

When Trusts Merit Additional Oversight: The Role of a Trust Protector

April 30, 2024



Irrevocable trusts can offer a smooth, tax-advantaged way to transfer wealth to family members. However, there's a trade-off: when you establish an irrevocable trust, you surrender control over the assets placed within it. What you can influence, though, is who will manage the distribution of those assets after your passing.

In situations where the trust creator lacks full confidence in the trustee's ability to carry out their wishes, relying on a single trustee may not be sufficient. This is when appointing a trust protector may be worth consideration. The trust protector acts as an additional layer of oversight, ensuring that the trustor's intentions are faithfully executed.

Board/CEO Relationship

A trust protector is to a trustee what a corporate board of directors is to a CEO. A trustee [manages the trust on a day-to-day basis](#). The protector oversees the trustee and weighs in on critical decisions, such as the sale of closely held business interests or investment transactions involving large dollar amounts.

There is a broad range of powers one can confer on a trust protector. For example, a trust protector can be enabled enable to:

- Replace a trustee,
- Appoint a successor trustee or successor trust protector,
- Approve or veto investment or beneficiary distribution decisions, and
- Resolve disputes between trustees and beneficiaries.

A word of warning: Although it may be tempting to provide a protector with a broad range of powers, this can hamper the original trustee's ability to manage the trust efficiently. Keep in mind that the idea is to protect the integrity of the trust, not to appoint a co-trustee.

Exercise of Discretion

Trust protectors offer many benefits. For example, a protector with the power to remove and replace the trustee can do so if the trustee develops a conflict of interest or fails to manage the trust assets in the beneficiaries' best interests.

A protector with the power to modify the trust's terms can correct mistakes in the trust document or clarify ambiguous language. A protector with the power to change the way trust assets are distributed, if necessary, to achieve your original objectives can help ensure your loved ones are provided for in the way you would have desired.

Selecting the Best Candidate

Choosing the right trust protector is critical. Given the power he or she will have over your family's wealth, you'll want to choose someone whom you trust and who's qualified to make investment and other financial decisions. Many people appoint a

trusted advisor — such as an accountant, attorney or investment advisor — who may not be able or willing to serve as trustee but who can provide an extra layer of protection by monitoring the trustee's performance.

Appointing a family member as protector is also possible, but it can be risky. If the protector is a beneficiary or has the power to direct the trust assets to him- or herself (or for his or her benefit), this power could be treated as a general power of appointment, potentially triggering negative tax consequences.

Taking Action

If you determine that having a trust protector is the right choice for your situation, it is recommend that you work closely with your attorney and financial advisors. They can assist you in drafting documents that precisely outline the trust protector's role and authority. Your attorney will also provide insights into the customary powers and duties associated with this position. Additionally, be sure to discuss any specific scenarios or concerns you'd like the trust protector to address.

Remember that legal matters can be complex, so seeking professional guidance ensures that your trust protector arrangement aligns with your unique needs and goals. For more information or to discuss this matter in greater detail, contact your Anchin Relationship Partner or Valerie Makarenko, a Senior Tax Manager in Anchin Private Client, at valerie.makarenko@anchin.com.