

Worth Knowing

the Pros and Cons of Powers of Appointment

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An often misunderstood but common estate planning tool that can appear in estate planning documents is the power of appointment. Not to be confused with a power of attorney (the document that allows you to delegate certain powers to an agent to act on your behalf while you are still living), a power of appointment can be an incredibly useful tool if used properly and knowledgeably.

A well-considered power of appointment allows you to maintain significant flexibility in your estate plan now and in the future, even when that estate plan is otherwise considered irrevocable under the law. Though hundreds of pages of books, scholarly articles, court decisions, and tax regulations have been written on the topic of powers of appointment, this newsletter can help you identify opportunities in which powers of appointment may be useful and recognize cases in which they can create negative consequences.

What Is a Power of Appointment?

Broadly speaking, a power of appointment is a right granted in a legal document, including in a will or a trust, by an individual (the donor) to another person (the donee or the power holder). This granted power allows the donee to name someone else as a recipient (the appointee) of all or a portion of the donor's money and property in the future. The power holder is not required to exercise the power. Rather, the power holder simply has the option to exercise it.

If the power is left unexercised, then the money and property will pass to those individuals or entities who were originally named in the will or trust as the beneficiaries and in the amounts originally specified. This tool essentially allows for the person making a will or trust to postpone the decision of who should receive the donor's money and property, and grants such decision-making power to someone else who may be in a better position in the future to determine who will receive it.



General Versus Limited Powers of Appointment

In trust law and tax law, there are two types of powers of appointment: (1) a general power of appointment and (2) a limited power of appointment (also known as special or non-general powers of appointment). A general power of appointment is, with only a few exceptions, a power that is exercisable in favor of the decedent, their estate, their creditors, or the creditors of their estate. If a power of appointment does not fit within the definition of a general power, then it is, by default, a limited power of appointment. A common example of a limited power of appointment is a power that is limited to distributions for health, education, maintenance, or support of a beneficiary



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WELCOME, CHERISH

Meet our new associate attorney!



Cherish Buss grew up in the Shawano area and earned her Juris Doctorate from Marquette University Law School. While enrolled, she was an active member of Marquette's Estate Planning Society and Association for Women Lawyers Student Chapter. Prior to working at Wilson Law Group, Cherish worked as a judicial law clerk for Waukesha County. She also worked as our receptionist before her time at Marquette!

Cherish is licensed to practice law in the State of Wisconsin and is an active member of the Wisconsin State Bar and Association for Women Lawyers Professional Chapter. In her spare time, she's an avid mystery reader who also enjoys golfing, going to concerts, and trying out new recipes.



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(called the HEMS standard). Another example is a power granted to a power holder to distribute the property among a limited group of individuals, for example, among only "your descendants."

Lifetime Versus Testamentary Powers of Appointment

An additional characteristic that can be applied to a power of appointment is whether the power is to be a lifetime power of appointment or a testamentary power of appointment. The difference has to do with the particular moment that the power can be exercised by the power holder. For example, if a power of appointment gives the power holder a power to distribute property among grandchildren only while the power holder is alive, this would be a lifetime power of appointment. However, because this is also a limited power of appointment, we can refer to this power as a lifetime limited power of appointment. Similarly, if a general power of appointment is granted, but only for life, then it would be a lifetime general power of appointment.

On the other hand, if a power of appointment (either limited or general) is granted to a power holder that can only be exercised at the power holder's death, then this would be considered a testamentary power of appointment. Typically, a testamentary power of

appointment must be exercised through a provision in the powerholder's will or trust that specifies how the property subject to the power is to be distributed upon the power holder's death. Thus, someone could be granted either a testamentary limited power of appointment or a lifetime limited power of appointment, or a testamentary general power of appointment or a lifetime general power of appointment.



Why Use Powers of Appointment?

