THE ESTATE PLANNER

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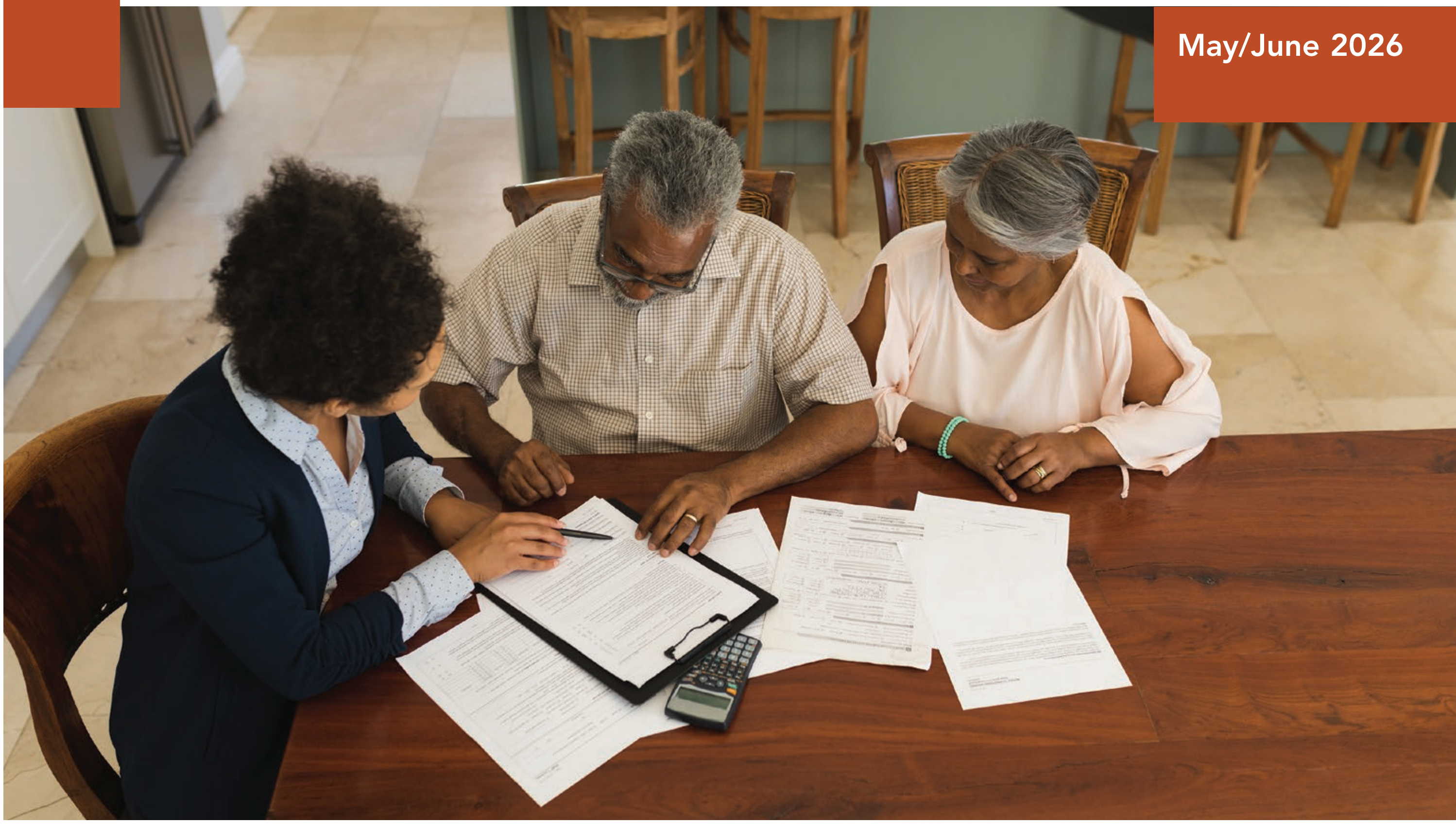

