

NEWSLETTER



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WHAT IS THE 5 BY 5 POWER IN ESTATE PLANNING?

By Matt Haupt

The 5 by 5 power (or 5 by 5 rule) is an optional trust provision that individuals can use in the estate planning process when creating their trust. This provision gives beneficiaries the option to withdraw money from a trust in a controlled way each year without completely draining the trust or disrupting its long-term goals.

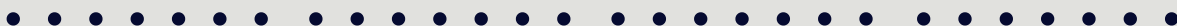
It allows a beneficiary to withdraw the greater of :

- ✔ \$5,000 or
- ✔ 5% of the total value of the trust

Typically, a beneficiary will determine which option yields the largest withdrawal amount. For example:

- If a trust is worth \$90,000, 5% would be \$4,500, so the beneficiary could instead take the \$5,000 option.
- If a trust is worth \$150,000, 5% would be \$7,500, making this option better than the fixed \$5,000 withdrawal.

It's important to note that the beneficiaries are not required to withdraw from the trust each year but this provision provides flexibility to access funds, if needed, without special approval from the trustee.



MARY KUCHARK NAMED TO “LEADERS IN THE LAW” CLASS OF 2024



Congratulations to Attorney Mary Kucharek for being named to the 2024 Class of “Leaders in the Law” by Michigan Lawyers Weekly.

Attorneys that receive this honor are setting the standard for other attorneys in Michigan. According to Michigan Lawyers Weekly, “Leaders in the Law offer a wealth of expertise in diverse areas of the law and their outstanding contributions have changed the practice of law and the justice system. They demonstrate tremendous leadership and mentorship, and displayed a dedication not just to the legal community, but to their communities at large.” Mary is a shareholder in the firm and the City Attorney for the City of Birmingham, the City of Orchard Lake Village, and the Village of Lake Orion.

To learn more about Mary, or contact her, click [HERE](#).

Adding this provision to a trust can have a few benefits.

Keeps the Trust’s Structure and Goals Intact

The original intent of the trust is protected because withdrawals are controlled and limited to small amounts each year. This prevents beneficiaries from draining the trust too quickly while still giving them access to funds when needed.

Provides Beneficiaries with Financial Flexibility

Beneficiaries can take money if they need it, but aren’t required to withdraw anything. The trustee doesn’t have to approve these withdrawals and having a predictable, yearly source of income for the beneficiary can help with financial planning and stability.

Potential Tax Advantages

Trusts are often taxed at a higher tax rate than individuals and any withdrawal amount can be shifted to the taxable income of the beneficiary which could result in lower overall taxes.

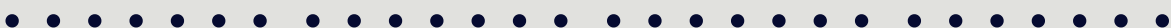
However, there could be some disadvantages, depending on the goals of the trust.

Trust Depletion Over Time

If a beneficiary takes the maximum withdrawal every year, the trust could shrink faster than the trust creator intended.

Creditor Exposure

Once a beneficiary withdraws money, it becomes part of their personal assets, which means creditors, lawsuits, or even divorce settlements could claim the money after it’s withdrawn.



Unintended Tax Consequences

Even if a beneficiary doesn't take money out of the trust, the IRS may still treat them as having control over that portion of the trust. If they skip their withdrawal rights year after year, the IRS may start counting a larger portion of the trust as if it belongs to them for tax purposes. This could lead to unexpected taxes in the future- even if they never actually take any money.

The 5 by 5 Power can be included when drafting a trust or, in some cases, added later through an amendment (if the trust allows modifications.) Through this provision, some trust owners may decide to put the following types of parameters

on trust withdrawals, only allowing beneficiaries to use the funds for purchases such as:

- Buying their first home
- Medical expenses
- College tuition or professional development

Not every trust needs this provision, but it can be a useful tool for giving beneficiaries flexible but controlled access to money from the trust. If your settling up a trust or reviewing an existing one, an estate planning attorney can help you determine whether this provision can help you meet your overall goals. ◇

COMMON ADOPTION QUESTIONS

By Monica Rossi Baylis

Adoption can be an exciting event, but it can also feel very overwhelming, especially when you are in the beginning stages of the process. Hiring legal counsel for the entire adoption process to assist you through all obstacles that may arise is highly recommended. This will make the adoption go as smoothly as possible. A few questions regarding adoption in Michigan are as follows:

Do I have to be married to adopt a child? Who can legally adopt in Michigan?

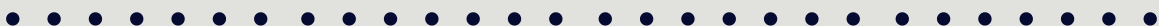
You do not have to be married to adopt in Michigan. As long as you are over 18 years of age, the following are eligible to begin the adoption process:

- Single Adult
- Married Couple
- Stepparents

It is important to note that, in Michigan two single individuals (unmarried couples) cannot adopt the same child. You must be married or only one person will be able to legally adopt the child. However, the court may also permit a married person to adopt without the other spouse under certain specific circumstances.

