

SECOND REGULAR SESSION

HOUSE BILL NO. 2106

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

4588H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 404.710, 456.023, 456.1-103, 456.5-508, 456.8-808, 469.060, 473.097, and 473.100, RSMo, and to enact in lieu thereof forty new sections relating to trusts and estates.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 404.710, 456.023, 456.1-103, 456.5-508, 456.8-808, 469.060, 2 473.097, and 473.100, RSMo, are repealed and forty new sections enacted in lieu thereof, to be 3 known as sections 404.710, 456.970, 456.975, 456.980, 456.985, 456.990, 456.995, 456.1000, 4 456.1005, 456.1010, 456.1015, 456.1020, 456.1025, 456.1030, 456.1035, 456.1040, 456.1045, 5 456.1050, 456.1055, 456.1060, 456.1065, 456.1070, 456.1075, 456.1080, 456.1085, 456.1090, 6 456.1095, 456.1100, 456.1105, 456.1110, 456.1115, 456.1120, 456.1125, 456.1130, 456.1135, 7 456.1-103, 456.5-508, 456.8-808, 473.097, and 473.100, to read as follows:

404.710. 1. A principal may delegate to an attorney in fact in a power of attorney general 2 powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects 3 and purposes or with respect to one or more express subjects or purposes. A power of attorney 4 with general powers may be durable or not durable.

5 2. If the power of attorney states that general powers are granted to the attorney in fact 6 and further states in substance that it grants power to the attorney in fact to act with respect to 7 all lawful subjects and purposes or that it grants general powers for general purposes or does not 8 by its terms limit the power to the specific subject or purposes set out in the instrument, then the 9 authority of the attorney in fact acting under the power of attorney shall extend to and include 10 each and every action or power which an adult who is nondisabled and nonincapacitated may 11 carry out through an agent specifically authorized in the premises, with respect to any and all

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of
13 attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and
14 purposes, the enumeration of one or more specific subjects or purposes does not limit the general
15 authority granted by that power of attorney, unless otherwise provided in the power of attorney.

16 3. If the power of attorney states that general powers are granted to an attorney in fact
17 with respect to one or more express subjects or purposes for which general powers are conferred,
18 then the authority of the attorney in fact acting under the power of attorney shall extend to and
19 include each and every action or power, but only with respect to the specific subjects or purposes
20 expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may
21 carry out through an agent specifically authorized in the premises, with respect to any and all
22 matters whatsoever, except as provided in subsections 6 and 7 of this section.

23 4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with
24 general powers has, with respect to the subjects or purposes for which the powers are conferred,
25 all rights, power and authority to act for the principal that the principal would have with respect
26 to his or her own person or property, including property owned jointly or by the entireties with
27 another or others, as a nondisabled and nonincapacitated adult; and without limiting the
28 foregoing has with respect to the subjects or purposes of the power complete discretion to make
29 a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent
30 for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment,
31 contract, note, security instrument, consent, receipt, release, proof of claim, petition or other
32 pleading, tax document, notice, application, acknowledgment or other document necessary or
33 convenient to implement or confirm any act, transaction or decision. An attorney in fact with
34 general powers, whether power to act with respect to all lawful subjects and purposes, or only
35 with respect to one or more express subjects or purposes, shall have the power, unless
36 specifically denied by the terms of the power of attorney, to make, execute and deliver to or for
37 the benefit of or at the request of a third person, who is requested to rely upon an action of the
38 attorney in fact, an agreement indemnifying and holding harmless any third person or persons
39 from any liability, claims or expenses, including legal expenses, incurred by any such third
40 person by reason of acting or refraining from acting pursuant to the request of the attorney in
41 fact, and such indemnity agreement shall be binding upon the principal who has executed such
42 power of attorney and upon the principal's successor or successors in interest. No such
43 indemnity agreement shall protect any third person from any liability, claims or expenses
44 incurred by reason of the fact that, and to the extent that, the third person has honored the power
45 of attorney for actions outside the scope of authority granted by the power of attorney. In
46 addition, the attorney in fact has complete discretion to employ and compensate real estate
47 agents, brokers, attorneys, accountants and subagents of all types to represent and act for the

48 principal in any and all matters, including tax matters involving the United States government
49 or any other government or taxing entity, including, but not limited to, the execution of
50 supplemental or additional powers of attorney in the name of the principal in form that may be
51 required or preferred by any such taxing entity or other third person, and to deal with any or all
52 third persons in the name of the principal without limitation. No such supplemental or additional
53 power of attorney shall broaden the scope of authority granted to the attorney in fact in the
54 original power of attorney executed by the principal.

55 5. An attorney in fact, who is granted general powers for all subjects and purposes or
56 with respect to any express subjects or purposes, shall exercise the powers conferred according
57 to the principal's instructions, in the principal's best interest, in good faith, prudently and in
58 accordance with sections 404.712 and 404.714.

59 6. Any power of attorney, whether durable or not durable, and whether or not it grants
60 general powers for all subjects and purposes or with respect to express subjects or purposes, shall
61 be construed to grant power or authority to an attorney in fact to carry out any of the actions
62 described in this subsection if the actions are expressly enumerated and authorized in the power
63 of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry
64 out any of the following actions if the actions are expressly authorized in the power of attorney:

65 (1) To execute, amend or revoke any trust agreement;

66 (2) To fund with the principal's assets any trust not created by the principal;

67 (3) To make or revoke a gift of the principal's property in trust or otherwise;

68 (4) To disclaim a gift or devise of property to or for the benefit of the principal,
69 **including but not limited to the ability to disclaim or release any power of appointment**
70 **granted to the principal and the ability to disclaim all or part of the principal's interest in**
71 **appointive property to the extent authorized under sections 456.970 to 456.1135;**

72 (5) To create or change survivorship interests in the principal's property or in property
73 in which the principal may have an interest; provided, however, that the inclusion of the
74 authority set out in this subdivision shall not be necessary in order to grant to an attorney in fact
75 acting under a power of attorney granting general powers with respect to all lawful subjects and
76 purposes the authority to withdraw funds or other property from any account, contract or other
77 similar arrangement held in the names of the principal and one or more other persons with any
78 financial institution, brokerage company or other depository to the same extent that the principal
79 would be authorized to do if the principal were present, not disabled or incapacitated, and
80 seeking to act in the principal's own behalf;

81 (6) To designate or change the designation of beneficiaries to receive any property,
82 benefit or contract right on the principal's death;