There are a variety of reasons why someone might want to use a power of appointment in their estate plan, including tax considerations, asset protection, and a desire for flexibility. The following are a few examples that can help illustrate how and why a power of appointment may be used:



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1. Sarah creates a trust that is designed to hold her property for the benefit of Dave, her only son, for his lifetime, and which will then pass to his children upon his death. However, three of her grandchildren have a history of drug use, terrible spending habits, and have even attempted to financially exploit her in the past. Although Sarah wants only her grandchildren to benefit from the trust after her son dies, she wants to allow Dave to determine how much (if anything) should go to each of her grandchildren, depending on how they conduct their lives in the future and what their needs are. Sarah's estate planning attorney suggests that she grant Dave a testamentary limited power of appointment in her trust that allows Dave to distribute the remainder of the trust property according to how he sees fit among his children, in equal or unequal shares at his death. This will require Dave to draft a will or trust that includes a provision that specifies how the remainder of Sarah's trust will be divided among his children at his death. Including such a power allows Sarah to maintain some control over who will receive her property, but also grants some important flexibility in her estate plan to her son so that he can take a second look at the family circumstances years after Sarah has passed away.

2. Marty died, leaving a trust that owns a significant amount of quickly-appreciating corporate stock shares. His only daughter Betty is the income beneficiary of the trust and enjoys the stock dividends that are paid out to her every year. Betty's children are the remainder beneficiaries of the trust. Betty is in her late eighties and is experiencing failing health. Before Marty died, he amended his trust to ensure that it contained a provision that granted Betty a testamentary general power of appointment over the trust. As a result, upon Betty's death, the stock in the trust receives a full step up in tax basis under current federal tax law, thus eliminating the capital gains taxes that would have otherwise been due on the sale of the stock in the hands of Betty's children after her death. Significant tax savings are achieved by including this type of a power of appointment.

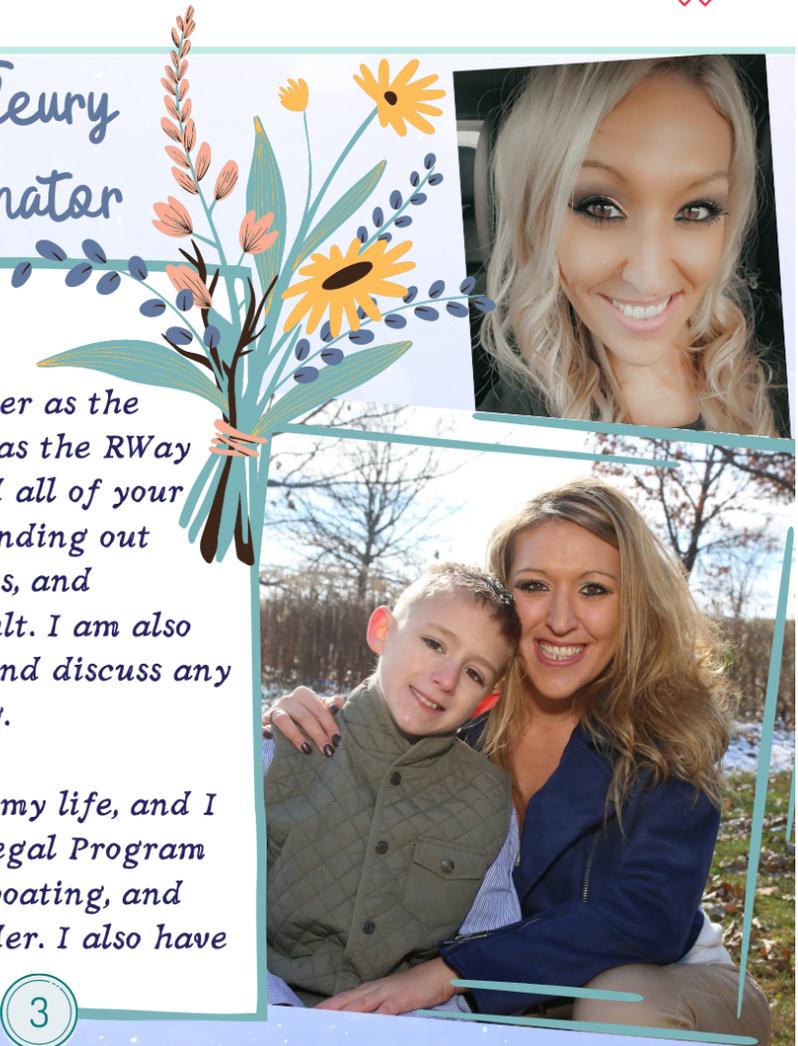
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STAFF PROFILE *Kassandra Fleury* RWay Coordinator

Hello, I'm Kassandra!

