



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB4702

by Rep. Michael Halpin

#### SYNOPSIS AS INTRODUCED:

New Act

755 ILCS 5/2-7

from Ch. 110 1/2, par. 2-7

755 ILCS 5/4-2 rep.

765 ILCS 320/Act rep.

765 ILCS 325/Act rep.

Creates the Uniform Powers of Appointment Act. Defines terms. Adds provisions concerning: governing law, common law and principles of equity; creation of power of appointment; nontransferability; presumption of unlimited authority; rules of classification; power to revoke or amend; requisites for exercise of power of appointment; intent to exercise; donor-imposed formal requirements; permissible appointment; the selective allocation doctrine; the capture doctrine; disposition of unappointed property; appointment to taker in default; the powerholder's authority to revoke or amend exercise; disposition of trust property subject to power; disclaimer; release; power to contract; creditor claims; and other matters. Makes corresponding changes in the Probate Act of 1975. Repeals the Power of Appointment Exercise Act and the Termination of Powers Act.

LRB100 13197 HEP 30845 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Article 1. General provisions.

5 Section 101. Short title. This Act may be cited as the  
6 Uniform Powers of Appointment Act.

7 Section 102. Definitions. In this Act:

8 (1) "Appointee" means a person to which a powerholder makes  
9 an appointment of appointive property.

10 (2) "Appointive property" means the property or property  
11 interest subject to a power of appointment.

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

15 (A) expressly uses the words "any power" in exercising  
16 any power of appointment the powerholder has;

17 (B) expressly uses the words "any property" in  
18 appointing any property over which the powerholder has a  
19 power of appointment; or

20 (C) disposes of all property subject to disposition by  
21 the powerholder.

22 (4) "Donor" means a person that creates a power of

1 appointment.

2 (5) "Exclusionary power of appointment" means a power of  
3 appointment exercisable in favor of any one or more of the  
4 permissible appointees to the exclusion of the other  
5 permissible appointees.

6 (6) "General power of appointment" means a power of  
7 appointment exercisable in favor of a powerholder, the  
8 powerholder's estate, a creditor of the powerholder, or a  
9 creditor of the powerholder's estate.

10 (7) "Gift-in-default clause" means a clause identifying a  
11 taker in default of appointment.

12 (8) "Impermissible appointee" means a person that is not a  
13 permissible appointee.

14 (9) "Instrument" means a writing.

15 (10) "Nongeneral power of appointment" means a power of  
16 appointment that is not a general power of appointment.

17 (11) "Permissible appointee" means a person in whose favor  
18 a powerholder may exercise a power of appointment.

19 (12) "Person" means an individual, estate, business or  
20 nonprofit entity, public corporation, government or  
21 governmental subdivision, agency, or instrumentality, or other  
22 legal entity.

23 (13) "Power of appointment" means a power that enables a  
24 powerholder acting in a nonfiduciary capacity to designate a  
25 recipient of an ownership interest in or another power of  
26 appointment over the appointive property. The term does not

1 include a power of attorney.

2 (14) "Powerholder" means a person in which a donor creates  
3 a power of appointment.

4 (15) "Presently exercisable power of appointment" means a  
5 power of appointment exercisable by the powerholder at the  
6 relevant time. The term:

7 (A) includes a power of appointment exercisable only  
8 after the occurrence of a specified event, the satisfaction  
9 of an ascertainable standard, or the passage of a specified  
10 time only after:

11 (i) the occurrence of the specified event;

12 (ii) the satisfaction of the ascertainable  
13 standard; or

14 (iii) the passage of the specified time; and

15 (B) does not include a power exercisable only at the  
16 powerholder's death.

17 (16) "Record" means information that is inscribed on a  
18 tangible medium or that is stored in an electronic or other  
19 medium and is retrievable in perceivable form.

20 (17) "Specific-exercise clause" means a clause in an  
21 instrument which specifically refers to and exercises a  
22 particular power of appointment.

23 (18) "Taker in default of appointment" means a person that  
24 takes part or all of the appointive property to the extent the  
25 powerholder does not effectively exercise the power of  
26 appointment.

