

# Trust Connection

A Monthly Report of Trust News and Information

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## POWER OF APPOINTMENT

### What is a Power of Appointment:

Power of Appointment is a provision within a trust document which provides a beneficiary, in many cases the surviving spouse, with the authority to name (assign) or change the ultimate beneficiaries.

Wow, this sounds great.....or does it?

A Power of Appointment provision can be a great feature, if it is a grantor's desire to allow for a beneficiary to have flexibility in terms of who gets the money next. However, this authority may not be the greatest if a grantor desires specific assets go to very specific beneficiaries.

When a Power of Appointment is being considered within a trust document, a grantor will typically have two options, a General Power of Appointment or a Limited Power of Appointment. Let's examine both options.

### General Power of Appointment

This power grants a named individual the ability to designate or assign assets of the trust to anyone. Yes I said anyone. Clearly, an advantage of the General Power of Appointment is flexibility. However, a potential downside is assets may never go to individuals the grantor may have desired them to go to, or said another way, assets may get in the hands of individuals the grantor desired not to go to. The grantor may have innocently thought the individual they gave this power to would make the same decisions they would have.

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## Limited Power of Appointment

This power grants a named individual the ability to designate or assign assets of the trust to any one or a multiple of individuals within a certain named class of individuals. An example would be a grantors' issue or direct descendants. The named individual holding this power still maintains some flexibility but can not give assets to just anyone.

In addition to the real-life family dynamics implications of incorporating a Power of Appointment within one's trust document, there may be real tax consequences to the individual holding this power, that they may not be aware of. Because an individual maintains this power, the assets may be included within their own estate for estate tax purposes. This potential issue should be addressed with a grantor's CPA and discussed with the person being granted the power, to ensure complete understanding of their obligations.

As with much within estate planning, things are not always as simple as they appear. Careful thought and consideration along with consultation with qualified professionals will go a long way in ensuring a grantor's wishes for their assets are followed.

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