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## **Planning Ahead**



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### **Estate Planning “Super” Powers**

If you are lucky enough to be the beneficiary of a trust created by your parents or grandparents, you may have a power under that trust to designate how your share will be distributed if you don't receive it all during your lifetime. A “Super” Power! For example, if your trust will continue for your lifetime (sometimes known as a “generation-skipping” trust), there will be provisions directing final distribution after your death. But you may have the power to name different beneficiaries to receive your trust when you are gone. This is called a “Power of Appointment”.

And if you are creating your own trust as part of your own estate planning, you can build in such a power giving your beneficiaries the right to direct how their trusts will be distributed. Such powers are given either for tax reasons or to create future flexibility, and sometimes both.

There are 2 kinds of powers of appointment. One is referred to a “limited power of appointment” because the people you can “appoint” to receive the rest of your trust are limited under the terms of the trust, commonly limited to family, and never to the person with the power to appoint or to his or her creditors.

The second kind of power is known as a “general power of appointment”. With a general power, there is no limitation on who can be appointed to receive the rest of the trust. There are tax consequences to a general power of appointment. The remainder of the trust is includable in the power holder's taxable estate. This may be a good result. The general power of appointment can be used strategically for tax purposes.

Many beneficiaries do not know they have a power of appointment over their trust and so the power goes unexercised. And if there is a power of appointment, care must be taken to exercise the power according to the requirements under the trust. Your estate planning attorney can review the trust and tell you if you have a power of appointment and advise you how to exercise it.

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