

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 *As used in this chapter:*

- 6 *(1) "Appointee" means a person to whom a powerholder makes an appointment of*
7 *appointive property;*
- 8 *(2) "Appointive property" means the property or property interest subject to a power*
9 *of appointment;*
- 10 *(3) "Blanket-exercise clause" means a clause in an instrument which exercises a*
11 *power of appointment and is not a specific-exercise clause. The term includes a*
12 *clause that:*
- 13 *(a) Expressly uses the words "any power" in exercising any power of*
14 *appointment the powerholder has;*
- 15 *(b) Expressly uses the words "any property" in appointing any property over*
16 *which the powerholder has a power of appointment; or*
- 17 *(c) Disposes of all property subject to disposition by the powerholder;*
- 18 *(4) "Donor" means a person who creates a power of appointment;*
- 19 *(5) "Exclusionary power of appointment" means a power of appointment exercisable*
20 *in favor of any one (1) or more of the permissible appointees to the exclusion of*
21 *the other permissible appointees;*
- 22 *(6) "General power of appointment" means a power of appointment exercisable in*
23 *favor of the powerholder, the powerholder's estate, a creditor of the powerholder,*
24 *or a creditor of the powerholder's estate;*
- 25 *(7) "Gift-in-default clause" means a clause identifying a taker in default of*
26 *appointment;*
- 27 *(8) "Impermissible appointee" means a person who is not a permissible appointee;*

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

1 power of appointment; and

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

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

8 Unless the terms of the instrument creating a power of appointment manifest a
 9 contrary intent:

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

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

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

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

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

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

22 (a) The instrument creating the power:

23 1. Is valid under applicable law; and

24 2. Except as otherwise provided in subsection (2) of this section,
 25 transfers the appointive property; and

26 (b) The terms of the instrument creating the power manifest the donor's intent
 27 to create, in a powerholder, a power of appointment over the appointive

1 property exercisable in favor of a permissible appointee.

2 (2) Subsection (1)(a)2. of this section does not apply to the creation of a power of
3 appointment by the exercise of a power of appointment.

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

5 (4) Subject to an applicable rule against perpetuities, a power of appointment may be
6 created in an unborn or unascertained powerholder.

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

9 A powerholder may not transfer a power of appointment. If the powerholder dies
10 without exercising or releasing the power, the power lapses.

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

13 Subject to Section 8 of this Act, and unless the terms of the instrument creating a
14 power of appointment manifest a contrary intent, the power is:

15 (1) Presently exercisable;

16 (2) Exclusionary; and

17 (3) Except as otherwise provided in Section 7 of this Act, general.

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

20 Unless the terms of the instrument creating a power of appointment manifest a
21 contrary intent, the power is nongeneral if:

22 (1) The power is exercisable only at the powerholder's death; and

23 (2) The permissible appointees of the power are a defined and limited class that does
24 not include the powerholder's estate, the powerholder's creditors, or the creditors
25 of the powerholder's estate.

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

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

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

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

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

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

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

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

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

18 A power of appointment is exercised only:

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

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

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

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

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

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

27 (1) As used in this section:

1 (a) "Residuary clause" does not include a residuary clause containing a
 2 blanket-exercise clause or a specific-exercise clause; and

3 (b) "Will" includes a codicil and a testamentary instrument that revises
 4 another will.

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

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

10 (b) The power is a general power exercisable in favor of the powerholder's
 11 estate;

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

13 (d) The powerholder did not release the power.

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

16 Unless the terms of the instrument exercising a power of appointment manifest a
 17 contrary intent:

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

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

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

25 A powerholder's substantial compliance with a formal requirement of an appointment
 26 imposed by the donor, including a requirement that the instrument exercising the
 27 power of appointment make reference or specific reference to the power, is sufficient

1 if:

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

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

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

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

11 (2) A powerholder of a general power of appointment that permits appointment only
 12 to the creditors of the powerholder or of the powerholder's estate is restricted to
 13 appointing to those creditors.

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

16 (a) Make an appointment in any form, including an appointment in trust, in
 17 favor of a permissible appointee;

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

19 (c) Create a nongeneral power in any permissible appointee to appoint to such
 20 persons as the powerholder chooses, including persons who are not
 21 permissible appointees of the original nongeneral power.

