## WEST VIRGINIA CODE: §44D-8A-805

## **§44D-8A-805.** Exclusions.

- (a) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.
- (b) This article does not apply to a:
- (1) Power of appointment;
- (2) Power to appoint or remove a trustee or trust director;
- (3) Power of a grantor over a trust to the extent the grantor has a power to revoke the trust;
- (4) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:
- (A) The beneficiary; or
- (B) Another beneficiary represented by the beneficiary under §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, and §44D-3-305 of this code with respect to the exercise or nonexercise of the power; or
- (5) Power over a trust if:
- (A) The terms of the trust provide that the power is held in a nonfiduciary capacity; and
- (B) The power must be held in a nonfiduciary capacity to achieve the grantor's tax objectives under the United States Internal Revenue Code of 1986 and regulations issued thereunder.
- (c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.