83 (7) To give or withhold consent to an autopsy or postmortem examination;

84 (8) To make an anatomical gift of, or prohibit an anatomical gift of, all or part of the
85 principal's body under the Revised Uniform Anatomical Gift Act or to exercise the right of
86 sepulcher over the principal's body under section 194.119;

87 (9) To nominate a guardian or conservator for the principal; and if so stated in the power
88 of attorney, the attorney in fact may nominate himself as such;

89 (10) To give consent to or prohibit any type of health care, medical care, treatment or
90 procedure to the extent authorized by sections 404.800 to 404.865; [or]

91 (11) To designate one or more substitute or successor or additional attorneys in fact; or

92 **(12) To exercise, to revoke, or amend the release of, or to contract to exercise or not**
93 **to exercise, any power of appointment granted to the principal to the extent authorized**
94 **under sections 456.970 to 456.1135.**

95 7. No power of attorney, whether durable or not durable, and whether or not it delegates
96 general powers, may delegate or grant power or authority to an attorney in fact to do or carry out
97 any of the following actions for the principal:

98 (1) To make, publish, declare, amend or revoke a will for the principal;

99 (2) To make, execute, modify or revoke a living will declaration for the principal;

100 (3) To require the principal, against his or her will, to take any action or to refrain from
101 taking any action; or

102 (4) To carry out any actions specifically forbidden by the principal while not under any
103 disability or incapacity.

104 8. A third person may freely rely on, contract and deal with an attorney in fact delegated
105 general powers with respect to the subjects and purposes encompassed or expressed in the power
106 of attorney without regard to whether the power of attorney expressly identifies the specific
107 property, account, security, storage facility or matter as being within the scope of a subject or
108 purpose contained in the power of attorney, and without regard to whether the power of attorney
109 expressly authorizes the specific act, transaction or decision by the attorney in fact.

110 9. It is the policy of this state that an attorney in fact acting pursuant to the provisions
111 of a power of attorney granting general powers shall be accorded the same rights and privileges
112 with respect to the personal welfare, property and business interests of the principal, and if the
113 power of attorney enumerates some express subjects or purposes, with respect to those subjects
114 or purposes, as if the principal himself or herself were personally present and acting or seeking
115 to act; and any provision of law and any purported waiver, consent or agreement executed or
116 granted by the principal to the contrary shall be void and unenforceable.

117 10. Sections 404.700 to 404.735 shall not be construed to preclude any person or
118 business enterprise from providing in a contract with the principal as to the procedure that
119 thereafter must be followed by the principal or the principal's attorney in fact in order to give a

120 valid notice to the person or business enterprise of any modification or termination of the
121 appointment of an attorney in fact by the principal; and any such contractual provision for notice
122 shall be valid and binding on the principal and the principal's successors so long as such
123 provision is reasonably capable of being carried out.

2 **456.970. Sections 456.970 to 456.1135 shall be known and may be cited as the**
3 **"Missouri Uniform Powers of Appointment Act".**

4 **456.975. As used in sections 456.970 to 456.1135 the following terms mean:**

- 5 (1) **"Appointee", a person to which a powerholder makes an appointment of**
6 **appointive property;**
- 7 (2) **"Appointive property", the property or property interest subject to a power of**
8 **appointment;**
- 9 (3) **"Blanket-exercise clause", a clause in an instrument which exercises a power**
10 **of appointment and is not a specific-exercise clause. The term includes a clause that:**
 - 11 (a) **Expressly uses the words "any power" in exercising any power of appointment**
12 **the powerholder has;**
 - 13 (b) **Expressly uses the words "any property" in appointing any property over**
14 **which the powerholder has a power of appointment; or**
 - 15 (c) **Disposes of all property subject to disposition by the powerholder;**
- 16 (4) **"Claim of creditor", the attachment by a creditor of trust property or beneficial**
17 **interests subject to a power of appointment, a creditor obtaining an order from a court**
18 **forcing a judicial sale of trust property, a creditor compelling the exercise of a power of**
19 **appointment, or a creditor reaching trust property or beneficial interests by other means;**
- 20 (5) **"Donor", a person who creates a power of appointment;**
- 21 (6) **"Exclusionary power of appointment", a power of appointment exercisable in**
22 **favor of any one or more of the permissible appointees to the exclusion of the other**
23 **permissible appointees;**
- 24 (7) **"General power of appointment", a power of appointment exercisable in favor**
25 **of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor**
26 **of the powerholder's estate;**
- 27 (8) **"Gift-in-default clause", a clause identifying a taker in default of appointment;**
- 28 (9) **"Impermissible appointee", a person that is not a permissible appointee;**
- 29 (10) **"Instrument", a document that contains information that:**
 - 30 (a) **Is inscribed on a hard copy, or inscribed on a hard copy that is transmitted by**
facsimile or stored in portable document format (.pdf) or in another comparable electronic
means or other medium that is retrievable in perceivable form; and
 - (b) **Contains a**
signature;

31 (11) "Nongeneral power of appointment", a power of appointment that is not a
32 general power of appointment;

33 (12) "Permissible appointee", a person in whose favor a powerholder may exercise
34 a power of appointment;

35 (13) "Person", an individual, estate, trust, business or nonprofit entity, public
36 corporation, government or governmental subdivision, agency, or instrumentality, or other
37 legal entity;

38 (14) "Power of appointment", a power that enables a powerholder acting in a
39 nonfiduciary capacity to designate a recipient of an ownership interest in or another power
40 of appointment over the appointive property. The term does not include a power of
41 attorney;

42 (15) "Powerholder", a person in which a donor creates a power of appointment;

43 (16) "Presently exercisable power of appointment", a power of appointment
44 exercisable by the powerholder at the relevant time. The term includes a power of
45 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
46 ascertainable standard, or the passage of a specified time only after:

47 (a) The occurrence of the specified event;

48 (b) The satisfaction of the ascertainable standard; or

49 (c) The passage of the specified time, and does not include a power exercisable only
50 at the powerholder's death;

51 (17) "Specific-exercise clause", a clause in an instrument which specifically refers
52 to and exercises a particular power of appointment;

53 (18) "Taker in default of appointment", a person that takes all or part of the
54 appointive property to the extent the powerholder does not effectively exercise the power
55 of appointment;

56 (19) "Terms of the instrument", the manifestation of the intent of the maker of the
57 instrument regarding the instrument's provisions as expressed in the instrument or as may
58 be established by other evidence that would be admissible in a legal proceeding.

