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YOUR TRUSTED LEGAL COUNSELOR



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IN THIS ISSUE:

1 *Life Insurance*
Do you have a Life Insurance Policy?

5 *Taxes*
2023 Gift & Estate Tax Exclusion Amounts

7 *Trusts & Wills*
What is a Trust Protector?

PREPARING FOR THE NEW YEAR

Written by Francine D. Ward

Do you have a life insurance policy? Are you thinking of purchasing one? If so, you should know that life insurance is one of the most critical components of any estate plan. People often purchase these policies as preventive measures. They want to make sure that, if they die unexpectedly, their loved ones don't suffer financial hardship.

Perhaps you think all you need to do is write the person's name on a form in the designated beneficiary section, and you want to receive the proceeds from your life insurance policy. But writing a name in the beneficiary designation section, in and of itself, is not the answer. There are several things you should consider first:

Continued on page 2



THINK ABOUT NAMING A TRUST AS THE BENEFICIARY.

Often, people name the person whom they want to benefit as the primary beneficiary of their life insurance policy. That might make sense if you want to provide funds for your spouse's retirement. But depending on your circumstances, goals, and whom you want to protect, a better idea might be to name a trust as the beneficiary. For specific individuals, it might be better if the life insurance proceeds are distributed according to the terms of your trust instead of a large cash payment made directly to them.

Minor Children

Life insurance companies rarely pay death benefits to minor children. States determine the age of the majority. If you are considering leaving money to a minor, know the age of the majority in your state. If you name your minor child as the primary beneficiary and you die when your child is still a minor, the court will appoint a guardian. That person will not likely be someone you would have chosen. The proceeds might benefit your child less than you would want. Plus, the proceeds might be managed differently than you desire. Any remaining proceeds will likely go directly into your child's pocket. Even as adults, they may not be mature enough to handle such a windfall. This can be avoided if a trust is named as the primary beneficiary of the life insurance policy, with your child as a beneficiary of the trust. Then, the life insurance proceeds will be managed by the person you have chosen as the trustee and will be distributed to your child according to your wishes.

Some people may also mistakenly designate the child's caretaker as the primary beneficiary to avoid the appointment of a guardian. However, this does not guarantee that the funds will be used for the child's benefit, and the proceeds are vulnerable to claims made by the caretaker's creditors. These problems can be avoided by designating a trust as the primary beneficiary and naming someone you trust as the trustee of that trust.



Recipients of Government Benefits.

Although your intentions may be good, naming someone receiving need-based government benefits as a primary beneficiary of your life insurance policy may cause them to lose their eligibility for those benefits. A special needs trust can be created and named as the primary beneficiary of your life insurance policy. That way, the insurance proceeds will be managed and distributed in a manner that will not compromise the government benefits but will supplement them.

[Continued on page 3](#)

Beneficiaries Who May Be Spendthrifts

If you are concerned that the potential beneficiary of your insurance proceeds is not financially responsible, making them a primary beneficiary may be asking for trouble. The proceeds could quickly be squandered. If you make a trust the primary beneficiary of your life insurance policy and name the individual as the beneficiary of the trust, you can establish specific conditions for distributions to that person, for example, that the distributions must only be for health, maintenance, or educational purposes.



THINK ABOUT ASSET PROTECTION

Designating a trust as the direct beneficiary of your life insurance policy can also protect its cash value and death benefit from creditors' claims.

Protection Against Your Creditors

All 50 states and the District of Columbia have statutes that protect the death benefit or cash value of life insurance, sometimes both from you and your estate's creditor claims. In some states, however, the exemptions for cash value life insurance are limited to a specific dollar amount or to the amount reasonably necessary to support a beneficiary. In addition, although typically the death proceeds of the life insurance policy are never available to your creditors because they pass to your heirs without ever becoming part of your estate, some states have laws that limit the exemption only to particular beneficiaries, such as a spouse, children, or other dependents. Designating a special trust called an irrevocable life insurance trust (ILIT) as the primary beneficiary of your policy can be a strategy to protect proceeds that are outside the scope of the statutory exemption.

Also, please keep in mind that it is essential that you name a beneficiary or beneficiaries for your life insurance policy because if you do not and leave this designation blank, the proceeds of the life insurance policy will be payable to your estate by default. Because your estate is responsible for paying off your debts, the life insurance proceeds may be available to satisfy your creditors' claims, and the individuals you want to benefit from may never see a penny of it. On the other hand, you may choose to do this intentionally to ensure that your estate has sufficient funds to pay off your debts. If your main goal is to provide for your family's needs, however, you need to name them or a trust created for their benefit as the policy's beneficiary.

