

# Trust Protectors

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**A KEY ESTATE  
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# Some Background

- The concept of trust protectors was derived primarily from Europe.
- First used in the US in the early 1970s.
- Now widely used in many trusts.
- Some states now have specific statutes dealing with trust protectors.
- There remain many unanswered questions for this relatively new, but very powerful, concept/position.

# What Are Trust Protectors

- Persons or entities appointed in a trust agreement (or under a will for testamentary trusts) and given specified powers. That is broad and vague, but the position can mean many different things.
- Usually, the trust protector is given the power to remove and replace the trustees.
- In some cases, the trust protector is given much more extensive powers.
- However, there may be tax, legal and other consequences to such broad powers.
- The IRS in 2011 asked legal groups to provide comments concerning trust protectors. Many groups provided comments, but the IRS has indicated that it will not issue any guidance as to the tax consequences of trust protectors.

# Some Points to Consider

- While there is much uncertainty and many issues, trust protectors can provide considerable flexibility to a trust. So, ignoring the position/concept despite the risks and uncertainties may be a mistake.
- Is the trust protector acting in a fiduciary or non-fiduciary capacity?
- Will the trust protector create nexus to a state that may then apply its state laws to the trust or tax the trust?
- What powers should be given to the trust protector (and the answer may differ quite significantly depending on many different factors affecting the particular trust plan)?
- Who should be named to serve in this position?
- What provisions do you want for successor trust protectors?

# Additional information

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