

Presenting a live 90-minute webinar with interactive Q&A

Structuring Trust Protector Provisions: Protectors' Powers and Duties, Trustee Oversight, Tax and Fiduciary Risks

Avoiding Unintentional Fiduciary Classification, Key Trust Provisions to Limit Disputes, Navigating State Differences

TUESDAY, OCTOBER 11, 2022

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Diedre Wachbrit Braverman, Esq., Attorney, **Braverman Law Group**, Boulder, CO

Cynthia D.M. Brown, Esq., President, **Commonwealth Trust Company**, Wilmington, DE

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

NOTE: If you are seeking CPE credit, you must listen via your computer – phone listening is no longer permitted.

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-877-447-0294** and enter your **Conference ID and PIN** when prompted. Otherwise, please **send us a chat** or e-mail sound@straffordpub.com immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the 'Full Screen' symbol located on the bottom right of the slides. To exit full screen, press the Esc button.

Continuing Education Credits

FOR LIVE EVENT ONLY

In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

For additional information about continuing education, call us at 1-800-926-7926 ext. 2.

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the link to the PDF of the slides for today's program, which is located to the right of the slides, just above the Q&A box.
- The PDF will open a separate tab/window. Print the slides by clicking on the printer icon.

Recording our programs is not permitted. However, today's participants can order a recorded version of this event at a special attendee price. Please call Customer Service at 800-926-7926 ext.1 or visit Strafford's website at www.straffordpub.com.

Structuring Trust Protector Provisions

Diedre Wachbrit Braverman, Esq.
Braverman Law Group
diedre@braverman-law.com

Cynthia D.M. Brown, Esq.
Commonwealth Trust Company
cbrown@comtrst.com

What is a “Trust Protector”

- **DEFINITION:**

- an individual appointed by the settlor of a trust to *ensure that the trustee carries out the settlor's intent* (the individual serves as the figurative eyes, ears and voice of the settlor in their absence).
- The overseer of the trust's administration, *able to adjust the parties, terms, and parameters of a perpetual trust* as needed throughout the duration of the trust.
- This role is helps *create flexibility* in the administration of an irrevocable trust.
- Typically, someone who is both objective and close enough to the family to understand its dynamic.

Why Does it Matter?

- *Think about everything that has changed in the last century, things we could never have imagined, yet alone planned for...*
- A trust is a perpetual document. As such, it is important that it allows a mechanism for flexibility to change with the times.

Changes Over the Last Decade

	THEN	NOW
Flight	In 1903, the first powered airplane took flight in Kitty Hawk, NC.	In 1998 alone, commercial airlines transported more than 614M people.
Telephone	In 1920, the census first counted households with telephones at 55% of the US population.	Individuals have their own portable “smartphones” that can go anywhere. They function as both phones and as mini-computers.
Televisions	In 1950, only 9% of households had a television and watched shows live.	Currently 98% of households have televisions, and many also have tablets for streaming on demand.
News	In 1900, mass communication took place through newspapers, of which there were 2,042 in the US alone.	Mass communication occurs in an instant via electronic means such as email, blogs, and twitter.
Technology & Finance	Purchasing required physically traveling to the seller’s location and exchange of physical currency.	The internet completely changed the purchasing process and created a more global economy. Payments are made by electronic means and purchase can be from anywhere.
Medicine	Many died from diseases that went undiagnosed, contagion spread rapidly and shortened lifespans.	Medical advances such as vaccines eradicated smallpox and created longer life expectancies.

Why Utilize a Trust Protector? Oversight

A Trust Protector can be given oversight powers to supervise and direct the trustee.

- Review and approve accountings
- Remove and replace trustees
- Direct trustee regarding investments
- Choose the trustee's professional advisors



Why Utilize a Trust Protector? Address Trust Problems

A Trust Protector can address problems with the trust.

