

## SENATE JUDICIARY

Exhibit No. 4  
 Date: 2/17/15  
 Bill No. SB 253

CROWLEY FLECK PLLP  
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February 11, 2015

Senator Mary McNally  
 Montana Senate  
 PO Box 20050  
 Helena, MT 59620-0500

RE: *Support for Senate Bill 253*

Dear Sen. McNally:

Thank you for sponsoring Senate Bill 253, for adoption of the Uniform Powers of Appointment Act in Montana. In my capacity as state chair of the Business, Estates, Taxation, Trust and Real Property Section of the State Bar of Montana, I write in support of SB 253. The BETTR Section includes over 200 Montana lawyers who practice largely in the commercial law area, including estate planning.

A power of appointment is authority created or reserved by a person owning property, which enables the person receiving the power to designate who should ultimately receive the property. Powers of appointment have been around for a century or more, but have come under greatly increased use in the past 15 years. Giving a child, grandchild or other trusted person the discretionary power to decide who ultimately will receive property is a very useful estate planning tool. Unfortunately, current Montana law leaves many fundamental questions about powers of appointment unanswered. The UPAA would provide much-needed statutory guide lines for such basic issues as "what constitutes powers of appointment?" and "what is necessary to exercise a power of appointment?" Indeed, I recently worked on a case where the decedent's Will raised both issues: it was unclear whether or not words in the decedent's will created a power of appointment; and it was unclear whether the person who claimed to have a power of appointment effectively exercised it. Section 5 of SB253 would resolve the issue of whether the decedent created a power of appointment, and section 11 of SB253 would provide a clear answer for whether or not the power was exercised effectively.

When I began practicing 30 years ago, we rarely saw powers of appointments in wills or trusts. Today, we draft and see powers of appointment frequently, some more clear than

others. It would be very helpful going forward if we had the excellent statutory guidance of UPAA to assist families and their estate planners in creating and exercising powers of appointment effectively.

Thank you again for sponsoring SB253.

Sincerely,  
CROWLEY FLECK PLLP



Dirk A. Williams

cc: Sen. Nels Swandal  
Sen. Cliff Larsen  
Chuck Willey  
David Dietrich

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Texas, and Washington only

February 4, 2015

**HAND DELIVERED**

Senator Mary McNally  
Montana Senate  
Helena, MT 59620

RE: Bill LC 2107, Senate Bill 253 – Uniform Powers of Appointment Act

Dear Senator McNally:

I am writing in support of Senate Bill 253, the Uniform Powers of Appointment Act (the "Act"). I have practiced law in Missoula for over forty years, with the majority of my practice being devoted to estate planning. I believe the Act will be of great benefit to estate planning attorneys, their clients and the courts.

Powers of appointment are commonly used by estate planners to grant to a third party the authority to direct the disposition of a donor's property to specified eligible recipients. However, clear statutory authority dealing with the creation, revocation and use of powers of appointment does not exist. Estate planners and the courts currently must rely on a patchwork of court cases that constitute the common law on powers of appointment. Adoption of the Act will provide legal certainty that is now lacking.

Powers of appointment can be a very flexible and useful tool for estate planners and their clients. Adoption of the Act will provide certainty as to the enforceability of such powers, and guidance to the courts that must interpret the powers granted in wills and trusts.

Thank you for your consideration.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

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GLH:jsm



Scott, Tokerud & McCarty, P.C.  
Attorneys and Counselors

February 4, 2015

Keith Tokerud  
Jon S. McCartyWilliam M. Scott,  
1946-2008

Senator Mary McNally  
Montana Senate  
P.O. Box 200500  
Helena, MT 59620-0500

Re: LC 2107, Senate Bill Number 253

Dear Senator McNally:

I am writing in support of Senate Bill Number 253, an act to adopt the Uniform Powers of Appointment Act.

I have been a Montana practicing attorney in Great Falls for over 30 years. I focus my practice on estate planning and represent clients throughout central and northwestern Montana. I am a member of a number of organizations relating to estate planning including the Cascade County Estate Planning Council and the State Bar of Montana's Business, Estates, Trust, Tax and Real Property section.

Like most estate planning lawyers I commonly use powers of appointment in the planning documents I prepare for my clients. They represent a powerful tool to allow Montanans to pass their property to whom they choose in a protected and flexible manner.

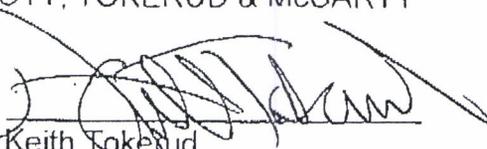
Unfortunately, there is very little statutory or case law authority to aid the courts in interpreting powers of appointment. The result is too often unnecessary and costly litigation. By providing guidelines for many of the questions that arise concerning interpretations of powers of appointment, the uniform act contained in Senate Bill 253 will conserve judicial resources and aid in the inexpensive and timely transfer of property from one Montana generation to the next.

I believe this act represents a big step forward for Montana citizens in their estate planning.

I urge the Senate Judiciary Committee to support this important bill.

Sincerely,

SCOTT, TOKERUD &amp; McCARTY

By: 

Keith Tokerud