



# Will Power

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## DESIGNATED REPRESENTATIVE

The Florida Trust Code has been signed into law but won't be effective until July 1, 2007. There are a number of new laws that present certain issues that will probably require you to update your estate planning documents. One of those issues I'll address today, and that issue centers on what you want your beneficiaries to know about your will and trust, and the assets that you bequeath.

Under current law, an "interested party" can request a copy of your trust following your demise, and the trustee must provide that interested party a copy. Interested parties are loosely defined as beneficiaries of your estate and your creditors. Trustees currently have the responsibility to provide beneficiaries accountings of the trust, to ensure that the trustees are properly carrying out the terms of your trust following your demise.

Many individuals, however, don't want their children to know everything about the estate plan. Perhaps one of the children was treated more favorably, and they don't want the other children to feel badly. Perhaps it's simply a privacy issue, not wanting all of the beneficiaries to know how much someone had in their trust.

The new Florida Trust Code addresses this issue, by allowing you to name a "designated representative" on behalf of one or more of your beneficiaries. The "designated representative" can be named to receive all of the information that a beneficiary would be entitled to, but the designated representative does not have to share that information with the beneficiary.

Allow me to illustrate by example. Suppose that "Greg" has a second spouse, "Terri" and two sons, "Doug" and "Hector". Greg provides in his trust instrument that all

of his assets are held in further trust for Terri for the remainder of her lifetime. At her death, the amounts are divided between Doug and Hector evenly. Doug's share is to be distributed to him outright, but Hector has had gambling and drug addiction problems, so his share is held in continued trust for his lifetime, with the trustee safeguarding those assets to ensure that Hector doesn't use them unwisely.

Greg does not want Doug and Hector to know how much is in his trust for Terri's benefit, as he does not want them to harass Terri for the rest of her life asking for money. Normally, Doug and Hector would have the ability to demand accountings and a copy of the trust. Under the new Florida Trust Code, however, Greg can name a "designated representative" for Doug and Hector, to receive this information on their behalf without sharing it with them. Greg believes that this will ensure family harmony for the rest of Terri's life.

Greg provides in his trust that at Terri's death, Doug is entitled to a copy of the trust and accountings, but retains the designated representative for Hector. Greg reasons that if Hector had knowledge how much was in his trust fund, he would continually request distributions from the trustee. He may do so anyway, but Greg can provide in his legal documents a legal mechanism to give Hector literally no information, while still providing for Hector.

There are a variety of details in the law when naming a designated representative, so one should consult with legal counsel when acting.

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