

BESPOKE PROTECTOR COMPANY MODEL TRUST PROTECTOR LANGUAGE

UPDATED 11/13/2017

BESPOKE PROTECTOR COMPANY, LLC
A WYOMING LIMITED LIABILITY COMPANY
DIRECTED TRUST SERVICES

For discussion or for more information, or for a Microsoft Word version of these provisions,
please contact:

Matthew T. McClintock, Manager

BESPOKE PROTECTOR COMPANY, LLC
1620 CENTRAL AVENUE
CHEYENNE, WYOMING 82001
877-777-6845

mtm@BespokeProtector.com

WWW.BESPOKEPROTECTOR.COM

Note to drafting attorney:

The following language is strongly recommended when drafting provisions to include a trust protector in a trust instrument. In most cases, it will be required before BESPOKE PROTECTOR COMPANY, LLC will accept appointment as trust protector. Please pay particular attention to asterisks (***) included in the text; these are areas that will require additional customization by the drafting attorney. Pay attention to your internal section numbering and any cross-references to assure a fully integrated and logical final document.

The essence of a trust protector's role is to help ensure that a trust carries out the settlor's intent after the trust is irrevocable and as circumstances change over time. To this end, the trust instrument should provide as much clarity as possible concerning the settlor's intent, the trust protector's enumerated powers, the nature and objects of any duty the protector holds, and various administrative issues concerning the protector.

Trust protector powers can generally be organized into one of two broad categories: quasi-trustee, or "trustee-like" powers and quasi-judicial, or "court-like" powers. Quasi-trustee powers are those powers that might otherwise be held by the trustee but that have been given to a non-trustee third power. They are typically powers that affect more routine aspects of trust administration. Quasi-judicial powers are powers unlike any trustee power; they are powers that address matters that might otherwise be referred to a court for adjudication.

For jurisdictions that allow assignment of powers in a nonfiduciary capacity, we have organized the trust protector powers according to a quasi-trustee and quasi-judicial framework, assigning some powers as fiduciary as to the Settlor's intent (i.e., "...the purposes of the trust") and other powers as nonfiduciary in nature. Please note that some jurisdictions do not recognize a quasi-trustee/quasi-judicial framework. In those instances all powers granted to the protector will be "fiduciary" indicated the powers that should be nonfiduciary in nature. Note that some powers should logically be held in a nonfiduciary capacity due to the nature of the power: that is, powers that would not otherwise be held by a trustee or that would put the trust protector in a position to favor one beneficiary over another, dilute a beneficial interest, reduce a beneficiary's access to trust information, etc. However, some jurisdictions do not allow directed trust powers to be held in a nonfiduciary capacity. In those circumstances, any power conferred in a fiduciary capacity must specify that any fiduciary duty is owed to the purposes of the trust as expressed by the Settlor or as reasonably inferred by the protector, and not to any individual beneficiary.

Framework for fiduciary & nonfiduciary duties

For use in jurisdictions that allow powers to be held in nonfiduciary capacity, or in which fiduciary presumption is default and nonbinding. (Including all UTC jurisdictions.)

Quasi-Trustee (fiduciary) duties	Quasi-judicial (nonfiduciary) duties
Power to direct or veto investments	Power to modify/amend trust instrument
Power to direct or veto sale of specific trust assets	Power to resolve disputes among trust parties
Power to direct or veto discretionary distributions by trustee	Power to grant, revoke, or modify powers of appointment
Power to manage trust-owned business	Power to add or delete beneficiaries*
Power to vote closely-held stock owned by trust	Power to change trustee's distribution standard (e.g., from "HEMS" to discretionary with independent/disinterested trustee)
Power to approve accountings & approve trustee compensation	Power to veto exercise of beneficiary's withdrawal right
Power to change trust situs and/or governing law	Power to consent to exercise of power of appointment
Power to construe trust terms	Power to terminate trust
Power to direct trustee in trust decanting	Power to remove or replace trustee; power to designate trustee succession

*PLEASE NOTE that the power to add or delete a beneficiary should always be a nonfiduciary power because that power can never likely be held in a fiduciary capacity.

Depending on the client (settlor)'s comfort level, all other powers may be granted in a fiduciary capacity with the limitation that any fiduciary power held by the trust protector would be fiduciary only as to the settlor's intent as expressed in the estate plan. When in doubt, it's likely safest to confer a power in a fiduciary capacity with the addition of language defining the nature of the fiduciary role. See below for model language to be included with any fiduciary power.

