

# **CRUMMEY WITHDRAWAL POWERS**

## **HIGHLIGHTS**

### **Background**

Only gifts of present interest can be sheltered from federal gift tax through the gift tax annual exclusion. Gifts in trust from the Grantor of a trust are generally considered to be gifts of future interest because, in the absence of a power granted to the beneficiaries in the trust document, the trust beneficiaries cannot directly access the property when it is transferred to the trust. Irrevocable trust beneficiaries can be given the power to withdraw their portion of a gift made to the trust by the Grantor. This withdrawal power is most often granted for a short period of time, such as 30 or 60 days, and then it terminates, or lapses. This power is sometimes known as a "Crummey" withdrawal power, or simply Crummey power, because the first persons to use this type of power (in conjunction with an irrevocable life insurance trust) was a family named Crummey in the case of *Crummey v. Commissioner*, 39 F.2d 81 (9th Cir. 1968).

The Crummey withdrawal power is set forth in the irrevocable life insurance trust document itself.

However, to enable the Crummey power to work in the manner it is designed to work, written notice of a beneficiary's withdrawal right must be provided by the Grantor or Trustee in a timely manner, initially and each time transfers are made directly or indirectly to the trust. The Trustee's notice to the beneficiaries can refer to current direct or indirect lump-sum gifts, direct or indirect recurring gifts, or any combination of these. Recurring gift provisions would be used when monthly or other periodic contributions are made to the trust for the payment of insurance premiums instead of annual contributions.

When the trust document provides for the Grantor to direct the use of Crummey withdrawal powers, the Grantor should initially notify the Trustee of the existence and scope of the withdrawal powers and who among the beneficiaries will have the right to withdraw from the transfers made to the trust in the current year. The Grantor, then, by written notice to the Trustee, may change which beneficiaries can exercise withdrawal powers with respect to transfers made to the trust in any given year and how much can be withdrawn.

## **ADVANTAGES**

1. The initial notice from the Trustee to the beneficiaries helps the beneficiaries be aware of the existence and fully understand the extent of their withdrawal powers and how they may be exercised.
2. The use of Crummey powers in an irrevocable trust permits the Grantor to avoid gift tax consequences on transfers made in trust, as long as the amount transferred to the trust for each beneficiary holding the power in conjunction with all other transfers made to the

beneficiary in that calendar year is less than the gift tax annual exclusion.

3. The Crummey power in an irrevocable life insurance trust permits life insurance premiums, and ultimately the proceeds from the policy, to escape federal gift and estate taxes.

### **DISADVANTAGES**

1. Crummey powers that lapse (terminate) in an amount in excess of the greater of \$5,000 or 5% of the trust estate can cause unexpected gift or income tax consequences for the trust beneficiaries.
2. Timely written notices must be faithfully given each year to the beneficiaries who hold the Crummey withdrawal powers.