POWERS OF APPOINTMENT: A FLEXIBLE ESTATE PLANNING TOOL

Owning foreign assets requires special estate planning

Becoming empty nesters soon?
This transition is the perfect time to reexamine your estate plan

Estate Planning Red Flag
You've neglected to review your life insurance policy

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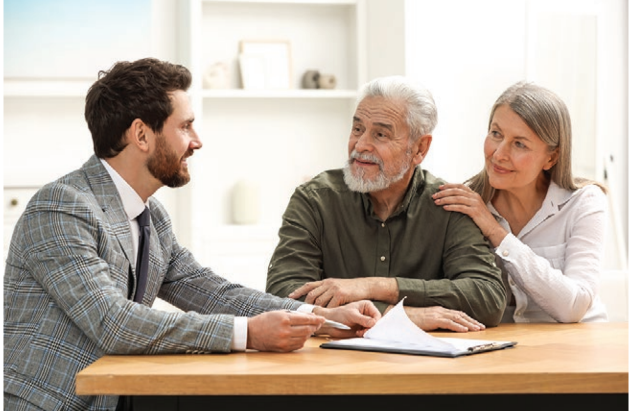
Powers of appointment: A flexible estate planning tool

By definition, estate planning is designed to address events that may not occur for years or even decades. This requires you to make decisions regarding your estate today against the backdrop of an uncertain future. Fortunately, there are tools available to build flexibility into your plan, including powers of appointment.



Defining powers of appointment

Powers of appointment are a legal right — typically conferred by a donor in his or her will or trust — that authorizes the holder of the power (a family member or trusted advisor) to designate who'll receive certain assets. Depending on how they're drafted, powers of appointment may allow the holder to distribute the assets during his or her lifetime (an "inter vivos" power) or at death through a will or trust (a "testamentary" power).

The distinction between general and limited powers of appointment has significant tax implications.

Powers of appointment can be general or limited. General powers of appointment allow holders to distribute assets to anyone, even to themselves, their estates or their creditors. In contrast, limited powers of appointment limit distributions to specified beneficiaries or classes of beneficiaries (such as the donor's children or grandchildren). Limited powers of appointment can't be exercised in favor of the holder or his or her estate or creditors. However, it can be used to benefit the holder if distributions are limited to "ascertainable standards" related to the holder's health, education, maintenance or support.

The distinction between general and limited powers of appointment has significant tax implications. Because holders of general powers of appointment effectively exercise ownership control over the assets, those assets are included in their estates for gift and estate tax purposes. This means holders may be subject to gift tax (in the case of inter vivos powers) or estate tax (in the case of testamentary powers), depending on how and whether the power is exercised. Holders of limited powers of appointment generally aren't exposed to gift or estate tax liability if the power is properly drafted and administered.

Building flexibility

There are many ways to use powers of appointment to build flexibility into your estate plan. Examples include:

Informed decision making. Powers of appointment allow for decisions on the distribution of wealth to be made later, when all the facts are available. Suppose you have three young children and your plan calls for your assets to be held in trust, providing your spouse with income for life and dividing the remaining assets equally among your children. By granting a limited testamentary power of appointment, you can give your spouse the ability to adjust the division of assets among the children based on their circumstances. Perhaps your daughter has become financially independent and needs less financial assistance than the others. Or maybe your son is unable to manage the assets on his own. In that case, your spouse might direct his share into a trust that restricts his access to the funds.

Asset protection. One advantage of transferring assets to an irrevocable trust is that they're removed from your estate and generally beyond the reach of your creditors. But what if you're concerned about having enough money during retirement? One option is to use a "self-settled" trust and name yourself as a discretionary beneficiary. That way, the trustee can distribute funds to you if needed. But these trusts generally offer little or no asset protection.