Use the following standard for any power conferred to the protector in a fiduciary capacity:

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The

Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

We have included language for specific powers in the pages that follow and have assigned appropriate language concerning the nature of any duty owed in the exercise or nonexercise of the trust protector's power. Please contact BESPOKE PROTECTOR COMPANY, LLC with any questions or concerning any power not addressed in this document.

info@BespokeProtector.com

877-777-6845

Modifications to Trust Preamble / Initial Trust Statement

Statement of Settlor's Intent

PLEASE INCLUDE STATEMENT OF SETTLOR'S INTENT

A statement of intent will help guide the Trust Protector in the exercise or nonexercise of the granted powers consistent with the settlor's purpose. The statement of intent may be included as part of the trust instrument, or it may be a separate "letter of wishes" accompanying the trust. Check your local laws to determine if one approach is more desirable in your jurisdiction.

Be sure to include guidance that will inform the Protector's decisions concerning distributions, powers over powers of appointment, etc. For example:

- Does the settlor want to incentivize or discourage certain behaviors or spending habits?
- Is asset protection for a beneficiary a high priority?
- Does a beneficiary have special needs due to a disability, addiction, or other circumstance?
- Does the settlor want to preserve family wealth within his or her natural descendants?
- Does the settlor want to promote education, philanthropy, provide for future generations, etc.?
- Why did the settlor set aside property in trust rather than make distributions outright?

These are offered as rough prompts to assist the attorney in helping the settlor articulate his or her intent.

Modifications to Trustee Succession Provisions

*** The following language is intended to be added to the trust's provisions concerning removal and replacement of trustees. Be sure to include relevant provisions allowing the trust protector to remove & replace trustees. Please format and number the provision according to your drafting preference. ***

Trustee Removal by Trust Protector

At any time during my life or after my death the Trust Protector may remove and appoint any Trustee.

Trust Protector Provisions

*** The following language is intended to comprise a complete article outlining the role of the Trust Protector. Please format and number the sections and subsections according to your drafting preference. ***

Provisions for Trust Protector

The Trust Protector's purpose is to direct the Trustee in matters concerning the trust, and to assist in achieving my objectives as expressed by the other provisions of my estate plan¹ if needed through the exercise or nonexercise of powers specifically granted to the Trust Protector. Any Trust Protector must be a corporate fiduciary or an individual who is not related or subordinate within the meaning of Internal Revenue Code Section 672(c) to the Settlor, to any beneficiary, or to any transferor. Neither a Settlor, nor any trust beneficiaries, nor any transferor may serve as a Trust Protector at any time under this instrument.

Designation of Trust Protector

I appoint BESPOKE PROTECTOR COMPANY, LLC to serve as Trust Protector of this trust. If BESPOKE PROTECTOR COMPANY, LLC is unable or unwilling to serve as Trust Protector, a successor Trust Protector may be appointed pursuant to other provisions of this instrument.

Default Capacity of Trust Protector²

If jurisdiction has adopted Sections 105 and 808 of the Uniform Trust Code (UTC), or if applicable directed trust statute allows fiduciary/nonfiduciary power assignment:

Example 1: I acknowledge that default provisions of ***Trust Code Name (Ref. UTC §808)*** consider Trust Protectors to be fiduciaries. However, provisions concerning the capacity of Trust Protectors are not mandatory provisions of ***Trust Code Name*** pursuant to ***Ref. UTC §105)*** I have therefore intentionally determined the capacity with which any Trust Protector will hold various powers under this instrument and I have determined that certain powers will be held in a fiduciary capacity and others will be held in a nonfiduciary capacity.

Example 2: Default provisions of the ***Directed Trust Statute Reference*** concerning trust protectors and other parties with the power to direct certain actions of the Trustee provide that trust protectors are advisors under applicable law and are considered to be fiduciaries unless the trust instrument provides otherwise. I have therefore intentionally determined that some powers

¹ Verify that Settlor intends the TP to view the Settlor's entire estate plan holistically. To do so, TP will need full access to Settlor's entire estate plan. If TP should disregard other elements of Settlor's plan and consider the exercise/nonexercise of powers only in this trust instrument, modify language accordingly.

² Verify whether your chosen jurisdiction has adopted the Uniform Trust Code or whether a separate directed trust statute applies. (A list of applicable statutory references is available at www.BespokeProtector.com.) If the applicable statute requires that all powers are held in a fiduciary capacity, there is no need to include a "Default Capacity" provision but specify in each power that the power is subject only to the duty to act in the best interests of the trust and not as to any individual beneficiary or class of beneficiaries.

held by the Trust Protector will be held in a fiduciary capacity and others will be held in a nonfiduciary capacity.

(Include with either option): A Trust Protector cannot modify any power that is conferred in a fiduciary capacity in such a way that would cause that power to be held in a nonfiduciary capacity. To the extent any power granted to a Trust Protector under this instrument is not specifically defined, such power shall be held in a nonfiduciary capacity.

