

1 AN ACT relating to powers of appointment.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 390 IS ESTABLISHED AND A NEW  
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *This chapter may be cited as the Kentucky Uniform Powers of Appointment Act.*

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
7 READ AS FOLLOWS:

8 *As used in this chapter:*

9 *(1) "Appointee" means a person to whom a powerholder makes an appointment of*  
10 *appointive property;*

11 *(2) "Appointive property" means the property or property interest subject to a power*  
12 *of appointment;*

13 *(3) "Blanket-exercise clause" means a clause in an instrument which exercises a*  
14 *power of appointment and is not a specific-exercise clause. The term includes a*  
15 *clause that:*

16 *(a) Expressly uses the words "any power" in exercising any power of*  
17 *appointment the powerholder has;*

18 *(b) Expressly uses the words "any property" in appointing any property over*  
19 *which the powerholder has a power of appointment; or*

20 *(c) Disposes of all property subject to disposition by the powerholder;*

21 *(4) "Donor" means a person who creates a power of appointment;*

22 *(5) "Exclusionary power of appointment" means a power of appointment exercisable*  
23 *in favor of any one (1) or more of the permissible appointees to the exclusion of*  
24 *the other permissible appointees;*

25 *(6) "General power of appointment" means a power of appointment exercisable in*  
26 *favor of the powerholder, the powerholder's estate, a creditor of the powerholder,*  
27 *or a creditor of the powerholder's estate;*

- 1 (7) "Gift-in-default clause" means a clause identifying a taker in default of  
2 appointment;
- 3 (8) "Impermissible appointee" means a person who is not a permissible appointee;
- 4 (9) "Instrument" means a writing;
- 5 (10) "Nongeneral power of appointment" means a power of appointment that is not a  
6 general power of appointment;
- 7 (11) "Permissible appointee" means a person in whose favor a powerholder may  
8 exercise a power of appointment;
- 9 (12) "Person" means an individual; estate; trust; business or nonprofit entity; public  
10 corporation; government or governmental subdivision, agency, or  
11 instrumentality; or other legal entity;
- 12 (13) "Power of appointment" means a power that enables a powerholder acting in a  
13 nonfiduciary capacity to designate a recipient of an ownership interest in or  
14 another power of appointment over the appointive property. The term does not  
15 include a power of attorney;
- 16 (14) "Powerholder" means a person in whom a donor creates a power of  
17 appointment;
- 18 (15) "Presently exercisable power of appointment" means a power of appointment  
19 exercisable by the powerholder at the time in question. The term:
- 20 (a) Includes a power of appointment not exercisable until the occurrence of a  
21 specified event, the satisfaction of an ascertainable standard, or the passage  
22 of a specified time only after:
- 23 1. The occurrence of the specified event;  
24 2. The satisfaction of the ascertainable standard; or  
25 3. The passage of the specified time; and
- 26 (b) Does not include a power exercisable only at the powerholder's death;
- 27 (16) "Specific-exercise clause" means a clause in an instrument which specifically

1 refers to and exercises a particular power of appointment;

2 (17) "Taker in default of appointment" means a person who takes part or all of the  
 3 appointive property to the extent the powerholder does not effectively exercise the  
 4 power of appointment; and

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

9 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 10 READ AS FOLLOWS:

11 Unless the terms of the instrument creating a power of appointment manifest a  
 12 contrary intent:

13 (1) The creation, revocation, or amendment of the power is governed by the law of  
 14 the donor's domicile at the relevant time; and

15 (2) The exercise, release, or disclaimer of the power, or the revocation or amendment  
 16 of the exercise, release, or disclaimer, is governed by the law of the powerholder's  
 17 domicile at the relevant time.

18 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 19 READ AS FOLLOWS:

20 The common law principles of equity supplement this chapter, except to the extent  
 21 modified by this chapter or law of the Commonwealth other than this chapter.

22 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 23 READ AS FOLLOWS:

24 (1) A power of appointment is created only if:

25 (a) The instrument creating the power:

26 1. Is valid under applicable law; and

27 2. Except as otherwise provided in subsection (2) of this section,

- 1                   transfers the appointive property; and
- 2           **(b) The terms of the instrument creating the power manifest the donor's intent**  
3                   **to create, in a powerholder, a power of appointment over the appointive**  
4                   **property exercisable in favor of a permissible appointee.**
- 5           **(2) Subsection (1)(a)2. of this section does not apply to the creation of a power of**  
6                   **appointment by the exercise of a power of appointment.**
- 7           **(3) A power of appointment may not be created in a deceased individual.**
- 8           **(4) Subject to an applicable rule against perpetuities, a power of appointment may be**  
9                   **created in an unborn or unascertained powerholder.**

10           ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
11 READ AS FOLLOWS:

12           **A powerholder may not transfer a power of appointment. If the powerholder dies**  
13                   **without exercising or releasing the power, the power lapses.**

14           ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
15 READ AS FOLLOWS:

16           **Subject to Section 9 of this Act, and unless the terms of the instrument creating a**  
17                   **power of appointment manifest a contrary intent, the power is:**

- 18           **(1) Presently exercisable;**  
19           **(2) Exclusionary; and**  
20           **(3) Except as otherwise provided in Section 8 of this Act, general.**

21           ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
22 READ AS FOLLOWS:

23           **Unless the terms of the instrument creating a power of appointment manifest a**  
24                   **contrary intent, the power is nongeneral if:**

- 25           **(1) The power is exercisable only at the powerholder's death; and**  
26           **(2) The permissible appointees of the power are a defined and limited class that does**  
27                   **not include the powerholder's estate, the powerholder's creditors, or the creditors**

1 of the powerholder's estate.

2 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
3 READ AS FOLLOWS:

4 (1) As used in this section, "adverse party" means a person with a substantial  
5 beneficial interest in property which would be affected adversely by a  
6 powerholder's exercise or nonexercise of a power of appointment in favor of the  
7 powerholder, the powerholder's estate, a creditor of the powerholder, or a  
8 creditor of the powerholder's estate.

9 (2) If a powerholder may exercise a power of appointment only with the consent or  
10 joinder of an adverse party, the power is nongeneral.

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

13 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
14 READ AS FOLLOWS:

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

16 (1) The instrument creating the power is revocable by the donor; or

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

19 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
20 READ AS FOLLOWS:

21 A power of appointment is exercised only:

22 (1) If the instrument exercising the power is valid under applicable law;

23 (2) If the terms of the instrument exercising the power:

24 (a) Manifest the powerholder's intent to exercise the power; and

25 (b) Subject to Section 14 of this Act, satisfy the requirements of exercise, if any,  
26 imposed by the donor; and

27 (3) To the extent the appointment is a permissible exercise of power.

1           ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
2 READ AS FOLLOWS:

3       **(1) As used in this section:**

4           **(a) "Residuary clause" does not include a residuary clause containing a**  
5           **blanket-exercise clause or a specific-exercise clause; and**

6           **(b) "Will" includes a codicil and a testamentary instrument that revises**  
7           **another will.**

8       **(2) A residuary clause in a powerholder's will, or a comparable clause in the**  
9       **powerholder's revocable trust, manifests the powerholder's intent to exercise a**  
10       **power of appointment only if:**

11           **(a) The terms of the instrument containing the residuary clause do not manifest**  
12           **a contrary intent;**

13           **(b) The power is a general power exercisable in favor of the powerholder's**  
14           **estate;**

15           **(c) There is no gift-in-default clause or it is ineffective; and**

16           **(d) The powerholder did not release the power.**

17           ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
18 READ AS FOLLOWS:

19       **Unless the terms of the instrument exercising a power of appointment manifest a**  
20       **contrary intent:**

21       **(1) Except as otherwise provided in subsection (2) of this section, a blanket-exercise**  
22       **clause extends to a power acquired by the powerholder after executing the**  
23       **instrument containing the clause; and**

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

26           ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
27 READ AS FOLLOWS:

1 *A powerholder's substantial compliance with a formal requirement of an appointment*  
 2 *imposed by the donor, including a requirement that the instrument exercising the*  
 3 *power of appointment make reference or specific reference to the power, is sufficient*  
 4 *if:*

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

6 *(2) The powerholder's manner of attempted exercise of the power does not impair a*  
 7 *material purpose of the donor in imposing the requirement.*

8 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 9 READ AS FOLLOWS:

10 *(1) A powerholder of a general power of appointment that permits appointment to*  
 11 *the powerholder or the powerholder's estate may make any appointment,*  
 12 *including an appointment in trust or creating a new power of appointment, that*  
 13 *the powerholder could make in disposing of the powerholder's own property.*

14 *(2) A powerholder of a general power of appointment that permits appointment only*  
 15 *to the creditors of the powerholder or of the powerholder's estate is restricted to*  
 16 *appointing to those creditors.*

17 *(3) Unless the terms of the instrument creating a power of appointment manifest a*  
 18 *contrary intent, the powerholder of a nongeneral power may:*

19 *(a) Make an appointment in any form, including an appointment in trust, in*  
 20 *favor of a permissible appointee;*

21 *(b) Create a general power in a permissible appointee; or*

22 *(c) Create a nongeneral power in any person to appoint to one (1) or more of*  
 23 *the permissible appointees of the original nongeneral power.*

24 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 25 READ AS FOLLOWS:

26 *(1) An appointment to a deceased appointee is ineffective.*

27 *(2) Unless the terms of the instrument creating a power of appointment manifest a*

1 contrary intent, a powerholder of a nongeneral power may exercise the power in  
 2 favor of, or create a new power of appointment in, a descendant of a deceased  
 3 permissible appointee whether or not the descendant is described by the donor as  
 4 a permissible appointee.