An alternative is to use an irrevocable trust coupled with a limited power of appointment, allowing a trusted third party to distribute assets to you. Because you're not a beneficiary of the trust, and distributions to you are purely discretionary, this arrangement should offer strong protection against creditors; however, outcomes depend on state law and precise drafting of the trust.

Tax planning. Powers of appointment offer several potential tax benefits, including avoidance of estate and generation-skipping transfer taxes under certain circumstances. In addition, they can be used to ensure that assets receive a stepped-up basis, enabling beneficiaries to sell them without triggering significant capital gains taxes. (See "Using powers of appointment to avoid capital gains tax" below.)

Handle with care

Powers of appointment can help your family adapt your estate plan to changing circumstances and achieve significant tax savings. To be effective, these powers require precise drafting and compliance with federal and state laws, so be sure to work with your estate planning advisor to ensure that they achieve your objectives.

Using powers of appointment to avoid capital gains tax

When you transfer highly appreciating assets to an irrevocable trust, their value (including all future appreciation) is removed from your estate for estate tax purposes. But unlike assets transferred at death — whose basis is "stepped up" to their fair market value — assets placed in an irrevocable trust retain your tax basis. This can result in a substantial capital gains tax bill when your beneficiaries eventually sell the assets.

With careful planning, powers of appointment can help avoid this result. Here's an example: Joe transfers $10 million in appreciated stock (with a basis of $2 million) to an irrevocable trust for the benefit of his children. The trust also names Joe's elderly father, Lou (whose $15 million estate tax exemption is mostly unused), as a discretionary beneficiary and grants him a testamentary general power of appointment over the trust assets.

When Lou dies, the general power of appointment causes the assets to be included in his estate (even if he never exercised it) and shielded from estate taxes by his exemption. As a result, the stock's basis is stepped up to its fair market value (say, $11 million) even though it remains in the trust. This strategy allows Joe's family to avoid as much as $1.8 million in capital gains taxes.

Owning foreign assets requires special estate planning

In an increasingly global world, it's not uncommon for individuals and families to own assets outside the United States. A vacation home in another country, inherited property overseas, foreign bank or investment accounts, or even an ownership interest in an international business can all add complexity to your financial picture. While these assets may represent meaningful opportunities and diversification, they also require careful attention when it comes to estate planning.