- Amend or modify the trust (can be limited to administrative and investment powers or not)
- Change the governing law and situs of the trust
- Create a special needs trust for a beneficiary
- Can decant a problematic trust
- Grant a beneficiary a general power of appointment over property otherwise subject to GSTT

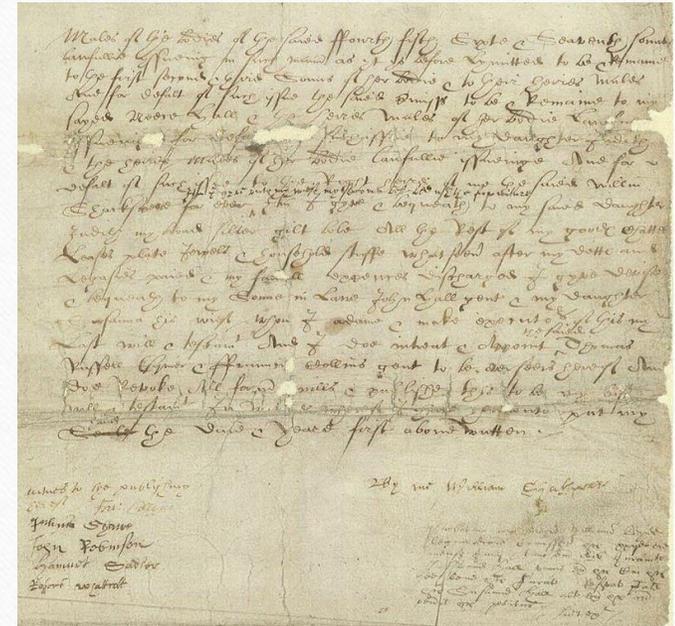
*I'm not upset that
you lied to me, I'm
upset that from now
on I can't believe you.*

(Friedrich Nietzsche)

Why Utilize a Trust Protector? As Time Passes and Needs Change

A Trust Protector can make changes to the trust instrument to keep pace with changing trust and tax laws.

- Again: amend or modify trust
- Terminate a trust
- Power to add or remove beneficiaries and modify distribution rights
- Power to construe ambiguous provisions or correct scrivener errors