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

6 Section 103. Governing law. Unless the terms of the  
7 instrument creating a power of appointment manifest a contrary  
8 intent:

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

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

16 Section 104. Common law and principles of equity. The  
17 common law and principles of equity supplement this Act, except  
18 to the extent modified by this Act or law of this State other  
19 than this Act.

20 Article 2. Creation, revocation, and amendment of power of  
21 appointment.

22 Section 201. Creation of power of appointment.

- 1 (a) A power of appointment is created only if:
- 2 (1) the instrument creating the power:
- 3 (A) is valid under applicable law; and
- 4 (B) except as otherwise provided in subsection
- 5 (b), transfers the appointive property; and
- 6 (2) the terms of the instrument creating the power
- 7 manifest the donor's intent to create, in a powerholder, a
- 8 power of appointment over the appointive property
- 9 exercisable in favor of a permissible appointee.
- 10 (b) Subdivision (a) (1) (B) of this Section does not apply to
- 11 the creation of a power of appointment by the exercise of a
- 12 power of appointment.
- 13 (c) A power of appointment may not be created in a deceased
- 14 individual.
- 15 (d) Subject to an applicable rule against perpetuities, a
- 16 power of appointment may be created in an unborn or
- 17 unascertained powerholder.

18 Section 202. Nontransferability. A powerholder may not

19 transfer a power of appointment. If the powerholder dies

20 without exercising or releasing the power, the power lapses.

21 Section 203. Presumption of unlimited authority. Subject

22 to Section 205, and unless the terms of the instrument creating

23 a power of appointment manifest a contrary intent, the power

24 is:

- 1           (1) presently exercisable;
- 2           (2) exclusionary; and
- 3           (3) except as otherwise provided in Section 204,
- 4           general.

5           Section 204. Exception to presumption of unlimited  
6           authority. Unless the terms of the instrument creating a power  
7           of appointment manifest a contrary intent, the power is  
8           nongeneral if:

- 9           (1) the power is exercisable only at the powerholder's  
10          death; and
- 11          (2) the permissible appointees of the power are a  
12          defined and limited class that does not include the  
13          powerholder's estate, the powerholder's creditors, or the  
14          creditors of the powerholder's estate.

15          Section 205. Rules of classification.

16          (a) In this Section, "adverse party" means a person with a  
17          substantial beneficial interest in property which would be  
18          affected adversely by a powerholder's exercise or nonexercise  
19          of a power of appointment in favor of the powerholder, the  
20          powerholder's estate, a creditor of the powerholder, or a  
21          creditor of the powerholder's estate.

22          (b) If a powerholder may exercise a power of appointment  
23          only with the consent or joinder of an adverse party, the power  
24          is nongeneral.

1 (c) If the permissible appointees of a power of appointment  
2 are not defined and limited, the power is exclusionary.

3 Section 206. Power to revoke or amend. A donor may revoke  
4 or amend a power of appointment only to the extent that:

5 (1) the instrument creating the power is revocable by  
6 the donor; or

7 (2) the donor reserves a power of revocation or  
8 amendment in the instrument creating the power of  
9 appointment.

10 Article 3. Exercise of power of appointment.

11 Section 301. Requisites for exercise of power of  
12 appointment. A power of appointment is exercised only:

13 (1) if the instrument exercising the power is valid  
14 under applicable law;

15 (2) if the terms of the instrument exercising the  
16 power:

17 (A) manifest the powerholder's intent to exercise  
18 the power; and

19 (B) subject to Section 304, satisfy the  
20 requirements of exercise, if any, imposed by the donor;  
21 and

22 (3) to the extent the appointment is a permissible  
23 exercise of the power.



1           Section 302. Intent to exercise: determining intent from  
2 residuary clause.

3           (a) In this Section:

4                 (1) "Residuary clause" does not include a residuary  
5 clause containing a blanket-exercise clause or a  
6 specific-exercise clause.

7                 (2) "Will" includes a codicil and a testamentary  
8 instrument that revises another will.

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

13                 (1) the terms of the instrument containing the  
14 residuary clause do not manifest a contrary intent;

15                 (2) the power is a general power exercisable in favor  
16 of the powerholder's estate;

17                 (3) there is no gift-in-default clause or it is  
18 ineffective; and

19                 (4) the powerholder did not release the power.