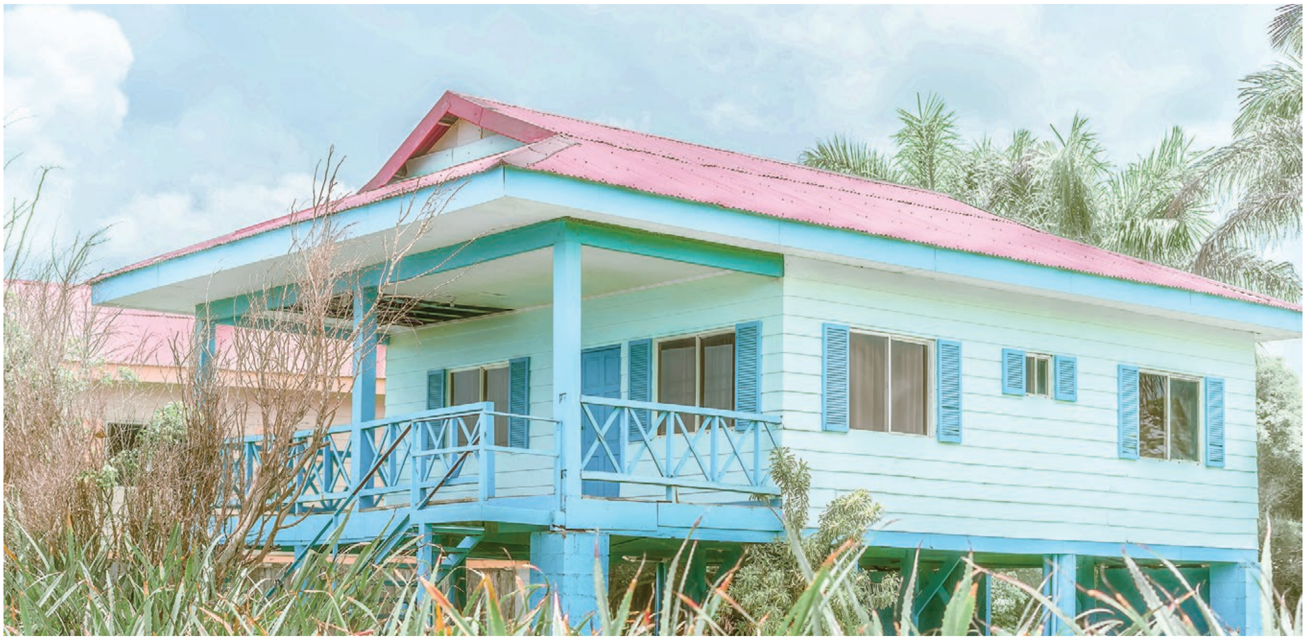
Properly account for foreign assets

Failing to properly account for foreign assets in your estate plan can create unintended tax consequences, legal complications and administrative delays for your heirs. Different countries have their own inheritance laws, tax regimes and reporting requirements — many of which may conflict or differ from U.S. tax laws.

Coordinating your estate plan to address these cross-border issues is important to ensure your wishes are carried out efficiently. Plus, you don't want your family to have to navigate a maze of international regulations during an already difficult time.

Double taxation is possible

If you're a U.S. citizen, you're subject to federal gift and estate taxes on all of your worldwide assets, regardless of where you live or where your assets are located. So, if you own assets in other countries, there's a risk of double taxation if the assets are subject to estate, inheritance or other death taxes in those countries. You may be entitled to a foreign death tax credit against your U.S. gift or estate tax liability — particularly in countries that have tax treaties with the United States — but in some cases, those credits aren't available or may not fully eliminate double taxation.



Keep in mind that you're considered a U.S. citizen if 1) you were born here, even if your parents have never been U.S. citizens and regardless of where you currently reside (unless you've renounced your citizenship), or 2) you were born outside the United States, but at least one of your parents was a U.S. citizen at the time. Even if you're not a U.S. citizen, you may be subject to U.S. gift and estate taxes on your worldwide assets if you're domiciled in the United States.

Domicile is determined based on the facts and circumstances of your situation and generally refers to residing in a place with the intent to remain there indefinitely. Once the United States becomes your domicile, its gift and estate taxes apply to your assets outside the United States, even if you leave the country, unless you take steps to change your domicile.

Consider drafting two wills

To ensure that your foreign assets are distributed according to your wishes, your will should be drafted and executed in a manner that is recognized in the United States and in the country or countries where the assets are located. Often, it's possible to prepare a single will that meets the requirements of each jurisdiction, but it may be preferable to have separate wills for foreign assets. One advantage of doing so is that separate wills, written in the foreign country's language (if not English), can help streamline the probate process or comparable estate administration process.

If you prepare two or more wills, work with local counsel in each foreign jurisdiction to ensure that the wills meet each country's requirements. And it's critical for your U.S. and foreign advisors to coordinate their efforts to ensure that one will doesn't revoke or conflict with the others. Also, keep in mind that some countries have forced heirship or similar laws that can override the terms of your will.

Complex tax laws require professional help

Addressing your cross-border assets proactively can reduce uncertainty, manage potential tax exposure and spare your loved ones unnecessary complexity. Contact your estate planning advisor with questions regarding your foreign assets. ▮

Becoming empty nesters soon?

This transition is the perfect time to reexamine your estate plan

It's graduation season! Whether your last (or only) child is preparing to leave home for college or a new job, becoming empty nesters is a major life transition for parents. While much of the focus is on adjusting to a quieter house, this milestone also presents an ideal opportunity to revisit your estate plan.

