



THE POWER OF THE GIRAFFE IN ESTATE PLANNING



“What you do makes a difference, and you have to decide what kind of difference you want to make.”

— Jane Goodall

Few scholars, if any, have focused on the power of the giraffe in estate planning. However, after reading this article, I suspect you may agree that the giraffe may well be the most important non-human animal in estate planning.

It is often both prudent and common to leave wealth to surviving spouses or other loved ones in trust. For the sake of simplicity, let's refer to the surviving spouse as “Step Mom.” A well-drafted trust identifies the trust beneficiary who will enjoy the trust's assets after Step Mom passes on. The successor beneficiary is sometimes referred to as a “remainderman.” Again, for the sake of simplicity, let's call the remainderman, “Angry Step Son.” Angry Step Son is often the child of the individual who set up the trust for Step Mom.

Here's where the problem starts.

Human nature being what it is, Angry Step Son may not like Step Mom. In fact, Angry Step Son may not like a lot about what Step Mom does. He may not like her trips to Paris, philanthropic ways, investment strategies, income tax planning, and the way she seems to like her children just a bit more than Angry Step Son.

We have seen circumstances in which Angry Step Son has a legally vested interest in the assets Step Mom intends to use for her lifetime – that is, an interest not subject to divestiture. In this unfortunate situation, Step Mom must account to Angry Step Son and endure his criticisms about her decisions. This entangled complexity can cause sleepless nights for Step Mom and an unhealthy relationship between them.

Of course, Step Mom would dearly appreciate a shield from the harassing criticism foisted upon her by Angry Step Son.

One wonderful defense trusts can deploy is the power of appointment, sometimes also referred to as the “power of disappointment.” This power allows Step Mom to “appoint,” or assign, trust assets – usually upon her death – among various others besides Angry Step Son. What a tremendous deterrent to Angry Step Son continuing to hound and harry her. This power may be so great that

Angry Step Son can be fully disinherited. It can also be less drastic by allowing Step Mom to appoint up to 50 percent of trust assets away from Angry Step Son.

Imagine Step Mom, after relentless harassment from Angry Step Son, calls a meeting at her attorney's office. Angry Step Son is seemingly happy that he now has a larger audience – Step Mom and her attorney – to air his grievances.

But at the meeting, the attorney advises Angry Step Son that Step Mom is going to appoint his eventual inheritance, at her death, to the newest baby giraffe at the local zoo.

Angry Step Son is further advised that it is only fitting he should have the right to name the new baby giraffe. After all, it is his inheritance that's going to the zoo. For possible names, perhaps Angry Step Son might want to consult Rudyard Kipling's, *The Jungle Book*.

Angry Step Son, suddenly realizing he has over-played his hand, immediately suggests that Step Mom should continue her visits to the Musée d'Orsay, maintain her investment strategy, and enjoy life the way she would prefer.

Angry Step Son may then become as cuddly and docile as a baby giraffe. Respectfully, he may say, “Oh, and by the way, shouldn't we ignore exercising the power of appointment, and let someone else have the joy of naming the baby giraffe?”

