Tentative Report

The Uniform Powers of Appointment Act

2013 Secretary of State Business Law Reform Study Groups

Uniform Powers of Appointment Act Study Group

November 14, 2013
Introduction

The Uniform Powers of Appointment Study Group (“Study Group”) recommends favorable consideration of the Uniform Powers of Appointment Act for Mississippi. Powers of appointment are commonly used by estate planners to give a third party the authority to direct the disposition of a donor’s property to specified eligible recipients.

Statement of the problem area

The power of appointment is a staple of modern estate-planning practice. However, many jurisdictions have very little statutory or case law on powers of appointment. While Mississippi has provisions adopted in the 1940s governing release of powers of appointment\(^1\), there is no statutory law governing the creation and use of powers of appointment.

History of the project

In July 2013, the National Conference of Commissioners on Uniform State Laws (“the ULC”) unanimously adopted a uniform act intended to codify the patchwork of state court cases that constitute the common law on powers of appointment. The Act was developed by a ULC drafting committee comprised of some of the country’s leading trust and estates practitioners and professors. The Act also received extensive input from the American College of Trust and Estate Counsel (ACTEC) and the American Bar Association Section on Real Property, Trust and Estate Law (ABA-RPTE).

Following the ULC’s approval, the Mississippi Secretary of State’s Office volunteered to facilitate a study group to review the Act and issue a recommendation to the Legislature. Serving on the Study Group were Representative Mark Baker; Rick Courtney, Frascogna Courtney, PLLC; Anthony Sherman, Trustmark; Gray Edmondson, Barnes Law Firm; Senator Briggs Hopson; Len Martin, Baker Donelson Bearman Caldwell & Berkowitz, P.C.; Don Nichols, Wise Carter Child & Caraway, P.A.; Jack Nichols, Butler Snow LLP; Ben Sones, Taggart, Rimes & Graham, PLLC; Will Wilkins, Mississippi Law Research Institute; Jack Wilson, Chief Counsel to Governor Phil Bryant; and Jimmy Young, Wells Marble & Hurst, PLLC.

The Study Group held an initial conference call with University of Iowa Professor Thomas Gallanis, the reporter for the ULC drafting committee that prepared the Act, and drafting committee chair Turney Berry to get a general overview of the act.

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Since Mississippi has existing law governing the release of powers of appointment, the Group was asked to decide whether to preserve those provisions or weave them into the new act. The proposal includes Mississippi-specific customizations to the Uniform Act and conforming amendments to the release of powers of appointment statutes.

Summary of Proposal

Article 1 includes definitions and other general provisions. Article 2 provides rules for the creation, revocation, and amendment of powers of appointment. Article 3 governs the exercise of powers by the powerholder and the distribution of appointive property. Article 4 is concerned with disclaimers, releases, and contracts between a powerholder and permissible beneficiary to appoint or not to appoint property. Article 5 outlines the rights of a powerholder’s creditors in appointive property. Finally, Article 6 contains boilerplate provisions common to uniform acts. The act’s highlights are summarized below.

Article 1

The Uniform Powers of Appointment Act defines three specific roles: The person who creates a power of appointment is the “Donor.” The person who may exercise the power is the “Powerholder” (rather than the more confusing “donee”). A person who may receive appointive property is a “Permissible appointee” (or just an “Appointee” following receipt). The uniform act defines a “Power of appointment” as “a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appoint over the appointive property.” Other definitions describe different types of powers and different methods of exercising a power.

Article 2

Section 201 provides a permissive standard governing creation of powers of appointment: the power must be in a valid governing instrument that transfers the appointive property and must use terms showing the donor’s intent to create a power to appoint property. Other provisions state that a power is nontransferable and provide rules and presumptions as to the extent of the power, which are applicable if the terms of the power are not sufficiently clear. Finally, Section 206 states that a power may not be revoked or amended unless either i) the instrument creating the power is revocable, or ii) the donor reserves a power of revocation or amendment.

Article 3

Section 301 sets out the rules for exercising a power of appointment, and sections 302 - 304 apply if the powerholder’s intent is unclear. Section 305 clarifies that a powerholder may, unless otherwise prohibited, make an appointment to a permissible appointee in any form, including in trust or by creating a general power of appointment. Other sections govern
appointments to deceased or impermissible appointees, disposition of unappointed property, and a powerholder’s ability to revoke or amend an exercise of power.

