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NOTE TO BENEFICIARIES USING A POWER OF APPOINTMENT

Under the typical Dynasty trust¹ the Beneficiary of an Exemption Trust is granted the option to direct where their trust assets go at their death. This right is known as a "Power of Appointment". What this means is that an individual beneficiary may direct in their Will to whom trust assets pass at their death. Generally speaking, the beneficiary is limited to appointing assets to a descendent of a grantor. So when a beneficiary passes away, they could direct, in their will, that their trust be distributed in trust or outright to their children, their siblings or their siblings' children, as long as the trusts goes to the descendents of a grantor. We sometimes include provisions to permit a beneficiary to continue the trust for the spouse of a beneficiary, provided that at the spouse's death, the trust assets pass to someone who was a descendent of a grantor.

If you are a beneficiary of a Dynasty trust, and there has been an Exemption trust created for your benefit, you need to talk to your own estate planning attorney about how to exercise the Power of Appointment granted to you under a Dynasty trust. Normally, you would include in your last will and testament, a statement such as the following:

"I hereby exercise the Power of Appointment granted to me, under Article X, paragraph A, of The XYZ Trust, Dated the 1st day of January, 2001 and appoint the corpus of my Exemption Trust to my child, Jane, to continue in trust for her benefit"

or it could read:

"I appoint my Exemption Trust property to my children outright under the Power of Appointment granted to me under The XYZ Trust Dated the 1st day of January, 2001"

or could read:

"I appoint, under the Power of Appointment granted to me under The XYZ Trust Dated the 1st day of January, 2001, the trust property in my Exemption Trust to each of my grandchildren in equal shares, per stirpes, to the exclusion of my children"

The beneficiary needs to make sure that if they wish to change the distribution scheme set up in original trust, they must do it through a will, properly drafted referring specifically to the Power of Appointment granted to them under the trust agreement that established their trust.

This provision also applies to future beneficiaries, so a grandchild of a Grantor could direct where their trust goes, through the exercise of a Power of Appointment.

¹ Sometimes called a Bloodline Trust or Asset Protection Trust

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