Nomination of Successor Trust Protectors

If the designated Trust Protector is removed or is unwilling or unable to serve for any reason, then a successor Trust Protector will be appointed according to the remaining provisions of this Article.

Appointment, Removal, and Replacement of a Trust Protector

This Section establishes the means by which a Trust Protector is appointed in the event of vacancy, or removed and replaced during the term of any trust created under this instrument.

Trust Protector Removal and Replacement by Committee³

I appoint the following to serve as a committee to act by majority vote to remove and replace any Trust Protector serving under this instrument with or without cause:

Individual 1

Individual 2

Individual 3

At all times the trust protector removal and replacement committee must be comprised of an odd number of individuals, a majority of whom are not related or subordinate as defined in Section 672(c) of the Internal Revenue Code to a Settlor, to any beneficiary, or to any transferor. If any member of this committee is unable or unwilling to serve, then the remaining committee members will select an individual to replace that member. If none of the named individuals are able and willing to serve, then the committee will be dissolved and a shareholder⁴ in the law firm of *** or its successor in interest may appoint a Trust Protector.

³ This is offered as an alternative method to appoint, remove, or replace the Trust Protector without relying on court intervention but to prevent the protector from being considered “related or subordinate” to a party in interest. We recommend that at all times a committee with the power to appoint, remove, or replace the protector should be comprised of a majority of individuals who are not related or subordinate to the settlor, a beneficiary, or a transferor.

⁴ This option is included in case the drafting attorney wants to allow his/her law firm to fill a Trust Protector vacancy.

No Removal by Trustees

No Trustee may remove a Trust Protector.

Resignation of a Trust Protector

A Trust Protector may resign by giving written notice to the Settlor, if living, to the Primary Beneficiary and the then-serving Trustee. If the Primary beneficiary is incapacitated or deceased, a Trust Protector may resign by giving written notice to the then-serving Trustee.

Resignation will take effect on the date set forth in the notice, but not earlier than 30 days after the delivery date of the notice of resignation, unless an earlier effective date is agreed to by the trust's Primary Beneficiary. A resigning Trust Protector is not liable or responsible for the act of any successor Trust Protector.

Upon the resignation of a Trust Protector, the resigning Trust Protector may appoint the resigning Trust Protector's successor as Trust Protector in the manner otherwise set forth in this Article concurrent with the written notice of resignation. If the resigning Trust Protector fails to make the appointment, the resigning Trust Protector will be replaced pursuant to the remaining provisions of this Article.

Incapacity of a Trust Protector

If any individual Trust Protector becomes incapacitated, the incapacitated Trust Protector need not resign as Trust Protector. Any then-serving Trust Protector or the immediately eligible successor Trust Protector may provide a written declaration that a Trust Protector is incapacitated. The written declaration of the Trust Protector's incapacity will terminate the Trust Protector's service.

Vacancy in the Office of Trust Protector

If the office of Trust Protector is vacant and there is no effectively named successor Trust Protector, a successor Trust Protector will be appointed according to the provisions of this Article. If a Trust Protector is not appointed within 60 days of a vacancy, the Primary Beneficiary may petition a court of competent jurisdiction to appoint a successor Trust Protector to fill any vacancy remaining unfilled after a period of 90 days. By making this appointment, the court will acquire jurisdiction over the trust only to the extent necessary to make the appointment.

If the Primary Beneficiary is a minor or is incapacitated, his or her Legal Representative may act on behalf of the Primary Beneficiary.

Authority of Successor Trust Protectors

Any successor Trust Protector has all the authority of any predecessor Trust Protector, but is not responsible for the predecessor's acts, omissions, or forbearances.

Trust Protector Standard of Conduct; No Duty to Monitor

To the extent a Trust Protector holds any power or authority in a fiduciary capacity, the Trust Protector has no general duty to monitor or remain informed about the trust. Specifically, the Trust Protector has no duty to investigate the Trustee's actions or inactions, to audit the trust's books, to review the trust's investments, or to evaluate the trust portfolio's performance, unless a trust beneficiary or other interested party:

files a written complaint with the Trust Protector alleging a breach of trust and detailing the matters the Trust Protector should investigate, audit, review, or evaluate; or

requests an action that the Trust Protector is authorized to perform under this instrument.

If the Trust Protector possesses the power to direct, consent to, or veto the actions of a Trustee described in the written complaint, the Trust Protector shall defer to the Trustee's judgment except in those instances in which the Trust Protector can find no rational basis for the Trustee's action, omissions, or forbearances. The Trust Protector will only bear liability for an omission or forbearance if:

the trust suffers monetary loss and the Trust Protector made no reasonable inquiry when alerted that the Trustee might have breached the Trustee's fiduciary duties; or

even if the Trust Protector made a reasonable inquiry, no other reasonable person would have failed to take action against the Trustee under those circumstances.

