

ESTATE & TRUST PLANNING STRATEGIES: POWER OF APPOINTMENT AND DISCLAIMER TRUST EXPLAINED

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In one of our previous articles, we covered the topic of disclaimers as an excellent post-mortem tax planning tool. As discussed, anyone can *disclaim* a part of their inheritance.

By doing so, it would go to the successor's heirs as if the beneficiary had predeceased the decedent. But what if the beneficiary doesn't want that bequest to go to their children, and instead, a favored niece or nephew?

Is it possible to do that? **The simple answer is no.**

In order to have the inheritance go to another party, a power of appointment would be needed and granted by the decedent in their will or trust.

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WHAT IS A POWER OF APPOINTMENT?

A power of appointment is a way to *ensure that your estate plan can be adjusted to the beneficiaries' circumstances at the time of your death*. Unlike a disclaimer, which is the beneficiary's decision to forego the bequest, a power of appointment is granted to the beneficiary by the testator or donor.

The legal authority of a power of appointment is to make another person the outright owner of the property left by the [decedent](#)¹. The decedent gives the power to a designated third party, so the designated person may choose the [beneficiaries](#)¹ of the donor's [trust](#)¹ or [will](#)¹. Essentially, the holder of the power of appointment has the ability to divide up the [estate](#)¹ between the beneficiaries.

For example, a testator decides to divide their estate amongst their children when writing a will. The testator can name their spouse as the holder of a power of appointment so that when they pass away, the holder can reassess the family's situation and decide if and how the money should instead be distributed to the children. It can be as broad or as narrow as the testator decides.

There are two types of power of appointment: *general* or *limited*. A **general power of appointment** gives the third party broad discretion in how assets are to be distributed, whereas a **limited power of appointment** gives the third party more restricted options.

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.





WHAT IS A DISCLAIMER TRUST?

A disclaimer trust is a tool that allows spouses to minimize estate taxes. When one spouse passes away, the surviving spouse can disclaim ownership of the decedent's assets and move them to an irrevocable trust². A disclaimer trust is granted through a testamentary document.

For example, in his or her will, the decedent states that if a named beneficiary should disclaim, then the assets do not necessarily go to the heirs of the person disclaiming assets. The testator can state that if a beneficiary should disclaim the assets, they will go to the persons or entities that the testator dictates.

Normally, this is done when a bypass trust is established, but it will only be funded if the surviving spouse disclaims his or her interest. However, the testator can also provide specific instructions if any bequest is disclaimed. The disclaimed bequest can become part of the residue, be passed to that favored niece or nephew, or be given to any third party – outright or set up in a trust.

DEFINITIONS

1. **Disclaimer** – When a beneficiary says, “I don’t want it”, the bequests are then distributed to the beneficiary’s heirs at law
2. **Power of Appointment** – The testator gives the power to distribute assets to a third party
3. **Disclaimer Trust** – The testator identifies a beneficiary, but if that beneficiary disclaims the inheritance, then the testator identifies the succession and the structure

Please [contact](#) one of our Estate & Gift team specialists for further information or assistance with your estate planning needs.

Note: Any changes to your estate plan must be drafted by your attorney.

Sources:

¹ [Cornell University](#)

² [Cornell Law School](#)



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Our estate planning team assists with the transition of family wealth and estate succession. Our team of experts has over 90 years of combined experience working with family-owned and privately held companies, as well as high-net-worth individuals. Our primary goal is to assist individuals and their attorneys to effectively transfer wealth while minimizing unnecessary estate, gift, and generation-skipping taxes. In addition, we can coordinate all of your [Estate & Gift, Trust and Probate](#) needs to ensure a smooth transition while minimizing emotional, tax, and administrative burdens. [Contact us today.](#)

We are offering a [free preview](#) of the planner for download. Schedule a call to assess your situation for access to the full book.

There is no better time to start, and it is never too early.

Would you like assistance with your Estate Plan? [Douglas Venturelli](#) and [Richard Umanoff](#) are available to review your current estate plan, provide recommendations, and consult with your estate attorney.

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Douglas A. Venturelli is a Principal at KROST. He has over 45 years of experience in tax, estate, and business services. His main focus is federal estate and gift taxes. Doug consults with clients in the entertainment, legal, real estate, and medical industries. [» Full Bio](#)



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