

Trust Connection

Building Lasting Relationships for the Benefit of our Mutual Clients

TRUST NEWS AND INFORMATION FROM YOUR TRUST REPRESENTATIVE OFFICE

Welcome to **Trust Connection**, a regular communication from Valley National Trust Services. The Trust Representative Office model provides a framework for cohesively connecting all of the client's key advisors: the Estate Planning Professional, the Financial Advisor and National Advisors Trust. Instead of encountering obstacles when working together, our "team approach" provides a solid trustee and investment management solution for clients' complex financial situations.



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The Valley National Financial Advisors family, including **Valley National Trust Services**, is focused on growth. As a Trust Representative Office of National Advisors Trust, we represent the largest federally-chartered trust company created by Registered Investment Advisors (RIAs). Our trust service model is built on the strength of the local support and responsiveness provided by you—the local estate planning professional, Valley National Advisers—the local and trusted investment advisor and National Advisors Trust serving as the trust administrator. This combined expertise allows us to excel in the services we provide delivering the best possible outcomes for our mutual clients.

Trust Protectors and Advisors

Trust protectors or advisors are becoming much more commonplace in trust drafting, so what is a trust protector anyway? It is fair to say that the terms are not meaningful without additional information.

The terms protector and advisor can be used interchangeably, and one may be used in state law, making it the preferred term for that situs. I will use "protector" for simplicity in this article to describe the roles.

A protector, simply put, is a power holder. What power do they have? Whatever power the grantor gives them in the document. Is it a fiduciary or non-fiduciary role? It depends on what powers they are given and manner in which the power is exercised.

A protector's powers are usually not very extensive, after all, there is a trustee of the trust. So why have a protector at all? Two primary reasons: as a watchdog over the trustee, and as a power holder to do things a trustee may have a hard time justifying governed by fiduciary duties. A little history may help to understand the origin of the protector. Common law jurisdictions likely have trust law, but most of the world is governed by civil law. For this reason, residents of civil law countries who want to enjoy the benefits that trusts offer have to create them in, sometimes, faraway lands. They may be in a different time zone, speak a different language, and be generally unable to visit with the family in person. Naturally, in a long-term trust especially, the grantor may want someone to have the power to change the trustee if the trustee appears to not be doing their job, or not doing it to the satisfaction of the beneficiaries, without the involvement of local courts, which may also be prone to favor the local trustee. Thus the role of protector was created in foreign trusts. Consider the development of U.S. trust law in recent years where the

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2015 Trust Education Series Dates & Topics

Free monthly webinars at our office in Bethlehem. Earn CLE or CFP credits and have lunch on us. Join us the third Wednesday of each month from 1 - 2 p.m. Curriculum and speakers provided by Cannon Financial Institute.

REGISTER @ OUR ONLINE ATTORNEY CENTER: valleynationalgroup.com/attorney-center

August 19 - Protectors & Advisors / *Speaker: Daniel Smith*

Protectors are an old concept that is new to American trust law. Here we will discuss the role of the protector, and what they can and cannot do.

September 16 - The Return of Charitable Remainder Trusts / *Speaker: Daniel Smith*

While the Charitable Remainder Trust (CRT) has never gone away, recent years have not been as favorable for their creation. As markets rise and tax laws have increased, CRTs are more popular than ever, and a great way to convert dormant assets to investable assets.

October 14 - Estate Planning for the Retirement Plan / *Speaker: Daniel Smith*

This program will address the key issues to understand for those who have clients with significant retirement assets. The rules for retirement plans are extensive and often are complicated when trying to include them in the estate plan.

November 18 - Structuring and Managing ILITs Effectively / *Speaker: Daniel Smith*

This program explores the complex issues with Irrevocable Life Insurance Trust (ILIT). We will examine administrative, tax, fiduciary, and investment issues. ILITs often do not link in well with standard practices and trustee compensation.

December 16 - Planning Issues for Estates under \$10 Million / *Speaker: Daniel Smith*

With Estate tax exclusions at over \$5 Million per person, over 99% of Americans no longer are threatened with Estate tax, and as a result, there are challenges to many traditional estate planning techniques.

We Want To Hear From You!

Valley National Trust Services invites you to take advantage of our many avenues of marketing and communication, within the Lehigh Valley and nationally, by:

- Submitting an article for an upcoming issue of Trust Connection
- Presenting joint seminars on Estate Planning and using trusts
- Joining us for a live discussion on "Your Financial Choices", a weekly radio program airing on *WDIY 88.1 FM—Lehigh Valley Community Public Radio*

If you would like to explore any of these opportunities, please contact one of our Trust Representatives today!

