

TITLE 25: CHAPTER 5.

§ 501. Powers of appointment; effect of rule against perpetuities 199
§ 502. Release of powers of appointment..... 199
§ 503. Rule against perpetuities.....200
§ 504. Certain powers of appointment 202
§ 505. Exercise of powers of appointment..... 202
§ 506. Rule against accumulations203

§ 501. Powers of appointment; effect of rule against perpetuities.

Every estate or interest in property, real or personal, created through the exercise, by will, deed or other instrument, of a power of appointment, irrespective of:

- (1) Whether such power is limited or unlimited as to appointees;
- (2) The manner in which such power was created or may be exercised;
- (3) Whether such power was created before or after the passage of this section,

shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or accumulations now in effect or hereafter enacted be deemed to have been created at the time of the exercise and not at the time of the creation of such power of appointment. No such estate or interest shall be void on account of any such rule unless the estate or interest would have been void had it been created at the date of the exercise of such power of appointment otherwise than through the exercise of a power of appointment. (Code 1915, § 3907(a); 38 Del. Laws, c. 198; Code 1935, § 4414; 25 Del. C. 1953, § 501.)

§ 502. Release of powers of appointment.

(a) Any power which is exercisable by deed, by will, by deed or will, or otherwise, whether general or special, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the grantee and delivered as provided in this section.

(b) A power which is releasable may be released with respect to the whole or any part of the property subject to such power and may also be released 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. No release of a power shall be deemed to make imperative a power which was not imperative prior to such release, unless the instrument of release expressly so provides.

(c) A release of a power of appointment may be delivered to:

- (1) Any person specified for such purpose in the instrument creating the power;
- (2) Any trustee of the property to which the power relates;

(3) Any person, other than the grantee, who could be adversely affected by an exercise of the power;

(4) The recorder in any county and when so filed the recorder shall record the release in a separate docket, but any such release, recorded in any county record prior to April 7, 1947, shall be deemed to be sufficient delivery within the provisions of this section.

(d) This section shall apply to releases heretofore and hereafter executed, but nothing herein contained shall be deemed to affect the validity of any release heretofore executed. (Code 1935, § 4414a; 46 Del. Laws, c. 207, § 1; 25 Del. C. 1953, § 502.)

§ 503. Rule against perpetuities.

(a) No interest created in real property held in trust shall be void by reason of the common-law rule against perpetuities or any common-law rule limiting the duration of noncharitable purpose trusts, and no interest created in personal property held in trust shall be void by reason of any rule, whether the common-law rule against perpetuities, any common-law rule limiting the duration of noncharitable purpose trusts, or otherwise.

(b) In this State, the rule against perpetuities for real property held in trust is that at the expiration of 110 years from the later of the date on which a parcel of real property or an interest in real property is added to or purchased by a trust or the date the trust became irrevocable, such parcel or interest, if still held in such trust, shall be distributed in accordance with the trust instrument regarding distribution of such property upon termination of the trust as though termination occurred at that time, or if no such provisions exist, to the persons then entitled to receive the income of the trust in proportion to the amount of the income so receivable by such beneficiaries, or in equal shares if specific proportions are not specified in the trust instrument. In the event that the trust instrument does not provide for distribution upon termination and there are no income beneficiaries of the trust, such parcel or interest shall be distributed to such then living persons who are then determined to be the trustor's or testator's distributees by the application of the intestacy laws of this State then in effect governing the distribution of intestate real property as though the trustor or testator had died at that particular time, intestate, a resident of this State, and owning the property so distributable.

This rule shall not apply to the following trusts, all of which may be perpetual:

(1) A trust for the benefit of 1 or more charitable organizations as described in §§ 170(c), 2055(a) and 2522(a) of the United States Internal Revenue Code of 1986 (Title 26 of the United States Code) [26 U.S.C. §§ 170(c), 2055(a) and 2522(a)], or under any similar statute;

(2) A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan or profit sharing plan for the exclusive benefit of some or all of its employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund held in trust;

(3) A statutory trust formed under Chapter 38 of Title 12 for which a certificate of statutory trust is on file in the office of the Secretary of State; or

(4) A trust of real or personal property created for the perpetual care of cemeteries pursuant to the provisions of subchapter IV of Chapter 35 of Title 12.