456.980. 1. The creation, revocation, or amendment of the power is governed by
2 the law of the donor's domicile at the relevant time, and the exercise, release, or disclaimer
3 of the power, or the revocation or amendment of the exercise, release, or disclaimer of the
4 power, is governed by the law of the powerholder's domicile at the relevant time.

5 2. The common law and principles of equity supplement sections 456.970 to
6 456.1135, except to the extent modified by such sections or other laws of this state.

456.985. 1. Except as otherwise provided in the terms of an instrument creating or exercising a power of appointment, sections 456.970 to 456.1135 govern powers of appointment.

2. The terms of an instrument creating or exercising a power of appointment prevail over any provisions of sections 456.970 to 456.1135 except:

(1) The transferability of a power of appointment by a powerholder under subsection 1 of section 456.995;

(2) The limitations on the authority of a donor to extend a general power of appointment beyond the death of a powerholder under subsection 3 of section 456.995;

(3) The power is exclusionary if the permissible appointees of a power of appointment are not defined and limited under subsection 3 of section 456.1005;

(4) The requisites for the exercise of a power of appointment under section 456.1015;

(5) The effect of an impermissible appointment under section 456.1045;

(6) A general power of appointment which is presently exercisable may be reached by the creditors of the powerholder or the powerholder's estate under section 456.1100.

456.990. 1. A power of appointment is created only if:

(1) The instrument creating the power:

(a) Is valid under applicable law; and

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

(2) The terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

2. Paragraph (b) of subdivision (1) of subsection 1 of this section, does not apply to the creation of a power of appointment by the exercise of a power of appointment.

3. Power of appointment shall not be created in a deceased individual.

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

5. Any property that is the subject of an invalid power of appointment shall be transferred, held or otherwise disposed of in accordance with the valid provisions of the instrument attempting to create the power, if any such provisions exist, or if none, in accordance with other applicable laws, as the case may be.

456.995. 1. A powerholder shall not transfer a power of appointment.

2 **2. Except as provided in subsection 3 of this section, to the extent a powerholder**
3 **dies without effectively disclaiming, exercising, or releasing a power, the power lapses upon**
4 **the death of the powerholder.**

5 **3. A general power of appointment may provide that the power shall survive the**
6 **death of the powerholder in the hands of the powerholder's personal representative. Such**
7 **provision shall be valid only to the extent the powerholder dies after he or she effectively**
8 **receives the general power, but within the period for disclaiming the power, and only to**
9 **the extent the powerholder has not disclaimed, exercised or released the power. Under**
10 **such circumstances, the personal representative of the powerholder may either exercise the**
11 **power in favor of the powerholder's estate, if the estate is a permissible appointee, or**
12 **disclaim the power as provided by section 456.1080.**

13 **(1) If the power is neither exercised nor disclaimed by the powerholder's personal**
14 **representative as stated, the power shall lapse at the earlier of the end of the period for**
15 **making a disclaimer under other applicable Missouri laws or the end of the period in**
16 **which the power is valid under its terms.**

17 **(2) The terms of a general power of appointment providing that "This power of**
18 **appointment shall survive the death of the powerholder", or words of similar import, shall**
19 **be sufficient to extend the power after the death of a powerholder in the hands of his or her**
20 **personal representative in this subsection.**

21 **(3) In addition to the protections otherwise afforded under applicable law, the**
22 **personal representative shall not be individually liable for his or her actions or inactions**
23 **under this subsection if he or she does not have actual knowledge of the power and all**
24 **pertinent circumstances reasonably necessary for him or her to make a determination on**
25 **the exercise, disclaimer, or lapse of the power at least one hundred and twenty days prior**
26 **to the end of the period for making a disclaimer or the end of the period in which the**
27 **power is valid under its terms, whichever first occurs. The foregoing exemption from**
28 **liability shall not apply if the personal representative exercises or disclaims the power or**
29 **allows the power to lapse in bad faith.**

456.1000. 1. Subject to section 456.1005, the power is:

2 **(1) Presently exercisable;**

3 **(2) Exclusionary; and**

4 **(3) Except as otherwise provided in subsection 2 of this section, general.**

5 **2. The power is nongeneral if:**

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

7 (2) The permissible appointees of the power are a defined and limited class that do
8 not include the powerholder's estate, the powerholder's creditors, or the creditors of the
9 powerholder's estate.

 456.1005. 1. As used in this section, "adverse party" means a person with a
2 substantial 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 creditor of the
5 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.

 456.1010. A donor may revoke or amend a power of appointment only to the extent
2 that the instrument creating the power is revocable by the donor, or the donor reserves a
3 power of revocation or amendment in the instrument creating the power of appointment.

 456.1015. A power of appointment is exercised only if:

2 (1) The instrument exercising the power is valid under applicable law;

3 (2) The terms of the instrument exercising the power:

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

5 (b) Subject to section 456.1030, satisfy the requirements of exercise, if any, imposed
6 by the donor; and

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

 456.1020. 1. As used in this section:

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

4 (2) "Will", includes a codicil and a testamentary instrument that revises another
5 will.

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

9 (1) The power is a general power exercisable in favor of the powerholder's estate;

10 (2) There is no gift-in-default clause or the clause is ineffective; and

11 (3) The powerholder did not release the power.

 456.1025. 1. Except as otherwise provided in subsection 2 of this section, a blanket-
2 exercise clause extends to a power acquired by the powerholder after executing the
3 instrument containing the clause.

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

 456.1030. A powerholder's substantial compliance with a formal requirement of
2 appointment imposed by the donor is sufficient if the powerholder knows of and intends
3 to exercise the power, and the powerholder's manner of attempted exercise of the power
4 does not impair a material purpose of the donor in imposing the requirement.

 456.1035. 1. A powerholder of a general power of appointment that permits
2 appointment to the powerholder or the powerholder's estate may make any appointment,
3 including an appointment in trust or creating a new power of appointment, that the
4 powerholder could make in disposing of the powerholder's own property.

 2. A powerholder of a general power of appointment that permits appointment only
6 to the creditors of the powerholder or of the powerholder's estate may appoint only to
7 those creditors.

 3. The powerholder of a nongeneral power may:

9 (1) Make an appointment in any form, including an appointment in trust, in favor
10 of a permissible appointee;

11 (2) Create a general power in a permissible appointee; or

12 (3) Create a nongeneral power in any person to appoint to one or more of the
13 permissible appointees of the original nongeneral power.