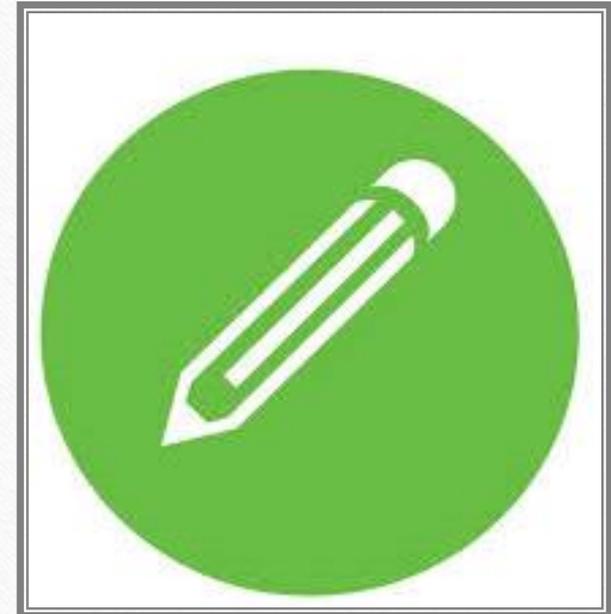


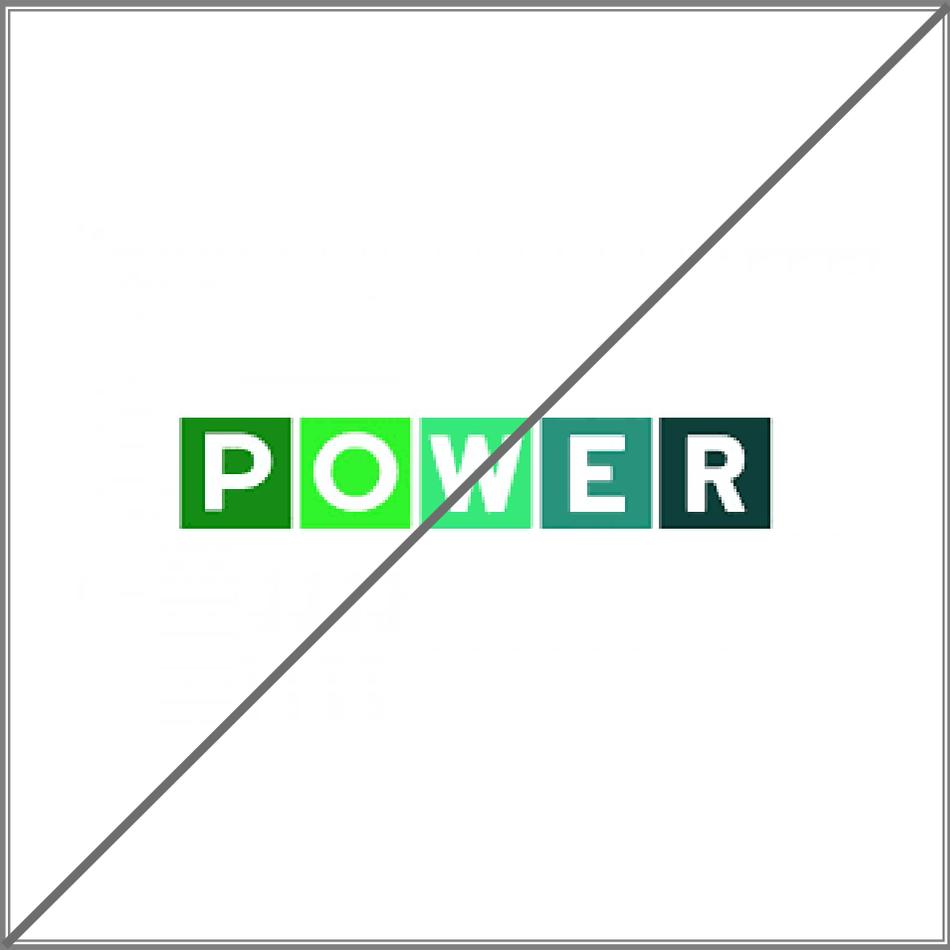
Trust Protector Powers: Typical List

- The list of typical Trust Protector powers can be broken down into four main categories:
 1. Power to modify the terms of a trust instrument;
 2. Powers that a trustee would prefer not to have;
 3. Powers related to the trust's tax status; and
 4. Powers related to silent trusts.

Power to Modify the Terms of a Trust

- Power to amend the trust including both technical amendment and broader powers;
- Power to decant (all or partial) or merge the trust;
- Small trust termination powers – to reduce the time the trust exists;
- Power to alter beneficiary interest – to be used for tax, estate, or creditor planning purposes; and
- Power to grant a power of appointment (a general power of appointment to switch between estate and generation-skipping taxation of the trust assets)





POWER

Powers the Trustee Does Not Want

- Power to remove and replace trustees and advisors to the trust;
- Power to fill vacancies or act as a gap filler themselves;
- Change of trust situs and governing law
- Power to veto trustee decisions
- Management of specific assets (closely held entities, cryptocurrency, etc.)
- Distribution and/or investment discretion
- Determine fees for the trustee and other advisors



Grantor Trust Powers

- Should all be performed in a non-fiduciary capacity to provide the trust protector the broadest amount of discretion.
 1. Power to reimburse the grantor for income tax due
 2. Power to terminate a grantor's power to substitute assets (to turn off grantor trust status)
 3. Power to terminate any other power that the grantor has which triggers grantor trust status (to turn off grantor trust status)

Silent Trusts Powers

- Power to receive notice on behalf of beneficiaries
- Power to bind the beneficiaries as to judicial and nonjudicial matters (similar to a Designated Representative)
- Power to request distributions on behalf of beneficiaries
- The power to end a silent period (as to one or all beneficiaries)
- The power to expand, restrict, eliminate or otherwise vary the right of a beneficiary to be informed of a trust



Trust Protector Statutory Powers

	Statutory Reference	Trust Document	Default List of Duties
Delaware	12 DEL. C. §3313(f)	All powers and authority granted by the terms of the governing instrument.	Non-inclusive list of powers: 1. Power to remove/replace fiduciaries 2. Power to modify or amend the trust for tax or administrative purposes 3. Power to modify a power of appointment
Nevada	NRS §163.5553	All powers and authority granted by the terms of the governing instrument.	Non-inclusive list of powers, including the same items listed for Delaware and the ability to increase or decrease the interests of beneficiaries; terminate a trust; direct or veto distributions; change situs and governing law; interpret the trust and advise the trustee, and review and approve trustee reports
South Dakota	SD Codified L. §55-1B-6	All powers and authority granted by the terms of the governing instrument.	A specific list of powers and discretion that a trust protector may have, leaving it to the governing instrument to provide the specifics details as to how the powers may exercised or any limitations.
Tennessee	TN Code §35-15-1201	All powers and authority granted by the terms of the governing instrument.	Non-inclusive list of powers includes decanting power, the power to make loans of trust property (including the power to make a loan to a beneficiary without interest). It also allows a TP to subsequently be appointed by an agreement of the qualified beneficiaries.

