapse, release, or waiver exceeds the greater of the amount
521 specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in
522 26 U.S.C. Sec. 2503(b).

523 Section 37. Section **75-10-601** is enacted to read:

Part 6. Miscellaneous Provisions

75-10-601. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 38. Section **75-10-602** is enacted to read:

75-10-602. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 39. Section **75-10-603** is enacted to read:

75-10-603. Application to existing relationships.

(1) Except as otherwise provided in this chapter, on and after May 9, 2017:

(a) this chapter applies to a power of appointment created before, on, or after May 9, 2017;

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 9, 2017;

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 9, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and

(d) a rule of construction or presumption provided in this chapter applies to an instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument.

(2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 9, 2017, is not affected by this chapter.

(3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before May 9, 2017, the law continues to apply to the right.

555 Section 40. **Repealer.**
556 This bill repeals:
557 Section **75-2-608**, Exercise of power of appointment.
558 Section **75-2-704**, Power of appointment -- Meaning of specific reference
559 **requirement.**

Legislative Review Note
Office of Legislative Research and General Counsel