

A Momentum Minute



Trust Protectors: Are They a Good Fit for Your Client?

What Is a Trust Protector?

Traditionally, the three roles that must be filled when setting up a trust are the settlor (also called a grantor, trustor, or trustmaker), the trustee, and the beneficiary. All three roles are necessary to create a trust that functions properly. Although it is common to use trust

protectors in foreign asset protection trusts, a trust protector is a relatively new role in trusts drafted in the United States for estate planning purposes. However, as the number of trusts designed to last for generations grows, estate plans need more built-in flexibility. Giving a trust protector, through the terms of the trust, certain powers over the trust, such as removing or appointing trustees, adding or removing beneficiaries, and amending or even terminating the trust, ensures that your client's intentions for creating the trust are fulfilled despite changing law or circumstances.

How Is a Trust Protector Selected?

A settlor may select as a trust protector any individual or group of individuals, such as family members, business associates, friends, attorneys, accountants, or other professional advisors. The naming of a trust protector may be specific, such as "my neighbor John Doe," or general, such as "a CPA selected by the majority of the owners of the [ABC CPA Firm]." The settlor provides for and selects a trust protector in the trust agreement.

Who Makes a Good Trust Protector?

Because of the many and varied powers that a trust protector can hold, your client should name a trust protector with attributes, knowledge, or skills suitable for the role's responsibilities. For example, if the trust protector has the power to amend the terms of the trust to account for changes in tax law, the selected trust protector should understand tax law and how it will impact the trust. If a trust protector has the power to veto or direct trust distributions to beneficiaries, the selected trust protector should understand the family history and desires of the settlor. Different powers may require the selection of different trust protectors or possibly a committee of trust protectors.

What Does a Trust Protector Do?

Based on your client's wishes, the purposes of the trust, and applicable laws, the trust protector can hold many different powers, including administrative powers traditionally held by a trustee, such as the power to make distributions, and judicial powers traditionally held by a court, such as the power to remove beneficiaries. Trust protector powers can include the ability to

- remove a trustee or appoint a successor trustee,
- add or remove beneficiaries,
- amend the trust agreement,
- exercise the voting rights of closely held business interests owned by the trust,
- interpret the terms of the trust,
- veto or direct trust distributions,
- terminate the trust, and

- appoint and remove members of a distribution or investment committee.

This list is not exhaustive, and the inclusion of any of these or other trust protector powers should only occur after careful consideration of your client's desires and purposes for creating the trust.

Why Your Client May Want to Include a Trust Protector in Their Trust-Based Estate Plan

There are several reasons why a client may want to include a trust protector in their trust-based estate plan:

- Trust protectors offer increased flexibility and peace of mind. The administration of a perpetual trust that may last for generations can be daunting because no one knows what the future may hold. Including trust protector provisions in a trust, agreement can ensure that the client's trust achieves the client's goals despite changing circumstances and laws.
- Trust protectors can provide additional oversight and support for a trustee. A trust protector can ensure that a trustee is properly administering the trust and carrying out the trust's purposes. If the trustee is delinquent in its duties, a trust protector may remove the trustee and appoint a better-suited trustee. A trust protector can also help a trustee correctly interpret trust provisions and address changes in the law or beneficiary circumstances.
- Trust protectors provide a more accessible and less costly means of modifying a trust. If a trust needs to be changed after the settlor's death, the only route is usually through the court system, a complicated and costly process. Giving a trust protector the power to modify the terms of a trust can prevent the need to go to court to change the trust.

Can My Client Name a Trust Protector for a Testamentary Trust?

A testamentary trust, usually created through a will, comes into existence after the settlor dies and the will has been probated. A settlor can, and in many cases, should include trust protector provisions in a testamentary trust to ensure that your client's intent for the trust is properly carried out over time.

Does Tennessee Allow for Trust Protectors?

Tennessee statute T.C.A. § 35-15-1201 governs Trust Protectors. Tennessee is a Trust friendly state, and our Trust Protectors laws are broad. It is essential to consult an attorney familiar with Tennessee laws to understand whether trust protector provisions are suitable for your client's estate planning goals.

Contact us to learn whether naming a trust protector makes sense for your clients. We are happy to answer any questions you or your clients may have and help them craft an estate plan perfect for them and their loved ones.

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