Personal Power v. Fiduciary Power

- **Personal Power:** a personal power is one that can be exercised by the powerholder for the powerholder's own benefit, or for the benefit of other parties or purposes, without regard in either case to the settlor's intentions (other than as may be expressed in the terms of the power) and without regard to any fairness, reasonableness or common sense.
 - Only duty of the holder of a personal power is to comply with the terms of the power and to avoid committing fraud. It is not subject to court review beyond the action involving fraud.
 - What would fraud look like? Granting the Trust Protector, the power to appoint assets to the settlor's issue and the Trust Protector agreeing to do so but having an agreement with the issue that he will do so only if the issue agree to give him a portion of those funds.
- **Fiduciary Power:** a position of trust and loyalty to the purpose and objects of the power, and confidence. One who acts for the benefit of another, and who in that function must place the interests of that other above his own.
 - A party acting in a fiduciary capacity is obligated to periodically consider whether to exercise the power and may do so only in the best interest of the parties for whom he is acting.
 - The standard for a fiduciary action is good faith, a very high standard of conduct. A breach of any of its fiduciary duties will give rise to liability for a breach of trust.

Statutory Presumptions: Uniform Acts

	Statutory Reference	Presumption	
Uniform Trust Code	UTC §808	Fiduciary	Contains a rebuttable presumption that a third-party power holder is a fiduciary.
Uniform Directed Trust Act	UDTA §5, §8(a)	Fiduciary	The only non-fiduciary powers under the UDTA are the power to appoint and remove a trustee, the power to amend the trust to achieve the settlor's tax objective, and any other powers which the trust instrument indicates to be non-fiduciary powers. The trust director (protector) has the same fiduciary duty and liability in exercise or nonexercised of a power that a trustee in a like position would have under similar circumstances.

Standard of Conduct

Is the Trust Protector a Fiduciary

- Alaska says “no unless you say yes”: *Subject to the terms of the trust instrument, a trust protector is not liable or accountable as a trustee or fiduciary because of an act or omission of the trust protector taken when performing the function of a trust protector under the trust instrument.* - AS § 13.36.370
- Arizona says “no” ...*a trust protector is not a trustee or fiduciary and is not liable or accountable as a trustee of fiduciary because of an act or omission of the trust protector...*” ARS § 14-10818(D)

Standard of Conduct

Is the Trust Protector a Fiduciary

- Colorado refers to “trust directors” who can limit their liability to the same extent a trustee can: ((a) *A trust director has the same fiduciary duty and liability in the exercise of nonexercised of the power: (I) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or (II) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and (b) The terms of the trust may vary the director’s duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.* C.R.S. § 15-16-808
- Delaware says “yes unless you say no”: *Where one or more persons are given direct authority by the terms of a governing instrument to direct, consent to or disapprove a fiduciary’s actual or proposed investment decisions, distribution decisions, or other decision of the fiduciary such persons shall be considered to be advisers and fiduciaries when exercising such authority unless the governing instrument otherwise provides.* 12 Del. C. § 3313(d)

Standard of Conduct

Is the Trust Protector a Fiduciary

- Idaho “if acting in a fiduciary capacity” *“Fiduciary” means a trustee... or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate.*” IC § 15-7-501
- Iowa: trust protector is like trustee *Any governing instrument providing for a trust director or trust protector may also provide such trust director or trust protector with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under the laws of this state or under the governing instrument. Unless the governing instrument provides otherwise, a trust director or trust protector has no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunity, or authority provided or allowed by the governing instrument to such trust director or trust protector.* Iowa Code § 633A.4801

Standard of Conduct

Is the Trust Protector a Fiduciary

- Michigan says “yes” *...the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.*” MCL 78091(1)
- Mississippi references trust protectors breaching fiduciary duties *Any loss resulting from compliance with a direction of trustee, trust advisor, or trust protector including, but not limited to, any loss from the trustee, trust advisor, or trust protector breaching fiduciary responsibilities...* Miss. Code Ann. § 91-8-1205
- Missouri says “yes unless you say no” *A trust protector shall act in a fiduciary capacity... provided that the trust instrument may provide that the trust protector shall act in a non-fiduciary capacity.* Mo. Rev. Stat. § 456.8-808(6)(1)

