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.

WV Legislature