 456.1040. 1. An appointment to a deceased appointee is ineffective.

2 2. A powerholder of a nongeneral power may exercise the power in favor of, or
3 create a new power of appointment in, a descendant of a deceased permissible appointee
4 whether the descendant is described by the donor as a permissible appointee and whether
5 the descendant of a deceased permissible appointee was alive at the time of the execution
6 of the instrument creating the power or at the time of the exercise of the power.

 456.1045. 1. Except as otherwise provided in section 456.1040, an exercise of a
2 power of appointment in favor of an impermissible appointee is ineffective.

3 2. An exercise of a power of appointment in favor of a permissible appointee is
4 ineffective to the extent the appointment is a fraud on the power.

 456.1050. If a powerholder exercises a power of appointment in a disposition that
2 also disposes of property the powerholder owns, the owned property and the appointive
3 property shall be allocated in the permissible manner that best carries out the
4 powerholder's intent.

 456.1055. To the extent a powerholder of a general power of appointment, other
2 than a power to withdraw property from, revoke, or amend a trust, makes an ineffective
3 appointment:

4 **(1) The gift-in-default clause controls the disposition of the ineffectively appointed**
5 **property; or**

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

8 **(a) Passes to the powerholder if the powerholder is a permissible appointee and**
9 **living; or**

10 **(b) If the powerholder is an impermissible appointee or deceased, passes to the**
11 **powerholder's estate if the estate is a permissible appointee; or**

12 **(c) If there is no taker under paragraphs (a) or (b) of this subdivision, passes under**
13 **a reversionary interest to the donor or the donor's transferee or successor in interest.**

456.1060. To the extent a powerholder releases or fails to exercise a general power
2 **of appointment other than a power to withdraw property from, revoke, or amend a trust,**
3 **and except as provided in subsection 3 of section 456.995:**

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

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

7 **(a) Except as otherwise provided in paragraph (b) of this subdivision, the**
8 **unappointed property passes to:**

9 **a. The powerholder if the powerholder is a permissible appointee and living; or**

10 **b. If the powerholder is an impermissible appointee or deceased, the powerholder's**
11 **estate if the estate is a permissible appointee; or**

12 **(b) To the extent the powerholder released the power, or if there is no taker under**
13 **paragraph (a) of this subdivision, the unappointed property passes under a reversionary**
14 **interest to the donor or the donor's transferee or successor in interest.**

456.1065. To the extent a powerholder releases, ineffectively exercises, or fails to
2 **exercise a nongeneral power of appointment:**

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

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

7 **(a) Passes to the permissible appointees if:**

8 **a. The permissible appointees are defined and limited; and**

9 **b. The terms of the instrument creating the power do not manifest a contrary**
10 **intent; or**

11 **(b) If there is no taker under paragraph (a) of this subdivision, passes under a**
12 **reversionary interest to the donor or the donor's transferee or successor in interest.**

456.1070. 1. If the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

2. If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property in the same form, manner, and amount under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

456.1075. A powerholder may revoke or amend an exercise of a power of appointment at any time before the exercise becomes effective to transfer property to the appointee.

456.1080. As provided by sections 469.010 to 469.210, a powerholder may disclaim all or part of a power of appointment, and a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

456.1085. 1. A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

2. A powerholder of a releasable power of appointment may release the power in whole or in part:

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

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the powerholder's intent by clear and convincing evidence and delivered to the donor, the donor's personal representative, a guardian of the donor or the conservator of the estate of the donor, or the holder of the legal title to the property to which the interest related. A release involving an estate or property within the jurisdiction of the probate division of a circuit court may be filed in that division.

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

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

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

456.1090. 1. A powerholder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power; or

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

6 2. A powerholder of a power of appointment that is not presently exercisable may
7 contract to exercise or not to exercise the power only if the powerholder:

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

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

 456.1095. The remedy for a powerholder's breach of contract to appoint or not to
2 appoint property is limited to damages payable out of the appointive property or, if
3 appropriate, specific performance of the contract.

 456.1100. 1. As used in this section, "power of appointment created by the
2 powerholder" includes a power of appointment created in a transfer by another person to
3 the extent the powerholder contributed value to the transfer.

4 2. Appointive property subject to a general power of appointment created by the
5 powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's
6 estate to the extent provided in chapter 428.

7 3. Subject to subsection 2 of this section, appointive property subject to a general
8 power of appointment created by the powerholder is not subject to a claim of a creditor of
9 the powerholder or the powerholder's estate:

10 (1) To the extent the powerholder irrevocably appointed the property in favor of
11 a person other than the powerholder or the powerholder's estate; and

12 (2) If the power is not presently exercisable.

13 4. Subject to subdivision (1) of subsection 3 of this section, and notwithstanding the
14 presence of a spendthrift provision or whether the claim arose before or after the creation
15 of the power of appointment, appointive property subject to a general power of
16 appointment created by the powerholder is subject to a claim of a creditor of the
17 powerholder to the same extent as if the powerholder owned the appointive property, if the
18 power is presently exercisable.

 456.1105. 1. Except as otherwise provided in subsection 3 of this section, appointive
2 property subject to a exercisable general power of appointment created by a person other
3 than the powerholder is subject to a claim of a creditor of the powerholder to the extent the
4 powerholder's property is insufficient.

5 2. Appointive property subject to testamentary or not presently exercisable general
6 power of appointment created by a person other than the powerholder is not subject to a
7 claim of a creditor of the powerholder or the powerholder's estate.

8 3. Subject to subsection 3 of section 456.1115, a power of appointment created by
9 a person other than the powerholder which is subject to an ascertainable standard relating

10 to an individual's health, education, support, or maintenance within the meaning of Section
11 204(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code, is treated for purposes of
12 sections 456.1100 to 456.1115 as a nongeneral power.

456.1110. 1. For purposes of sections 456.1100 to 456.1115, and except as otherwise
2 provided in subsection 2 of this section, during the period the power may be exercised, a
3 power of withdrawal shall be treated as a presently exercisable general power of
4 appointment to the extent of the property subject to the power.

5 2. Upon the lapse, release, or waiver of a power to withdraw property from a trust,
6 the power is treated as a presently exercisable general power of appointment only to the
7 extent the value of the property affected by the lapse, release, or waiver exceeds the greater
8 of the amount specified in Sections 204(b)(2), 2514(e), or 2503(b) of the Internal Revenue
9 Code.

