

## Chapter 31D.

### North Carolina Uniform Powers of Appointment Act.

#### Article 1.

##### General Provisions and Definitions.

#### § 31D-1-101. Short title.

This Chapter may be cited as the North Carolina Uniform Powers of Appointment Act. (2015-205, s. 3(a).)

#### § 31D-1-102. Definitions.

The following definitions apply in this Chapter:

- (1) "Appointee" means a person to whom a power holder 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 which 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 power holder has.
  - b. Expressly uses the words "any property" in appointing any property over which the power holder has a power of appointment.
  - c. Disposes of all property subject to disposition by the power holder.
- (4) "Donor" means a person who 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 power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.
- (7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
- (8) "Impermissible appointee" means a person that is not a permissible appointee.
- (9) "Instrument" means a writing.
- (10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.
- (11) "Permissible appointee" means a person in whose favor a power holder may exercise a power of appointment.
- (12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.
- (13) "Power holder" means a person in whom a donor creates a power of appointment.
- (14) "Power of appointment" means a power that enables a power holder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The power of

appointment may be general or nongeneral and presently exercisable or not presently exercisable. The term does not include a power of attorney.

- (15) "Presently exercisable power of appointment" means a power of appointment exercisable by the power holder at the relevant time. The term:
  - a. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard relating to an individual's health, education, and support or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, or the passage of a specified time only after one of the following:
    - 1. The occurrence of the specified event.
    - 2. The satisfaction of the ascertainable standard.
    - 3. The passage of the specified time.
  - b. Does not include a power exercisable only at the power holder's death.
- (16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.
- (17) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the power holder does not effectively exercise the power of appointment.
- (18) "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 in a judicial proceeding. (2015-205, s. 3(a).)

### **§ 31D-1-103. Governing law.**

- (a) The creation, revocation, or amendment of the power of appointment is governed by either of the following:
  - (1) The law of the jurisdiction designated in the terms of the instrument creating the power.
  - (2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the donor's domicile at the relevant time, then the law of the jurisdiction of the donor's domicile at the relevant time.
- (b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by either of the following:
  - (1) The law of the jurisdiction designated in the terms of the instrument creating the power.
  - (2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the power holder's domicile at the relevant time, then the law of the jurisdiction of the power holder's domicile at the relevant time. (2015-205, s. 3(a).)

### **§ 31D-1-104. 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 another statute of this State. (2015-205, s. 3(a).)