

What is a Trust Protector?

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By: [James C. Milton](#)

A few years ago, the Oklahoma legislature enacted a new statute allowing for trust protectors -- referenced in the statute as trust advisors. Section 175.3(M) of the Oklahoma Trust Act follows the general pattern of trust protector statutes, providing default rules for the position.

The phrase trust protector appears again in another new Oklahoma statute. Under Section 175.84 of the Discretionary and Special Needs Trust Act, a beneficiary's interest in a trust created under the Act is protected from creditors even if the beneficiary serves as a trust protector.

With these new statutory developments, you may be wondering what a trust protector is and does. In an outstanding practice manual on the subject, Prof. Alexander A. Bove, Jr. wrote that a trust protector is a person with authority over the trust, but who is not the trustee. The role is included in order to protect the trust and the settlor's intent and the beneficiaries from future changes in laws or circumstances. In this role, the trust protector can override the trustee.

Lawyers can use protectors in a variety of situations, and give them a variety of powers. Under South Dakota's statute, a trust protector can be authorized, to direct trust distributions or even change the situs of the trust.

One possible use for a protector would be with powers of attorney. If the principal appoints an agent using a power of attorney, the agent often acts after the principal is no longer about to supervise the agent. Under some circumstances, the principal may wish to appoint another person to supervise or approve actions by the agent under the power of attorney. This might easily be done through the appointment of two agents under the power of attorney. How they serve could be specified in the document, giving one of them supervisory authority over the other. The principal can thereby protect against possible misuse or abuse of the power of attorney after the principal is no longer able to do so personally.

Likewise, a guardianship could be structured so that one co-guardian is given the authority to protect the Ward in some way from the other co-guardian.

These types of dual controls are common in management, accounting, and financial services. Given that estate planning deals with those situations where the client may be no longer capable of

providing protection of control, the use of these tools makes a lot of sense.

Attorneys

- James C. Milton