**Article 4**

Section 401 provides that a state’s general law on disclaimers applies to both powerholders and permissible appointees. Section 402 gives a powerholder authority to release a power unless prohibited by the donor, Section 403 provides a method for releasing powers of appointment, and Section 404 provides rules for revoking or amending a release. Finally, Sections 405 and 406 govern contracts to exercise, or not to exercise, a power of appointment.

**Article 5**

This article governs creditor claims on appointive property. The rules depend on whether the powerholder also created the power, and whether the powerholder has a power to withdraw property from a trust.

**Amendments to Chapter 15**

The amendments to Title 91, Chapter 15 harmonize the definitions used in the release of powers of appointment statutes with the definitions used in the Uniform Act.

**Conclusion**

The proposed Uniform Powers of Appointment Act preserves existing Mississippi law on release of powers of appointment, while providing needed statutory guidance on the creation and exercise of powers of appointment. Both attorneys and their clients will benefit from the certainty provided by the act. The Study Group sees no reason to oppose its adoption.
AN ACT TO CREATE THE MISSISSIPPI UNIFORM POWERS OF APPOINTMENT ACT, WHICH SHALL BE CODIFIED IN TITLE 91, CHAPTER 14, MISSISSIPPI CODE OF 1972, TO CREATE NEW SECTION 91-14-101, MISSISSIPPI CODE OF 1972, TO ENACT SHORT TITLE; TO CREATE NEW SECTION 91-14-102, MISSISSIPPI CODE OF 1972, TO PROVIDE DEFINITIONS; TO CREATE NEW SECTION 91-14-103, MISSISSIPPI CODE OF 1972, TO PROVIDE GOVERNING LAW; TO CREATE NEW SECTION 91-14-104, MISSISSIPPI CODE OF 1972, ACT SUPPLEMENTS COMMON LAW; TO CREATE NEW SECTION 91-14-201, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CREATION OF POWERS OF APPOINTMENT; TO CREATE NEW SECTION 91-14-202, MISSISSIPPI CODE OF 1972, POWERS ARE NONTRANSFERABLE; TO CREATE NEW SECTION 91-14-203, MISSISSIPPI CODE OF 1972, FOR PRESUMPTION OF UNLIMITED AUTHORITY; TO CREATE NEW SECTION 91-14-204, MISSISSIPPI CODE OF 1972, TO PROVIDE EXCEPTION TO PRESUMPTION; TO CREATE NEW SECTION 91-14-205, MISSISSIPPI CODE OF 1972, FOR THE RULES OF CLASSIFICATION; TO CREATE NEW SECTION 91-14-206, MISSISSIPPI CODE OF 1972, TO PROVIDE THE POWER TO REVOKER OR AMEND; TO CREATE NEW SECTION 91-14-301, MISSISSIPPI CODE OF 1972, FOR REQUISITES FOR EXERCISE OF POWER; TO CREATE NEW SECTION 91-14-302, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DETERMINING INTENT TO EXERCISE; TO CREATE NEW SECTION 91-14-303, MISSISSIPPI CODE OF 1972, FOR INTENT AND AFTER-ACQUIRED POWER; TO CREATE NEW SECTION 91-14-304, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR COMPLIANCE WITH DONOR-IMPOSED REQUIREMENTS; TO CREATE NEW SECTION 91-14-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PERMISSIBLE APPOINTMENTS; TO CREATE NEW SECTION 91-14-306, MISSISSIPPI CODE OF 1972, FOR APPOINTMENTS TO DECEASED APPOINTEES OR DECENDANTS; TO CREATE NEW SECTION 91-14-307, MISSISSIPPI CODE OF 