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

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

25 (2) Unless the terms of the instrument creating a power of appointment manifest a
 26 contrary intent, a powerholder of a nongeneral power may exercise the power in
 27 favor of, or create a new power of appointment in, a descendant of a deceased

1 permissible appointee whether or not the descendant is described by the donor as
 2 a permissible appointee.

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

5 (1) Except as provided in Section 15 of this Act, an exercise of a power of
 6 appointment in favor of an impermissible appointee is ineffective.

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

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

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

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

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

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

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

22 (a) Passes to:

23 1. The powerholder if the powerholder is a permissible appointee and
 24 living; or

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

27 (b) If there is no taker under paragraph (a) of this subsection, passes under a

1 reversionary interest to the donor or the donor's transferee or successor in
 2 interest.

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

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

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

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

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

11 1. The powerholder if the powerholder is a permissible appointee and
 12 living; or

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

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

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

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

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

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

26 (a) Passes to the permissible appointees if:

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

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

3 *As provided in KRS 394.035 and 394.610 to 394.670:*

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

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

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

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

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

13 *A powerholder of a releasable power of appointment may release the power in whole or*
14 *in part:*

15 *(1) By substantial compliance with a method provided in the terms of the instrument*
16 *creating the power; or*

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

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

23 *A powerholder may revoke or amend a release of a power of appointment only to the*
24 *extent that:*

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

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

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

3 *A powerholder of a presently exercisable power of appointment may contract:*

4 *(1) Not to exercise the power; or*

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

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

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

11 *(1) Is also the donor of the power; and*

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

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

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

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

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

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

26 *(3) Subject to subsection (2) of this section, appointive property subject to a general*
27 *power of appointment created by the powerholder is not subject to a claim of a*

1 creditor of the powerholder or the powerholder's estate to the extent the
 2 powerholder irrevocably appointed the property in favor of a person other than
 3 the powerholder or the powerholder's estate.

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

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

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

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

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

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

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

26 (1) Except as otherwise provided in subsection (2) of this section, appointive property
 27 subject to a nongeneral power of appointment is exempt from a claim of a

1 creditor of the powerholder or the powerholder's estate.

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

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

8 In applying and construing the Kentucky Uniform Powers of Appointment Act,
9 consideration shall be given to the need to promote uniformity of the law with respect
10 to its subject matter among states that enact it.

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

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

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

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

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

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

26 (c) This chapter applies to a judicial proceeding concerning a power of
27 appointment commenced before the effective date of this Act, unless the

1 *court finds that application of a particular provision of this chapter would*
 2 *substantially interfere with the effective conduct of the judicial proceeding*
 3 *or prejudice a right of a party, in which case the particular provision of this*
 4 *chapter does not apply and the superseded law applies;*

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

8 *(e) An act done before the effective date of this Act is not affected by this*
 9 *chapter.*

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

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

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

16 ➔Section 38. KRS 381.225 is amended to read as follows:

17 (1) (a) A future interest or trust is void if it suspends the power of alienation for
 18 longer than the permissible period. The power of alienation is the power to
 19 convey to another an absolute fee in possession of land, or full ownership of
 20 personalty. The permissible period is within twenty-one (21) years after the
 21 death of an individual or individuals then alive.

22 (b) If the settlor of an inter vivos trust has an unlimited power to revoke, the
 23 permissible period is computed from the termination of that power.

24 (c) If a future property interest or trust is created by exercise of a power of
 25 appointment, the permissible period is computed from the time the power is
 26 exercised if the power is a general power exercisable in favor of the donee, the
 27 donee's estate, the donee's creditors, or the creditors of the donee's estate,

1 whether or not it is exercisable in favor of others, and even if the general
2 power is exercisable only by will; in the case of other powers, the permissible
3 period is computed from the time the power is created, unless the instrument
4 exercising the power provides that the period is computed from the date the
5 power is irrevocably exercised, but facts at the time the power is exercised are
6 considered in determining whether the power of alienation is suspended
7 beyond the death of an individual or individuals alive at the time of creation of
8 the power plus twenty-one (21) years.

9 (2) The power of alienation is suspended when there are no persons who, alone or in
10 combination with others, can convey an absolute fee in possession of land, or full
11 ownership of personalty.