If the Trust Protector chooses to direct, veto, or consent to an action of the Trustee, the Trust Protector shall exercise the authority with the same degree of care, skill, competence, and good judgment that a Trustee would exhibit in exercising those powers.

To the extent that the Trust Protector holds any power or authority in a nonfiduciary capacity, the Trust Protector is not liable for any action, omission, or forbearance in the absence of an affirmative showing by clear and convincing evidence of bad faith by the Trust Protector to any of the beneficiaries.

Indemnification of Trust Protector

I recognize that some persons or institutions may be reluctant to serve as Trust Protector without indemnification by the trust for potential liability. Therefore, the Trustee shall expend the trust assets to defend any claim brought against any Trust Protector, unless the Trust Protector is shown by clear and convincing evidence to have acted in bad faith or with reckless disregard or indifference to the interests of the Primary Beneficiary, even if the cost of the Trust Protector's defense would exhaust the trust's value. If any claim brought against a Trust Protector is successful and the Trust Protector is shown to have acted in bad faith or with reckless disregard or indifference to the interests of the Primary Beneficiary, the Trustee may seek reimbursement

from that Trust Protector using any legal or equitable means available to the Trustee for the value of any trust assets used to defend the Trust Protector.

Any Trust Protector is entitled to reimbursement from the trust estate for any expenses, including reimbursement for attorney's fees and costs of litigation reasonably incurred to defend any claim brought against the Trust Protector, unless the Trust Protector is shown by clear and convincing evidence to have acted in bad faith. This must be done even if the cost of the Trust Protector's defense would exhaust the trust's value.

This Section applies to any currently serving Trust Protector and for claims brought against any former Trust Protector in connection with his or her acts, omissions, or forbearances in regard to the trust while serving as Trust Protector.

Trust Protector Powers

If the applicable jurisdiction has enumerated trust protector powers, incorporate by reference In addition to the powers exercisable by a Trust Protector under ***cite relevant trust protector powers statute***, which are hereby expressly incorporated by reference, any Trust Protector named or appointed under the provisions of this instrument has the following powers and authorities. The powers held by the Trust Protector shall be held and exercised or not exercised in the sole discretion of the trust protector and are binding on all other persons.

If the applicable jurisdiction does not provide enumerated powers by statute

Any Trust Protector named or appointed under the provisions of this instrument has the following powers and authorities. The powers held by the Trust Protector shall be held and exercised or not exercised in the sole discretion of the trust protector and are binding on all other persons.

Power to Amend or Modify the Instrument for Administrative, Legal, or Tax Purposes

The Trust Protector may amend or modify this instrument as it applies to any trust over which the Trust Protector is serving as Trust Protector to:

Alter the administrative and investment powers of any Trustee;

Reflect tax or other legal changes that affect trust administration or reflect the intentions of the Settlor, however the Trust Protector may ascertain those intentions with regard to any material issue including but not limited to:

Tax treatment of assets held by the trust or to be distributed by the trust;

Administration of trust assets and the Trustee's performance or delegation of any duty;

Timing and nature of distributions to or for the benefit of a beneficiary; and

Other matters relevant to administering the trust in accordance with the Trust Protector's interpretation of the Settlor's intent that the Trust Protector determines will be best addressed by modifying this trust instrument.

Eliminate or minimize the state and federal taxes payable by my estate and provide the maximum benefit to my beneficiaries as expressed in this instrument. This includes dividing trust property into separate shares or funds;

Correct ambiguities, including scrivener errors, that might otherwise require court construction or reformation;

Grant any beneficiary of any trust created under this instrument the unlimited and unrestricted testamentary general power to appoint all or any portion of the principal and undistributed income of the beneficiary's trust or trust share to the creditors of the beneficiary's estate. As a condition for the beneficiary's exercise of this power, the Trust Protector may require that the beneficiary first obtain the consent of the Trust Protector. Any testamentary power of appointment granted by the Trust Protector may only be exercised personally by the beneficiary, must be exercised in writing, and may be revoked by the Trust Protector at any time during that beneficiary's lifetime. I suggest that the Trust Protector exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax or when it appears that it may reduce overall taxes; and

Add or modify terms of any trust created under this instrument so that the trust will protect the financial resources governed by this instrument and comply with the Settlor's intent that the trust assets not be considered income or resources for all entitlement benefits from any government agency, such as Social Security Disability payments, Medicare, Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other special-purpose benefits for which the beneficiary is eligible.

