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What Is a Trust Protector and When Might You Need One?

Trust protectors -- long popular in offshore trusts set up by high rollers -- are now gaining popularity in trusts established here in the U.S. by less affluent folks. A trust protector is someone who is appointed to watch over a trust that will be in effect for a long time and ensure that it is not adversely affected by any changes in the law or circumstances.

There are a number of reasons for appointing a trust protector. Having a protector allows a long-term trust to be more flexible and adapt to factual and legal changes. For example, beneficiaries may get divorced or die prematurely or the law may change. A protector can also be helpful if you believe there may be conflict among the beneficiaries and the trustee or if you want a means to remove a trustee who is unresponsive to the needs of the beneficiary or who doesn't fulfill your wishes.

You can name a trust protector in your trust document, which will also dictate the trust protector's powers. Here are some powers that a trust protector may be given:

- Remove and replace a trustee
- Allow the trust to be amended due to changes in the law
- Resolve disputes between trustees (if there is more than one) or between beneficiaries and the trustee(s)
- Change distributions from the trust based on changes in the beneficiaries' lives
- Allow new beneficiaries to be added if there are additional descendants
- Veto investment decisions

Whatever powers the trust protector has, you should be as specific as possible in the trust document. The more specific you are, the more likely your wishes will be carried out. An attorney can help you ensure that the trust protector does not have too much power.

Technically, anyone can serve as a trust protector; however, it is a good idea to appoint an independent third party rather than a family member or a beneficiary. A lawyer or accountant may be a good choice. There are also companies that provide trust protector services.

Another form of trust protector is the "Trust Advisory Committee." This is a group of two or more persons who will serve together, with the same trust protector powers described above. The members of the trust advisory committee may be family or non-family members.

If you need a trust of any type or want to add Trust Protectors provisions to your existing trust, call us today at 601.987.3000 or 866-ELDERLAW(353-3752).