12 (3) There is no suspension of the power of alienation by a trust or by equitable interests
13 under a trust if the trustee has power to sell, either expressed or implied, or if there
14 is a power to terminate the trust by distributing the property subject to the trust to
15 the beneficiaries in fee simple in one (1) or more persons then living.

16 (4) This section does not apply to limit any of the following:

17 (a) Transfers, outright or in trust, for charitable purposes;

18 (b) Transfers to one (1) or more charitable organizations as described in 26
19 U.S.C. secs. 170(c), 2055(a), and 2522(a), or any similar statute;

20 (c) A future interest or a power of appointment arising out of a nondonative
21 transfer, except a nonvested property interest or a power of appointment
22 arising out of:

23 1. A premarital or post-marital agreement;

24 2. A separation or divorce settlement;

25 3. An arrangement similar to subparagraph 1. or 2. of this paragraph arising
26 out of a prospective, existing, or previous marital relationship between
27 the parties;

- 1 4. A contract to make or revoke a will or trust;
- 2 5. A contract to exercise or not to exercise a power of appointment;
- 3 6. A transfer in satisfaction of a duty of support; or
- 4 7. A reciprocal transfer;
- 5 (d) A transfer to a trust or other property arrangement forming part of a pension,
- 6 profit-sharing, stock bonus, health, disability, death benefit, income deferral,
- 7 or other current or deferred benefit plan for one (1) or more employees,
- 8 independent contractors, or their beneficiaries or spouses, to which
- 9 contributions are made for the purposes of distributing to or for the benefit of
- 10 the participants or their beneficiaries or spouses the property, income, or
- 11 principal in the trust or other property arrangement; or
- 12 (e) A property interest, power of appointment, or arrangement that was not
- 13 subject to the common law rule against perpetuities or is excluded by another
- 14 statute of this Commonwealth.

15 ➔Section 39. KRS 381.226 is amended to read as follows:

- 16 (1) Except as provided in subsection (2) of this section, KRS 381.224 and 381.225 shall
- 17 apply to:
- 18 (a) A future property interest or a power of appointment that is created on or after
- 19 July 15, 2010, including a property interest or power of appointment created
- 20 pursuant to the exercise of a power of appointment under an instrument
- 21 executed prior to July 15, 2010; or
- 22 (b) A future property interest or a power of appointment:
- 23 1. That is created pursuant to the laws of any state that does not have a rule
- 24 against perpetuities in force;
- 25 2. That is not covered by any previously existing rule against perpetuities;
- 26 and
- 27 3. To which, after July 15, 2010, the laws of this state are made applicable

1 by transfer of the situs of a trust to Kentucky, by a change in the law
2 governing a trust instrument to Kentucky law, or otherwise.

3 (2) With respect to a nonvested property interest or a power of appointment created
4 either before or after July 15, 2010, which is determined in a judicial proceeding
5 commenced on or after July 15, 2010, to violate Kentucky's rule against perpetuities
6 as that rule existed at the time the interest or power was created, a court upon the
7 petition of an interested person may reform the disposition in the manner that most
8 closely approximates the transferor's manifested plan of disposition and is within
9 the limits of the rule against perpetuities applicable when the nonvested property
10 interest or power of appointment was created.

11 (3) For purposes of this section only, a future property interest or a power of
12 appointment is created when the power is irrevocably exercised or when a revocable
13 exercise becomes irrevocable.

14 (4) An instrument which contains a provision requiring the vesting of all interests
15 created by the instrument within the period provided by the common law rule
16 against perpetuities shall be construed as requiring the interests to vest within the
17 period specified by this section and KRS 381.224 and 381.225, unless the provision
18 is determined by a court to have been included in the instrument for reasons other
19 than protecting the interest against a violation of the common law rule against
20 perpetuities. For purposes of this subsection, the term "common law rule against
21 perpetuities" shall include KRS 381.215, 381.216, and 381.217 prior to their repeal
22 on July 15, 2010. **This subsection does not apply to any interest in property
23 created by the exercise of the special power of appointment granted by an
24 instrument that was irrevocable on September 25, 1985.**

25 ➔Section 40. The following KRS sections are repealed:

26 386.095 Execution and delivery of releases of powers exercisable by deed, will or
27 otherwise.

- 1 394.060 Devise or bequest extends to an execution of power.
- 2 394.070 Appointment by will in exercise of a power -- When valid.