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2019

Understanding Power of Appointment

A power of appointment is created under an estate plan. It provides flexibility and allows adjustments to the distribution of assets after the death of a person who created the plan. There are some key points that you need to understand about using powers of appointment.

A power of appointment should not be confused with a power of attorney. A power of attorney (whether financial or health) is a document that appoints another person to act for you if you are still living but become disabled or incapable of making your own decision.

When creating a will or trust today, you cannot predict your family's economic or personal situation thirty years after your death. A power of appointment permits the person you name to alter the distribution plan to better fit changed family situations. This person can reevaluate the family situation to determine the best possible outcome for the beneficiary(ies). It is important that you trust the person's judgment when you are giving a power of appointment because, depending on the type of appointment, there may be no limits on the power they have.

You should realize that one of the significant advantages of utilizing a trust in estate planning is its flexibility. This flexibility applies to the distribution of assets even after the death of the one who created the trust. Having a trust is like having your own rule book!

For example, you may have children and wish to give an equal inheritance to each. However, an unanticipated event (such as a serious accident or illness) may occur after your death which requires additional help for one child. The power holder can instruct the trustees to adjust the distribution to consider the new needs of one of the children. This flexibility allows you to protect the beneficiary's assets from the claims of third parties, such as creditors, ex-spouses, care providers, etc.

Let's look at an example where a power of appointment would be desired:

John creates a trust for the benefit of his spouse, Mary, after his death. John grants Mary a limited power of appointment. This allows her to appoint the assets remaining in the trust at her death among their children, grandchildren, great-grandchildren, or trusts, for their benefit as she determines. If Mary does not exercise this power, the assets will be distributed as John stated. However, their son, Brad, develops a bad gambling habit. Mary exercises her limited power of appointment to appoint Brad's share to a trust for his benefit. This protects the funds from being immediately gambled away. In this case, gambling is a change in circumstances that requires a change in John's trust. Other such changes include medical situations, drug abuse, marital problems, and creditor difficulties. The power of appointment allows John to plan for the unexpected.

If you would like to learn more the tax ramifications or whether a power of appointment document could be an appropriate addition to your estate plan, or to create a trust to protect you assets please contact us 702-386-6800.

Upcoming Estate Planning Workshops

**Learn everything you need to know about
estate planning and are afraid to ask or
didn't know to ask**

Seating is Limited!

October Dates – Fully Booked

Saturday, November 2nd: 10:00AM - 12:00PM

Wednesday, November 13th: 3:00PM - 5:00PM

Saturday, November 30th: 10:00AM - 12:00PM

Wednesday, December 4th: 3:00PM - 5:00PM



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