

CHAPTER 702

UNIFORM POWERS OF APPOINTMENT ACT

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SUBCHAPTER I

GENERAL PROVISIONS

702.101 Short title. This act may be cited as the Uniform Powers of Appointment Act.

History: 2023 a. 127.

702.102 Definitions. 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. "Blanket-exercise clause" includes a clause that does any of the following:

(a) Expressly uses the words "any power" in exercising a power of appointment the powerholder has.

(b) Expressly uses the words "any property" in appointing any property over which a powerholder has a power of appointment.

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

(4) "Broad limited power of appointment" means a power of appointment exercisable in favor of anyone other than the powerholder, the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

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

(6) "Exclusionary power of appointment" means a power of

appointment exercisable in favor of one or more permissible appointees to the exclusion of the other permissible appointees.

(7) "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.

(8) "Gift-in-default clause" means a clause that identifies a taker in default of appointment.

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

(10) "Instrument" means a writing.

(11) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

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

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

(14) "Powerholder" means a person in which a donor creates a power of appointment.

(15) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. "Power of appointment" does not include a power of attorney.

(16) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. "Presently exercisable power of appointment" includes a power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time, and only after the oc-

currence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified time, but does not include a power exercisable only at the powerholder's death.

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

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

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

History: 2023 a. 127.

702.103 Governing law. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the creation, revocation, or amendment of a power of appointment is governed by the law of the donor's domicile at the relevant time. The exercise, release, or disclaimer of a power of appointment, or the revocation or amendment of an exercise, release, or disclaimer of a power of appointment is governed by the law of the powerholder's domicile at the relevant time.

History: 2023 a. 127.

702.104 Common law and principles of equity. The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or any other state law.

History: 2023 a. 127.

702.105 Default rules. The terms of a governing instrument prevail over any provision of this subchapter.

History: 2023 a. 127.

SUBCHAPTER II

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

702.201 Creation of power of appointment. (1) A power of appointment is created only if the instrument creating the power satisfies all of the following:

(a) The instrument is valid under applicable law.

(b) Except as provided in sub. (2), the instrument governs the disposition of the appointive property.

(c) The terms of the instrument 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) (b) does not apply to a power of appointment that is created by the exercise of a power of appointment.

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

(4) A power of appointment may be created in an unborn or unascertained powerholder.

History: 2023 a. 127.

A warranty deed grants a present fee simple interest. A purported reservation of a power of appointment in a warranty deed is ineffective. Powers may be reserved and a lesser interest granted, but not by warranty deed. *Lucareli v. Lucareli*, 2000 WI App 133, 237 Wis. 2d 487, 614 N.W.2d 60, 99-1679.

NOTE: The above annotation relates to powers of appointment under former ch. 702, 1997 stats., prior to the repeal and recreation of this chapter by 2023 Wis. Act 127.

702.202 Nontransferability. A powerholder may not trans-

fer a power of appointment. If a powerholder dies without exercising or releasing a power of appointment, the power lapses.

History: 2023 a. 127.

702.203 Presumption of unlimited authority. Subject to ss. 702.204 and 702.205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, a power of appointment is all of the following:

(1) A presently exercisable power of appointment.

(2) An exclusionary power of appointment.

(3) A general power of appointment.

History: 2023 a. 127.

702.204 Exception to presumption of unlimited authority. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is a nongeneral power of appointment if all of the following apply:

(1) The power is exercisable only at the powerholder's death.

(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.

History: 2023 a. 127.

702.205 Rules of classification. (1) In this section, "adverse party" means a person with a substantial beneficial interest in appointive 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 a nongeneral power of appointment.

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

History: 2023 a. 127.

702.206 Power to revoke or amend. A donor may revoke or amend a power of appointment only to the extent that any of the following applies:

(1) The instrument creating the power is revocable by the donor.

(2) The donor reserves a power of revocation or amendment over the power of appointment in the instrument.

History: 2023 a. 127.

SUBCHAPTER III

EXERCISE OF POWER OF APPOINTMENT

702.301 Requisites for exercise of power of appointment. (1) (a) A power of appointment is exercised only if all of the following apply:

1. The instrument exercising the power is valid under applicable law.

2. The terms of the instrument exercising the power do all of the following:

a. Manifest the powerholder's intent to exercise the power.

b. Subject to s. 702.304, satisfy the requirements of exercise, if any, imposed by the donor.

(b) A power of appointment is exercised under par. (a) only to the extent the appointment is a permissible exercise of the power.

(2) If the donor requires the consent of the donor or any other person for the exercise of a power of appointment, the consent

must be expressed in the instrument exercising the power of appointment or in a separate written instrument, signed in either case by the persons whose consent is required. If any person whose consent is required dies or becomes legally incapable of consenting, the power of appointment may be exercised by the powerholder without the consent of that person unless the terms of the instrument creating the power of appointment manifest a contrary intent.

(3) (a) Except as provided in par. (b) and unless the terms of the instrument creating a power of appointment manifest a contrary intent, if a power of appointment is vested in 2 or more persons, the joint powerholders may only exercise the power of appointment unanimously.

