

Trust Protectors

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Trust protectors/directed trusts

- Directed trusts
 - Someone other than the trustee has the authority to act for the trust or to direct the trustee to act in a particular way
 - Examples:
 - Money manager directs investments; trustee handles administrative tasks
 - Trustee manages investments; distribution advisor determines SNT distributions
- Trust protectors
 - A type of directed trust
 - Trust protectors typically make infrequent, out of the ordinary decisions

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Trust protectors are not trustees

- It is possible to split the trustee duties among multiple trustees
 - Investment trustee, distribution trustee, administrative trustee, etc.
- If the person is a trustee, he/she has a whole bucket of fiduciary duties
- Trust protectors are not trustees
 - They (typically) are fiduciaries, but duties may be limited

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Uses of directed trusts/ trust protectors (UDTA § 6)

- acquire, dispose of, exchange, or retain an investment;
- make or take loans;
- vote proxies for securities held in trust;
- adopt a particular valuation of trust property or determine the frequency or methodology of valuation;
- adjust between principal and income or convert to a unitrust;
- manage a business held in the trust;
- select a custodian for trust assets;
- **modify, reform, terminate, or decant a trust;**
- direct a trustee's or another director's delegation of the trustee's or other director's powers;
- **change the principal place of administration, situs, or governing law of the trust;**
- **ascertain the happening of an event that affects the administration of the trust;**
- **determine the capacity of a trustee, settlor, director, or beneficiary of the trust;**
- determine the compensation to be paid to a trustee or trust director;
- prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust;
- grant permission before a trustee or another director may exercise a power of the trustee or other director; or
- release a trustee or another trust director from liability for an action proposed or previously taken by the trustee or other director.

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Texas Trust Code § 114.0031

- Nonexclusive list of actions a protector can take
 - The power to remove and appoint trustees, advisors, trust committee members, and other protectors;
 - The power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and
 - The power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.

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Texas Trust Code § 114.0031

- A trust protector is a fiduciary except in one case:
 - If the protector's only power is to remove and appoint trustees, advisors, trust committee members or other protectors **and the protector does not exercise that power to appoint himself/herself**, the trust agreement may provide that he/she is not a fiduciary
 - This can be very useful in a special needs trust

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