

The donor could limit the scope of the power. For example, the donor could include all assets in the trust or estate, or just a portion of the assets. The power could be limited to whom it may be exercised. In some instances, the donee may only exercise the power in favor of the descendants of the donor's trust or will. In other instances, the power may be exercised to include the donee's spouse or charity.

The power must be in writing and must be *specific* in its terms and description. It is advisable to completely discuss and determine goals before creating such a long-lasting documents. Consider: if the power is contained in a trust and vests in the children or grandchildren of the creator, it could easily only become effective in twenty or thirty years...perhaps more. By that time, the wishes of the donor may no longer be possible to obtain due to death. It is thus vital to word the power with clarity and precision.

Most powers of appointment are contained in Wills or Trusts and allow a person to alter the gifting within a small class of people, taking into account events occurring after the death of the testator. Typically, the power states the person holding the power may adjust what goes to the children or grandchildren taking into account certain subsequent events, but limits the gifting to only the children and grandchildren and often limits the amount of the change allowed, e.g. only half of a person's share may be altered, etc.

Practical Uses:

Let's say a client creates a revocable living trust. The client is unmarried and has two children (both productive citizens). Client Mary leaves 2M worth of assets equally to the two children (George and Nancy) in lifetime trusts to provide protection against a divorce, lawsuit, etc. If George or Nancy then dies with assets still in trust, their individual share is then to be distributed