Many estate plans are created when children are young. At that stage, documents often prioritize guardianship provisions, income replacement and asset management for minor beneficiaries. But once children reach adulthood and your financial picture evolves, your estate plan should change as well.

Review powers of attorney

One of the most important updates for empty nesters involves powers of attorney. If your children are now adults, you may wish to revisit who you've named to make financial or medical decisions if you become incapacitated. While you may have previously named a spouse as the primary agent, you might now consider adding an adult child as a successor agent.

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At the same time, parents often overlook that their newly adult children should also have basic estate planning documents in place. When a child turns 18, parents no longer have automatic authority to access medical information or make financial decisions on their behalf. Encouraging your college-aged or young adult child to sign health care directives and financial powers of attorney can help prevent unnecessary legal or administrative complications during an emergency.

Update trust provisions

If you established trusts when your children were minors, it may be time to review the distribution terms. Do the age provisions still make sense? Should distributions be staggered differently? Have your children demonstrated financial maturity that would justify simplifying the asset distribution structure?

Additionally, your overall goals may have shifted. With retirement approaching, you may want to revisit how much you intend to leave to children versus allocating assets to charitable causes or other priorities. Trust terms should reflect both your current financial position and your long-term objectives.

Revisit beneficiary designations

Retirement accounts, life insurance policies and certain investment accounts pass by beneficiary designation — not by your will or trust. Over time, these designations can become outdated. Divorce, remarriage, the birth of grandchildren or the death of a named beneficiary are all reasons to review and update these forms.

Align your estate plan with your retirement plan

Becoming an empty nester often shifts financial focus toward retirement. Your estate plan should align with your anticipated retirement timeline, income needs and health care planning.

Long-term care considerations, in particular, deserve attention. These costs can significantly affect both your financial security and the legacy you leave behind.

A practical step forward

Estate planning isn't a one-time event. It's an ongoing process that should reflect your current circumstances and goals. The transition to an empty nest is a natural checkpoint; one that allows you to simplify, update and strengthen your plan. Work with your estate planning advisor to ensure your documents, beneficiary designations and estate tax strategies are coordinated and up to date.

ESTATE PLANNING RED FLAG

You've neglected to review your life insurance policy

Life insurance is often purchased during major milestones, such as getting married, buying a house or welcoming a child. Once the policy is in place, it's easy to set it aside and assume planning is complete. But life changes, tax laws evolve and financial goals shift. That's why regularly reviewing your policy and assessing whether you have the right coverage amount is an important part of sound estate planning.

Life insurance generally provides liquidity at death, subject to policy terms. That liquidity may be necessary to cover funeral expenses, pay off debt, replace lost income for surviving family members or fund future needs such as education expenses. From an estate planning perspective, life insurance can also play a key role in ensuring heirs are treated according to your intentions, minimizing financial stress and preserving other assets.

A common issue that can arise when you don't review your policy regularly is that your beneficiary designations become outdated. Divorce, remarriage, births and deaths can all change who *should* receive proceeds. Life insurance is distributed according to the beneficiary designations on file, not by your will or trust, which means an old designation can override your carefully drafted estate documents. A periodic review helps ensure your policy aligns with your current intentions.