456.1115. 1. Except as otherwise provided in subsections 2 and 3 of this section,
2 appointive property subject to a nongeneral power of appointment is exempt from a claim
3 of a creditor of the powerholder or the powerholder's estate.

4 2. Appointive property subject to a nongeneral power of appointment is subject to
5 a claim of a creditor of the powerholder or the powerholder's estate to the extent that the
6 powerholder owned the property and, reserving the nongeneral power, transferred the
7 power in violation of chapter 428.

8 3. If the initial gift-in-default of appointment is to the powerholder or the
9 powerholder's estate, a nongeneral power of appointment is treated for purposes of
10 sections 456.1100 to 456.1115 as a general power.

456.1120. Sections 456.970 to 456.1135 shall not limit the ability of a creditor or
2 other claimant to reach a beneficial interest as otherwise provided in sections 456.5-501 to
3 456.5-507.

456.1125. In applying and construing sections 456.970 to 456.1135, consideration
2 shall be given to the need to promote uniformity of the law with respect to its subject
3 matter among states that enact it.

456.1130. Sections 456.970 to 456.1135 modify, limit, or supersede the Electronic
2 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but do
3 not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001 (c), or
4 authorize electronic delivery of any of the notices described in Section 103(b) of that act,
5 15 U.S.C. Section 7003(b).

456.1135. 1. Except as otherwise provided in sections 456.970 to 456.1135:

2 (1) Sections 456.970 to 456.1135 shall apply to a power of appointment created
3 before, on, or after the effective date of such sections, and shall apply to a judicial

4 proceeding concerning a power of appointment commenced on or after the effective date
5 of such sections;

6 (2) Sections 456.970 to 456.1135 shall apply to a judicial proceeding concerning a
7 power of appointment commenced before the effective date of such sections unless the
8 court finds that application of a particular provision of such sections would interfere
9 substantially with the effective conduct of the judicial proceeding or prejudice a right of
10 a party, in which case the particular provision of such sections does not apply and the
11 superseded law applies;

12 (3) A rule of construction or presumption provided in sections 456.970 to 456.1135
13 applies to an instrument executed before the effective date of sections 456.970 to 456.1135
14 unless there is a clear indication of a contrary intent in the terms of the instrument; and

15 (4) Except as otherwise provided in subdivisions (1) to (3) of this subsection, an
16 action done before the effective date of sections 456.970 to 456.1135 is not affected by such
17 sections.

18 2. If a right is acquired, extinguished, or barred on the expiration of a prescribed
19 period that commenced under law of this state other than sections 456.970 to 456.1135
20 before the effective date of such sections, the law continues to apply to the right.

456.1-103. In sections 456.1-101 to 456.11-1106:

2 (1) "Action," with respect to an act of a trustee, includes a failure to act;

3 (2) "Ascertainable standard" means a standard relating to an individual's health,
4 education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section
5 2541(c)(1) of the Internal Revenue Code;

6 (3) "Beneficiary" means a person that:

7 (a) has a present or future beneficial interest in a trust, vested or contingent; or

8 (b) in a capacity other than that of trustee, holds a power of appointment over trust
9 property;

10 (4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose
11 described in subsection 1 of section 456.4-405;

12 (5) "Conservator" means a person described in subdivision (3) of section 475.010. This
13 term does not include a conservator ad litem;

14 (6) "Conservator ad litem" means a person appointed by the court pursuant to the
15 provisions of section 475.097;

16 (7) "Environmental law" means a federal, state, or local law, rule, regulation, or
17 ordinance relating to protection of the environment;

18 (8) "Financial institution" means a non-foreign bank, savings and loan or trust company
19 chartered, regulated and supervised by the Missouri division of finance, the office of the

20 comptroller of the currency, the office of thrift supervision, the National Credit Union
21 Administration, or the Missouri division of credit union supervision. The term "non-foreign
22 bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of
23 section 361.005;

24 (9) "Guardian" means a person described in subdivision (7) of section 475.010. The
25 term does not include a guardian ad litem;

26 (10) "Interested persons" include beneficiaries and any others having a property right in
27 or claim against a trust estate which may be affected by a judicial proceeding. It also includes
28 fiduciaries and other persons representing interested persons. The meaning as it relates to
29 particular persons may vary from time to time and must be determined according to the particular
30 purposes of, and matter involved in, any proceeding;

31 (11) "Interests of the beneficiaries" means the beneficial interests provided in the terms
32 of the trust;

33 (12) "Internal Revenue Code" means the United States Internal Revenue Code of 1986,
34 as in effect on January 1, 2005, or as later amended;

35 (13) **"Investment advisor", means a person, entity, or trust protector who has been**
36 **granted the power under a trust instrument, including a split trust, to direct, consent to,**
37 **approve of, or disapprove of a trustee's actual or proposed investment decisions; to retain,**
38 **purchase, sell, exchange, tender, or otherwise engage in transactions affecting the**
39 **ownership of investments or rights therein, with respect to either publicly or nonpublicly**
40 **traded investments, including the determination of the valuation thereof;**

41 (14) "Jurisdiction," with respect to a geographic area, includes a state or country;

42 [(14)] (15) "Person" means an individual, corporation, business trust, estate, trust,
43 partnership, limited liability company, association, joint venture, government; governmental
44 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial
45 entity;

46 [(15)] (16) "Permissible distributee" means a beneficiary who is currently eligible to
47 receive distributions of trust income or principal, whether mandatory or discretionary;

48 [(16)] (17) "Power of withdrawal" means a presently exercisable power of a beneficiary
49 to withdraw assets from the trust without the consent of the trustee or any other person;

50 [(17)] (18) "Principal place of administration" of a trust is the trustee's usual place of
51 business where the records pertaining to the trust are kept, or the trustee's residence if the trustee
52 has no such place of business, unless otherwise designated by the terms of the trust as provided
53 in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the
54 following order of priority:

55 (a) The usual place of business of the corporate trustee if there is but one corporate
56 cotrustee;

57 (b) The usual place of business or residence of the trustee who is a professional fiduciary
58 if there is but one such trustee and no corporate cotrustee; or

59 (c) The usual place of business or residence of any of the cotrustees;

60 [(18)] (19) "Professional fiduciary" means an individual who represents himself or
61 herself to the public as having specialized training, experience or skills in the administration of
62 trusts;