1972, TO ADDRESS IMPERMISSIBLE APPOINTMENTS; TO CREATE NEW SECTION 91-14-308, MISSISSIPPI CODE OF 1972, FOR THE APPLICATION OF THE SELECTIVE ALLOCATION DOCTRINE; TO CREATE NEW SECTION 91-14-309, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPLICATION OF THE CAPTURE DOCTRINE; TO CREATE NEW SECTION 91-14-310, MISSISSIPPI CODE OF 1972, TO GOVERN DISPOSITION OF UNAPPOINTED PROPERTY; TO CREATE NEW SECTION 91-14-311, MISSISSIPPI CODE OF 1972, TO GOVERN DISPOSITION OF UNAPPOINTED PROPERTY; TO CREATE NEW SECTION 91-14-312, MISSISSIPPI CODE OF 1972, FOR DISPOSITION WHERE PARTIAL APPOINTMENT MADE TO TAKER IN DEFAULT; TO CREATE NEW SECTION 91-14-313, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPOINTMENT TO TAKER IN DEFAULT; TO CREATE NEW SECTION 91-14-314, MISSISSIPPI CODE OF 1972, TO PROVIDE POWERHOLDER’S AUTHORITY TO REVOCER OR AMEND EXERCISE; TO CREATE NEW SECTION 91-14-401, MISSISSIPPI CODE OF 1972, TO GOVERN DISCLAIMER; TO CREATE NEW SECTION 91-14-402, MISSISSIPPI CODE OF 1972, TO...
ALLOW RELEASE OF POWER; TO CREATE NEW SECTION 91-14-403,
MISSISSIPPI CODE OF 1972, TO PROVIDE FOR METHOD OF RELEASE; TO
CREATE NEW SECTION 91-14-404, MISSISSIPPI CODE OF 1972, TO GOVERN
REVOCATION OR AMENDMENT OF RELEASE; TO CREATE NEW SECTION 91-14-
405, MISSISSIPPI CODE OF 1972, FOR THE POWER TO CONTRACT A
PRESENTLY EXERCISABLE POWER; TO CREATE NEW SECTION 91-14-406,
MISSISSIPPI CODE OF 1972, FOR THE POWER TO CONTRACT A NOT
PRESENTLY EXERCISABLE POWER; TO CREATE NEW SECTION 91-14-407,
MISSISSIPPI CODE OF 1972, TO PROVIDE REMEDY FOR BREACH OF
CONTRACT; TO CREATE NEW SECTION 91-14-501, MISSISSIPPI CODE OF
1972, TO ADDRESS CREDITORS CLAIMS WHEN GENERAL POWER CREATED; TO
CREATE NEW SECTION 91-14-502, MISSISSIPPI CODE OF 1972, TO ADDRESS
CREDITORS CLAIMS WHEN GENERAL POWER NOT CREATED; TO CREATE NEW
SECTION 91-14-503, MISSISSIPPI CODE OF 1972, TO PROVIDE THE POWER
TO WITHDRAW; TO CREATE NEW SECTION 91-14-504, MISSISSIPPI CODE OF
1972, TO ADDRESS CREDITOR CLAIMS AND NONGENERAL POWERS; TO CREATE
NEW SECTION 91-14-601, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
UNIFORMITY AMONG THE STATES; TO CREATE NEW SECTION 91-14-602,
MISSISSIPPI CODE OF 1972, TO ADDRESS ELECTRONIC SIGNATURES; TO
CREATE NEW SECTION 91-14-603, MISSISSIPPI CODE OF 1972, FOR
APPLICATION TO EXISTING RELATIONSHIPS; TO RESERVE NEW SECTION 91-
14-604, MISSISSIPPI CODE OF 1972; TO CREATE NEW SECTION 91-14-605,
MISSISSIPPI CODE OF 1972, TO PROVIDE EFFECTIVE DATE; TO AMEND
SECTION 91-15-3, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND
SECTION 91-15-5, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND
SECTION 91-15-7, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND
SECTION 91-15-11, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND
SECTION 91-15-13, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND
SECTION 91-15-17, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR
RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. The following shall be codified as Chapter 14,
Title 91, Mississippi Code of 1972:

ARTICLE 1

GENERAL PROVISIONS

91-14-101. Short title. This chapter may be cited as
the Uniform Powers of Appointment Act.

91-14-102. 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 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 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 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 powerholder may exercise a power of appointment.

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

(13) “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. The term does not include a power of attorney.

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

(15) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder 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, or the passage of a specified time only after:

(i) the occurrence of the specified event;
(ii) the satisfaction of the ascertainable standard; or
(iii) the passage of the specified time; and
(B) does not include a power exercisable only at the
powerholder’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 that
takes all or part of the appointive property to the extent the
powerholder 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
by other evidence that would be admissible in a legal proceeding.

91-14-103. Governing Law. Unless the terms of
the instrument creating a power of appointment manifest a contrary
intent:
(1) the creation, revocation, or amendment of the power is
governed by the law of the donor’s domicile at the relevant time;
and
(2) 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 the law of the powerholder’s domicile at
the relevant time.
91-14-104. 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 law of this state other than this chapter.

ARTICLE 2

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

91-14-201. Creation of power of appointment. (a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection (b), transfers the appointive property; and

(2) 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.

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

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

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.
91-14-202. Nontransferability. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

91-14-203. Presumption of unlimited authority. Subject to Section 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 204, general.

91-14-204. 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.

91-14-205. Rules of classification. (a) In this section, “adverse party” means a person with a substantial beneficial interest in property which 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.
(b) If a powerholder may exercise a power of appointment only
with the consent or joinder of an adverse party, the power is
nongeneral.
(c) If the permissible appointees of a power of appointment
are not defined and limited, the power is exclusionary.

91-14-206. Power to revoke or amend. A donor may
revoke or amend a power of appointment only to the extent that:
(1) the instrument creating the power is revocable by the
donor; or
(2) the donor reserves a power of revocation or amendment in
the instrument creating the power of appointment.

ARTICLE 3

EXERCISE OF POWER OF APPOINTMENT

91-14-301. 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) subject to Section 304, 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.

Intent to exercise: Determining intent from residuary clause. (a) In this section:

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

(2) “Will” includes a codicil and a testamentary instrument that revises another will.

(b) 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:

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

(2) the power is a general power exercisable in favor of the powerholder’s estate;

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

(4) the powerholder did not release the power.

Intent to exercise: After-acquired power.

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:
(1) except as otherwise provided in paragraph (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

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

91-14-304. 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:

(1) the powerholder knows of and intends to exercise the power; and

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

91-14-305. Permissible appointment. (a) 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.
(b) 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.

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

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

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

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

91-14-306. Appointment to deceased appointee or permissible appointee’s descendant. (a) Subject to Section 91-5-7, an appointment to a deceased appointee is ineffective.

(b) 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.

91-14-307. Impermissible appointment. (a) Except as otherwise provided in Section 306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.
(b) 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.

91-14-308. 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.

91-14-309. 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 living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder’s estate if the estate is a permissible appointee; or
(B) if there is no taker under subparagraph (A), passes under a reversionary interest to the donor or the donor’s transferee or successor in interest.

91-14-310. 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 subparagraph (B), the unappointed property passes to:

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

(ii) if the powerholder is an impermissible appointee or 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 subparagraph (A), the unappointed property passes under a reversionary interest to the donor or the donor’s transferee or successor in interest.

91-14-311. 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 subparagraph (A), passes under a reversionary interest to the donor or the donor’s transferee or successor in interest.

91-14-312. 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.

91-14-313. 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 deemed not to have been exercised and the
appointee takes under the clause.

91-14-314. 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:

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

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

ARTICLE 4

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

91-14-401. Disclaimer. As provided by Section 89-21-1, et seq.:

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

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

91-14-402. Authority to release. A powerholder may release a power of appointment, in whole or in part, as provided in Section 91-15-5.
Method of release. A powerholder of a releasable power of appointment may release the power in whole or in part as provided in Section 91-15-7.

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.

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.

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.

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.

ARTICLE 5

RIGHTS OF POWERHOLDER’S CREDITORS IN APPOINTEE PROPERTY

91-14-501. Creditor claim: General power created by powerholder. (a) 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.

(b) 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 Section 15-3-101, et seq.

(c) Subject to subsection (b), 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.

(d) Subject to subsections (b) and (c), 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 the powerholder is subject to a claim of a creditor of:
(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) 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, if the power is exercisable at the powerholder’s death.

91-14-502. Creditor claim: General power not created by powerholder. (a) Except as otherwise provided in subsection (b), 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:

(1) the powerholder, to the extent the powerholder’s property is insufficient, if the power is presently exercisable; and

(2) the powerholder’s estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to Section 504(c), a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual’s health, education, support, or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), as amended, is treated for purposes of this article as a nongeneral power.

91-14-503. Power to withdraw. (a) For purposes of this article, and except as otherwise provided in subsection (b),
a power to withdraw property from a trust is treated, 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.

(b) 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 amount specified in 26 U.S.C. Section
2041(b)(2) and 26 U.S.C. Section 2514(e) or the amount specified
in 26 U.S.C. Section 2503(b), as amended.

91-14-504. Creditor claim: Nongeneral power.
(a) Except as otherwise provided in subsections (b) and (c),
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.

(b) 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 Section 15-3-101, et seq.

(c) If the initial gift in default of appointment is to the
powerholder or the powerholder’s estate, a nongeneral power of
appointment is treated for purposes of this article as a general
power.
ARTICLE 6

MISCELLANEOUS PROVISIONS

91-14-601. Uniformity of application and construction.