(b) If a power of appointment is vested in 2 or more persons and one or more of the joint powerholders die, become incapable of exercising the power of appointment, or renounce, release, or disclaim the power of appointment, the power of appointment may be exercised unanimously by the other powerholders.

History: 2023 a. 127.

702.302 Intent to exercise: determining intent from residuary clause. (1) 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 appointment only if all of the following apply:

(a) The terms of the instrument containing the residuary clause do not manifest a contrary intent.

(b) The power of appointment is a general power of appointment exercisable in favor of the powerholder’s estate.

(c) There is no gift-in-default clause in the instrument creating the power of appointment or the gift-in-default clause in the instrument creating the power of appointment is ineffective.

(d) The powerholder did not release the power of appointment.

History: 2023 a. 127.

702.303 Intent to exercise: after-acquired power. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent, all of the following apply:

(1) Except as otherwise provided in sub. (2), a blanket-exercise clause extends to a power of appointment acquired by the powerholder after executing the instrument containing the clause.

(2) If the powerholder is also the donor of the power of appointment, a blanket-exercise clause does not extend to the power of appointment unless there is not a gift-in-default clause or the gift-in-default clause is ineffective.

History: 2023 a. 127.

702.304 Substantial compliance with donor-imposed formal requirement. A powerholder’s substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if all of the following apply:

(1) The powerholder knows of and intends to exercise the power of appointment.

(2) The powerholder’s manner of attempted exercise of the power of appointment does not impair a material purpose of the donor in imposing the requirement.

History: 2023 a. 127.

702.305 Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder’s estate may make any appointment, including an appointment 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 the creditors 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 of appointment may do any of the following:

(a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.

(b) Create a general or nongeneral power of appointment in a permissible appointee that may be exercisable in favor of persons other than permissible appointees of the original nongeneral power of appointment.

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

History: 2023 a. 127.

702.306 Appointment to a deceased appointee. Subject to s. 854.06, an exercise of a power of appointment is ineffective to the extent it is in favor of a deceased appointee.

History: 2023 a. 127.

702.307 Impermissible appointment. (1) Except as otherwise provided in s. 702.306, an exercise of a power of appointment is ineffective to the extent it is in favor of an impermissible appointee.

History: 2023 a. 127.

(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.

History: 2023 a. 127.

702.308 Selective 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 must be allocated in the permissible manner that best carries out the powerholder’s intent.

History: 2023 a. 127.

702.309 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, all of the following apply:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, the ineffectively appointed property passes to one of the following:

1. If the powerholder is a permissible appointee and living, the powerholder.

2. If the powerholder is an impermissible appointee or deceased, the powerholder’s estate if the estate is a permissible appointee.

(b) If there is no taker under par. (a), the ineffectively appointed property passes under a reversionary interest to the donor or the donor’s transferee or successor in interest.

History: 2023 a. 127.

702.310 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, all of the following apply:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, except as otherwise provided in par. (b), the unappointed property passes to any of the following:

1. If the powerholder is a permissible appointee and living, the powerholder.

2. If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee.

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

History: 2023 a. 127.

702.311 Disposition of unappointed property under released or unexercised nongeneral power of appointment. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment, all of the following apply:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, the unappointed property passes to the permissible appointees if all of the following apply:

1. The permissible appointees are defined and limited.

2. The terms of the instrument creating the power do not manifest a contrary intent.

(b) If there is no taker under par. (a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

History: 2023 a. 127.

702.312 Disposition of unappointed property if partial appointment to taker in default. Unless the terms of an 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.

History: 2023 a. 127.

702.313 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 gift-in-default clause.

History: 2023 a. 127.

702.314 Powerholder's authority to revoke or amend exercise. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that any of the following applies:

(1) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is a nongeneral power of appointment, the terms of the instrument creating the power of appointment do not prohibit the reservation.

(2) The terms of the instrument creating the power of ap-

pointment provide that the exercise of the power of appointment is revocable or amendable.

History: 2023 a. 127.

702.315 Presumption of nonexercise of a power of appointment. (1) A personal representative, trustee, or other fiduciary who holds property subject to a power of appointment may administer that property as if the power of appointment was not exercised if the personal representative, trustee, or other fiduciary has no notice of the existence of any of the following within 6 months after the death of the powerholder:

(a) A document purporting to be a will of the powerholder if the power of appointment is exercised by the will.

(b) Other documentation of the powerholder purporting to exercise the power of appointment if the power of appointment is exercisable other than by a will.

(2) A personal representative, trustee, or other fiduciary who acts in good faith is not liable to any person for administering property as if a power of appointment was not exercised as provided in sub. (1).

History: 2023 a. 127.

SUBCHAPTER IV

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

702.401 Disclaimer. (1) A powerholder may disclaim all or part of a power of appointment as provided under ss. 700.27 and 854.13.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property, as provided under ss. 700.27 and 854.13.

History: 2023 a. 127.

702.402 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.

History: 2023 a. 127.

702.403 Method of release. A powerholder of a releasable power of appointment may release the power in whole or in part by any of the following methods:

(1) Substantial compliance with a method provided in the terms of the instrument creating the power.