What are the most common types of adoption in Michigan?

- Agency Placement Adoptions
- Direct-Placement Adoptions
- Relative Adoptions
- Stepparent Adoptions
- Guardianship Adoptions
- Adoptions through the Department of Health and Human Services (DHHS)/Michigan Children's Institute (MCI)



- Adult Adoptions
- Same Sex or Second Parent Adoption

What is an adoption home study or preplacement assessment?

The state requires a child-placing agency to conduct a preplacement assessment, commonly referred to as a home-study, in all adoptions where children are not placed with a close relative, stepparent, or guardian. This study assesses your home and family with different phases such as a documentation phase, a home inspection phase, and individual family member interview phase. If placement has been approved, a few additional home studies may be performed prior to the adoption being finalized. An adoption home study may review the following:

- The family’s personal history, their home, financial situation, health, and employment of the individual or family that will be adopting the child;
- They will discuss discipline, religion, and family support;
- They will assess the safety of your home and make the adoptive parent(s) aware of improvements that need to be made;
- They will interview each family member that lives in the household to ensure everyone is ready to bring a new child into the home;
- They will conduct a criminal background check (There are certain offenses that would prohibit someone from being able to adopt a child.); and,
- They will provide the required adoption training.

It is extremely important to be as open and honest as possible during the home study or preplacement assessment.

Is a new birth certificate issued when a child is adopted?

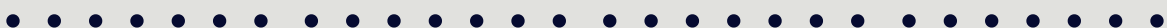
A new birth certificate will be issued after adoption is complete if the new parents request one. The birth certificate will show the adoptive parent(s) as the parents of the child. The birth certificate does not show any indication that the child has been adopted.

What are the different types of relationships between birth parent(s) and adoptive parent(s)?

There are several types of adoption relationships that can take place between the birth parent(s) and adoptive parent(s). They are:

Open Adoption: An open adoption is one in which the adoptive parent(s) agrees to the exchange of contact information with the birth parent(s) and potentially develop a relationship. In choosing an open adoption, the birth parent can reach out to the adoptive family as agreed to by the adoptive parent(s) for as long as the adoptive parent(s) welcomes such contact. It is important to note that just because an adoption is “open” does not mean that the birth parent has any right to see the child or be involved in the child’s life in any way. All contact between the adoptive parent and the birth parent is completely at the discretion of the adoptive parent, there is no legal contract or parental right for the birth parent to enforce. Open adoption may not be appropriate in some circumstances. That being said, some positive reasons for open adoption are:

- The birth parent(s) can get to know the adoptive parent(s)- Developing a relationship with the adoptive family could be positive for all the parties involved.
- When the time comes, the birth parent will be able to explain to the child why they decided to place them in adoption.



Welcome Attorney Matthew Haupt!



Matt Haupt joins Beier Howlett as an associate specializing in Estate Planning and Probate. He brings with him an invaluable set of skills, abilities, and expertise. He is passionate about advancing public education, protecting civil rights, and is dedicated to education equity and justice. Matt has been a Troy School District Board Member since January 2023. He is an advocate for equitable education policies and procedures that improve student outcomes across Troy's diverse student body. To learn more or contact Matt, click [HERE](#).

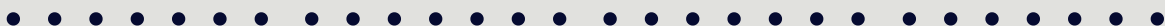
- The child will have the opportunity to know the birth parent and they will be able to watch the child grow up.

Semi-Open Adoption: Semi-open adoption is more of a restricted open adoption. In a semi-open adoption, all communication between the adoptive parent(s) and the birth parent(s) is facilitated through an agency. It is common for the birth mother and/or birth father to meet the adoptive parent(s) before the baby is born. After the baby is born, the adoptive parent(s) may agree to send pictures and updates to the birth parent(s) or even agree to meet when the child is older and wishes to meet their birth parent(s). Again, as with open adoption, there are no guarantees. The adoptive parents still have all of the parental legal rights to the child and will do what they feel is in the best interests of the child.

Closed Adoption: In a closed adoption, no identifying information is exchanged between the birth mother and the adoptive parent(s). It is not always the adoptive parent(s) that choose a closed adoption. The birth parents may wish to remain anonymous and ask that the central adoption registry not allow the release of their identifying information.

Can the birth parent(s) change their minds?

