

Article 2.

Creation, Revocation, and Amendment of Power of Appointment.

**§ 31D-2-201. Creation of power of appointment.**

- (a) A power of appointment is created only if all of the following apply:
  - (1) The instrument creating the power is valid under applicable law.
  - (2) Repealed by Session Laws 2021-53, s. 4.1, effective June 25, 2021.
  - (3) The terms of the instrument creating the power manifest the donor's intent to create in a power holder a power of appointment over the appointive property exercisable in favor of a permissible appointee.
- (b) Repealed by Session Laws 2021-53, s. 4.1, effective June 25, 2021.
- (c) A power of appointment may not be created in a deceased individual.
- (d) Subject to an applicable rule against perpetuities or restraint on alienation, a power of appointment may be created in an unborn or unascertained power holder. (2015-205, s. 3(a); 2021-53, s. 4.1.)

**§ 31D-2-202. Nontransferability.**

A power holder may not transfer a power of appointment. If a power holder dies without exercising or releasing a power, the power lapses. (2015-205, s. 3(a).)

**§ 31D-2-203. Presumption of unlimited authority.**

Subject to the provisions of G.S. 31D-2-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is all of the following:

- (1) Presently exercisable.
- (2) Exclusionary.
- (3) Except as otherwise provided in G.S. 31D-2-204, general. (2015-205, s. 3(a).)

**§ 31D-2-204. 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 both of the following apply:

- (1) The power is exercisable only at the power holder's death.
- (2) The permissible appointees of the power are a defined and limited class that does not include the power holder's estate, the power holder's creditors, or the creditors of the power holder's estate. (2015-205, s. 3(a).)

**§ 31D-2-205. Rules of classification.**

(a) In this section, the term "adverse party" means a person with a substantial beneficial interest in property who would be affected adversely by a power holder's exercise or nonexercise of a power of appointment 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.

(b) If a power holder 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. (2015-205, s. 3(a).)

**§ 31D-2-206. Power to revoke or amend.**

A donor may revoke or amend a power of appointment only to the extent that either of the following apply:

- (1) The instrument creating the power is revocable by the donor.
- (2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment. (2015-205, s. 3(a).)