

settlor. A power of appointment includes any right or power granted by statute to any person other than the settlor;

Title 60 O.S. Sec. 299.3 states “A donee may exercise a power of appointment only by an instrument executed with sufficient formalities to pass title to the property covered by the power. When a power of appointment is exercisable only by will, a donee may not exercise it by deed. When a power of appointment is exercisable by deed, a donee may exercise it by will.

The standard power of appointment is usually for the benefit of a third party. The power is not dependent on incapacity of the Grantor, and has different criteria for creation and enforcement.

### **Types of Powers of Appointment:**

A general power of appointment is one that may be exercised and given to the donee or the donee’s estate, or the creditor’s of either. This power could also be utilized in favor of other people. A general power of appointment causes inclusion of the assets in the donee’s estate for estate tax purposes. A general power of appointment asset inclusion causes the assets subject to the power to get a step up in basis at the death of the donee. This can oftentimes be advantageous in taxable estates that have grown in value during the donee’s lifetime.

A limited power of appointment may not be exercised in favor of the donee, donee’s estate, or the creditors of either. This limited power will not cause inclusion of the assets into the donee’s estate for estate tax purposes.

A power of appointment can be either “presently exercisable” at the time in question to the extent that an irrevocable appointment can be made or it can be “not presently exercisable” if it is postponed.