Notwithstanding any other provision of this instrument, the Trust Protector may not amend or modify any power or provision of the trust so as to expand the Trust Protector's amending powers or the Trust Protector's other existing powers, authorities, or discretions. But the previous provision does not prevent the Trust Protector from making amendments to correct scrivener's errors as to the Trust Protector's powers, authorities, and discretions, or to amend the trust in any manner required for the sole purpose of ensuring that the powers, authorities, and

discretions of the Trust Protector remain legally binding and valid under applicable law.

Any amendment made by the Trust Protector will be binding and conclusive on all persons interested in the trust unless the amendment is shown by clear and convincing evidence to have been made in bad faith by the Trust Protector. The Trust Protector will not be liable for any consequences of amending or not amending the trust. Any amendment must be made in writing and signed by the Trust Protector. The Trust Protector must deliver a copy of the amendment to the Primary Beneficiaries and Trustees of the amended trust.

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Add or Remove Beneficiaries and to Modify Distribution Rights⁵

The Trust Protector may add or remove beneficiaries, or amend the dispositive provisions for any beneficiary of any trust created under this instrument. ***Add any additional language limiting the class of permissible beneficiaries, such as the Settlor, the Settlor's spouse, or any lineal descendant of the Settlor*** In addition, the Trust Protector may:

Modify the distribution rights of any beneficiary or class of beneficiaries created by this instrument; or

Make, withhold, or amend the terms of any distribution for any beneficiary or class of beneficiaries of a trust created under this instrument.

The Trust Protector's power to add or remove beneficiaries or to modify a beneficiary's distribution right cannot be exercised in such a way that would cause a beneficiary under this trust to be unable to qualify for any benefits from any government agency, such as Social Security Disability payments, Medicare, Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other special-purpose benefits for which the beneficiary is eligible.

⁵ If the jurisdiction allows powers to be assigned in nonfiduciary capacity, this should be a nonfiduciary power. Otherwise, include the following:

“The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.”

Select oneThe Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a nonfiduciary capacity.

Or

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Change the Governing Law and Situs of Administration

The Trust Protector may change the governing law of the trust, remove all or any part of the property, or change the situs of administration of the trust from one jurisdiction to another. The Trust Protector may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. The Trust Protector may take action under this Section for any purpose the Trust Protector considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by the Trust Protector, the Trust Protector may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if the Trust Protector does not appoint an Independent Trustee within 30 days of the Trust Protector's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or Legal Representative may act on the beneficiary's behalf.

Select oneThe Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a nonfiduciary capacity.

Or

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Terminate a Trust

The Trust Protector may terminate this trust or any trust created under this instrument at any time.

Select oneThe Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a nonfiduciary capacity.

Or

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Direct Trust Decanting

The Trust Protector may direct the Trustee to appoint the property subject to the Trustee's power of distribution in trust for the benefit of one or more beneficiaries of any trust created under this instrument under the terms established as agreed upon between the Trustee and the Trust Protector and as more specifically set forth in *****cross-reference to trustee's decanting power***** of this instrument.

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Remove and Appoint Trustees

The Trust Protector may remove any Trustee of any trust created under this instrument at any time, with or without cause. If the office of Trustee of a trust is vacant and no successor Trustee is effectively named, the Trust Protector may appoint an individual or a corporate fiduciary to serve as Trustee. A Trust Protector may not appoint any then-serving Trust Protector as a Trustee.

If the Trust Protector removes a Trustee, notice of removal must be made in writing and delivered to the Trustee being removed and any other then-serving Trustees. The removal of the Trustee will be effective in accordance with the terms of the notice of removal.

If one or more beneficiaries also hold the power to remove, replace, or remove and replace Trustees, the Trust Protector's power to remove and replace a Trustee does not limit or otherwise negate the power of the beneficiaries to remove and replace a Trustee.

Select oneThe Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a nonfiduciary capacity.

Or

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of the Settlor in establishing this trust instrument. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Power to Add or Remove Beneficiaries and to Modify Distribution Rights

The Trust Protector may add or remove beneficiaries, or amend the dispositive provisions for any beneficiary of any trust created under this instrument. In addition, the Trust Protector may direct my Trustee to:

Modify the distribution rights of any beneficiary or class of beneficiaries created by this instrument; or

Make, withhold, or amend the terms of any distribution for any beneficiary or class of beneficiaries of a trust created under this instrument.

The Trust Protector may veto any power held by my Trustee to appoint any beneficiary's interest in further trust as provided under the law of the governing situs or jurisdiction of trust administration, or as provided by *****cross-reference to trustee's decanting power***** of this instrument.

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a nonfiduciary capacity.