I joined Wilson Law Group this past December as the newest member of the RWay Team. My role as the RWay Coordinator includes assisting with any and all of your updates for your annual review meeting, sending out information regarding your review meetings, and providing you with the services of LegalVault. I am also one of the people you meet with to review and discuss any updates to your plan at your RWay meeting.

I have lived in the Madison area nearly all my life, and I graduated from the Madison College Paralegal Program in 2018. In my free time, I enjoy camping, boating, and spending time with my 11-year-old son, Ryder. I also have a small dog named Cole.





All classes are offered exclusively to our RWay members and their guests.

Wilson Law Group combines our most valued educational workshops into three convenient half-day events!

Where:

Clarion Suites
2110 Rimrock Road
Madison, WI

When:

Saturday, September 18, 2021
Saturday, January 22, 2021
Saturday, May 21, 2021

Three Ways to Register:

Phone

608-833-4001

Email

mail@wilsonlawgroup.com

Website

wilsonlawgroup.com

All classes are presented by WLG unless otherwise indicated

*Symposium I
Saturday, September 18, 2021*

8:30 a.m.	8:30 a.m.
Trustee Training: <i>Trust Process</i>	IRA Planning Under the SECURE Act
Break	
9:45 a.m.	9:45 a.m.
Trustee Training: <i>Administration Process</i>	Planning for Firearms: Legacy & Liability
Break	
11:00 a.m.	11:00 a.m.
LegalVault	Planning Under Medicare After Age 65

*Symposium II
Saturday, January 22, 2022*

8:30 a.m.	8:30 a.m.
Funding	Income Taxes for Trusts
Break	
9:45 a.m.	9:45 a.m.
Trustee Training: <i>Trust Process</i>	Using Trusts to Protect Your Assets from Long-Term Care Costs
Break	
11:00 a.m.	11:00 a.m.
Trustee Training: <i>Administration Process</i>	Planning for Incapacity

*Symposium III
Saturday, May 21, 2022*

8:30 a.m.	8:30 a.m.
Trustee Training: <i>Trust Process</i>	Current Events in Estate Planning
Break	
9:45 a.m.	9:45 a.m.
Trustee Training: <i>Administration Process</i>	Estate Planning (& Mistakes) of the Rich & Famous
Break	
11:00 a.m.	11:00 a.m.
Have You Done Your Homework?	Tax Advantages of Charitable Planning

Trustee Training: The Trust Process

This program will provide attendees with an understanding of estate planning concepts, why a trust is useful in comprehensive planning, and an introduction to the trust administration process. Attendance is a must for every Trustee and successor Trustee. A Trustee Handbook will be included. This program is a precursor for the Trustee Training (The Administration Process) program.

Trustee Training: The Administrative Process

The Trust Administration workshop provides Trustees with a detailed description of the decisions to be made and the tasks to be completed following the death of a Trustmaker. These include valuing assets, administering retirement plans and annuities, dividing and distributing trust assets, and preparing estate and fiduciary income tax returns. It is important to know how to handle these responsibilities before the need exists. Prior attendance at the Trustee Training (The Trust Process) program is highly encouraged.

LegalVault

This workshop is for anyone who would like to learn more about the benefits and functions of their LegalVault account. LegalVault enables you to keep, track, and review your documents outside of your regular estate planning meetings, control access to your estate planning documents, and add additional documents to your vault that requires privacy. LegalVault also allows healthcare providers to have access to your medical directives at a moment's notice.

IRA Planning Under the SECURE Act

With the passage of the SECURE Act in 2020, the landscape of planning with qualified accounts has changed dramatically. In the past 15+ years, attorneys and advisors were careful to promote the use of the stretch or inherited IRA to the next generation. As the maximum time period to defer taxation on an inherited IRA is now 10 years, this program will review options to add value to your legacy.

Planning for Medicare After Age 65

Presented by an Industry Expert

Reaching eligibility for Medicare is a milestone in our lives. You may have questions about benefits, supplemental insurance, prescription drug plans, and more. Enrollment growth, budget pressures, new political directions, and rapid technological change will continue to shape the program's future. An industry expert will discuss the importance of when to apply, benefits covered, why supplemental plans are a strong consideration, and how to maximize your Medicare benefits.

