

What is A Power of Appointment

The power of appointment is a provision in a trust which gives the holder of the power of appointment the authority to change the beneficiaries of the trust. For example, if a married couple's trust contains a power of appointment provision with the surviving spouse as the holder of the power of appointment, after the settlor passes away, the surviving spouse would have the power to change the beneficiaries and heirs named in the trust. More specifically, if they had two children and they originally wished to give an equal inheritance to each child as beneficiaries, but one of the children is involved in a serious accident after the death of the settlor, the surviving spouse, as holder of the power of appointment, can adjust the inheritance funds in order to provide additional help for the child who suffered the serious injuries.

Therefore, a client may want a power of appointment as it allows for more flexibility since the holder would have the authority to determine how the trust will be distributed after the death of the settlor. This would be helpful in certain circumstances where an event occurs after the settlor's death, as seen in the example illustrated above. Additionally, a power of appointment appears to be ideal in situations where a couple has a strong degree of trust between them and they believe that the holder (e.g. surviving spouse) would carry out the agreed-upon intentions/plans of the trust rather than changing the trust dramatically when such would not be necessary.

Conversely, a client may not want a power of appointment if they do not necessarily see eye-to-eye with their spouse on how the trust assets should be distributed. For example, if the client wanted to leave all of the estate to his children as beneficiaries but their spouse wanted to leave some of the estate to a charity, the client may not want a power of appointment provision with the spouse as the holder because the trust assets could end up being distributed in a manner that the client did not wish for. Another instance where a power of appointment may not be ideal is if one of the spouses has children from a prior marriage because the surviving spouse could distribute the trust assets to those children while excluding the settlor's children.

Lastly, it is important to note the distinction between a limited power of appointment and a general power of appointment. A limited power of appointment would allow for the holder to distribute the assets only to the beneficiaries defined in the trust. Whereas a general power of appointment would give the holder the additional power to distribute the assets to anybody, including himself, his estate, or his creditors.