Standard of Conduct

Is the Trust Protector a Fiduciary

- Nevada: protector must act in “best interests of trust” *A trust protector may exercise the powers provided to the trust protector in the best interests of the trust.* Nev. Rev. Stat. § 163.5553
- New Hampshire includes trust protectors in a list of fiduciaries *For purposes of this section, a “fiduciary” means any trustee, trust advisor, or trust protector.* RSA § 564-B:12-1206(6)(b) The section referenced describes when a fiduciary can sue a trust advisor or trust protector for breach of trust.

Standard of Conduct

Is the Trust Protector a Fiduciary

- South Carolina says “yes” *A trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust protector.* S.C. Code Ann. § 62-7-1005A(D)
- South Dakota says “no greater liability than a trustee” *Any governing instrument providing for a trust advisor or trust protector may also provide such trust advisor or trust protector with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under South Dakota law or under the governing instrument. Unless the governing instrument provides otherwise, a trust advisor or trust protector has no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunities, or authority provided or allowed by the governing instrument to such trust advisor or trust protector.* SDCL 66-1B-1.1.

Standard of Conduct

Is the Trust Protector a Fiduciary

- Tennessee gives a remedy for trust protector breach of trust *A beneficiary, trustee, trust advisor, or trust protector shall not commence a proceeding against a trustee, former trustee, trust advisor, or trust protector for breach of trust...* Tenn. Code Ann. § 35-15-1005
- Vermont says “yes” *A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector.* V.S.A. 14A § 1102
- Wisconsin has some trust protector laws but does not address whether a trust protector is a fiduciary.
- Wyoming says “yes” *Trust protectors are fiduciaries to the extent of the powers, duties and discretions granted to them under the terms of the trust instrument.* Wyo. Stat. Ann. 4-10 § 711

Who Should and Should Not Serve?

The selection of the trust protector should be made to

- Avoid conflicts of interest
 - No beneficiaries of any type (not even remote contingent)
- Avoid negative tax consequences
 - No grantors or beneficiaries
- Preserve asset protection characteristics
 - No grantors, beneficiaries, or creditors
 - Consider specifically excluding grantors, beneficiaries, and creditors from ever serving.

Considerations as to What Powers Should be Fiduciary

When deciding if a power should be exercised in a fiduciary capacity, consider if you want the individual's decision to be influenced by:

- What *is best for the beneficiaries*
- Make an objective decision about what is *best for the administration* of the trust

Powers that <u>must</u> be exercised in a Non-Fiduciary Capacity	Powers that <u>should</u> be exercised in a Non-Fiduciary Capacity (<i>interests other than beneficiary</i>)	Powers that <u>can easily</u> be exercised in a Fiduciary Capacity	Powers that <u>should</u> be exercised in a fiduciary capacity (<i>directing the Trustee</i>)
Power to turn off grantor trust status (<i>such as the substitution of assets</i>)	Power to add or exclude a beneficiary	Power to change situs	Power to divide a trust
Power to terminate the grantor's reimbursement for income taxes paid	Power to reimburse the grantor for income taxes paid	Power to change governing law	Power to direct the trustee to begin providing statements to beneficiaries of a quiet trust
	Power to turn off grantor trust status	Power to remove/appoint fiduciaries and determine compensation	Power to direct the trustee with regard to holding a specific asset
	Power to grant a power of appointment	Power to veto a trustee's actions	Power to direct the trustee to make or withhold distributions
		Power to modify or terminate the trust	Power to approve trustee accounts

Other Considerations

- Will a trustee be willing to take *direction from a non-fiduciary*?
- If the trust protector is in an *advisory role rather than a directional* role, how does that change the relationship with the trustee? What if the trustee disagrees with the trust protector's guidance – who wins?
- What if the trustee feels the trust protector is acting outside of its authority? Outside of its fiduciary duty? What does the trustee do? What level of *trustee oversight or review* is required?
- Concerns with [IRC §674](#) where the trust protector serves in a non-fiduciary capacity and has a special power of appointment – does it rise to the level of *causing grantor trust status* in the trust protector?