Planning for Firearms: Legacy & Liability

If you are administering an estate, the ownership of Type II weapons (fully automatic, suppressors, etc.) could be problematic. If the weapon is not registered properly, transferring, possessing, or receiving a Type II weapon is a criminal act. This is a particularly harsh result for a personal representative who must deal with Type II weapons. What is the solution? The creation of a valid Gun Trust will give important guidance to the Trustee and the beneficiaries to avoid violation of federal law.

Income Taxes for Trusts

Income taxes are often a secondary discussion topic during the course of planning an estate. However, basic knowledge of trust and estate income tax rules is essential to avoiding common mistakes that can cost thousands of dollars. This workshop will provide a practical overview of the issues that arise in connection with the income taxation of trusts and estates.

Planning for Incapacity

While your legal documents are up to date and you have discussed who will act in your place to make financial and health care decisions, there is more to the story. This program will dig into the finer points of what actually happens when the issue of incapacity confronts you and your family members. We will cover how to discuss your wishes with your loved ones, ways to plan ahead for your potential incapacity, what the institutions will need to know, and the likely outcome of the process.

Using Trusts to Protect Your Assets from Long-Term Care Costs

The skyrocketing costs of long-term care can decimate the net worth you've built over a lifetime. Using an Irrevocable Trust may protect your assets from the costs of long-term care for those who cannot qualify for other planning alternatives. This program will review the pros and cons of Irrevocable Trusts in long-term care planning.

Funding Your Trust

Funding is a critical function of maintaining your trust. Even though your current assets are coordinated with your trust, it is your responsibility to make sure that all assets acquired in the future are also coordinated with your trust. This workshop will help you understand how to properly maintain your trust funding. It also provides essential information to correctly fund your trust, so be sure to sign up if you have not yet taken the class.

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Current Events in Estate Planning

As we all know, estate planning is essential to making sure your assets and values pass on to future generations in the way that you want. This program is designed to keep you up to date with how changing laws and court decisions can impact your existing planning. We will discuss the most important changes that can have an impact in your plan.

Have You Done Your Homework?

Not only is your trust binder full of important legal documents, it also contains documents to guide your family in implementing your plan. This workshop offers a guided session to completing your Memorandum for Distribution of Personal Property, Remembrance and Services Memorandum, Child Care Exhibit, Key Information section, and other customizable documents. Please bring your trust binder(s) and we will identify your "homework" and provide direction on completing it.

Estate Planning (& Mistakes) of the Rich & Famous

Celebrities seem to have it all...or do they? Estate planning has always proven to be the great equalizer of us all. You will hear stories from Philip Seymour Hoffman to Elvis, Michael Jackson to James Gandolfini. When estate plans are done incorrectly, or not at all, the chaos of probate and litigation can take away from the legacy of a loved one. An informative and fun time will be had by all while we learn from the mistakes of the "elite."

Tax Advantages of Charitable Planning

You don't have to stop supporting the causes you are passionate about once you pass. With proactive charitable planning, you can continue or even amplify your giving potential in addition to lowering your taxable estate and avoiding potential capital gains issues. In this presentation, we will be covering Charitable Trusts, Gift Annuities, Private Foundations, Donor Advised Funds, Bequests of Funds, and Bequests of Appreciated Assets.

Check out our library of workshops!

1. Go to wilsonlawgroup.com
2. Click the "Log in to Watch RWay Workshops" button under "Free Workshops"
3. Enter the password: **Sinatra2013**



3. John is Karen's second husband. Karen has children from a previous marriage. John has never been married and has no children of his own. Some of Karen's children have been very nice to John while others have been quite mean to him. Karen has significant wealth and intends to ultimately leave it to her children; however, she wants to provide for John throughout the remainder of his life if he outlives her. To that end, Karen's estate plan establishes a trust for John that is protected from estate taxes at her death. The income generated on the trust property is paid out to John for his life, with the principal of the property payable to her children at John's death. However, she grants John a testamentary limited power of appointment over certain company stock held in the trust so that upon his death, he can determine who among Karen's children will receive that stock and in what shares. Karen explains this to her children so that they get the message that if they mistreat John after she is gone, he has the authority to reduce the value of their share of her trust by at least some degree. Her hope is that this will incentivize her children to treat John with a certain level of respect that they sometimes have struggled with during her life.

These examples illustrate just a few of the more common reasons why and how powers of appointment can be creatively used to build flexibility into an estate plan. There are many other ways to use these incredibly useful tools. It is important to note, however, that they can also create significant risk and lead to unintended consequences.