[Continued on page 4](#)



Protection against your loved one's creditors.

If your spouse is the primary beneficiary of your life insurance policy, your creditors typically cannot reach the proceeds. However, if your spouse has joint debts or obligations with you, for example, if he or she co-signed a mortgage loan, credit card, or personal loan with you, the proceeds may be available to creditors to satisfy those obligations, depending upon state law.

Also, it is essential to keep in mind that although state law provides that the proceeds of your life insurance policy are exempt (at least partially) from your creditors, once those proceeds are in the hands of your direct beneficiaries, they typically are within the reach of their creditors. Even if your children or other loved ones do not have any creditors, they may eventually face lawsuits, bankruptcy, or divorce. If they are primary beneficiaries of your life insurance policy, the death benefit you intended for them to receive may be exposed to claims from those creditors.

An ILIT or other trust can also protect the death benefit by including a “spendthrift trust” provision that prohibits trust beneficiaries from pledging the trust assets, including life insurance proceeds, as collateral. Their creditors can only reach any distributions made to them from the trust.

SEEK ADVICE ABOUT THE AMOUNT YOUR BENEFICIARIES WILL NEED

Could you seek the counsel of your financial advisor to determine the amount of life insurance benefits your loved ones will need for a financially secure future? Many factors should be considered, including your current income, other insurance policies, savings and investments, possible college and other future expenses, your total debt, your mortgage, and the number of individuals who are financially dependent on you. It is crucial to establish a secure safety net and provide financial stability during the transition period after your death, mainly if you are the primary breadwinner and your spouse is the main caregiver for your children but will need to return to the workforce.



Give Me a Call

Ensuring your loved ones are cared for after you are gone is your top priority. My priority is to assist in crafting a plan that will ensure continued support and prosperity for your loved ones. Call me today to schedule your appointment.



2023 Gift & Estate Tax Exclusion Amounts

Written by Francine D. Ward

Thanks to the high rate of inflation, estate and gift tax exclusion amounts have been increased. It is projected that the exclusion amount for anyone dying in 2023 and the generation-skipping transfer tax exemption for 2023 will be \$12,920,000. That is an exclusion amount increase from the \$12,060,000 in 2022.

For 2022, the annual exclusion amount for gifts was \$16,000. That amount is projected to increase to \$17,000 in 2023. In 2022, the number of gifts that could be made to a noncitizen spouse not included in the total amount of taxable gifts was \$164,000. In 2023, the projected amount is \$175,000.

WHAT DOES THIS MEAN FOR YOU?

1. Concerning the basic exclusion amount, individuals can transfer \$860,000 (and \$1,720,000 for married couples) more in 2023 without paying a transfer tax.
2. For the exclusion amount for gifts, you can gift up to \$17,000 without being assessed a gift tax.



California Passes Law Prohibiting Workplace Discrimination Based on Marijuana Use Away from Workplace

Written by Francine D. Ward

Assemb. B. 2188, 2021-2022 Reg. Sess. (Ca. 2022)

California just passed a law that limits an employer's ability to discriminate based on a person's "use of cannabis off the job and away from the workplace." On September 18, 2022, Governor Gavin Newsome signed the bill (Assembly Bill 2188) amending the California Fair Employment and Housing Act. In addition, the law prohibits employers from discriminating based on "an employer—required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids." The law provides that the results of those tests "have no correlation to impairment on the job." Further, those results show that someone "consumed cannabis in the last few weeks."

This law does not imply that it is acceptable for someone to come to work impaired. However, it instructs employers to apply other screenings to determine if a worker is impaired. This law protects many categories of workers, but not all. For example, those excluded from the protection of this law are workers in the building and construction trades, employees whose positions require a federal background check, and employees who must be tested for controlled substances under state or federal law as a condition of employment to receive federal funds or licensing or to enter a federal contract. This new California law takes effect on January 1, 2024.

What does this mean for you?

1. A similar law might apply to you even if you don't live and work in California. Several states have enacted similar statutes, including Connecticut, Montana, New Jersey, New York, Nevada, and Rhode Island. Other states are sure to follow.
2. On September 9, 2022, the New Jersey Cannabis Regulatory Commission issued guidance imposing stricter requirements for employers regarding this issue.
3. Bottom line, employers in these states must consider protecting workers' rights in the employer's effort to maintain a drug-free workplace.



