Will your estate plan benefit from a trust protector?

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You may have several different types of trusts in your estate plan. In general, to achieve the greatest tax savings, these trusts must be irrevocable, thus requiring you to give up control over the trust assets.

Even though you appoint a trustee to oversee distribution of the trust's assets, you can go a step further by appointing a trust protector. This person will serve as an overseer of the trustee's actions. Taking this step can also provide you peace of mind because the trust protector has the power to alter the trust in light of changing family situations or tax laws.

Powers available

Essentially, 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.

You can confer broad powers on a trust protector. Examples include the power to:

- Remove or replace a trustee;
- Appoint a successor trustee or successor trust protector;
- Amend the trust terms to correct administrative provisions, clarify ambiguous language or alter beneficiaries' interests to comply with new laws or reflect changed circumstances; and
- Terminate the trust.

While it may be tempting to provide a protector with a broad range of powers, it's important to note that this can hamper the trustee's ability to manage the trust efficiently.

Trust protector in action

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.

Choosing the right person

Appointing the right trust protector is critical. Given the power he or she has 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.

Choosing a family member as protector is 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, exposing the protector to gift and estate tax liability and potentially triggering other negative tax consequences.

Due diligence is a must

Before deciding on appointing a trust protector, contact us. It's important to review the trusts in your estate plan to ensure they're drafted in such a way that there are no misunderstandings regarding the protector's role and the authority you grant him or her.

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