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Man vs. Machine: Trust Protectors

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We asked ChatGPT: What is a "trust protector" and when would I need one? Colleen Carcone, director of Wealth Planning Strategies at TIAA, provides expert critique.

In our ongoing series to see how generative AI responds to technical financial questions, we recently posed a question to Chat GPT: What is a “trust protector,” and when would I need one?

Then we ran the AI answer by one of our industry subject matter experts to see how the automated answer stacked up. Here’s what Colleen Carcone, director of Wealth Planning Strategies at TIAA had to say about the AI’s answer.

ChatGPT Response:

A trust protector is a person or entity appointed to oversee and protect a trust. The role of a trust protector is to ensure that the trust is administered according to the grantor’s intentions and to provide an additional layer of oversight and flexibility. Here are some key points about trust protectors:

Duties and Powers of a Trust Protector

1. Modification of Trust Terms: They can amend the trust to reflect changes in law or circumstances.

2. Overseeing the Trustee: They have the power to remove and replace trustees if they are not performing their duties properly.

3. Resolving Disputes: They can help resolve disputes between beneficiaries and trustees.

4. Veto Powers: They might have the authority to approve or veto certain actions of the trustee.

5. Consent to Trust Distributions: They may need to consent to distributions from the trust.

When You Might Need a Trust Protector

1. Complex Trust Arrangements: If the trust has complex terms or holds significant assets, a trust protector can provide additional oversight.

2. Long-Term Trusts: For trusts that will be in existence for many years, a trust protector can adapt the trust to changing circumstances.

3. Special Needs Trusts: Trust protectors can ensure that the terms of special needs trusts are adhered to, protecting the beneficiary's eligibility for government benefits.

4. Foreign Trusts: Trust protectors are often used in offshore trusts to provide local oversight and ensure compliance with local laws.

5. Concerns About Trustee Performance: If there is concern about the trustee's ability to manage the trust, a trust protector can act as a safeguard.

Advantages

– Flexibility: They can adapt the trust to changes in law or the grantor's circumstances without going to court.

– Oversight: They provide an additional layer of oversight, ensuring the trustee acts in the best interest of the beneficiaries.

– Dispute Resolution: They can help prevent and resolve conflicts between beneficiaries and trustees.

Disadvantages

– Cost: There may be additional costs associated with appointing a trust protector.

– Complexity: Adding a trust protector can complicate the administration of the trust.

– Potential for Conflict: The trust protector might have conflicts of interest or disagreements with the trustee or beneficiaries.

In conclusion, a trust protector can be a valuable addition to a trust, especially in complex or long-term trust arrangements. However, it is essential to carefully consider the potential advantages and disadvantages and consult with a legal advisor to determine if a trust protector is appropriate for your specific situation.

Colleen Carcone, Director of Wealth Planning Strategies,

TIAA, responds:

In this case, ChatGPT has done a decent job of highlighting the basics at a very high level, but like many of ChatGPT's responses, it does not go beyond the basics and provide a personalized overview. ChatGPT is well suited for breaking down complex subjects but having human input and expertise to test for bias, weigh ethical considerations and be involved in the use of these tools is extremely important to confirm accuracy and that the information is relevant to an individual's unique legal or financial situation.

While the role of a trust protector has been part of the law for more than 50 years, it remains relatively uncommon and surprisingly undefined. When a trust is revocable, the grantor may make changes to the trust terms as circumstances change. When a trust is irrevocable, however, the grantor cannot change trust terms or beneficiaries. Enter the trust protector. Generally speaking, the trust protector's job is to uphold the grantor's intent. A trust protector can add flexibility in administering the trust, can avoid court involvement and can oversee the trustee's actions. Trust protectors are most often considered when a trust is designed to last in perpetuity (or according to state law) or in special circumstances, such as with a Special Needs Trust.

The trust protector is often empowered to make certain modifications to a trust in order to uphold that intent. Some of the powers that a trust protector can be granted include removing and replacing a trustee, changing distribution terms or making discretionary distributions from the trust, changing trust terms as a result of changes in law, changing trust situs and adding beneficiaries. The trust protector role is separate from that of a trustee and often is tasked with overseeing the trustee. For example, a trustee may be charged with investing a trust's assets. The trust protector is an independent party that can monitor the trustee's performance. In the event that there is a conflict between the trustee and a beneficiary, the trust protector can be that neutral third party that can step in and help resolve the issue. The trust protector can provide an extra level of checks and balances to a trust, and the ability to make modifications to an irrevocable trust as circumstances or laws arise can certainly be an advantage.

While you might be nodding your head thinking that this all sounds good, there are certain considerations to keep in mind. As ChatGPT has pointed out, there is often a cost associated with naming a trust protector, and in many cases, the trustee or the trust beneficiary can be given the same powers as the trust protector. For example, a beneficiary may be given the power to remove and replace a trustee. A trustee may be given the power to change trust situs. A trust can be drafted flexibly to allow the trustee to make discretionary distributions and can provide for future beneficiaries. While the flexibility to modify trust provisions without having to go to court may certainly be attractive, many states have enacted decanting statutes which allow modification relatively simply.

A second consideration is that the law surrounding trust protectors varies significantly from state to state, so caution must be heeded. For example, in some states a trust protector has a fiduciary duty to the trust beneficiaries, while in others, the trust protector is not a fiduciary. This impacts the trust protector’s responsibilities.

While I would grade this ChatGPT answer a solid “C/ C+,” as always, ChatGPT is not a replacement for legal and financial advice. It is important to meet with an estate planning attorney who can help you determine what the best course of action is for your personal situation.