WHAT IS A TRUST PROTECTOR?

Written by Francine D. Ward

When setting up a trust, the three most important roles to be identified are (1) the settlor (sometimes called the grantor or trustor), (2) the trustee, and (3) the beneficiary. Each of these plays a significant and essential role in the effectiveness and enforceability of a trust. A more recent role that has become important in preparing some trusts is the trust protector. This has happened due to the extended life of many trusts. As generations grow, estate plans require greater built-in flexibility. By granting the trust protector added powers, it is more likely that your intentions for creating the trust are fulfilled despite changing laws or circumstances. These additional powers may include removing or appointing trustees, adding or removing beneficiaries, and concluding or terminating the trust.

How Is a Trust Protector Selected?

A settlor may select as a trust protector any individual or group of individuals, such as family members, business associates, friends, attorneys, accountants, or other professional advisors. The naming of a trust protector may be specific, such as “my neighbor Joanna Doe,” or general, such as “a CPA selected by the majority of the owners of the [XYZ Firm].” The trust protector is generally designated in the trust agreement.

Who Makes a Good Trust Protector?

Because the trust protector has a variety of powers that may require a specific skill set, they should be chosen carefully. For example, if the trust protector has the power to amend the terms of the trust to account for changes in tax law, the trust protector should understand tax law and how it will impact the trust. If a trust protector has the power to veto or direct trust distributions to beneficiaries, the selected trust protector should understand the family history and desires of the settlor. Different powers may require the selection of different trust protectors or possibly a committee of trust protectors.

What Does a Trust Protector Do?

Based on your wishes, the purpose of the trust, and applicable law, your trust protector can hold many different powers.

[Continued on page 7](#)

This includes administrative powers traditionally held by a trustee, such as the power to make distributions, and judicial powers usually held by a court, such as the power to remove beneficiaries. Trust protector powers might also include the power to:

1. Remove a trustee or appoint a successor trustee
2. Add or remove beneficiaries
3. Amend the trust agreement
4. Exercise the voting rights of business interests owned by the trust
5. Interpret the terms of the trust
6. Veto or direct trust distributions
7. Terminate the trust
8. Appoint and remove members of a distribution or investment committee

This list is not exhaustive; it is suggestive only. I think it would be best if you incorporated trust protector powers after careful consideration of your needs and in discussion with your trusted estate planning counselor, whomever that might be.



Reasons for Including a Trust Protector in Your Trust-Based Estate Plan

There are several reasons to include a trust protector in your trust-based estate plan:

- a. Trust protectors offer a less costly and easier way of modifying a trust. If a trust needs to be changed after the settlor's death, the only route is usually through the court system.

[Continued on page 8](#)



That can be a complicated, lengthy, and costly process. Giving a trust protector the power to modify the terms of a trust can prevent the need to go to court to change the trust.

b.Trust protectors offer increased flexibility and peace of mind. No one knows what the future holds, as we discovered with CoVID-19. Therefore, the administration of a perpetual trust that may last for generations can be daunting. Including trust protector provisions in your trust agreement can ensure that your trust achieves YOUR goals despite changing circumstances and laws.

c.Trust protectors can provide additional oversight and support for a trustee. A trust protector can ensure that a trustee is properly administering the trust and carrying out the trust's purposes. If the trustee is delinquent in its duties, a trust protector may remove the trustee and appoint a better-suited trustee. A trust protector can also help a trustee correctly interpret trust provisions and address changes in the law or beneficiary circumstances.

Can I Name a Trust Protector for a Testamentary Trust?

Testamentary trusts are usually created through a will. They begin to exist after the settlor dies and the will has been probated. A testator (the person who makes the will) can, and often should, include trust protector provisions in a testamentary trust to ensure that their intent for the trust is adequately carried out over time.

Does Every State Allow Trust Protectors?

State law varies in its treatment, classification, and guidance for trust protectors. Though many states have adopted a uniform set of laws governing trust protectors or a modified version of these uniform laws, other states have not addressed trust protectors at all. It is essential to consult an attorney familiar with your state's laws to understand whether trust protector provisions are suitable for you and your goals.

Don't hesitate to contact me to learn more about naming a trust protector and discuss whether it is a good idea for you. I am happy to answer any questions and help you craft an estate plan perfect for you and your loved ones.

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