5 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 6 READ AS FOLLOWS:

7 (1) Except as provided in Section 16 of this Act, an exercise of a power of  
 8 appointment in favor of an impermissible appointee is ineffective.

9 (2) An exercise of a power of appointment in favor of a permissible appointee is  
 10 ineffective to the extent the appointment is a fraud on the power.

11 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 12 READ AS FOLLOWS:

13 If a powerholder exercises a power of appointment in a disposition that also disposes of  
 14 property the powerholder owns, the owned and appointive property shall be allocated in  
 15 the permissible manner that best carries out the powerholder's intent.

16 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 17 READ AS FOLLOWS:

18 To the extent a powerholder of a general power of appointment, other than a power to  
 19 revoke, amend, or withdraw property from a trust, makes an ineffective appointment:

20 (1) The gift-in-default clause controls the disposition of the ineffectively appointed  
 21 property; or

22 (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the  
 23 ineffectively appointed property:

24 (a) Passes to:

25 1. The powerholder if the powerholder is a permissible appointee and  
 26 living; or

27 2. If the powerholder is an impermissible appointee or not living, the



1                                    powerholder's estate if the estate is a permissible appointee; or  
 2                    (b) If there is no taker under paragraph (a) of this subsection, passes under a  
 3                                    reversionary interest to the donor or the donor's transferee or successor in  
 4                                    interest.

5                    ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 6 READ AS FOLLOWS:

7                    To the extent a powerholder releases or fails to exercise a general power of  
 8                    appointment other than a power to revoke, amend, or withdraw property from a trust:

9                    (1) The gift-in-default clause controls the disposition of the unappointed property; or

10                    (2) If there is no gift-in-default clause or to the extent the clause is ineffective:

11                    (a) Except as otherwise provided in paragraph (b) of this subsection, the  
 12                    unappointed property passes to:

13                    1. The powerholder if the powerholder is a permissible appointee and  
 14                    living; or

15                    2. If the powerholder is an impermissible appointee or not living, the  
 16                    powerholder's estate if the estate is a permissible appointee; or

17                    (b) To the extent the powerholder released the power, or if there is no taker  
 18                    under paragraph (a) of this subsection, the unappointed property passes  
 19                    under a reversionary interest to the donor or the donor's transferee or  
 20                    successor in interest.

21                    ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 22 READ AS FOLLOWS:

23                    To the extent a powerholder releases, ineffectively exercises, or fails to exercise a  
 24                    nongeneral power of appointment:

25                    (1) The gift-in-default clause controls the disposition of the unappointed property; or

26                    (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the  
 27                    unappointed property:

1 (a) Passes to the permissible appointees if:

2 1. The permissible appointees are defined and limited; and

3 2. The terms of the instrument creating the power do not manifest a  
4 contrary intent; or

5 (b) If there is no taker under paragraph (a) of this subsection, passes under a  
6 reversionary interest to the donor or the donor's transferee or successor in  
7 interest.

8 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
9 READ AS FOLLOWS:

10 Unless the terms of the instrument creating or exercising a power of appointment  
11 manifest a contrary intent, if the powerholder makes a valid partial appointment to a  
12 taker in default of appointment, the taker in default of appointment may share fully in  
13 unappointed property.

14 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
15 READ AS FOLLOWS:

16 If a powerholder makes an appointment to a taker in default of appointment and the  
17 appointee would have taken the property under a gift-in-default clause had the  
18 property not been appointed, the power of appointment is deemed not to have been  
19 exercised, and the appointee takes under the clause.

20 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
21 READ AS FOLLOWS:

22 A powerholder may revoke or amend an exercise of a power of appointment only to the  
23 extent that:

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

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

3 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
4 READ AS FOLLOWS:

5 As provided in KRS 394.035 and 394.610 to 394.670:

6 (1) A powerholder may disclaim all or part of a power of appointment; and

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

9 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
10 READ AS FOLLOWS:

11 A powerholder may release a power of appointment, in whole or in part, except to the  
12 extent the terms of the instrument creating the power prevent the release.

13 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
14 READ AS FOLLOWS:

15 A powerholder of a releasable power of appointment may release the power in whole or  
16 in part:

17 (1) By substantial compliance with a method provided in the terms of the instrument  
18 creating the power; or

19 (2) If the terms of the instrument creating the power do not provide a method or the  
20 method provided in the terms of the instrument is not expressly made exclusive,  
21 by a record manifesting the powerholder's intent by clear and convincing  
22 evidence.