Jane A. Kapinas
610-868-9000 x131
jkapinas@valleynationalgroup.com

Laurie A. Siebert, CPA, CFP®, AEP®
610-868-9000 x108
lsiebert@valleynationalgroup.com

wdiy 88.1
LEHIGH VALLEY
COMMUNITY PUBLIC RADIO
93.7 FM WEST 93.9 FM EAST



search for the best situs has become a popular a popular pursuit. This may likewise mean that a long-term trust is operated in a different time zone by a trustee physically removed from the beneficiaries. Thus, for the same reasons they made sense in foreign trusts, in our 50 different state law country, the concept of the protector has entered into popular drafting. And like many things in the U.S., once we adopt the idea, we tend to want to make it bigger and better and this is where we will watch the interpretations of the courts over time to determine whether the role is of a fiduciary nature.

Many states have defined the role of a protector and made attempts to pre-define them as fiduciaries or not fiduciaries. Ultimately, regardless of general state laws, the courts will determine the fiduciary nature of the role based on things like their duties, and the expectation that it is a constant duty versus a role not expected to be needed, but available if and when needed. The original concept of a protector was an emergency relief valve, so when changed to be an oversight role, its legal nature may be judged to be different. A typical Trust Protector power is to have the right to change the trustee. This may be deemed to be non-fiduciary if the role is designed to respond to expressed concerns of beneficiaries, triggering an examination of the trustee's actions, as opposed to an annually compensated role, implying there is an ongoing, active duty to inspect proactively.

Duties that may be given to a protector include:

- ✦ Remove or replace the trustee
- ✦ Change the trust's situs
- ✦ Change governing law
- ✦ Approve accountings
- ✦ Terminate the trust
- ✦ Alter trust provision based on changes in tax laws
- ✦ Veto investment decisions
- ✦ Sue and defend lawsuits against the trust assets

All of these are fairly benign powers, yet could be quite valuable in the right circumstances. Yet the following powers may also be granted to the protector:

- ✦ Resolve deadlocks between co-trustees or disagreements between the trustee and/or beneficiary
- ✦ Control spending in excess of a designated certain amount
- ✦ Veto distributions to beneficiaries
- ✦ Alter beneficiaries (add, remove, replace)
- ✦ Consent to exercise Powers of Appointment (POA) by beneficiary
- ✦ Assign interests or POAs to beneficiary (ex., to use Basic Exclusion Amount [BEA])

Imagine that a trustee may be reluctant to exercise a power to grant a general power of appointment to a beneficiary over a portion of the trust. Yet, if a trusted family member or family advisor is given that power, it could help them to respond to opportunities under the tax code at the time, and make judgment calls to further the purposes of the trust or improve its tax results.

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Summary: The role of a protector or advisor to the trust may be very appropriate and useful, but as with many newer techniques they may not be completely clear under the law. They are best employed judiciously and with close attention to the laws and case law of the state of situs in order to ensure that they have the intended effect in helping to carry out the wishes of your clients.

About Our Firm

Valley National Financial Advisors is an independent one-stop financial services group of companies that offer personalized, comprehensive and coordinated financial services. Established in 1985, Valley National has developed a reputation for innovation, financial strength, and quality. Our financial professionals are experts in delivering financial needs-analysis, wealth accumulation, risk management and planning instruction and counsel in a professional, useful manner. Valley National Advisers works within a planning structure that has as its single goal the best interests of each client. Each financial recommendation is based on personal interviews, data gathering, document review, and a thorough understanding of the client's financial goals. With a complete planning process, advisor recommendations are made with an understanding of the "big picture." We see a greater need for trusts with today's ever-changing estate tax environment and family dynamics. With National Advisers Trust Company, you stay involved and your client's benefit from low trustee fees. Contact us for more information on how we can support you in business succession planning or trust services.



Valley National Trust Services

1655 Valley Center Parkway, Suite 100
Bethlehem, PA 18017
610-868-9000 | 800-383-8297

TRUST SERVICES PROVIDED BY NATIONAL ADVISORS TRUST COMPANY, FSB



Jane A. Kapinas - 610-868-9000 x131

Trust Representative, Valley National Trust Services,
a Trust Representative Office of National Advisers Trust Company, FSB

Benjamin M. Tenaglia, III - 610-868-9000 x130

Portfolio Manager, Valley National Advisers, Inc.

www.valleynationalgroup.com

Valley National Advisers, Inc is a Registered Investment Adviser (RIA) with the U.S. Securities and Exchange Commission.

We value our relationships with area attorneys. As an independent and locally owned company in the Lehigh Valley, it is our priority to provide the local, personal service, which you and your clients have come to expect. If you are an attorney looking for a professional consultation on an estate or tax planning matter, our team of knowledgeable advisors is here to help. valleynationalgroup.com/attorney-center