63 [(19)] (20) "Property" means anything that may be the subject of ownership, whether real
64 or personal, legal or equitable, or any interest therein;

65 [(20)] (21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
66 qualification is determined:

67 (a) is a permissible distributee;

68 (b) would be a permissible distributee if the interests of the permissible distributees
69 described in paragraph (a) of this subdivision terminated on that date; or

70 (c) would be a permissible distributee if the trust terminated on that date;

71 [(21)] (22) "Record" means information that is inscribed on a tangible medium or that
72 is stored in an electronic or other medium and is retrievable in perceivable form;

73 [(22)] (23) "Revocable," as applied to a trust, means that the settlor has the legal power
74 to revoke the trust without the consent of the trustee or a person holding an adverse interest,
75 regardless of whether the settlor has the mental capacity to do so in fact;

76 [(23)] (24) "Settlor" means a person, including a testator, who creates, or contributes
77 property to, a trust. If more than one person creates or contributes property to a trust, each
78 person is a settlor of the portion of the trust property attributable to that person's contribution
79 except to the extent another person has the power to revoke or withdraw that portion pursuant
80 to the terms of the trust;

81 [(24)] (25) "Sign" means, with present intent to authenticate or adopt a record:

82 (a) to execute or adopt a tangible symbol; or

83 (b) to attach to or logically associate with the record an electronic sound, symbol, or
84 process;

85 [(25)] (26) "Spendthrift provision" means a term of a trust which restrains either the
86 voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's
87 interest;

88 [(26)] (27) "State" means a state of the United States, the District of Columbia, Puerto
89 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

90 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal
 91 law or formally acknowledged by a state;

92 [(27)] **(28)** "Terms of a trust" means the manifestation of the settlor's intent regarding
 93 a trust's provisions as expressed in the trust instrument or as may be established by other
 94 evidence that would be admissible in a judicial proceeding;

95 [(28)] **(29)** "Trust instrument" means an instrument executed by the settlor that contains
 96 terms of the trust, including any amendments thereto;

97 [(29)] **(30)** "Trustee" includes an original, additional, and successor trustee, and a
 98 cotrustee.

456.5-508. 1. [A creditor or other claimant of a beneficiary or other person holding a
 2 special power of appointment or a testamentary general power of appointment may not attach
 3 trust property or beneficial interests subject to the power, obtain an order from a court forcing
 4 a judicial sale of the trust property, compel the exercise of the power, or reach the trust property
 5 or beneficial interests by any other means.] **Except as provided in sections 456.970 to**
 6 **456.1135:**

7 **(1) Appointive property subject to a general power of appointment exercisable only**
 8 **at the powerholder's death is not subject to the claim of a creditor;**

9 **(2) Appointive property subject to a nongeneral power of appointment is not**
 10 **subject to the claim of a creditor.**

11 2. This section shall not limit the ability of a creditor or other claimant to reach a
 12 beneficial interest as otherwise provided in sections 456.5-501 to 456.5-507.

13 3. [In this section "special power of appointment" means a power of appointment
 14 exercisable in favor of one or more appointees other than the holder, the holder's estate, the
 15 holder's creditors, or the creditors of the holder's estate, and a "testamentary general power of
 16 appointment" means a power of appointment exercisable at the death of the holder, without the
 17 consent of the creator of the power or of a person holding an adverse interest in favor of the
 18 holder, the holder's estate, the holder's creditors, or the creditors of the holder's estate.] **As used**
 19 **in this section, the terms "appointive property", "general power of appointment",**
 20 **"nongeneral power of appointment", and "claim of a creditor" shall have the same**
 21 **meaning as defined in section 456.975.**

456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor
 2 that is contrary to the terms of the trust.

3 2. A trust instrument may provide for [the appointment of a trust protector. For purposes
 4 of this section, a "trust protector", whether referred to in the trust instrument by that name or by
 5 some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly
 6 granted in the trust instrument one or more powers over the trust] **one or more persons not then**

7 **servicing as a trustee to be given authority to direct, consent to, or disapprove a trustee's**
8 **actual or proposed investment decisions, distribution decisions, or other decisions of the**
9 **trustee and shall be deemed a direct trust if such powers are granted. A trust instrument**
10 **may also provide for one or more persons to be given any other powers expressly granted**
11 **in the trust instrument. Any such person may be identified in the trust instrument by any**
12 **name or designation, but for purposes of this section, any such person is herein referred**
13 **to as "trust protector".**

14 3. A trust protector appointed in the trust instrument shall have only the powers granted
15 to the trust protector by the express terms of the trust instrument, and a trust protector is only
16 authorized to act within the scope of the authority expressly granted in the trust instrument.
17 Without limiting the authority of the settlor to grant powers to a trust protector, the express
18 powers that may be granted include, but are not limited to, the following:

- 19 (1) Remove and appoint a trustee or name a successor trustee or trust protector;
20 (2) Modify or amend the trust instrument to:
21 (a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or
22 state law, or the rulings and regulations under such code or law;
23 (b) Reflect legal changes that affect trust administration;
24 (c) Correct errors or ambiguities that might otherwise require court construction; or
25 (d) Correct a drafting error that defeats a grantor's intent;
26 (3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries
27 of the trust;
28 (4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;
29 (5) Change the applicable law governing the trust and the trust situs; or
30 (6) Such other powers as are expressly granted to the trust protector in the trust
31 instrument.

32 4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector
33 shall have no power to modify a trust to:

34 (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C.
35 Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible
36 beneficiary of the trust at the death of that beneficiary; or

37 (2) Reduce or eliminate an income interest of the income beneficiary of any of the
38 following types of trusts:

39 (a) A trust for which a marital deduction has been taken for federal tax purposes under
40 Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any
41 comparable provision of applicable state law, during the life of the settlor's spouse;

42 (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during
43 the life of the noncharitable beneficiary;

44 (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code,
45 during any period in which the settlor is a beneficiary; or

46 (d) A trust for which an election as a qualified Sub-Chapter S Trust under Section
47 1361(d) of the Internal Revenue Code is currently in place.

48 5. Except to the extent otherwise provided in a trust instrument specifically referring to
49 this subsection, the trust protector shall not exercise a power in a way that would result in a
50 taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the
51 trust protector's gross estate for federal estate tax purposes.