Power to Construe the Terms of This Instrument

The Trust Protector may settle any disputes concerning the interpretation of any provision contained in this instrument that arise as a result of any perceived ambiguity. In doing so, the role of the Trust Protector is to ensure that the instrument is construed in a manner consistent with the Settlor's objectives in establishing this trust instrument.

The Trust Protector authorized to act with respect to this Subsection holds the powers and authorities of this Subsection in a fiduciary capacity only to the purposes and objectives of my estate plan. The Trust Protector owes no individual fiduciary duty to any beneficiary in the exercise or nonexercise of this power.

Executing Documents Denoting Authority

The Trust Protector may execute and deliver, and may direct any Trustee to execute and deliver, any documents necessary to carry out any power granted to the Trust Protector or the Trustee. All parties dealing with the Trust Protector and the Trustee may rely on statements and documents made by the Trust Protector and by any Trustee. No party is required to inquire into any statement or document's validity. If any conflict exists between assertions of authority made by the Trust Protector and the Trustee, assertions made by the Trust Protector will control, and any assertion made by the Trustee will be disregarded to the extent of the conflict.

Limitation on Trust Protector Powers

A Trust Protector may not exercise any power or discretion in favor of the Trust Protector, for the Trust Protector's benefit, or for the benefit of any person to whom the Trust Protector is related or subordinate within the meaning of Internal Revenue Code Section 672(c). My intent is that nothing in this instrument be construed in any manner that would cause the Trust Protector to possess a general power of appointment within the meaning of Internal Revenue Code Sections 2041 and 2514. This provision, however, does not prohibit the Trust Protector or any related party from receiving reasonable fees for services rendered to the Trust.

If the Trust Protector exercises any power to change trust situs or governing law, or decant or terminate a trust created under this instrument, the Trust Protector must direct that an amount of assets will be left with the Trustee, sufficient in the Trustee's discretion to cover an estimate of the reasonable claims, expenses and taxes that the Trustee may incur in defending any anticipated claims or winding up the trust.

In exercising and considering whether to exercise any power granted to a Trust Protector under this agreement, the Trust Protector should make reasonable inquiry into any matter or seek any information that reasonably bear upon the Trust Protector's decision to exercise the power.

Trust Protector May Release Powers

Acting on behalf of itself and all successor Trust Protectors, a Trust Protector may irrevocably release, renounce, suspend, or limit any power or discretion held by the Trust Protector at any time. Any such action the Trust Protector will be binding on all successor Trust Protectors.

Deemed Consent by Trust Protector

If any provision of this Article requires the consent or approval of a Trust Protector before a Trustee can act and the Trust Protector does not affirmatively deny consent to the proposed action in writing within 10 days of being notified in writing that approval or consent is sought for the particular act, the Trust Protector will be considered to have given consent or approval for the Trustee's proposed action.

Trust Protector Compensation

Any Trust Protector serving under this instrument is entitled to receive reasonable compensation for services rendered, taking into consideration:

The market rate for similar services in the jurisdiction in which the Trust Protector serves;

The breadth and nature of the powers, authorities, and discretions granted to the Trust Protector;

The amount of time the Trust Protector will likely devote to determining whether to exercise or not exercise any power conferred to the Trust Protector under this instrument or applicable law; and

The trust property's current value and the projected amount of appreciation.

The Trust Protector is entitled to reimbursement for all expenses incurred in the performance of its duties as Trust Protector, including reasonable travel expenses.

Serving in the capacity of Trust Protector does not prevent the Trust Protector from also providing legal, investment, or accounting services on behalf of the trust or the trust beneficiaries. If the Trust Protector is providing professional services, the Trust Protector is entitled to charge its normal and customary fees for services provided or to be provided, in addition to the Trust Protector's ordinary compensation as Trust Protector.

Right to Examine Trust Records

The books and records of each trust created under this instrument, including all documentation, inventories, and accountings, must be open and available for inspection by the Trust Protector at all reasonable times. The Trust Protector may direct the Trustee to produce any documentation relevant to any power held by the Trust Protector. Any costs associated with the Trustee's production of documentation or information requested by the Trust Protector will be an expense of the trust.

Employment of Professionals

Any Trust Protector may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of the Trust Protector's duties. The Trust Protector may act on the recommendations of the persons or entities employed, with or without independent investigation.

The Trust Protector may reasonably compensate an individual or entity employed to assist or advise the Trust Protector, regardless of any other relationship existing between the individual or entity and the Trust Protector.

The Trust Protector may direct and the Trustee will pay the usual compensation for services contracted for under this Section out of trust income or principal as the Trust Protector deems advisable. The Trust Protector may direct payment of compensation to an individual or entity employed to assist or advise the Trust Protector without diminishing the compensation to which the Trust Protector is entitled under this instrument. A Trust Protector who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise the Trust Protector may nonetheless receive the Trust Protector's share of the compensation paid to the entity.

