

POWER OF APPOINTMENT

Footnotes

See probate code, § 633.901633.917

559.1 Release by donee of power.

A power to appoint which is exercisable by deed, by will, by deed or will, or otherwise, in whole or to any extent in favor of the donee of the power, the donee's estate, the donee's creditors, the creditors of the donee's estate, or others, is releasable, either with or without consideration, by written instrument executed by the donee. If such instrument shall be executed and acknowledged in the manner provided for the execution and acknowledgment of instruments affecting real estate and recorded with the county recorder in the county in which the donee of the power resides or the county of last residence of the donor of the power of the county in which any real estate which may be subject to the power is located, such recording shall be deemed a sufficient delivery of such release.

A power to appoint described herein is releasable with respect to the whole or any part of the property subject to such power and is also releasable in such manner as to reduce or limit the persons or objects, or classes of persons or objects in whose favor such power would otherwise be exercisable.

It is hereby declared that such releases are in accordance with the public policy of this state and are valid and effectual whether heretofore or hereafter made.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.1]

559.2 Definition scope of power.

The term "*power to appoint*" as used in section 559.1, shall mean and include all powers which are in substance and effect powers of appointment, regardless of the language used in creating them and whether they are (1) general, special or otherwise, (2) vested, contingent or conditional, (3) in gross, appendant, simply collateral, in trust or in the nature of a trust or otherwise, (4) exercisable by an instrument amending, revoking, altering or terminating a trust or an estate, or an interest thereunder or otherwise, (5) exercisable presently or in the future, (6) exercisable in an individual or a fiduciary capacity whether alone or in conjunction with one or more other persons or corporations, (7) powers to invade or consume property, or (8) powers remaining after one or more partial releases have heretofore or hereafter been made with respect to a power to appoint.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.2]

559.3 Release by one donee exclusive of others.

If a power to appoint is or may be exercisable by two or more persons either in an individual or fiduciary capacity in conjunction with one another or successively, a release or disclaimer of the power in whole or in part executed by any one of the donees of the power shall be effective to release or disclaim, to the extent therein provided, all right of such person to exercise or to participate in the exercise of the said power, but unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.3]

559.4 Limiting release.

A release of a power to appoint may also be made for life or lives or for a specified period of time.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.4]

559.5 Disclaimer.

A donee of a power to appoint may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as the donee might release it.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.5]

559.6 Delivery.

A release or disclaimer may be delivered to any of the following: (1) Any person who could be adversely affected by the exercise of the power; or (2) any trustee of the property to which the power relates; or (3) any person specified for such purpose in the instrument creating the power; or (4) the county recorder as provided in section 559.1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.6]

559.7 Other lawful means.

Nothing contained in this chapter shall prevent the release of any power to appoint or the disclaimer thereof in any lawful manner.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.7]

559.8 Declaration of common law.

This chapter shall be deemed declaratory of the common law of this state and it shall be liberally construed so as to effectuate the intent that all powers to appoint whatsoever shall be releasable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.8]

559.9 Applicability.

This chapter shall apply to releases and disclaimers heretofore or hereafter delivered.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 559.9]