

Power Play: How a General Power of Appointment Trust Can Strengthen Your Clients' Legacies

Around Valentine's Day, themes of love and relationships can stress to clients the importance of estate coplanning between couples and the options available to them. A proper estate plan can help ensure that the surviving spouse is taken care of, that the deceased spouse's wishes are honored after they pass away, and, if necessary, that the marital deduction is utilized to address any estate tax concerns the couple may have. One solution for married couples is placing assets for the surviving spouse in a *general power of appointment (GPOA) trust*. While this estate planning tool is not as restrictive or protective as other options, a GPOA trust can still provide some peace of mind for clients.

What Is a General Power of Appointment Trust?

A GPOA is the legal authority granted by one individual (the *donor*) to a different individual (the *donee*, also known as the *powerholder* or *appointer*) that allows the donee to determine who will receive certain assets, either during their lifetime or upon their death. This power is broad and may include the ability to direct distribution of the assets to themselves, their creditors, their estate, or their estate's creditors, making it distinct from more restrictive limited powers of appointment. In a GPOA trust, the donee is the beneficiary and has a GPOA over the trust's assets, meaning that the donee can make unlimited withdrawals from the trust.

Why Would a Client Use a General Power of Appointment Trust?

If your client intends to protect their assets, even in the hands of their spouse, you may wonder why they would use a GPOA trust when the beneficiary spouse can withdraw and do whatever they want with the assets. This type of arrangement sounds more like giving assets to a spouse outright, which may lead to many problems down the road. Although the trustmaker spouse gives up control over the assets, there are a few key benefits of a GPOA trust, including the following:

- **Incapacity protection.** If the surviving spouse cannot manage their affairs when their spouse passes away, no one has to worry about a guardianship or conservatorship for these assets because the trustee will step in and manage the assets on behalf of the surviving spouse. In other words, the assets held in the trust can generally be managed without court oversight, whereas assets held in the spouse's name may require court intervention.
- **Asset segregation.** Depending on the types of assets your client owns and applicable state law, it may be beneficial to have certain assets set aside in a trust so they can be managed independently and to avoid any future commingling should the surviving spouse remarry.
- **Probate avoidance.** As long as the assets remain in the trust, the successor trustee can take over management when the surviving spouse passes away, bypassing the need for probate court involvement. This ensures a smoother transition and keeps the details of the trust, including what and how much is left to beneficiaries, out of public view.

Requirements for a General Power of Appointment Trust

As with all trusts, certain requirements must be met, especially if clients want assets transferred to this trust to qualify for the unlimited marital deduction. Some of these requirements are the following:

- **Mandatory income distributions.** The surviving spouse must receive all income from the trust at least annually.
- **Power over assets.** The surviving spouse must have the power to appoint assets to either themselves or their estate.
- **Only the spouse.** Only the surviving spouse can exercise their power. No other person can have the power to appoint the trust assets.

Talking to Your Clients About a General Power of Appointment Trust

As we celebrate love and relationships this month, we can extend this sentiment to our clients' estate plans by explaining how, depending on their unique situation, they can use a GPOA trust to accomplish their planning goals.

Our attorneys are available to advise you on the ins, outs, pros, and cons of a GPOA trust in estate planning.