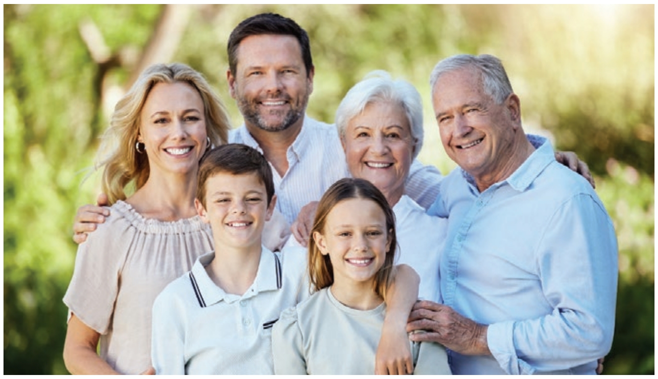
Policy ownership is another estate planning consideration. If you personally own a life insurance policy on yourself, the death benefit will be included in your taxable estate. For higher-net-worth individuals, this could increase estate tax exposure. In some cases, an irrevocable life insurance trust (ILIT), if properly structured and administered, can help keep proceeds out of the estate while still providing funds for heirs or estate expenses. Even if estate taxes aren't a concern today, future changes in wealth or tax law could make them relevant.

Coverage amount matters, too. A policy purchased years ago may no longer reflect your current financial circumstances. Inflation alone can significantly reduce the purchasing power of an older policy's death benefit. Reviewing coverage helps ensure it continues to support your family's needs and estate objectives.

Finally, reviewing your policy creates an opportunity for better coordination with your overall estate plan. Life insurance should work in harmony with your will, trusts and retirement account beneficiary designations. When these pieces are aligned, your estate plan is more likely to achieve the outcome you desire.

Our business is creating your legacy

Our clients work hard to create their wealth. We work hard to help them preserve it.



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The Michael Law Group, P.C. (TMLG) is a boutique law firm. Our practice areas are:

- Estate planning, probate,
- Estate and trust administration,
- Business succession planning, charitable planning,
- Tax and related legal areas.

How do our clients trust us and our work? The short answer is that we've proven it again and again. We can do that because our attorneys are highly qualified and experienced. They have advanced degrees in taxation, including masters of law (LLM) degrees in taxation and/or are licensed CPAs.

We work with our clients to develop unique estate plans and business succession plans. We're honored to have represented—and to represent—multiple generations of many families. These experiences and others are invaluable and help to set us apart. In addition, most our attorneys are licensed to practice law in both Illinois and Florida.

We can help you:

Make the best choices for your future. Every client's needs are unique. We work with clients to design, draft, and execute comprehensive estate planning documents that reflect their specific goals and objectives, and avoid the pitfalls that can occur without proper planning.

Keep the peace. Trustees and executors are charged with significant duties, if not executed properly could result in personal liability for them or in the estate or trust's value. The Michael Law Group represents estates, executors, administrators, and trustees throughout the probate, estate, and trust administration process.

Protect your family-business legacy. The transition of a family business will be the most significant transaction in an owner's lifetime. We provide our clients with recommendations that result in long-lasting value because we understand family business.

Ensure meaningful gift-giving. Charitable giving can play an important role in the estate planning process, benefiting causes near and dear to you, and reducing income taxes during your lifetime and estate taxes upon your death.

If you are here reading about our services, you have decided that you want to plan for your future and your family's future. We are dedicated to helping you to do just that: create a better future for yourself and those you cherish.

To learn more just call us at 312-900-0151. We're always happy to talk with you about your goals, your concerns, and how we might help you create your legacy.

Welcome D. Bryant Ross!

D. Bryant Ross

We're extremely pleased to welcome D. Bryant Ross as our newest attorney. Bryant offers our clients nearly a decade of specialization in trust and estate administration and planning; retirement planning, especially surrounding the complexities of the SECURE Act; and a strong focus on federal transfer taxation with a particular specialty in generation-skipping transfer taxation. He strives to structure estate plans to serve each client's individual needs and goals, and he advises clients on the intricacies of estate planning and transfer tax laws. A graduate of Vanderbilt University, Bryant earned his Juris Doctor (JD) from the Loyola University Chicago School of Law, with dual certificates in tax law and international law and practice. In law school, he served on the executive boards for the Arts and the Law Society and the Alternative Dispute Resolution Society. Licensed to practice in Illinois, he is a member of the Chicago Estate Planning Counsel and the American Bar Association.

TMLG

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