

Second Generation Wills***What are "Children's Trusts" or "Descendants' Trusts"?***

After your death, assets can be held in lifetime, protective trusts for the benefit of your children and their descendants. Each child (or other descendant) can be given the right to become a co-trustee or sole trustee of his or her trust at designated ages. The trustees are required to provide for the health, support, maintenance and education of the children and their descendants during their lifetimes. Additionally, each child may be given a testamentary "power of appointment" (described below) to designate who is to receive the property in that child's trust upon his or her death. If the child does not exercise this power of appointment, any remaining trust property typically passes to the child's children, in further lifetime trusts for their benefit, on substantially the same terms as the child's lifetime trust (or to trusts that terminate when each grandchild reaches a specified age - called a "contingent trust" - see below). The major advantages in using lifetime, protective trusts for children and other descendants are as follows:

- The trust assets will not be subject to claims of the child's or descendant's creditors, so that a large judgment in a lawsuit will not result in the child or descendant losing the benefits of these assets;
- The assets will remain clearly segregated as the child's or descendant's separate property, which is generally beyond the reach of Texas divorce courts;
- Management assistance can be provided for each child or descendant who is under a specified age through a trustee or co-trustee;
- There may be potential income tax savings available through distributions directly to grandchildren, who may be in low tax brackets; and
- Up to the amount of your estate that is exempt from federal estate tax (\$5,430,000 in 2015, adjusted for inflation each year)¹, *plus* whatever it grows to by the time of your children's deaths, can pass to future generations free from estate tax at your children's deaths.

What is a Contingent Trust?

A Contingent Trust is a trust designed to hold property that might otherwise be distributed to a person who is incapacitated, or who is too young to manage the property prudently. It enables the trustee to make distributions to or for the benefit of the person, without subjecting the property to the control of a court-supervised guardianship. Distributions are made for the person's health, support, maintenance and education. A Contingent Trust provides many of the benefits discussed above; however, a Contingent Trust terminates at a specified age, and the benefits described above no longer apply after that date.

¹ This exempt amount was \$5,250,000 in 2013, was \$5,340,000 as of January 1, 2014, and is \$5,430,000 as of January 1, 2015.

What is a Power of Appointment?

A "power of appointment" enables the beneficiary of a trust to decide to whom the trust's assets will pass. A "testamentary" power of appointment means that the power may be exercised only in the beneficiary's Will. Powers of appointment may be "limited" so that the group of people to whom the property may be given is restricted, or "general" so that the beneficiary may give the trust property to his or her estate, and thereby, to anyone named in his or her Will.

What is a Fiduciary?

"Fiduciary" is the term applied to anyone acting on behalf of another to manage assets that have been entrusted to the Fiduciary. The term includes an executor (who has been entrusted by the decedent to manage the assets of the estate for the estate's beneficiaries) and a trustee (who has been entrusted with the assets of the trust to manage them for the trust's beneficiaries). The same person can be both a "Fiduciary" and a beneficiary.