



Crummey Powers

By Theresa M. Varnet, Esq.

For 2013, an individual is currently able to gift up to \$5,250,000 in his lifetime without the imposition of federal gift taxes. If no such gifts are made during lifetime, \$5,250,000 may be left to beneficiaries upon death, free of federal estate taxes. (For 2013 Illinois imposes estate tax at \$4 million). In addition, an individual may gift up to \$14,000 per year per beneficiary, and this is above and beyond the \$5,250,000 if it is a “present interest” gift. That means the beneficiary must be given the right to enjoy the gift contemporaneously.

There are two ways a gift may fall within the “present-interest” requirement. First, an outright gift may be made to the beneficiary. The beneficiary has complete access to the funds as recipient of an outright gift and, as such, it is clearly a gift of present interest. The second way to qualify an annual gift as a “present interest” gift is to set up a trust with a “demand right.” This demand right is known as a “Crummey power.” The right to demand the gift converts a gift to a trust from a future interest gift to a present interest gift.

A “Crummey power” provides that upon notification of a gift, the beneficiary has the right to demand the gift for a determined time period rather than have it automatically remain in the trust. When the time provided for withdrawal passes or the beneficiary declines, he gives up his “demand right” and the gift remains in the trust to be managed by the trustees according to the terms of the agreement. For the trust to work properly, it is important that the beneficiary understand not to elect to receive the gift when made. (NOTE: If the beneficiary receives needs based government benefits,

the right to withdraw will be treated as a gift to the beneficiary and will cause a loss of needs based governmental benefits. Therefore, you need to discuss with your attorney the ramifications of making a present interest gift to a trust which has a beneficiary who receives needs based governmental benefits such as Medicaid or SSI.)

This is a brief synopsis of Crummey powers. Through working with your attorney, this type of gift through trust is a very effective method of estate planning. We will discuss in greater detail the importance of Crummey powers and government regulations when we meet to discuss the specifics of your estate plan.

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