Deciding How and When to Select a Trust Protector

If you set up an Irrevocable Trust, the trust will have a perpetual term and may continue for generations. However, the problem with a long-term Trust is that it is not possible for the Grantor to anticipate future changes in the law or the family's circumstances, which might require specific modifications to the Trust in order to better serve the needs of the beneficiaries. One way to allow the Trust to be more flexible is to appoint a Trust Protector.

A Trust Protector is a third party who is not the Grantor, Trustee or Beneficiary, but who is given specific powers in the Trust agreement to make changes to the Trust in order to carry out the Grantor's intent. There are essentially three reasons a person would consider using a trust protector. One is to police the trustee. Although traditionally the beneficiary is tasked with the responsibility to keep a trustee in check, the grantor may not want the beneficiary to hold this power. Also, enforcing this power through a beneficiary can lead to costly and time-consuming litigation.  A second reason is to guide the trustee regarding trust distributions especially in the special needs context and regarding investment decisions. A third reason is to empower someone to change the trust in order to adapt to future circumstances, such as changes in the law, the beneficiaries, or the trust assets.

Once the decision is made to use a trust protector, then the grantor and his attorney need to decide the basic structure. There are four things that should be considered.

1. The first consideration is who should be the trust protector. A trust protector can be a person acting alone or a legal entity, such as a financial institution or law firm. When utilizing people, whether alone or in a group, the grantor can choose specific people, such as a relative or friend, or a person who fits into a certain class or category, such as the current guardian of the beneficiary, an accountant, or an attorney.
2. If possible, there should also be successor trust protectors named, and a process for choosing a successor trust protector in case all of those named are unable or unwilling to serve. Authority can be granted to an existing trust protector to name his or her successor, or to someone else, such as the trustee, or the beneficiary to appoint successor trust protectors.

1. There should be a mechanism to remove a trust protector, either for good cause or any reason. This authority can be held by other members of the trust protector committee or the beneficiary, or trustee.

4. Lastly, reimbursement of reasonable expenses incurred by the trust protector should be

authorized. In addition, compensation of a fixed annual amount or hourly rate can be paid.

If you have any questions call Gregory J. Spadea of the Law Offices of Spadea & Associates, LLC at 610-521-0604.