

PROPERTY CODE

TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

SUBTITLE C. POWERS OF APPOINTMENT

CHAPTER 181. POWERS OF APPOINTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. In this chapter:

(1) "Donee" means a person, whether or not a resident of this state, who, either alone or in conjunction with others, may exercise a power.

(1-a) "Object of the power of appointment" means a person to whom the donee is given the power to appoint.

(2) "Power" means the authority to appoint or designate the recipient of property, to invade or consume property, to alter, amend, or revoke an instrument under which an estate or trust is created or held, and to terminate a right or interest under an estate or trust, and any authority remaining after a partial release of a power.

(3) "Property" means all property and interests in property, real or personal, including parts of property, partial interests, and all or any part of the income from property.

(4) "Release" means a renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release, including a covenant not to exercise all or part of a power.

Acts 1983, 68th Leg., p. 3723, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 551, Sec. 1, eff. Sept. 1, 2003.

Sec. 181.002. APPLICATION. (a) Except as provided by Subsection (b), this chapter applies:

(1) to a power or a release of a power, regardless of the date the power is created;

(2) to a vested, contingent, or conditional power;
and

(3) to a power classified as a power in gross, a power

appurtenant, a power appendant, a collateral power, a general, limited, or special power, an exclusive or nonexclusive power, or any other power.

(b) This chapter applies regardless of the time or manner a power is created or reserved or the release is made and regardless of the time, manner, or in whose favor a power may be exercised.

(c) This chapter does not apply to a power in trust that is imperative.

Acts 1983, 68th Leg., p. 3723, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.003. CHAPTER NOT EXCLUSIVE. The provisions of this chapter concerning the release of a power are not exclusive.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.004. CONSTRUCTION. This chapter is intended to be declarative of the common law of this state, and it shall be liberally construed to make all powers, except imperative powers in trust, releasable unless the instrument creating the trust expressly provides otherwise.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

Sec. 181.051. AUTHORITY OF DONEE TO RELEASE POWER. Unless the instrument creating the power specifically provides to the contrary, a donee may at any time:

- (1) completely release the power;
- (2) release the power as to any property subject to the power;
- (3) release the power as to a person in whose favor a power may be exercised; or
- (4) limit in any respect the extent to which the power may be exercised.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.052. REQUISITES OF RELEASE. (a) A partial or complete release of a power, with or without consideration, is

valid if the donee executes and acknowledges, in the manner required by law for the execution and recordation of deeds, an instrument evidencing an intent to make the release, and the instrument is delivered:

(1) to the person or in the manner specified in the instrument creating the power;

(2) to an adult, other than the donee releasing the power, who may take any of the property subject to the power if the power is not exercised or in whose favor it may be exercised after the partial release;

(3) to a trustee or cotrustee of the property subject to the power; or

(4) to an appropriate county clerk for recording.

(b) An instrument releasing a power may be recorded in a county in this state in which:

(1) property subject to the power is located;

(2) a donee in control of the property resides;

(3) a trustee in control of the property resides;

(4) a corporate trustee in control of the property has its principal office; or

(5) the instrument creating the power is probated or recorded.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.053. RELEASE BY GUARDIAN. If a person under a disability holds a power, the guardian of the person's estate may release the power in the manner provided in this chapter on the order of the court in this state in which the guardian was appointed or in which the guardianship proceeding is pending.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.054. EFFECT OF RELEASE ON MULTIPLE DONEES. Unless the instrument creating a power provides otherwise, the complete or partial release by one or more donees of a power that may be exercised by two or more donees, either as an individual or a fiduciary, together or successively, does not prevent or limit the exercise or participation in the exercise of the power by the other

donee or donees.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.055. NOTICE OF RELEASE. (a) A fiduciary or other person in possession or control of property subject to a power, other than the donee, does not have notice of a release of the power until the original release or a copy is delivered to the fiduciary or other person.

(b) A purchaser, lessee, or mortgagee of real property subject to a power who has paid a valuable consideration and who is without actual notice does not have notice of a release of the power until the instrument releasing the power is filed for record with the county clerk of the county in which the real property is located.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.056. RECORDING. (a) A county clerk shall record a release of a power in the county deed records, and the clerk shall index the release, with the name of the donee entered in the grantor index.

(b) The county clerk shall charge the same fee for recording the release of a power as the clerk is authorized to charge for recording a deed.

Acts 1983, 68th Leg., p. 3726, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.057. EFFECT OF FAILURE TO DELIVER OR FILE. Failure to deliver or file an instrument releasing a power under Sections [181.052](#) and [181.055](#) does not affect the validity of the release as to the donee, the person in whose favor the power may be exercised, or any other person except those expressly protected by Sections [181.052](#) and [181.055](#).

Acts 1983, 68th Leg., p. 3726, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.058. RESTRAINTS ON ALIENATION OR ANTICIPATION. The release of a power that otherwise may be released is not prevented merely by provisions of the instrument creating the power that restrain alienation or anticipation.

SUBCHAPTER C. EXERCISE OF POWERS OF APPOINTMENT

Sec. 181.081. EXTENT OF POWER. Unless an instrument creating a power expressly provides to the contrary, a donee may exercise a power in any manner consistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.

Sec. 181.082. GENERAL EXERCISE. In exercising a power, a donee may make an appointment:

(1) of present, future, or present and future interests;

(2) with conditions and limitations;

(3) with restraints on alienation;

(4) of interests to a trustee for the benefit of one or more objects of the power; and

(5) that creates any right existing under common law.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.

Sec. 181.083. CREATING ADDITIONAL POWERS. (a) In exercising a power, a donee may make appointments that create in the objects of the power additional powers of appointment. The additional powers of appointment must be exercisable in favor of objects of the power who would have been permissible objects under the original donee's power.

(b) In exercising a power, a donee who may appoint outright to an object of the power may make appointments that create in the object of the power powers exercisable in favor of persons that the original donee may direct, even though the objects of the secondary power of appointment may not have been permissible objects of the original donee's power.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.