For example, what if John, in the example above, turned out to be vindictive and, out of spite, exercised his testamentary limited power of appointment to grant everything to one of Karen's children who had a terrible gambling problem, and who then lost everything in one weekend in Atlantic City? Certainly, this would not have been what Karen had intended. But, a power of appointment can lead to this type of result if the power holder chooses to exercise their power irresponsibly.

How Can This Information Help You?

Now that you have a better grasp on the uses and limitations of this powerful estate planning tool, you can better identify in your own circumstances the situations that would call for use of a power of appointment. You can also identify the existence of powers of appointment in your own estate planning documents or in the documents of your loved ones, and consider whether these are in fact appropriate for the circumstances.

If you'd like to learn more about how powers of appointment can be used to help you achieve your estate planning goals while maintaining flexibility, please don't hesitate to reach out to us. We are eager to help you make the best planning decisions for your unique needs. Give us a call today!



This Quarter in History



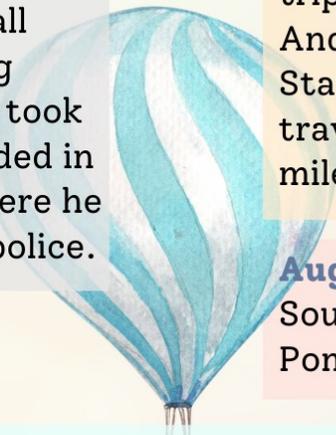
July 16, 1872 Norwegian explorer Roald Amundsen was born near Oslo. He was the first to sail from the Atlantic to the Pacific Ocean via the Northwest Passage in 1906, discovered the South Pole in 1911, and flew over the North Pole in a dirigible in 1926.

July 25, 1909 The world's first international overseas airplane flight was achieved by Louis Bleriot in a small monoplane. After asking "Where is England?" he took off from France and landed in England near Dover, where he was greeted by British police.



August 17, 1978 The first transatlantic balloon trip was completed by three Americans: Max Anderson, Ben Abruzzo, and Larry Newman. Starting from Maine on August 11th, they traveled in the Double Eagle II over 3,000 miles in 137 hours, landing near Paris.

August 24, 79 A.D. Mount Vesuvius erupted in Southern Italy and destroyed the cities of Pompeii, Stabiae, and Herculaneum.



August 26, 1883 One of the most catastrophic volcanic eruptions in history occurred on the Indonesian island of Krakatoa. Explosions were heard 2,000 miles away. Tidal waves 120 ft. high killed 36,000 people on nearby islands, while five cubic miles of earth were blasted into the air up to a height of 50 miles.

September 3, 1783 The Treaty of Paris was signed by John Adams, Ben Franklin and John Jay, formally ending the American Revolutionary War between Britain and the United States.



September 26, 1774 American folk legend Johnny Appleseed was born in Massachusetts (as John Chapman). For 40 years he traveled through the heartland, planting and tending to orchards. He was known for his kindness and love of animals, and was regarded as a "great medicine man" by Native Americans.

Summer 2021

With most of Dane County vaccinated or partially vaccinated, it's understandable that folks are itching to go out and do something fun like they weren't able to do last summer. As usual, Southern Wisconsin is full of unique festivals and events this year.

Here are a few that we're excited for!

July 22-25: WaunaFest

Waunakee's annual fest at Centennial Park has it all: carnival rides, live music, a 5k run, an arts and crafts fair, volleyball and softball tournaments, and much more.

August 13-15: White Oak Folk Fest

This music festival, held at White Oak Savanna Events Farm & Sanctuary in Dodgeville, is a celebration of all things folk. Unplug and enjoy some traditional music in a stunning prairie setting.

August 27-19: Middleton Good Neighbor Festival

Held at Firemen's Park every year since 1964, the theme for this year's fest is "All Together Now!" - true to form for this fun community event focused on raising money for local causes.

September 4-5: Taste of Madison

Sample world-class cuisine from 40 different area restaurants, listen to live music, and savor the end of summer. While this event is usually held at Capitol Square, this year it will be at Breese Stevens Field, or "Off the Square."

September 25-26: Art Fair on the Square

Peruse handmade artwork, jewelry, clothing, accessories, and more from over 500 artists at Madison Museum of Contemporary Art's classic annual festival.

Note: this year's date is tentative.



MARK YOUR CALENDARS