20           Section 303. Intent to exercise: after-acquired power.  
21 Unless the terms of the instrument exercising a power of  
22 appointment manifest a contrary intent:

23                 (1) except as otherwise provided in paragraph (2), a  
24 blanket-exercise clause extends to a power acquired by the

1 powerholder after executing the instrument containing the  
2 clause; and

3 (2) if the powerholder is also the donor of the power,  
4 the clause does not extend to the power unless there is no  
5 gift-in-default clause or it is ineffective.

6 Section 304. Substantial compliance with donor-imposed  
7 formal requirement. A powerholder's substantial compliance  
8 with a formal requirement of an appointment imposed by the  
9 donor, including a requirement that the instrument exercising  
10 the power of appointment make reference or specific reference  
11 to the power, is sufficient if:

12 (1) the powerholder knows of and intends to exercise  
13 the power; and

14 (2) the powerholder's manner of attempted exercise of  
15 the power does not impair a material purpose of the donor  
16 in imposing the requirement.

17 Section 305. Permissible appointment.

18 (a) A powerholder of a general power of appointment that  
19 permits appointment to the powerholder or the powerholder's  
20 estate may make any appointment, including an appointment in  
21 trust or creating a new power of appointment, that the  
22 powerholder could make in disposing of the powerholder's own  
23 property.

24 (b) A powerholder of a general power of appointment that

1 permits appointment only to the creditors of the powerholder or  
2 of the powerholder's estate is restricted to appointing to  
3 those creditors.

4 (c) Unless the terms of the instrument creating a power of  
5 appointment manifest a contrary intent, the powerholder of a  
6 nongeneral power may:

7 (1) make an appointment in any form, with any  
8 conditions and limitations, including an appointment in  
9 trust to any trustee, in favor of a permissible appointee;

10 (2) create a general or nongeneral power in a  
11 permissible appointee that may be exercisable in favor of  
12 persons other than permissible appointees of the original  
13 nongeneral power; or

14 (3) create a nongeneral power in any person to appoint  
15 to one or more of the permissible appointees of the  
16 original nongeneral power.

17 Section 306. Appointment to deceased appointee. Subject to  
18 Section 4-11 of the Probate Act of 1975, an appointment to a  
19 deceased appointee is ineffective.

20 Section 307. Impermissible appointment.

21 (a) Except as otherwise provided in Section 306, an  
22 exercise of a power of appointment in favor of an impermissible  
23 appointee is ineffective.

24 (b) An exercise of a power of appointment in favor of a

1 permissible appointee is ineffective to the extent the  
2 appointment is a fraud on the power.

3 Section 308. Selective allocation doctrine. If a  
4 powerholder exercises a power of appointment in a disposition  
5 that also disposes of property the powerholder owns, the owned  
6 property and the appointive property must be allocated in the  
7 permissible manner that best carries out the powerholder's  
8 intent.

9 Section 309. Capture doctrine: disposition of  
10 ineffectively appointed property under general power. To the  
11 extent a powerholder of a general power of appointment, other  
12 than a power to revoke, amend, or withdraw property from a  
13 trust, makes an ineffective appointment:

14 (1) the gift-in-default clause controls the  
15 disposition of the ineffectively appointed property; or

16 (2) if there is no gift-in-default clause or to the  
17 extent the clause is ineffective, the ineffectively  
18 appointed property:

19 (A) passes to:

20 (i) the powerholder if the powerholder is a  
21 permissible appointee and living; or

22 (ii) if the powerholder is an impermissible  
23 appointee or not living, the powerholder's estate  
24 if the estate is a permissible appointee; or

1           (B) if there is no taker under subparagraph (A),  
2           passes under a reversionary interest to the donor or  
3           the donor's transferee or successor in interest.

4           Section 310. Disposition of unappointed property under  
5           released or unexercised general power. To the extent a  
6           powerholder releases or fails to exercise a general power of  
7           appointment other than a power to revoke, amend, or withdraw  
8           property from a trust:

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

11          (2) if there is no gift-in-default clause or to the  
12          extent the clause is ineffective:

13               (A) except as otherwise provided in subparagraph  
14               (B), the unappointed property passes to:

15                       (i) the powerholder if the powerholder is a  
16                       permissible appointee and living; or

17                       (ii) if the powerholder is an impermissible  
18                       appointee or not living, the powerholder's estate  
19                       if the estate is a permissible appointee; or

20               (B) to the extent the powerholder released the  
21               power, or if there is no taker under subparagraph (A),  
22               the unappointed property passes under a reversionary  
23               interest to the donor or the donor's transferee or  
24               successor in interest.

