

# Trust protectors: The modern-day godfather of estate planning

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The basic legal concept of a trust agreement is that someone (the trustee) holds something (the trust property) for the benefit of someone (the beneficiary).

Numerous reasons spur creation of a trust. Frequently, the driving force is not exuberant wealth. Rather, the reasons revolve around protecting the beneficiary from others who may do them harm -- or from themselves.

Here are some common scenarios for creating a trust that do not involve enormous wealth:

**Minors** -- Parents of young children are frequently the first to realize the utility of a trust. Let's face it, if some accident occurs and the parents die, do they really want children to have free access to large sums of money on their 18th birthday? Even releasing a modest 401(k) savings plan to their heirs could spell disaster (plus all the fun of spending the money at that age!)

**Divorce** -- Many people use trusts to insulate their heirs from divorcing spouses. Imagine working your whole life to leave behind a decent nest egg only to have your child co-mingle the funds with a spouse. And then, statistically there is the coin flip (50/50) of whether the marriage will survive. Ouch!

**Disability/incapacity** -- People with disabilities often do not want to own assets that could disrupt valuable health care and Social Security benefits. Some people simply aren't good with money. Either way, trusts can protect these individuals while enhancing their quality of life.

At the center of this concept is the word "trust," right? You are really placing a lot of trust in the person or organization acting as trustee. This task of handling money for a beneficiary can go on for decades or future generations, depending on how the trust is written. Therein lies the problem.

If an individual is serving as trustee, that individual may no longer be around. If an organization,

bank or trust company is acting as trustee that could change, too.

Even though most agreements provide provisions to appoint a successor, this process can be burdensome on the people involved. In addition, what happens when an acting trustee is no longer holding up his or her end of the bargain?

Enter the trust protector (a/k/a trust adviser). While relatively new in concept (OK, folks, this is the law, so that means within the past half-century), trust protectors play an increasingly larger role in how trusts are drafted and administered.

The basic role is to guide the trustee in continuing to administer the trust in the manner that its creator intended. The protector can have narrow or broad powers, ranging from simply correcting a typo in the document all the way up to removing the trustee or changing beneficiaries.

The point is that a protector can be a neutral third party to oversee the trustee and take action only when necessary.

A trust protector should not be a beneficiary of any interest in the trust property so that any actions remain unbiased. This person (or committee of people) or organization serves at the discretion of the creator of the trust and can also transcend generations to continue to assist the trustee in carrying on the family legacy.

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