(c) For purposes of this rule against perpetuities, trusts created by the exercise of a power of appointment, whether limited or general, and whether by will, deed or other instrument, shall be deemed to have become irrevocable by the trustor or testator on the date on which such exercise became irrevocable. Donors, not donees, of limited powers of appointment and donees exercising, not donors of, general powers of appointment, shall be deemed the trustors or testators for purposes of distributions to the trustor's or testator's distributees pursuant to subsection (b) of this section. Notwithstanding the foregoing, in the case of a power of appointment described in § 504 of this title as a "first power," trusts created by the exercise of the power of appointment, whether by will, deed or other instrument, shall be deemed to have become irrevocable by the trustor or testator on the date on which the first power was created.

(d) The rule contained in this section is subject to §§ 501 and 502 of this title concerning powers of appointment.

(e) For purposes of this section, real property does not include any intangible personal property such as an interest in a corporation, limited liability company, partnership, statutory trust, business trust or other entity, regardless of whether such entity is the owner of real property or any interest therein. If a trust owns an interest in an entity described in the preceding sentence and the entity is the owner of real property, but the entity ceases to exist so that the trust becomes the owner of any interest in such real property, the trust shall not become void or subject to termination by reason of the common-law rule against perpetuities or other similar rule, and except as otherwise provided in the governing instrument, the trustee may either distribute the interest in real property in accordance with subsection (b) of this section or convey the interest in real property to another such entity in exchange for an interest in the entity to be held as before.

45 Del. Laws, c. 224, § 1; 25 Del. C. 1953, § 503; 65 Del. Laws, c. 422,

§ 8; 68 Del. Laws, c. 404, § 1; 70 Del. Laws, c. 164, §§ 1-3; 70 Del. Laws, c. 538, § 1; 72 Del. Laws, c. 385, § 1; 72 Del. Laws, c. 397, § 1; 73 Del. Laws, c. 329, §§ 68, 69; 76 Del. Laws, c. 254, § 16.; 78 Del. Laws, c. 117, § 18.;

§ 504. Certain powers of appointment.

Notwithstanding any other provision of this chapter, in the case of a power of appointment over property held in trust (the “first power”), if the trust is not subject to, or has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers imposed pursuant to Chapter 13 of the Internal Revenue Code [26 U.S.C. Ch. 13] or any successor provision thereto and the first power may not be exercised in favor of the donee, the donee’s creditors, the donee’s estate or the creditors of the donee’s estate, then every estate or interest in property, real or personal, created through the exercise, by will, deed or other instrument, of the first power, irrespective of:

(1) The manner in which the first power was created or may be exercised, or

(2) Whether the first power was created before or after the passage of this section,

shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or accumulations now in effect or hereafter enacted, be deemed to have been created at the time of the creation of, and not at the time of the exercise of, the first power. For purposes of applying the foregoing rule, if any part of an estate or interest in property created through the exercise of the first power includes another power of appointment (the “second power”), then the second power of appointment and any estate or interest in property (including additional powers of appointment) created through the exercise of the second power shall be deemed to have been created at the time of the creation of the first power.

72 Del. Laws, c. 397, § 2.;

§ 505. Exercise of powers of appointment.

If the instrument creating a power of appointment, whether limited or general, does not expressly manifest a contrary intent of the donor, the donee of such a power, in addition to exercising the power in any other manner permitted by law and the instrument creating the power, may effectively appoint all or a portion of the assets, subject to such power to a trustee or trustees for the benefit of 1 or more objects of the power and may, in addition, create in an object of the power a general power of appointment, exercisable during life or at death, over assets subject to the original power or a limited power of appointment, exercisable during life or

at death, to appoint such assets among objects all of whom are objects of the original power.

74 Del. Laws, c. 102, § 2.;

§ 506. Rule against accumulations.

No provision directing or authorizing accumulation of trust income shall be invalid.

74 Del. Laws, c. 102, § 3.;