1           Section 311. Disposition of unappointed property under  
2 released or unexercised nongeneral power. To the extent a  
3 powerholder releases, ineffectively exercises, or fails to  
4 exercise a nongeneral power of appointment:

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

7           (2) if there is no gift-in-default clause or to the extent  
8 the clause is ineffective, the unappointed property:

9           (A) passes to the permissible appointees if:

10           (i) the permissible appointees are defined and  
11 limited; and

12           (ii) the terms of the instrument creating the power  
13 do not manifest a contrary intent; or

14           (B) if there is no taker under subparagraph (A), passes  
15 under a reversionary interest to the donor or the donor's  
16 transferee or successor in interest.

17           Section 312. Disposition of unappointed property if  
18 partial appointment to taker in default. Unless the terms of  
19 the instrument creating or exercising a power of appointment  
20 manifest a contrary intent, if the powerholder makes a valid  
21 partial appointment to a taker in default of appointment, the  
22 taker in default of appointment may share fully in unappointed  
23 property.

24           Section 313. Appointment to taker in default. If a

1 powerholder of a general power makes an appointment to a taker  
2 in default of appointment and the appointee would have taken  
3 the property under a gift-in-default clause had the property  
4 not been appointed, the power of appointment is deemed not to  
5 have been exercised, and the appointee takes under the  
6 gift-in-default clause.

7 Section 314. Powerholder's authority to revoke or amend  
8 exercise. A powerholder may revoke or amend an exercise of a  
9 power of appointment only to the extent that:

10 (1) the powerholder reserves a power of revocation or  
11 amendment in the instrument exercising the power of  
12 appointment and, if the power is nongeneral, the terms of  
13 the instrument creating the power of appointment do not  
14 prohibit the reservation; or

15 (2) the terms of the instrument creating the power of  
16 appointment provide that the exercise is revocable or  
17 amendable.

18 Section 315. Disposition of trust property subject to  
19 power. In disposing of trust property subject to a power of  
20 appointment exercisable by an instrument other than a will, a  
21 trustee acting in good faith shall have no liability to any  
22 appointee or taker in default of appointment for relying upon  
23 an instrument believed to be genuine purporting to exercise a  
24 power of appointment or for assuming that there is no

1 instrument exercising the power of appointment in the absence  
2 of actual knowledge thereof within 3 months of the last date on  
3 which the power of appointment may be exercised.

4 Article 4. Disclaimer or release; contract to appoint or not to  
5 appoint.

6 Section 401. Disclaimer. As provided by Section 2-7 of the  
7 Probate Act of 1975:

8 (1) A powerholder may disclaim all or part of a power  
9 of appointment.

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

13 Section 402. Authority to release. A powerholder may  
14 release a power of appointment, in whole or in part, except to  
15 the extent the terms of the instrument creating the power  
16 prevent the release.

17 Section 403. Method of release. A powerholder of a  
18 releasable power of appointment may release the power in whole  
19 or in part:

20 (1) by substantial compliance with a method provided in  
21 the terms of the instrument creating the power; or

22 (2) if the terms of the instrument creating the power



1 do not provide a method or the method provided in the terms  
2 of the instrument is not expressly made exclusive, by an  
3 instrument manifesting the powerholder's intent by clear  
4 and convincing evidence.

5 Section 404. Revocation or amendment of release. A  
6 powerholder may revoke or amend a release of a power of  
7 appointment only to the extent that:

8 (1) the instrument of release is revocable by the  
9 powerholder; or

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

12 Section 405. Power to contract: presently exercisable  
13 power of appointment. A powerholder of a presently exercisable  
14 power of appointment may contract:

15 (1) not to exercise the power; or

16 (2) to exercise the power if the contract when made  
17 does not confer a benefit on an impermissible appointee.

18 Section 406. Power to contract: power of appointment not  
19 presently exercisable. A powerholder of a power of appointment  
20 that is not presently exercisable may contract to exercise or  
21 not to exercise the power only if the powerholder:

22 (1) is also the donor of the power; and

23 (2) has reserved the power in a revocable trust.

