

Appointing Your Legacy: A Guide to Using a General Power of Appointment Trust to Protect Your Spouse

Through sickness and health, thick and thin, you and your spouse have been there for each other. You may even share almost everything, including your estate plan. That plan expresses the love and trust you have built over the years. It ensures that the other will be financially and legally taken care of when something happens to one of you.

However, you may have lived long enough to know that, despite your best efforts, not everything can be perfectly planned for. A proper estate plan can help ensure that your surviving spouse is taken care of, that your wishes are honored after you pass away, and, if necessary, that the marital deduction is utilized to address any estate tax concerns you may have. One solution for married couples is placing assets (money and property) into 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 peace of mind.

What Is a GPOA 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 the 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 assets in the trust. Here is a breakdown of how a GPOA trust works:

- Upon the donor spouse's death, the assets transfer into the GPOA trust, and the provisions of the trust grant the donee spouse the general power of appointment over those trust assets.
- A GPOA treats the donee spouse as the legal owner of the trust assets. This means that they can control what happens to the assets in the trust, even if their decision differs from what the donor spouse originally specified in the trust's distribution instructions.
- The donee spouse has unlimited discretion to decide who receives the trust property and how and when beneficiaries receive it. They can also use a GPOA to change the trust asset beneficiaries or the terms and conditions of beneficiaries' distributions from the trust. This also means that they have unlimited withdrawal rights.

How a GPOA Trust Protects Your Spouse and Your Legacy

Giving your spouse the ability to alter your estate plan might seem like a risky move, and in some ways, it is—both for you and them. However, the open-ended nature of a GPOA trust offers unmatched flexibility that can futureproof your estate plan and ensure that your spouse and loved ones are protected in the ever-evolving landscape of life. The following are some additional benefits:

- **Incapacity protection.** If the surviving spouse cannot manage their affairs when their spouse passes away, no one has to worry about 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 you own and the 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.

While probate avoidance and incapacity planning are important considerations in an estate plan, **a GPOA trust's other key advantages lie in its ability to provide long-term flexibility and address unforeseen circumstances.**

- If your spouse experiences a significant change in their financial or life situation after something happens to you, they can adjust the distribution of assets accordingly using their GPOA.
- Changes in family dynamics, such as divorce, disability, or windfalls, can also necessitate adjustments to an estate plan. With a GPOA trust, your spouse can add or remove beneficiaries who will inherit at their passing, alter the amount of assets a beneficiary will receive at your surviving spouse's death, and modify the timing or conditions of distributions, such as setting age requirements or other criteria for receiving funds.

Requirements for a General Power of Appointment Trust

As with all trusts, certain requirements must be met, especially if you want assets in 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.

Planning for Life's Changes

Change is the only constant in life. An estate plan that cannot adapt to change risks failing when it matters most. You cannot plan for everything, but with a GPOA trust, your estate plan can be ready for anything.

For couples who have built a life together, a GPOA trust can represent the culmination of the love and trust they share and give an estate plan, like a strong relationship, the ability to stand the test of time.

Call us to discuss the pros and cons of general powers of appointment in estate planning.