52 6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of
53 this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the
54 contrary:

55 (1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted
56 to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the
57 settlor, or the trust as set forth in the trust instrument; **provided, however, that the trust**
58 **instrument may provide that the trust protector shall act in a nonfiduciary capacity.** A
59 trust protector is not a trustee, and is not liable or accountable as a trustee when performing or
60 declining to perform the express powers given to the trust protector in the trust instrument. A
61 trust protector is not liable for the acts or omissions of any fiduciary or beneficiary under the trust
62 instrument;

63 (2) A trust protector is exonerated from any and all liability for the trust protector's acts
64 or omissions, or arising from any exercise or nonexercise of the powers expressly conferred on
65 the trust protector in the trust instrument, unless it is established by a preponderance of the
66 evidence that the acts or omissions of the trust protector were done or omitted in breach of the
67 trust protector's duty, in bad faith or with reckless indifference;

68 (3) A trust protector is authorized to exercise the express powers granted in the trust
69 instrument at any time and from time to time after the trust protector acquires knowledge of their
70 appointment as trust protector and of the powers granted. **The trust protector may take any**
71 **action, judicial or otherwise, necessary to carry out the duties given to the trust protector**
72 **in the trust instrument;**

73 (4) A trust protector is entitled to receive, from the assets of the trust for which the trust
74 protector is acting, reasonable compensation, and reimbursement of the reasonable costs and
75 expenses incurred, in determining whether to carry out, and in carrying out, the express powers
76 given to the trust protector in the trust instrument;

77 (5) A trust protector is entitled to receive, from the assets of the trust for which the trust
78 protector is acting, reimbursement of the reasonable costs and expenses, including attorney's
79 fees, of defending any claim made against the trust protector arising from the acts or omissions
80 of the trust protector acting in that capacity unless it is established by clear and convincing
81 evidence that the trust protector was acting in bad faith or with reckless indifference; and

82 (6) The express powers granted in the trust instrument shall not be exercised by the trust
83 protector for the trust protector's own personal benefit.

84 7. If a trust protector is granted a power in the trust instrument to direct, consent to, or
85 disapprove a trustee's actual or proposed investment decision, distribution decision, or other
86 decision of the trustee required to be performed under applicable trust law in carrying out the
87 duties of the trustee in administering the trust, then only with respect to such power, excluding
88 the powers identified in subsection 3 of this section, the trust protector shall have the same duties
89 and liabilities as if serving as a trustee under the trust instrument. **In carrying out any written**
90 **directions given to the trustee by the trust protector concerning actual or proposed**
91 **investment decisions, the trustee shall not be subject to the provisions of sections 469.900**
92 **to 469.913. For purposes of this subsection, "investment decisions" means, with respect**
93 **to any investment, decisions to retain, purchase, sell, exchange, tender, or otherwise engage**
94 **in transactions affecting the ownership of investments or rights therein, and, with respect**
95 **to nonpublicly traded investments, the valuation thereof.**

96 8. A trustee shall carry out the written directions given to the trustee by a trust protector
97 acting within the scope of the powers expressly granted to the trust protector in the trust
98 instrument. Except in cases of bad faith or reckless indifference on the part of the trustee, or as
99 otherwise provided in the trust instrument, the trustee shall not be liable for any loss resulting
100 directly or indirectly from any act taken or omitted as a result of the written direction of the trust
101 protector or the failure of the trust protector to provide consent. Except as otherwise provided
102 in the trust instrument, the trustee shall have no duty to monitor the conduct of the trust
103 protector, provide advice to or consult with the trust protector, or communicate with or warn or
104 apprise any beneficiary concerning instances in which the trustee would or might have exercised
105 the trustee's own discretion in a manner different from the manner directed by the trust protector.
106 **Except as otherwise provided in the trust instrument, any actions taken by the trustee at**
107 **the trust protector's direction shall be deemed to be administrative actions taken by the**
108 **trustee solely to allow the trustee to carry out the instructions of the trust protector, and**
109 **shall not be deemed to constitute an act by the trustee to monitor the trust protector or**
110 **otherwise participate in actions within the scope of the trust protector's authority.**

111 9. Except to the extent otherwise expressly provided in the trust instrument, the trust
112 protector shall be entitled to receive information regarding the administration of the trust as
113 follows:

114 (1) Upon the request of the trust protector, unless unreasonable under the circumstances,
115 the trustee shall promptly provide to the trust protector any and all information related to the trust
116 that may relate to the exercise or nonexercise of a power expressly granted to the trust protector
117 in the trust instrument. The trustee has no obligation to provide any information to the trust
118 protector except to the extent a trust protector requests information under this section;

119 (2) The request of the trust protector for information under this section shall be with
120 respect to a single trust that is sufficiently identified to enable the trustee to locate the records
121 of the trust; and

122 (3) If the trustee is bound by any confidentiality restrictions with respect to an asset of
123 a trust, a trust protector who requests information under this section about such asset shall agree
124 to be bound by the confidentiality restrictions that bind the trustee before receiving such
125 information from the trustee.

126 10. A trust protector may resign by giving thirty days' written notice to the trustee and
127 any successor trust protector. A successor trust protector, if any, shall have all the powers
128 expressly granted in the trust instrument to the resigning trust protector unless such powers are
129 expressly modified for the successor trust protector.

130 11. A trust protector of a trust having its principal place of administration in this state
131 submits personally to the jurisdiction of the courts of this state during any period that the
132 principal place of administration of the trust is located in this state and the trust protector is
133 serving in such capacity.

473.097. 1. Distributees of an estate which consists of personal property or real property
2 or both personal and real property have a defeasible right to the personal property, and are
3 entitled to the real property of such estate, as provided in this section, without awaiting the
4 granting of letters testamentary or of administration, if all of the following conditions are met:

5 (1) The value of the entire estate, less liens, debt, and encumbrances, does not exceed
6 [forty] **one hundred** thousand dollars;

7 (2) Thirty days have elapsed since the death of the decedent and no application for letters
8 or for administration or for refusal of letters under section 473.090 is pending or has been
9 granted, or if such refusal has been granted and subsequently revoked;

10 (3) A bond, in an amount not less than the value of the personal property, approved by
11 the judge or clerk of the probate division is filed by the person making the required affidavit,
12 **except that the court may dispense with the filing of a bond if it finds the same is not**
13 **necessary because all distributees have waived the filing of a bond and proof has been**

14 **submitted that the funeral bill has been paid or a waiver of bond has been filed for the**
15 **funeral claim or the funeral claim is prohibited by section 473.444. The bond shall be**
16 conditioned upon the payment of the debts of the decedent, including any debts to the state of
17 Missouri, the expenses of funeral and burial and compliance with future orders of the court in
18 relation to the estate of the decedent; and further conditioned that any part of the property to
19 which the distributee is not entitled will be delivered to the persons entitled to the property under
20 the law. Liability of the sureties on the bonds provided for in this section terminates unless
21 proceedings against them are instituted within two years after the bond is filed[]; except that, the
22 court may dispense with the filing of a bond if it finds that the same is not necessary];

23 (4) A fee, in the amount prescribed in subsection 1 of section 483.580, and when
24 required, the publication cost of the notice to creditors are paid or the proof of payment for such
25 publication is provided to the clerk of the probate division.

