

**INTERNATIONAL WEALTH PLANNERS  
RESIDENCY, CITIZENSHIP & PROTECTORS  
JULY 16, 2014**

**Common Protector Powers**

Core

- Remove and replace other trust fiduciaries
- Approving compensation of trust fiduciaries
- Designating additional and successor Protectors

Common Additional powers

- Approve, jointly with beneficiary, trustee accounts and release trustee from liability
- Waive confidentiality in a dispute
- Consent to exercise of special power of appointment (held by beneficiary or third party)
- Consent to exclusion from withdrawal right
- Consent to distributions to someone other than primary beneficiary
- Consent to decanting distribution from trust
- Consent to grant of a general power of appointment
- Consent to termination of a beneficial interest and its later distribution
- Consent to alternative information reporting (quiet trust)
- Approve alternative trustee liability and indemnification provisions
- Amend trust document to bifurcate fiduciary powers and authority (e.g., to create an investment or distribution director)
- Refer disputes to (and establish procedure for) ADR
- Appointment of deadlock committee

Less frequent powers (tax risk/characterization as trustee?)

- Consent to all trust distributions
- Direct trust distributions
- Direct trust investments
- Add or remove trust beneficiaries (*common in international trusts*)

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**Sample Emergency Protector Language**

(i) In the event of an emergency, an Emergency Protector shall have the authority to act as Protector until such emergency has ended. During the pendency of an emergency, only the decision of the Emergency Protector will be respected as the decision of the Protector. For this purpose, an “emergency” will be considered to exist during any period in which (A) no person serving as a Protector is free to communicate with the Trustees without concern for his or her well-being or the well-being of the members of his or her family, (B) a governmental authority prevents (or threatens to prevent) each person serving as a Protector from departing any jurisdiction at the time in question, or (C) no person serving as a Protector is free to communicate with the Trustees due to an event which has disrupted telephonic or electronic communications. The Trustees shall, in their discretion, determine whether an emergency exists and the duration of such emergency. The Trustees shall notify the Emergency Protectors upon the beginning and end of any period in which an emergency is considered to exist.

(ii) The initial Emergency Protector shall be (A) [Protector-A], (B) [Protector-B], and (C) [Protector-C], to serve jointly or whichever of them is then able and willing to serve. If at any time either Protector-B or Protector-C is not able or willing to serve, then \_\_\_\_\_, acting as a representative of \_\_\_\_\_ Trust Company Limited, shall serve jointly with [Protector-A] as the Emergency Protector.

(iii) The Protector, at any time or times other than during an emergency, may appoint or remove persons to serve as the Emergency Protector (including to change the designations in subparagraph (ii), above), and appoint additional persons to serve as the Emergency Protector.

(iv) References in this document to the “Protector” also shall include the Emergency Protector, unless the context clearly indicates otherwise.

*Note: The Trustee in the case of the trust in which this provision was incorporated was the family’s private trust company.*

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**Sample Family Power to Remove Protector**

**Family Power to  
Replace  
Protector**

Notwithstanding any other provision of this document, the Protector of any trust created under this document may be removed and a successor to such removed Protector appointed as follows:

- ◆ by the unanimous consent of my then living children and the beneficiaries of the trust in question; or if none of my children is then living, then
- ◆ by the consent of 80% of my then living descendants;

provided, however, that this power may not be exercised to appoint as a successor to a removed Protector any of the persons participating in the exercise of this power or any person who is related or subordinate to any such person, or anyone who is otherwise disqualified under the terms of this document from serving as a Protector.

Furthermore, this removal power may not be exercised to remove any of the following persons, if he or she is serving as a Protector:

- ◆ either of my brothers, \_\_\_\_\_ or \_\_\_\_\_;
- ◆ any of my children, or the children of my brothers, \_\_\_\_\_ or \_\_\_\_\_; or
- ◆ the key beneficiary.

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Sample Protector Provision

**Protector**

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The initial and successor Protectors are those persons named under the heading “Naming Decision Makers.” Additional and successor Protectors shall be named as provided under this heading.

**Successor Protectors**

Each person serving as a Protector may designate his, her or its successor as a Protector. The Protector may designate one or more individuals or entities to serve as an additional Protector. A Protector may designate alternates and a method of selecting successors. Any designation of an alternate or a method of selection (including a designation by me) can be changed by the Protector then serving. Any designation, revocation, acceptance of appointment, or resignation of a Protector for a trust shall be delivered in writing to the Trustees of that trust. A Protector or successor Protector of a trust may be any individual or entity (other than me or an entity controlled by me). A Protector who is incapacitated, other than temporarily, shall be treated as having resigned. I do not encourage, but do not prohibit, naming different Protectors for separate trusts.

**Resignation of Protectors**

A person serving as a Protector of any trust may resign at any time, as long as that trust will then have at least one Protector able and willing to serve.

**Failsafe Protector**

If no Protector has otherwise been provided for a particular trust, the Protector shall be designated by the available beneficiaries having a then present interest in that trust, acting by majority vote; provided, however, that a beneficiary under age 35 may not participate in naming himself or herself or a related or subordinate person as a Protector. If no beneficiaries are available, then the Trustees may designate a Protector to serve until another Protector is designated, but the person named by the Trustees cannot be, or be related or subordinate to, any of the Trustees.

**Decisions by Protector**

**The Protector shall act in a fiduciary capacity in the best interests of the trust.** If there is ever more than one person serving as Protector for any one trust, they are still, for convenience, referred to in this document as the “Protector,” and they shall act by unanimous written consent unless they adopt written rules for taking action as would a board or committee. If the Protector is unavailable, disqualified from acting or no Protector is serving, any action that requires the Protector’s participation cannot be taken unless and until another person is available to act as Protector and is not disqualified.

**Restrictions on  
Decisions by  
Entity  
Protectors**

If a limited liability company or other entity is serving as a Protector, then no person may participate in a decision of the entity if that person would be precluded by this document from participating in that decision if he, she or it were serving directly as the Protector.

**Index of  
Protector  
Powers**

The Protector exercises its powers under the following provisions, which can be found at the pages noted. Restrictions on those powers will be found there as well, if any.

*[Index to protector powers and authority within the trust document.]*

**Compensating  
Protectors**

Unless waived, a Protector who is not a beneficiary or a donor shall receive reasonable compensation for services rendered as Protector in accordance with then prevailing industry standards for the particular services involved, as reasonably determined by the Protector with the consent of a majority of the available beneficiaries, if any, whose consent may not be unreasonably withheld. Also, the Protector shall be reimbursed for all reasonable expenses incurred in performing his or her duties, including expenses for legal advice or professional consultants, audits, or peer reviews of the performance of other fiduciaries that the Protector can remove. Any person serving as a Protector shall be considered to have waived any right to a fee based on a statutory schedule or requirement, and instead shall be compensated as provided under this document.

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