There are opportunities throughout the adoption process for the birth parents to change their minds. This is a risk that every adoptive family needs to understand and be ready for throughout the adoption journey. Even if the birth parent(s) have already given an out-of-court consent (a document signed by the birth parent relinquishing all parental rights outside of a court hearing), they can request revocation within 5 business days after the release or consent was signed, excluding weekends and holidays. The court must make several judicial determinations before granting the revocation. If the birth parent(s) execute a



release for adoption in court before the judge or other judicial officer, it may not be rendered void unless it is proved that it was involuntarily executed. The court may only grant a rehearing for good cause. The birth parent(s) have 21 days after executing a release in court to petition for a rehearing to revoke the release. It is more difficult for a revocation of consent to be granted to the birth parents with an in-court release than with an out of court consent.

What is the Central Adoption Registry?

Adoption files in Michigan are confidential. The Central Adoption Registry (run by the Health and Human Services Department of Michigan) contains information from birth parent(s) and adult former siblings allowing or denying information about them to be released to the adopted person.

The adopted person must be 18 years of age or older to have a court or agency request the information from the registry. Identifying and non-identifying information are treated differently. Non-identifying information is to be given to adult adoptees within 63 days of the request. Identifying information may be released only under certain conditions, such as the consent and denials filed by the biological parent(s) with the central adoption agency.

It is crucial for all parties involved to remember that adoption laws vary from state to state and the parameters surrounding adoption can be complicated, so it would be wise to seek legal counsel if you decide to pursue adoption so they can guide you through the entire process. ◇

ESSENTIAL ELEMENTS OF A CONTRACT

By Beier Howlett

Contracts are legally binding agreements between two or more parties that consist of a mutual exchange of promises with terms and conditions that are understood by both parties. They are a part of most commercial transactions so it is important that they are constructed with all the necessary information to make sure they are legally valid. While they vary in terms and complexity, the formation of a valid contract must include specific essential elements. These specific elements are:

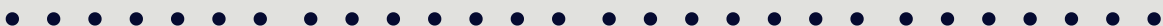
- Offer
- Acceptance
- Meeting of the Minds
- Consideration
- Capacity
- Legality

Offer

The offer is the first element of a contract. It is a proposal from one party to another that lays out the duties and responsibilities of each party entering into the contract. The offer element sets the foundation of the contract, and the terms should be clear and definite.

Acceptance

The second essential element of a contract is acceptance. Without acceptance, there will be no contract. This element means the parties have come to an agreement and will be legally bound by the contract terms. Generally



speaking, for the contract to be binding, the offeree must accept the offer. If the offeree counter-offers, the original offer is void. Acceptance can be either written, oral, or inferred by the offeree's actions.

Meeting of the Minds

Both parties must have a clear understanding of all the material terms and conditions they are agreeing to in the contract. They must both be active participants in the contract and fully understand what they are both getting into. If this is not established, then a contract may not be enforceable. Both parties must freely agree to the contract otherwise the contract could be considered invalid if one of the parties can prove that they were made to sign under duress, fraud, or misrepresentation.

Consideration

Contractual consideration is an essential part of a contract because it is the value exchanged between both parties which they have agreed upon. The value could be money, goods, services, or property. It is essentially what both parties promise to do (or not to do) and something both parties bargained for. There are two types of consideration. They are:

- **Executed Consideration:** This is when the promises of the contract are delivered immediately. As in delivery of goods or services at the time of payment.
- **Executory Considerations:** These are promises performed in the future. For example, you pay an amount to a seller with the promise that they will transfer ownership to you.

Capacity

All parties signing the contract must demonstrate that they are legally able to enter into the contract before they sign it. This is

BEIER HOWLETT NAMED TO “BEST LAW FIRMS” 2025



We have received Tier 1, 2, and 3 rankings for our expertise in Trusts & Estates, Commercial Litigation, Municipal Litigation, and Environmental Law and Litigation. The Law firms recognized by the Best Lawyers program identifies firms known for quality, specialized knowledge, and their commitment to excellence. Firms ranked by Best Lawyers persistently receive impressive ratings from clients and peers.



considered “legal capacity” and if one of the parties does not have the capacity to enter into the contract, the document may be void. Individuals that may not have the legal capacity to enter a contract could fall under the following categories:

- Being a minor;
- An individual under the influence of drugs or alcohol;
- An individual with a mental disability; and/or,
- An individual that is unable to understand the language in the contract.



Legality

All contracts are subject to the laws of the jurisdiction that controls their enforcement. Contracts must be legal and not violate any laws including federal, state, or local laws. A contract whose subject matter involves an illegal activity is not legally valid.

It is imperative to understand these essential elements of a contract when entering into any transaction. It would be advisable to seek legal counsel when entering into a contract to ensure the agreement is enforceable. ◊

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