1 Section 407. Remedy for breach of contract to appoint or  
2 not to appoint. The remedy for a powerholder's breach of a  
3 contract to appoint or not to appoint is limited to damages  
4 payable out of the appointive property or, if appropriate,  
5 specific performance of the contract.

6 Article 5. Rights of powerholder's creditors in appointive  
7 property.

8 Section 501. Creditor claim: general power created by  
9 powerholder.

10 (a) In this Section, "power of appointment created by the  
11 powerholder" includes a power of appointment created in a  
12 transfer by another person to the extent the powerholder  
13 contributed value to the transfer.

14 (b) Appointive property subject to a general power of  
15 appointment created by the powerholder is subject to a claim of  
16 a creditor of the powerholder or of the powerholder's estate to  
17 the extent provided in the Uniform Fraudulent Transfer Act.

18 (c) Subject to subsection (b), appointive property subject  
19 to a general power of appointment created by the powerholder is  
20 not subject to a claim of a creditor of the powerholder or the  
21 powerholder's estate to the extent the powerholder irrevocably  
22 appointed the property in favor of a person other than the  
23 powerholder or the powerholder's estate.

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

7 (1) the powerholder, to the same extent as if the  
8 powerholder owned the appointive property, if the power is  
9 presently exercisable; and

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

15 Section 502. Creditor claim: general power not created by  
16 powerholder.

17 (a) Except as otherwise provided in subsection (b),  
18 appointive property subject to a general power of appointment  
19 created by a person other than the powerholder is subject to a  
20 claim of a creditor of:

21 (1) the powerholder, to the extent the powerholder's  
22 property is insufficient, if the power is presently  
23 exercisable; and

24 (2) the powerholder's estate if the power is exercised  
25 at the powerholder's death, to the extent the estate is

1           insufficient, subject to the right of the deceased  
2           powerholder to direct the source from which liabilities are  
3           paid.

4           (b) Subject to subsection (c) of Section 504, a power of  
5           appointment created by a person other than the powerholder  
6           which is subject to an ascertainable standard relating to an  
7           individual's health, education, support, or maintenance within  
8           the meaning of 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1),  
9           as amended, is treated for purposes of this Article as a  
10          nongeneral power.

11          Section 503. Power to withdraw.

12          (a) For purposes of this Article, and except as otherwise  
13          provided in subsection (b), a power to withdraw property from a  
14          trust is treated, during the time the power may be exercised,  
15          as a presently exercisable general power of appointment to the  
16          extent of the property subject to the power to withdraw.

17          (b) A power to withdraw property from a trust ceases to be  
18          treated as a presently exercisable general power of appointment  
19          upon its lapse, release, or waiver.

20          Section 504. Creditor claim: nongeneral power.

21          (a) Except as otherwise provided in subsections (b) and  
22          (c), appointive property subject to a nongeneral power of  
23          appointment is exempt from a claim of a creditor of the  
24          powerholder or the powerholder's estate.

1           (b) Appointive property subject to a nongeneral power of  
2 appointment is subject to a claim of a creditor of the  
3 powerholder or the powerholder's estate to the extent that the  
4 powerholder owned the property and, reserving the nongeneral  
5 power, transferred the property in violation of the Uniform  
6 Fraudulent Transfer Act.

7           (c) If the initial gift in default of appointment is to the  
8 powerholder or the powerholder's estate, a nongeneral power of  
9 appointment is treated for purposes of this Section as a  
10 general power.

11                           Article 6. Miscellaneous provisions.

12           Section 601. Uniformity of application and construction.  
13 In applying and construing this uniform Act, consideration must  
14 be given to the need to promote uniformity of the law with  
15 respect to its subject matter among states that enact it.

16           Section 602. (Blank).

17           Section 603. Application to existing relationships.

18           (a) Except as otherwise provided in this Act, on and after  
19 the effective date of this Act:

20                   (1) this Act applies to a power of appointment created  
21 before, on, or after its effective date;

22                   (2) this Act applies to a judicial proceeding

1 concerning a power of appointment commenced on or after its  
2 effective date;

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

11 (4) a rule of construction or presumption provided in  
12 this Act applies to an instrument executed before the  
13 effective date of the Act unless there is a clear  
14 indication of a contrary intent in the terms of the  
15 instrument; and

16 (5) an act done before the effective date of this Act  
17 is not affected by this Act.