Who Should and Should Not Serve?

Pick the Right Person

- Someone with the knowledge, expertise, and skill to exercise the specific powers granted in the trust
 - Investment knowledge
 - Legal trust knowledge
- A trust protector should have good judgment, not clouded by emotional prior relationships with trustees or beneficiaries
- A trust protector committee must be likely to get along and every member must be highly responsive to avoid delays

Drafting Tips

The Trust Protector's Duty and Protections

- Investigate whether you have the power to make the trust protector a non-fiduciary:
 - Know the trust's situs's law on whether the trust protector must be a fiduciary.
 - Consider making the trust protector a fiduciary in the trust document even if you don't have to.
- Provide indemnification of the trust protector except in cases of bad faith.
- Does the trust protector have a duty to monitor the trust?
 - If not, under what circumstances must the trust protector act?
 - How much time does the trust protector have to respond?

Drafting Tips

Trust Protector Powers

- Specifically describe every one of the trust protector's powers.
- Don't rely on statutory powers which are subject to change.
 - Know your state's statutory powers, if any, so you can specifically opt out of statutory powers as appropriate.
 - Carefully tailor the powers to the abilities of the trust protector.
- Consider whether a *trust advisor* or *investment advisor* should also be named to provide investment expertise.
- Prohibit the trust protector from exercising their powers in a way that would jeopardize a tax deduction or election.
- Provide that the trust protector may name a successor.

Drafting Tips

Trust Protector Resources

- Allow the trust protector to hire their own advisors (accountants, attorneys, financial advisors, etc.).
- Provide that the trust protector has the right to access all of the trust records.
- Permit the trust protector to buy errors and omissions insurance.
- Consider a non-binding letter from the grantors to the trust protector about how they expect the powers to be used.

Drafting Tips

Trust Protector Compensation

- Consider providing that compensation must take into account:
 - The market rate for similar services;
 - The breadth and nature of the actions the trust protector must take;
 - The size of the trust (a proxy for potential liability);
 - The amount of time demanded of the trust protector;
 - The depth of experience and knowledge applied by the trust protector.
- Include a right to reimbursement of expenses

Existing Case Law

- Falls into four categories
 1. Liability
 2. Public Policy
 3. Practical Administration
 4. Neutrality

Liability Cases

- *IMO Ronald J. Mount 2012 Irrevocable Dynasty Trust U/A/D December 5, 2012*, No CV 12892-VCS, 2017 WL 4082886 (Del. Ch. Sept. 7, 2017) – a claim against a Trust Protector for breach of fiduciary duty in connection with actions taken pursuant to a settlement agreement. The key fact here was that the beneficiary (grantor's son) owed monies to the trust under the settlement agreement and was refusing to pay them. The Trust Protector filed a petition for instruction with the court and the beneficiary alleged that the Trust Protector breached its fiduciary duties in connection with his administration of the settlement agreement. The court stated that the Trust Protector could not be sued for breach of fiduciary duty where the trust instrument clearly provides that he is serving in a non-fiduciary capacity stating that, *"a settlor's decision to allow the trust protector to serve in a non-fiduciary capacity is valid and will be enforced under Delaware law."* The court rejected the beneficiary's argument that where a trust protector is given broad powers a simple provision in the trust saying a trust protector is not a fiduciary will not be enough to relieve the trust protector of its fiduciary duties. This is consistent with 12 Del. C. §3303(a) which gives full effect to the governing instrument.
- *Robert T. McLean Irrevocable Trust v. Patrick Davis*, 283 S.W.3d 786 (Mo. Ct. App. 2009) – The US case to interpret the role of a trust protector. The Missouri statute did not set out specific duties of a trust protector. The trust document granted him the power to remove and replace the trustee and established that he was acting in a fiduciary capacity. The question presented to the court is does the possession of the power to remove and replace the trustee carry with it an affirmative duty to monitor its actions? The court held that if serving as a fiduciary, the granting of authority to remove and replace the trustee potentially included the duty to protect the trust from foreseeable injury, a failure to do so would equate to bad faith. Ultimately, the court said that while the trust protector did not have a duty to monitor the activities of the trustee, if he became aware of conduct by the trustee that threatened the purpose of the trust, a duty may arise requiring the removal of the trustee.