Modifications to Trust Administration Provisions

*** The following language is intended to be added to the trust's provisions concerning general trust administration. Be sure to include relevant provisions defining the nature of the relationship between the trust protector and the trustee. Please format and number the provision according to your drafting preference. ***

Exoneration of the Trustee

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee. Absent clear and convincing evidence of willful bad faith on the part of the Trustee, the Trustee is exonerated from any liability for the acts, omissions, or forbearances of any Trust Protector and from any liability for the Trustee's own acts, omissions, or forbearances directed by the Trust Protector.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

The Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien.

Limitations on Trustee Liability

I direct that any individual or corporate fiduciary that serves as the Trustee will not incur any liability for any action, omission, or forbearance made in good faith reliance on information, consent, or directions received from a Trust Protector, except for cases of willful misconduct or gross negligence on the Trustee's part.

Any individual or corporate fiduciary currently serving as a Trustee may expend any portion of the trust assets to defend any claim brought against the Trustee as a result of his or her good faith reliance on any information, consent, or directions received from a Trust Protector, even if the Trustee's defense costs would exhaust the trust's value. Any individual or corporate fiduciary that formerly served as a Trustee is entitled to reimbursement from the trust estate for any expenses, including reimbursement for attorney's fees and litigation costs reasonably incurred as a result of the Trustee's good faith reliance on information, consent, or directions received from a Trust Protector.

Except for cases of willful misconduct or gross negligence on the Trustee's part, any action, omission, or forbearance made in good faith reliance on information, consent, or directions received from a Trust Protector will be considered to have been made in good faith for this Section's purposes.

U.S. Domestic Trust Protector / Directed Trust Statutes

The following pages include citations of all known domestic statutes concerning trust protectors and directed parties as of the publication of this guide. BESPOKE PROTECTOR COMPANY, LLC will attempt to update the references and salient language from time to time, and known updates will first be made to the website: www.BespokeProtector.com. The following list of statutes and citations is offered for reference use only; it is the drafting attorney's sole responsibility to verify the reference and applicability of any trust protector statute and to structure trust protector provisions consistent with governing law.

There are separate tables for UTC-derived statutes and for the non-UTC derived statutes. If you are aware of additional statutes not included in this list, or if you notice anything incorrect or outdated, please notify us at your earliest convenience so we can provide the most current, accurate information possible.

With thanks,

BESPOKE PROTECTOR COMPANY, LLC

info@BespokeProtector.com

877-777-6845

www.BespokeProtector.com

Non-UTC Directed Trust Statutes

AK	AK Stat § 13.36.370 (2015): (d) 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.
CO	<p>C.R.S. §15-16-801 (2016): (5) “Non-investment decision” means a fiduciary decision regarding the distribution, administration, or management of any property owned by a trust, other than an investment decision.</p> <p>(8)(a) “Trust advisor” means a person who is:</p> <ul style="list-style-type: none"> (I) Acting in a fiduciary capacity; and (II) Vested under a governing instrument with fiduciary powers to direct a trustee’s actual or proposed investment decisions or non-investment decisions. <p>(b) A person who holds a nonfiduciary power over a trust, including a power of appointment as defined in section 15-2-102, is not subject to the provisions of this part 8, regardless of whether he or she is described as a “trust advisor” within a governing instrument.</p>
DE	12 DE Code § 3313 (2015): (a) Where 1 or more persons are given 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 provided, however, that the governing instrument may provide that any such adviser (including a protector) shall act in a nonfiduciary capacity.
GA	GA Code § 53-12-303 (2015): (c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee or in any other person, including a cotrustee, to the exclusion of one or more trustees, the authority to direct the making or retention of any investment, the excluded trustee shall be liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the making or retention or any investment pursuant to the authorized direction.
ID	ID Code § 15-7-501 (2015): (4) When trust advisor considered as fiduciary. If one (1) or more trust advisors are given authority by the terms of a governing instrument to direct, consent to, or disapprove a fiduciary's investment decisions, or proposed investment decisions, such trust advisors shall be considered to be fiduciaries when exercising such authority unless the governing instrument provides otherwise.