18 (b) If a right is acquired, extinguished, or barred on the  
19 expiration of a prescribed period that commenced under law of  
20 this State other than this Act before the effective date of  
21 this Act, the law continues to apply to the right.

22 (c) No trustee is liable to any person in whose favor a  
23 power of appointment may have been exercised for any  
24 distribution of property made to persons entitled to take in  
25 default of the effective exercise of the power of appointment  
26 to the extent that the distribution shall have been completed

1 prior to the effective date of this Act.

2 Section 604. The Probate Act of 1975 is amended by changing  
3 Section 2-7 as follows:

4 (755 ILCS 5/2-7) (from Ch. 110 1/2, par. 2-7)

5 Sec. 2-7. Disclaimer. (a) Right to Disclaim Interest in  
6 Property. A person to whom any property or interest therein  
7 passes, by whatever means, may disclaim the property or  
8 interest in whole or in part by delivering or filing a written  
9 disclaimer as hereinafter provided. A disclaimer may be of a  
10 fractional share or undivided interest, a specifically  
11 identifiable asset, portion or amount, any limited interest or  
12 estate or any property or interest derived through right of  
13 survivorship. A powerholder, as that term is defined in Section  
14 102 of the Uniform Powers of Appointment Act, ~~power (as defined~~  
15 in "~~An Act Concerning Termination of Powers~~", approved May 25,  
16 1943, as amended) with respect to property shall be deemed to  
17 be a holder of an interest in such property.

18 The representative of a decedent or ward may disclaim on  
19 behalf of the decedent or ward with leave of court. The court  
20 may approve the disclaimer by a representative of a decedent if  
21 it finds that the disclaimer benefits the estate as a whole and  
22 those interested in the estate generally even if the disclaimer  
23 alters the distribution of the property, part or interest  
24 disclaimed. The court may approve the disclaimer by a

1 representative of a ward if it finds that it benefits those  
2 interested in the estate generally and is not materially  
3 detrimental to the interests of the ward. A disclaimer by a  
4 representative of a decedent or ward may be made without leave  
5 of court if a will or other instrument signed by the decedent  
6 or ward designating the representative specifically authorizes  
7 the representative to disclaim without court approval.

8 The right to disclaim granted by this Section exists  
9 irrespective of any limitation on the interest of the  
10 disclaimant in the nature of a spendthrift provision or similar  
11 restriction.

12 (b) Form of Disclaimer. The disclaimer shall (1) describe  
13 the property or part or interest disclaimed, (2) be signed by  
14 the disclaimant or his representative and (3) declare the  
15 disclaimer and the extent thereof.

16 (c) Delivery of Disclaimer. The disclaimer shall be  
17 delivered to the transferor or donor or his representative, or  
18 to the trustee or other person who has legal title to the  
19 property, part or interest disclaimed, or, if none of the  
20 foregoing is readily determinable, shall be either delivered to  
21 a person having possession of the property, part or interest or  
22 who is entitled thereto by reason of the disclaimer, or filed  
23 or recorded as hereinafter provided. In the case of an interest  
24 passing by reason of the death of any person, an executed  
25 counterpart of the disclaimer may be filed with the clerk of  
26 the circuit court in the county in which the estate of the



1 decedent is administered, or, if administration has not been  
2 commenced, in which it could be commenced. If an interest in  
3 real property is disclaimed, an executed counterpart of the  
4 disclaimer may be recorded in the office of the recorder in the  
5 county in which the real estate lies, or, if the title to the  
6 real estate is registered under "An Act concerning land  
7 titles", approved May 1, 1897, as amended, may be filed in the  
8 office of the registrar of titles of such county.