Public Policy Case

- *In re: Eleanor Pierce (Marshall) Stevens Living Trust*, 159 So.3d 1101 (Ct. App. LA, February 18, 2015) – Trustee alleged that the trust protector had no authority to remove him because the position of “trust protector” was not recognized by the Louisiana Trust Code, violated public policy and could not be recognized until the duties were defined by the legislature. The trust protector position and its defined powers were added to the trust as part of a 2007 trust amendment. At all times in question, the trust protector acted within the terms provided by the trust amendment. The trustee argued that from a policy argument perspective, the establishment of a trust protector would make the trustee answerable to the trust protector over the beneficiaries and confuse its duty. The court found the language of the trust amendment clear, and that public policy favored enforcement of the terms of the trust instrument and the grantor’s probable intent.

Practical Administration Cases: Standing?

- *In re: Macy Lynne Quintanilla Trust*, 2018 WL 4903068 (Tex. App. 2018) – grantor created two trusts, one in 2014 and one in 2016 for the same beneficiaries and with the same trustee (his wife). The first trust had a non-family member protector (West) and the second a family member; however, all other terms were the same. In 2016, the grantor had a falling out with West. The trustee merged the two trusts and had all beneficiaries sign consents to the merger. The 2014 trust was to be terminated in favor of the 2016. West was not a party to the merger and subsequently opposed the same. The court found that the trusts were properly merged, the trust protector of the 2014 Trust was not entitled to notice, and the trust protector was not an “interested person” under the Texas statute because he was not managing the trust or a beneficiary. Seems right that the trust protector can in effect be removed, but, odd that he had no standing.
- *Demican v. Mikhaylov*, 306 So.3d 142 (Fla. Dist. Ct. App. 2020) – a trust was established in 2015 for the benefit of the grantor’s children and for the purpose of investing in a business venture. The trustee was appointed, and a second individual (“Z”) was appointed to have the power to remove the trustee. Z disagreed with the settlor over the funding of the venture and the settlor ceased contributions to the trust. The settlor then sought to modify the trust, with the consent of the beneficiaries, in a manner that removed the trustee and Z. During the process, the trustee resigned, and Z replaced them with another trustee. As part of litigation, the trustee argued that Z was an indispensable party to the trust; however, the court found that Z was not an indispensable party as not a settlor, trustee or beneficiary. The court noted that Z should not be deemed to have greater power than the individual he had the power to appoint (the trustee).

Neutrality Cases

- *Jordan v. Hubbard*, No. 1 CA-CV 16-0060, 2017 WL 1740206, at (Ariz. Ct. App. May 4, 2017) – the beneficiary of trust died several months after the decedent. The trustee and trust protector determined that the distribution should not be made based upon an alleged ambiguity in the terms of the trust. The beneficiary’s estate sued the trustee and requested an arbitration as provided in the trust instrument. The trustee recommended an arbitrator and the same issued a preliminary finding indicating that he would rule in favor of the beneficiary. The trust protector attempted to modify the trust and enter into a new arbitration. The court found that the trust protector’s attempt to modify the trust in the midst of the arbitration process was contrary to the trustor’s intent and an apparent effort to usurp the authority vested in the arbitrator.
- *Matter of Trust for the benefit of Hettrick*, 111 N.Y.3d 522 (Ny Sur. Ct. Nov. 19, 2018) – decedent’s will established a special needs trust for his son (a resident of Virginia) with two of her other children serving as trustees. The remainder of the trust would go to the son’s decedents (of which there were none) and then to the decedents of the grantor. The trust protector was granted the power to remove and replace the trustee. In 2017, the trust protector removed the trustees and attempted to appoint a Virginia successor trustee and move the situs of the trust to Virginia. The existing trustees objected. The court, finding that the decedent’s will did not provide for a change of situs and the nature of a supplemental needs trust would imply that the trust should remain in New York, stating that “the entire tenor of the Trust provisions of decedent's Will indicate that New York Law is to apply in the handling of [the] trust.” AS all parties continued to reside in the same places they originally resided when the mother executed her Will, the court found no reason why the trust’s governing law should change. The decision did seem to indicate that the court was concerned that the son simply wanted a trustee who would accede to his requests which is at odds with the purpose of the trust and thus the trust protector’s actions were contrary to that.