26 2. Notwithstanding the limitation periods set out in section 473.050, the affidavit
27 required by this section may be made by the person designated as personal representative under
28 the will of the decedent, if a will has been presented for probate within the limitation periods
29 specified in section 473.050, otherwise by any distributee entitled to receive property of the
30 decedent any time after thirty days after decedent's death, and shall set forth all of the following:

31 (1) That the decedent left no will or, if the decedent left a will, that the will was
32 presented for probate within the limitation periods specified in section 473.050;

33 (2) That all unpaid debts, claims or demands against the decedent or the decedent's estate
34 and all estate taxes due, if any, on the property transfers involved have been or will be paid,
35 except that any liability by the affiant for the payment of unpaid claims or demands shall be
36 limited to the value of the property received;

37 (3) An itemized description and valuation of property of the decedent. As used in this
38 subdivision, the phrase "property of the decedent" shall not include property which was held by
39 the decedent as a tenant by the entirety or a joint tenant at the time of the decedent's death;

40 (4) The names and addresses of persons having possession of the property;

41 (5) The names, addresses and relationship to the decedent of the persons entitled to and
42 who will receive, the specific items of property, **and their respective interest therein**,
43 remaining after payment of claims and debts of the decedent, included in the affidavit;

44 (6) The facts establishing the right to such specific items of property as prescribed by this
45 section. The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall
46 show the names and addresses of the persons entitled to the described property under the facts
47 stated in the affidavit and shall recite that the will of decedent has been probated or that no will
48 has been presented to the court and that all estate taxes on the property, if any are due, have been
49 **or will be paid.**

50 3. A copy of the affidavit and certificate shall be filed in the office of the clerk of the
51 probate division and copies of the affidavit and certificate shall be furnished by the clerk.

52 4. The distributees mentioned in this section may establish their right to succeed to the
53 real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk
54 in the office of the recorder of deeds of each county where the real property is situated.

55 5. When the **gross** value of the property, **less liens, encumbrances, and debts**, listed
56 in the affidavit is more than fifteen thousand dollars, the clerk shall cause to be published in a
57 newspaper of general circulation within the county which qualifies under chapter 493 a notice
58 to **all persons interested in the estate and to** creditors of the decedent **whose claims have not**
59 **been prohibited by section 473.444** to file their claims in the court or be forever barred. The
60 notice shall be published once a week for two consecutive weeks. Proof of publication of notice
61 pursuant to this section shall be filed not later than ten days after completion of the publication.
62 The notice shall be in substantially the following form:

63 To all persons interested in the estate of, Decedent:

64 On the day of, 20..., a small estate affidavit was filed by the
65 distributees for the decedent under section 473.097, RSMo, with the probate division of the
66 circuit court of County, Missouri.

67 All creditors of the decedent, who died on, 20..., are notified that section
68 473.444 sets a limitation period that would bar claims one year after the death of the decedent.
69 A creditor may request that this estate be opened for administration.

70 Receipt of this notice should not be construed by the recipient to indicate that the
71 recipient may possibly have a beneficial interest in the estate. The nature and extent of any
72 person's interest, if any, may possibly be determined from the affidavit on this estate filed in the
73 probate division of the circuit court of County, Missouri.

74 Date of first publication is, 20...

75

76 Clerk of the Probate Division

77 of the Circuit Court

78 County, Missouri

79 6. **When the gross value of the property, less liens and encumbrances, listed in the**
80 **affidavit is more than fifteen thousand dollars, the certificate of the clerk shall not be**
81 **issued unless a licensed attorney has entered an appearance on behalf of the affiant.**

82 7. Upon compliance with the procedure required by this section, the personal property
83 and real estate involved shall not thereafter be taken in execution for any debts or claims against
84 the decedent, but such compliance has the same effect in establishing the right of distributees to

85 succeed to the property as if complete administration was had; but nothing in this section affects
86 the right of secured creditors with respect to such property.

87 [7.] 8. The affiant shall collect the property of decedent described in the affidavit. The
88 property of decedent shall be liquidated by the affiant to the extent necessary to pay debts of
89 decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares
90 of the distributees shall occur in accordance with section 473.620. The affiant shall distribute the
91 remaining property to such persons identified in the affidavit as required in subdivision (5) of
92 subsection 2 of this section who are entitled to receive the specific items of personal property,
93 as described in the affidavit, or to have any evidence of such property transferred to such persons.
94 To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's
95 property.

473.100. The person **or entity** making payment, delivery, transfer or issuance of personal
2 property or evidence thereof pursuant to the affidavit prescribed in section 473.097 is discharged
3 and released to the same extent as if made to an executor or administrator of the decedent, and
4 [he] **the person or entity** is not required to see to the application thereof or to inquire into the
5 truth of any statement in the affidavit if made by any other person. If any person **or entity** to
6 whom the affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property
7 or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled
8 in an action brought for that purpose by or on behalf of the persons entitled thereto under section
9 473.097, upon proof of the defeasible right declared by such section. Any person **or entity** to
10 whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to
11 any administrator or executor of the estate or to the surviving spouse or minor children of the
12 decedent who proceed under section 473.090 or 473.093 or to any other person **or entity** having
13 a superior right.

2 [456.023. A general residuary clause in a will, or a will making general
3 disposition of all of the testator's property, does not exercise a power of
4 appointment granted in an instrument creating or amending a trust unless specific
5 reference is made to the power or there is some other indication of intention to
6 include the property subject to the power.]

2 [469.060. A power with respect to property shall be treated as an interest
3 in such property and if releasable shall be disclaimable in whole or in part under
4 the provisions of this chapter by the holder of the power. An individual who is
5 a potential object of a power exercise has an interest in the property that is
disclaimable in whole or in part.]

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