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

91-14-602. 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. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

91-14-603. Application to existing relationships. (a) Except as otherwise provided in this chapter, on and after the effective date of this chapter:

(1) this chapter applies to a power of appointment created before, on, or after the effective date of this chapter;

(2) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this chapter;

(3) this chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this chapter 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;

(4) a rule of construction or presumption provided in this chapter applies to an instrument executed before the effective date of this chapter unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) except as otherwise provided in paragraphs (1) through (4), an action done before the effective date of this chapter is not affected by this chapter.

(b) 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 the effective date of this chapter, the law continues to apply to the right.

91-14-604. Reserved

91-14-605. Effective date. This chapter takes effect July 1, 2014.

Section 2. Section 91-15-3, Mississippi Code of 1972, is amended as follows:

91-15-3. Definitions. When used in this chapter, unless the context otherwise requires:

(a) “Power” includes any power to appoint or designate to whom appointive property shall go, any power to invade property,
any power to alter, amend, or revoke any instrument under which an
estate or trust is held or created or to terminate any right or
interest thereunder, and any power remaining where one or more
partial releases have heretofore or hereafter been made with
respect to a power, whether heretofore or hereafter created or
reserved, whether vested, contingent, or conditional, and whether
classified in law or known as a power in gross, a power appendant,
a power appurtenant, a collateral power, a general, special, or
limited power, exclusive or nonexclusive power, or otherwise, and
irrespective of when, in what manner, or in whose favor it may be
exercised.

(b) “DoneePowerholder” means any person, whether resident or
nonresident of this state, who, either alone or with another, has
the right to exercise a power a person in which a donor creates a
power of appointment.

(c) “ObjectsPermissible appointee” when used in connection
with a power means the person in whose favor the power may be
exercised means a person in whose favor a powerholder may exercise
a power of appointment.

(d) “Appointive Property” when used in connection with a
power means any and all property, whether real or personal, any
and all interest in property, and any and all income from
property, which is subject to the power, and includes any part of
the property, any part of the interest in property, and any part
of the income from property means the property or property interest subject to a power of appointment.

(e) “Release” means renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release.

Section 3. Section 91-15-5, Mississippi Code of 1972, is amended as follows:

91-15-5. Authority to release

Unless the instrument creating the power specifically provides to the contrary, the donee-powerholder of a power, whether now existing or hereafter created, may:

(a) At any time completely release his power.

(b) At any time or times release his power: (one) as to any appointive property which is subject thereto; (two) as to any one or more of the objects permissible appointees thereof; or (three) so as to limit in any other respect the extent to which it may be exercised.

Section 4. Section 91-15-7, Mississippi Code of 1972, is amended as follows:

91-15-7. Procedure to release

A release of a power, whether partial or complete, shall be valid and effective with or without a consideration when the donee-powerholder executes an instrument evidencing an intent to make the release, signed and acknowledged in the manner prescribed for the execution of deeds, and delivers the instrument or causes it to be delivered, either:
(a) To an adult person who may take any of the appointive property which is subject to the power in the event of its non-exercise, or to one in whose favor it may be exercised after such partial release; or

(b) To any trustee or any co-trustee of the appointive property which is subject to the power; or

(c) By filing the same for recordation in the chancery clerk's office in the county and judicial district thereof in which any of the appointive property is located, or in which either the donee-powerholder or the trustee in control of the appointive property resides, or in which the trustee has its principal office, or in which the instrument creating the power is probated or recorded.

Section 5. Section 91-15-11, Mississippi Code of 1972, is amended as follows:

91-15-11. Chapter supplemental, not exclusive

The rights and means provided in this chapter for the release of a power are not exclusive, but are in addition to all other rights and means of a donee-powerholder to release a power in whole or in part.

Section 6. Section 91-15-13, Mississippi Code of 1972, is amended as follows:


Any fiduciary or other person, association, or corporation having the possession or control of any appointive property
subject to a power of appointment shall be deemed to have notice
of a release of the power when the original or a copy of the
release is delivered to such fiduciary or other person,
association, or corporation.

Section 7. Section 91-15-17, Mississippi Code of
1972, is amended as follows:

91-15-17. Recording procedures

Clerks of chancery courts are authorized and directed to
record releases of powers of appointment in the books provided for
the recordation of deeds, to index the same in the current and
general indexes, the name of the donee-powerholder being entered on
the grantor index, and to charge therefor at the rate applicable
to deeds.