(2) If the terms of the instrument creating the power do not provide a method, a writing that manifests the powerholder's intent by clear and convincing evidence.

History: 2023 a. 127.

702.404 Revocation of amendment of release. A powerholder may revoke or amend a release of a power of appointment only to the extent that any of the following applies:

(1) The instrument of release is revocable by the powerholder.

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

History: 2023 a. 127.

702.405 Power to contract: presently exercisable power of appointment. A powerholder of a presently exercisable power of appointment may contract to do any of the following:

(1) Not to exercise the power.

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

History: 2023 a. 127.

702.406 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 all of the following apply:

- (1) The powerholder is also the donor of the power.
- (2) The powerholder reserved the power in a revocable trust.

History: 2023 a. 127.

702.407 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.

History: 2023 a. 127.

SUBCHAPTER V

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

702.501 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 a powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in ch. 242 and any other applicable law relating to fraudulent conveyances.

(3) Subject to sub. (2), appointive property subject to a general power of appointment created by a 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 subs. (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 appointment, appointive property subject to a general power of appointment created by a powerholder is subject to a claim of a creditor of any of the following:

(a) If the power of appointment is a presently exercisable power of appointment, the powerholder, to the same extent as if the powerholder owned the appointive property.

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

History: 2023 a. 127.

702.502 Creditor claim: general power not created by powerholder. (1) Except as otherwise provided in sub. (2), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of any of the following:

(a) If the power of appointment is a presently exercisable power of appointment, the powerholder to the extent the powerholder's property is insufficient.

(b) If the power of appointment is exercisable at the powerholder's death, the powerholder's estate or revocable trust, subject to the right of a decedent to direct the source from which liabilities

are paid, but only to the extent of the powerholder's exercise of that general power of appointment and only to the extent that the claim of the creditor has been filed and allowed in the powerholder's estate or filed with and approved by the trustee of a revocable trust but not paid because the assets of the estate or revocable trust are insufficient. For purposes of this paragraph, a revocable trust is a trust that is revocable, as defined in s. 701.0103 (22), by the powerholder or jointly by the powerholder and the powerholder's spouse.

(2) Subject to s. 702.504 (3), a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 USC 2041 (b) (1) (A) or 2514 (c) (1), is considered for purposes of this subchapter as a nongeneral power of appointment.

(3) If during the powerholder's lifetime, the powerholder exercises a general power of appointment created by a person other than the powerholder, a creditor of the powerholder can reach the appointed interests to the same extent that under the law relating to fraudulent conveyances the creditor could reach property that the powerholder has owned and transferred during the powerholder's lifetime.

History: 2023 a. 127.

702.503 Power to withdraw. (1) For purposes of this subchapter, and except as otherwise provided in sub. (2), a power to withdraw property from a trust is considered, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the following:

(a) The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal Revenue Code.

(b) The amount referenced in section 2503 (b) of the Internal Revenue Code for each individual other than the beneficiary who makes a transfer to the trust or who is considered to make a transfer to the trust pursuant to an election to split gifts under section 2513 (a) of the Internal Revenue Code.

History: 2023 a. 127.

702.504 Creditor claim: nongeneral power of appointment. (1) Except as otherwise provided in subs. (2) and (3), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the law relating to fraudulent conveyances.

(3) For purposes of this subchapter, if the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated as a general power of appointment.

History: 2023 a. 127.

702.505 Third parties in good faith protected. Any person acting without actual notice of claims of creditors under this subchapter incurs no liability to those creditors for transferring property that is subject to a power of appointment or that has been appointed. A purchaser without actual notice and for a valu-

able consideration takes an interest in property, legal or equitable, and takes the interest free of any rights that a powerholder's creditor may have under this subchapter.

History: 2023 a. 127.

SUBCHAPTER VI

MISCELLANEOUS PROVISIONS

702.601 Recording instruments relating to a power of appointment. (1) Each of the following instruments relating to a power of appointment is entitled to be recorded as a conveyance upon compliance with s. 706.05 (1):

(a) An instrument, other than a will, exercising a power of appointment.

(b) An instrument expressing consent to exercise a power of appointment.

(c) A disclaimer.

(d) A release.

(2) If a power of appointment is exercised by a will, a certified copy of the will and of the certificate of probate thereof may be recorded.

History: 2023 a. 127.

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

History: 2023 a. 127.

702.603 Relation to electronic signatures in global and national commerce act. (1) Except as provided in sub.

(2), this chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.

(2) This chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

History: 2023 a. 127.

702.604 Applicability. (1) (a) This chapter applies to a power of appointment created before, on, or after March 23, 2024.

(b) This chapter applies to a judicial proceeding concerning a power of appointment commenced on or after March 23, 2024.

(c) This chapter applies to a judicial proceeding concerning a power of appointment commenced before March 23, 2024, 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.

(d) A rule of construction or presumption in this chapter applies to an instrument executed before March 23, 2024, unless there is a clear indication of a contrary intent in the terms of the instrument.

(e) Except as otherwise provided in pars. (a) to (d), this chapter does not apply to an action taken before March 23, 2024.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under a law of this state other than this chapter before March 23, 2024, the law continues to apply to the right.

History: 2023 a. 127.