9 (d) Effect of Disclaimer. Unless expressly provided  
10 otherwise in an instrument transferring the property or  
11 creating the interest disclaimed, the property, part or  
12 interest disclaimed shall descend or be distributed (1) if a  
13 present interest (a) in the case of a transfer by reason of the  
14 death of any person, as if the disclaimant had predeceased the  
15 decedent; (b) in the case of a transfer by revocable instrument  
16 or contract, as if the disclaimant had predeceased the date the  
17 maker no longer has the power to transfer to himself or another  
18 the entire legal and equitable ownership of the property or  
19 interest; or (c) in the case of any other inter vivos transfer,  
20 as if the disclaimant had predeceased the date of the transfer;  
21 and (2) if a future interest, as if the disclaimant had  
22 predeceased the event that ~~which~~ determines that the taker of  
23 the property or interest has become finally ascertained and his  
24 interest has become indefeasibly fixed both in quality and  
25 quantity; and in each case the disclaimer shall relate back to  
26 such date for all purposes.

1           A disclaimer of property or an interest in property shall  
2 not preclude any disclaimant from receiving the same property  
3 in another capacity or from receiving other interests in the  
4 property to which the disclaimer relates.

5           Unless expressly provided otherwise in an instrument  
6 transferring the property or creating the interest disclaimed,  
7 a future interest limited to take effect at or after the  
8 termination of the estate or interest disclaimed shall  
9 accelerate and take effect in possession and enjoyment to the  
10 same extent as if the disclaimant had died before the date to  
11 which the disclaimer relates back.

12           A disclaimer made pursuant to this Section shall be  
13 irrevocable and shall be binding upon the disclaimant and all  
14 persons claiming by, through or under the disclaimant.

15           (e) Waiver and Bar. The right to disclaim property or a  
16 part thereof or an interest therein shall be barred by (1) a  
17 judicial sale of the property, part or interest before the  
18 disclaimer is effected; (2) an assignment, conveyance,  
19 encumbrance, pledge, sale or other transfer of the property,  
20 part or interest, or a contract therefor, by the disclaimant or  
21 his representative; (3) a written waiver of the right to  
22 disclaim; or (4) an acceptance of the property, part or  
23 interest by the disclaimant or his representative. Any person  
24 may presume, in the absence of actual knowledge to the  
25 contrary, that a disclaimer delivered or filed as provided in  
26 this Section is a valid disclaimer that ~~which~~ is not barred by

1 the preceding provisions of this paragraph.

2 A written waiver of the right to disclaim may be made by  
3 any person or his representative and an executed counterpart of  
4 a waiver of the right to disclaim may be recorded or filed, all  
5 in the same manner as provided in this Section with respect to  
6 a disclaimer.

7 In every case, acceptance must be affirmatively proved in  
8 order to constitute a bar to a disclaimer. An acceptance of  
9 property or an interest in property shall include the taking of  
10 possession, the acceptance of delivery or the receipt of  
11 benefits of the property or interest; except that (1) in the  
12 case of an interest in joint tenancy with right of survivorship  
13 such acceptance shall extend only to the fractional share of  
14 such property or interest determined by dividing the number one  
15 by the number of joint tenants, and (2) in the case of a ward,  
16 such acceptance shall extend only to property actually received  
17 by or on behalf of the ward or his representative during his  
18 minority or incapacity. The mere lapse of time or creation of  
19 an interest, in joint tenancy with right of survivorship or  
20 otherwise, with or without knowledge of the interest on the  
21 part of the disclaimant, shall not constitute acceptance for  
22 purposes of this Section.

23 This Section does not abridge the right of any person to  
24 assign, convey, release, renounce or disclaim any property or  
25 interest therein arising under any other statute or that ~~which~~  
26 arose under prior law.

1           Any interest in real or personal property that ~~which~~ exists  
2           on or after the effective date of this Section may be  
3           disclaimed after that date in the manner provided herein, but  
4           no interest that ~~which~~ has arisen prior to that date in any  
5           person other than the disclaimant shall be destroyed or  
6           diminished by any action of the disclaimant taken pursuant to  
7           this Section.

8           (Source: P.A. 83-1362.)

9           (755 ILCS 5/4-2 rep.)

10           Section 604.1. The Probate Act of 1975 is amended by  
11           repealing Section 4-2.

12           (765 ILCS 320/Act rep.)

13           Section 604.2. The Power of Appointment Exercise Act is  
14           repealed.

15           (765 ILCS 325/Act rep.)

16           Section 604.3. The Termination of Powers Act is repealed.