23 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
24 READ AS FOLLOWS:

25 A powerholder may revoke or amend a release of a power of appointment only to the  
26 extent that:

27 (1) The instrument of release is revocable by the powerholder; or

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

3 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
4 READ AS FOLLOWS:

5 A powerholder of a presently exercisable power of appointment may contract:

6 (1) Not to exercise the power; or

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

9 ➔SECTION 30. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
10 READ AS FOLLOWS:

11 A powerholder of a power of appointment that is not presently exercisable may  
12 contract to exercise or not to exercise the power only if the powerholder:

13 (1) Is also the donor of the power; and

14 (2) Has reserved the power in a revocable trust.

15 ➔SECTION 31. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
16 READ AS FOLLOWS:

17 The remedy for a powerholder's breach of a contract to appoint or not to appoint is  
18 limited to damages payable out of the appointive property or, if appropriate, specific  
19 performance of the contract.

20 ➔SECTION 32. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
21 READ AS FOLLOWS:

22 (1) As used in this section, "power of appointment created by the powerholder"  
23 includes a power of appointment created in a transfer by another person to the  
24 extent the powerholder contributed value to the transfer.

25 (2) Appointive property subject to a general power of appointment created by the  
26 powerholder is subject to a claim of a creditor of the powerholder or of the  
27 powerholder's estate to the extent provided in KRS Chapter 378A.

1 (3) Subject to subsection (2) of this section, appointive property subject to a general  
 2 power of appointment created by the powerholder is not subject to a claim of a  
 3 creditor of the powerholder or the powerholder's estate to the extent the  
 4 powerholder irrevocably appointed the property in favor of a person other than  
 5 the powerholder or the powerholder's estate.

6 (4) Subject to subsections (2) and (3) of this section, and notwithstanding the  
 7 presence of a spendthrift provision or whether the claim arose before or after the  
 8 creation of the power of appointment, appointive property subject to a general  
 9 power of appointment created by the powerholder is subject to a claim of a  
 10 creditor of:

11 (a) The powerholder, to the same extent as if the powerholder owned the  
 12 appointive property, if the power is presently exercisable; and

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

16 ➔SECTION 33. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 17 READ AS FOLLOWS:

18 (1) Appointive property subject to a general power of appointment created by a  
 19 person other than the powerholder is not subject to a claim of a creditor of the  
 20 powerholder or the powerholder's estate.

21 (2) A power of appointment created by a person other than the powerholder which is  
 22 subject to an ascertainable standard relating to an individual's health, education,  
 23 support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or  
 24 2514(c)(1), as amended, is treated for purposes of this chapter as a nongeneral  
 25 power.

26 ➔SECTION 34. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 27 READ AS FOLLOWS:

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

4 (2) Appointive property subject to a nongeneral power of appointment is subject to a  
 5 claim of a creditor of the powerholder or the powerholder's estate to the extent  
 6 that the powerholder owned the property and, reserving the nongeneral power,  
 7 transferred the property in violation of KRS Chapter 378A.

8 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 9 READ AS FOLLOWS:

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

13 ➔SECTION 36. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 14 READ AS FOLLOWS:

15 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and  
 16 National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or  
 17 supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic  
 18 delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec.  
 19 7003(b).

20 ➔SECTION 37. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO  
 21 READ AS FOLLOWS:

22 (1) Except as otherwise provided in this chapter, on and after the effective date of  
 23 this Act:

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

26 (b) This chapter applies to a judicial proceeding concerning a power of  
 27 appointment commenced on or after the effective date of this Act;

1        (c) This chapter applies to a judicial proceeding concerning a power of  
2        appointment commenced before the effective date of this Act, unless the  
3        court finds that application of a particular provision of this chapter would  
4        substantially interfere with the effective conduct of the judicial proceeding  
5        or prejudice a right of a party, in which case the particular provision of this  
6        chapter does not apply and the superseded law applies;

7        (d) A rule of construction or presumption provided in this chapter applies to an  
8        instrument executed before the effective date of this Act, unless there is a  
9        clear indication of a contrary intent in the terms of the instrument; and

10       (e) An act done before the effective date of this Act is not affected by this  
11       chapter.

12       (2) If a right is acquired, extinguished, or barred on the expiration of a prescribed  
13       period that commenced under law of the Commonwealth other than this chapter,  
14       before the effective date of this Act, the law continues to apply to the right.

15       ➔Section 38. The following KRS sections are repealed:

16       386.095 Execution and delivery of releases of powers exercisable by deed, will or  
17       otherwise.

18       394.060 Devise or bequest extends to an execution of power.

19       394.070 Appointment by will in exercise of a power -- When valid.