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TRUST

ARE YOU
EFFECTIVELY
USING THE TRUST
PROTECTOR ROLE?



TRUST CONNECTION CLIENT INSIGHTS

A Monthly Report on
Trust News and Information

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Are You Effectively Using the Trust Protector Role?

A Trust Protector is an independent person appointed under a trust instrument by the grantor (creator) of a trust with responsibilities and powers regarding very specific aspects of the trust.

History

Although the concept of a Trust Protector (previously referred to as “Trust Advisor”) has been a part of U.S. trust law for many years, it gained popularity within the last thirty years as many ultra-high net worth Americans established off-shore trusts in what were often tiny island nation-states. These jurisdictions offered some very attractive features, such as asset protection and privacy. However, a concern for the safety and soundness of the assets was indeed paramount, as was flexibility regarding specific parties having authority over various aspects of the trust. Said another way, individuals establishing trusts wanted their own investment advisors to manage the trusts’ assets, not the investment division of small foreign banks. The Trust Protector role was utilized to bifurcate duties, provide checks and balances, and add the desired flexibility, all while maintaining the benefits of the asset protection statutes.



Domestically, many have considered U.S. trust law as slow to adapt to the changing world, which has undergone massive alterations occurring in societal structures, corporate structures, financial products and services, and the way in which these services are delivered. However, over the last decade, there has been significant movement by trust and estate attorneys. These movements are made in order to take advantage of existing provisions by numerous states in adopting additional flexibility for grantors, as they desire to have various parties involved in the management of the trust. These moves are made in contrast to simply having a trustee with responsibility for every aspect of the trust. Therefore, the Trust Protector has come ashore and is now considered commonplace in trust documents.

What Powers Can Be Granted to a Trust Protector?

Although there is a myriad of powers a grantor may grant to a Trust Protector, the following are some of the most common:

- Power to remove and appoint the named trustee and/or investment advisor.
- Power to name a successor Trust Protector.
- Power to appoint agents on behalf of the trust to perform specific duties, such as tax preparation and advising special needs distributions.
- Power to approve/disapprove discretionary distribution requests by beneficiaries.
- Power to audit existing trust activities.
- Power to remove and replace individual beneficiaries from a named class of beneficiaries.



Who Can Be Named as a Trust Protector?

Once a grantor has decided a Trust Protector is the way to go for their trust, now comes the more challenging decision of whom to name. The following represent the most frequently named individuals:

Grantors Themselves: In many cases, the grantor decides they alone would like to retain some, or all, of these powers. Just because a trust is irrevocable doesn't mean the grantor can't retain some authority. The grantor is maintaining the integrity of the trust, and will be assured the trust comports with the governing state statutes, but simply feels more comfortable retaining some powers, allowing for the maximum amount of flexibility.

Attorney/CPA: Often, the grantor of the trust may name a center of influence, such as their attorney or CPA. They have relied on their professional advice and judgement, sometimes for many years, and desire to have them continue to participate in their affairs for many more to come.

Family Member or Close Friend: Sometimes the grantor of a trust prefers to have, in addition to legal and financial professionals, the contribution of a family member or close friend. Why would this be? The grantor may find that although they are confident the professionals they have chosen from an administrative, investment, legal and accounting perspective will comply with the trust document's provisions and applicable laws, there is a more personal touch that only a family member or close confidant can provide. They may feel that the Trust Protector should be someone who knows them well, knows their values, preferences and desires better than the other named parties. They may consider this contribution to be equally as important to the proper management of the trust as the professionals themselves. They may also enjoy having this named individual be empowered to pass along their responsibility to a member of the next generation, ensuring a family member or close family friend is always included in the management of the trust to some degree.

Combination: Although it is possible to have Co-Trust Protectors or a Trust Protector Committee, which may be a combination of the above three parties, this can often cause delays in any desired action. Not all Co-Trust Protectors or Committee members may be available when decisions are needed, or not all parties may be in agreement. What then? The pros and cons of this option should be considered with the drafting attorney to ensure continuity of the trust administration.

The trust world has always been somewhat of a mystery to most people and it is refreshing to see some evolution in terms of flexibility and client-centric thinking being enacted by many state legislators. This new client-centric thinking is even being embraced by many trust/estate attorneys and trustees. The utilization of a Trust Protector is one of those client-centric changes, and one that you and your families can be the beneficiaries of for multiple generations to come.





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