IL	760 ILCS 5/16.3: (e) Duty and liability of directing party. A directing party is a fiduciary of the trust subject to the same duties and standards applicable to a trustee of a trust as provided by applicable law unless the governing instrument provides otherwise, but the governing instrument may not, however, relieve or exonerate a directing party from the duty to act or withhold acting as the directing party in good faith reasonably believes is in the best interests of the trust.
IN	IC 30-4-3-9: (b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section: (1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or should know would constitute a breach of a duty owed by that person as a fiduciary. (2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.
MI*	MI Comp L § 700.7809 (2015): (a) Except as provided in subsection (2), 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. (2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
NV	<p>NV Rev Stat § 163.5553 (2015): 1. A trust protector may exercise the powers provided to the trust protector in the instrument in the best interests of the trust. The powers exercised by a trust protector are at the sole discretion of the trust protector and are binding on all other persons.</p> <p>NV Rev Stat § 163.5551 (2015): If one or more trust advisers are given authority, by the terms of an instrument, to direct, consent to or disapprove a fiduciary's investment decisions, the investment trust advisers shall be considered fiduciaries when exercising that authority unless the instrument provides otherwise.</p>

RI	RI Gen L § 18-9.2-2(9)(iii) (2015): (iii) For the purposes of this chapter, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in subparagraph (I) of this subsection shall be considered a qualified trustee; however, nothing in this chapter shall preclude a transferor from appointing one or more advisors, including, but not limited to: (A) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors; and (B) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust. For purposes of this section, the term "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one or more trust powers.
SD	SD Codified L § 55-1B-6 (2015): The powers and discretions of a trust protector are as provided in the governing instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the trust protector and are binding on all other persons.
TX	TX Trust Code §114.0031: (e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.
UT*	UT Code § 25-6-14(7)(b) (2015): (References only in passing in DAPT statute): the settlor has the authority under the terms of the trust instrument to appoint nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can direct, consent to, or disapprove distributions
WA	WA Rev Code § 11.100.130 (2015): Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority.

* Michigan and Utah both adopted significant parts of the UTC but neither adopted Section 808 (Powers to Direct). Michigan has a comprehensive trust protector statute; Utah only mentions trust protectors in passing in its domestic asset protection trust statute.

UTC-derived Directed Trust Statutes

Each of the following jurisdictions has substantially enacted Model UTC §808 verbatim. Verify whether your state has also enacted Model UTC §105 (Default and Mandatory Provisions) to determine if the directed party's presumption of fiduciary duty may be waived.

AL	Ala. Code 19-3B-808
AZ	A.R.S. §14-10808, 14-10818
AR	A.C.A. §28-73-808
DC	DC Code §19-1308.08
FL	Fla. Stat. §736.0808
KS	KS Stat. §58a-808
KY	KY Rev. Stat. §8.8-080
ME	ME Rev. Stat. 18-B-§808
MD	MD Estates & Trust Code Ann. §14.5-808
MA	ALM GL ch. 203E §808
MS	Miss. Code Ann. §91-8-808, 91-8-1201
MO	MO Rev. Stat. §456.8-808
MT	MT Code §72-38-808
NE	N.R.S. §30-3873
NH	NH Rev. Stat. §564-B:8-808
NM	NM Stat. §46A-8-808
NC	NC Gen. Stat. §36C-8A-1-11
ND	ND Cent. Code §59-16-08
OH	Ohio Rev. Code §5808.08
OR	OR Rev. Stat. §§130.685, 130.735
PA	20 PA Cons. Stat. §7778

SC	SC Code §62-7-808
TN	TN Code §§35-15-808, 35-15-1201-1206
VT	14 V.S.A. §808
VA	VA Code §64.2-770
WV	WV Code §44D-8-808
WI	WI Stat. §§701.0808, 701.0818
WY	WY Stat. §§4-10-808, 4-10-710-718

MODEL UTC ORIGINAL LANGUAGE (2014 DRAFT)

SECTION 105. DEFAULT AND MANDATORY RULES.

(a) Except as otherwise provided in the terms of the trust, this [Code] governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this [Code] except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) the power of the court to modify or terminate a trust under Sections 410 through 416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in [Article] 5;
- (6) the power of the court under Section 702 to require, dispense with, or modify or terminate a bond;
- (7) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- [(8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;]

[(9) the duty under Section 813(a) to respond to the request of a [qualified] beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;]

(10) the effect of an exculpatory term under Section 1008;

(11) the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding; [and]

(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice [; and

(14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 203 and 204].

SECTION 808. POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Excerpted comment to UTC §808:

Subsections (b)-(d) ratify the use of trust protectors and advisers. Subsections (b) and (d) are based in part on Restatement (Second) of Trusts § 185 (1959). Subsection (c) is similar to Restatement (Third) of Trusts § 64(2) (Tentative Draft No. 3, approved 2001). "Advisers" have long been used for certain trustee functions, such as the power to direct investments or manage a closely-held business. "Trust protector," a term largely associated with offshore trust practice, is more recent and usually connotes the grant of greater powers, sometimes including the power to amend or terminate the trust. Subsection (c) ratifies the recent trend to grant third persons such broader powers.