



Watching the Watchman

“Trust, but verify.” – Ronald Reagan

“Trust, but verify.” This phrase is often attributed to Ronald Reagan, but it is actually the English translation of an old Russian proverb, “Doveryai no proveryai,” that Reagan used when negotiating nuclear disarmament with the Soviet Union under Mikhail Gorbachev. Although Reagan may not have coined the term, he clearly understood its implications: It is wise to offer one’s trust, but it is foolish to trust blindly.

Where money is involved, this is especially true. Trust is such an integral aspect of managing someone else’s wealth that the vehicle often used to maintain and distribute financial assets for the benefit of another person is actually known as a “trust,” and the person entrusted with overseeing a trust is the “trustee.”

Appointing a trustee to watch over your assets when you are deceased or incapacitated is a prudent step to take, but the potential problem with this arrangement is that it only fulfills the first half of the Russian proverb; there is trust, but no verification. The trustee is responsible for overseeing the trust, but who will oversee the trustee? This is a common and somewhat obvious concern, and fortunately there is a remedy which is known as the “trust protector.”

A disconcerting question

The Roman poet Juvenal asked, “Who will watch the watchmen?” Although Juvenal’s question is somewhat satirical (his watchmen were charged with guarding the fidelity of Roman wives), it is easy to see that the problem is entirely serious when applied to those who oversee wealth.

When a grantor creates a trust, he or she also creates the need for a “watchman” to oversee the trust. This is where the trustee comes in. The grantor typically appoints an individual or a corporation as trustee to serve as the watchman of the interests of the trust and its beneficiaries. But who will watch the watchman? If a friend or family member is chosen as trustee, that individual may have conflicts with one or more beneficiaries, or may simply lack the requisite expertise to properly administer the trust.

Alternatively, if a corporation is chosen as trustee, the corporate trust officer assigned to the trust will usually be a stranger to the family and may be unfamiliar with the nuances of the grantor’s wishes and the beneficiaries’ genuine needs.

In both situations, appointing a trust protector to watch the watchman can be helpful. The corporate or individual trustee will usually retain the power to distribute assets and enforce the provisions of the trust, and the trust protector (who can also be an

individual or a corporation) will work with the trustee to ensure that the trustee is administering the trust according to the wishes of the grantor. While most trustees execute their fiduciary duties with integrity, a trust protector will ensure that this is happening and that the surviving family members and beneficiaries are being protected from any objectionable activities on the part of the trustee. Trust protectors can be used for existing trusts that already contain suitable provisions, or added by the grantor as an amendment to an existing trust if no prior trust protector provisions have been made.

The trust protector's primary responsibilities typically include overseeing the trustee's actions with respect to fees and trust administration, and appointing a successor trustee if the need arises. If you wish to give your trust protector additional powers, such as the ability to amend the trust, terminate the trust, or add or remove beneficiaries, these provisions can be included in your trust document as well.

Who should watch my watchman?

If your estate is sizable or complex enough to require a permanent trustee, it is sizable or complex enough to require a trust protector as well. Deciding which person or entity to appoint in each of these roles is critically important and can be a source of uneasiness and conflict within a family, so it is not to be taken lightly.

Wealthy families have been using corporate (as opposed to individual) trustees for centuries. Think of any bank that you know with "Trust" in their name; they are a corporate trustee. While friends or family members are sometimes considered for the trustee role, in situations where a trust is highly complex,

family members do not get along, or there is a blended family, it may be a good idea to consider using a corporate trustee instead. Being a trustee also involves a lot of work and personal responsibility, and many family members sign on without realizing these implications.

Corporate trust protectors, on the other hand, are a more recent development, and Heritage has recently begun offering corporate trust protector services to our clients through an affiliated subsidiary. Although the services of a trust protector are usually less demanding and far less expensive than the services of a trustee, the same potential issues with family dynamics remain, and it will often be desirable for the grantors (while they are alive) and the beneficiaries (after the grantors are gone) to ensure that they have a "watcher" that the family is already familiar with.

If you need a trust for your estate, you also need to have confidence that your trust will be handled properly after you are gone. You will have to choose a good trustee, but that may not be enough. Trust your trustee, but verify with a trust protector.

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