

7. Trust Protector*

7.1 Appointment of Trust Protector and General Provisions.

- (a) **[Specifically named.] Naming Trust Protector.** XXXXXX shall serve as Trust Protector. If XXXXXXXX is unable or unwilling to serve as Trust Protector, then YYYYYY shall serve as Trust Protector. If there is nobody to appoint a Trust Protector,

Under no circumstances may Beneficiary be named as Trust Protector.

[Person with ability to appoint.] Naming Trust Protector. XXXXXX shall have the authority, by a writing executed with the same formalities as this document, to appoint a Trust Protector, which could include appointing himself/herself/itself as Trust Protector. If XXXXXXXX is unable or unwilling to appoint a Trust Protector, then YYYYYYY shall have the authority, by a writing executed with the same formalities as this document, to appoint a Trust Protector, including appointing himself/herself/itself.

If there still is nobody to appoint a Trust Protector above and a Trust Protector is needed, then a Trust Protector shall be appointed by the Oakland County Probate Court.

An individual or entity given the ability to appoint a Trust Protector shall be considered a nonfiduciary not be liable to the Beneficiary for the exercise or non-exercise of the power to appoint.

Under no circumstances may Beneficiary be named as Trust Protector.

- (b) **Acceptance by Trust Protector.** A Trust Protector accepts being Trust Protector upon signing a written acceptance to become Trust Protector.
- (c) **Resignation.** An acting Trust Protector may resign upon serving notice of its resignation to the Trustee, the current trust beneficiaries (or their representatives), and the next named Trust Protector/ individual or entity with authority to appoint a Successor Trust Protector.
- (d) **No General Power of Appointment.** Notwithstanding any other provision of this Agreement, the Trust Protector shall not participate in exercising any power that would cause the Trust Protector to possess a general power of appointment over any or all of the Trust property.
- (e) **Advice of Counsel.** My Trust Protector may obtain the advice and assistance of legal counsel regarding his/her role from an attorney competent in trust administration. Any expense associated with exercising the Trust Protector's duties, including, but not limited to attorneys' fees, shall be paid as

expenses of administration by the Trustee, without the necessity of prior court approval.

7.2 Trustee's Duties Relating to Trust Protector.

- (a) **Coordinating Appointment of Trust Protector.** Trustee, a trust beneficiary (or a trust beneficiary's representative), or the individual with the ability to appoint the Trust Protector under paragraph 7.1 shall have independent discretion to trigger the appointment of a Trust Protector under paragraph 7.1. Furthermore, if a Trust Protector cannot be appointed in a timely manner under paragraph 7.1, then any of these individuals or entities shall have authority to petition the Oakland County probate court for the appointment of a Trust Protector.
- (b) **When a Trust Protector is Not Serving.** Until a Trust Protector accepts its appointment, Trustee shall retain all powers otherwise given to the Trust Protector, except that a Trustee other than a settlor shall not have the power to do the following if these powers are given to the Trust Protector below: (i) remove a Trustee and/or appoint a successor Trustee; (ii) amend or otherwise modify the Trust; and (iii) decant the Trust without the consent of the Trust Protector.

7.3 Powers of Direction. The Trust Protector shall be a Trust Director within the meaning of MCL 700.7703a when exercising the following powers of direction:

- (a) The Trust Protector may amend any provision of this Agreement to:
 - (1) Add or modify terms of the Trust so that the Trust will protect the financial resources governed by this Agreement and comply with the intent of this Trust that trust assets shall not be considered income or resources for all needs-based and entitlement benefits from any agency, such as Community Mental Health (CMH), Social Security Disability Insurance (SSDI), Medicare, Medicaid, Supplemental Security Income (SSI), Section 8 housing assistance, and any other special purpose benefits for which the Beneficiary is eligible or would be eligible if the terms of this Trust were modified or supplemented;
 - (2) Alter the administrative and investment powers of the Trustee to comply with any changes in the law;
 - (3) Reflect tax or other legal changes that affect trust administration, including changes that might be necessary to minimize the tax implications of any retirement benefits where this Trust is named the Beneficiary (except the residuary beneficiaries of this Trust shall not be changed without the written authorization of the beneficiaries that would immediately take if the Beneficiary had died at the time of the amendment); and

- (4) Correct ambiguities, including scrivener errors, that might otherwise require court construction or reformation.

The Trust Protector shall also have the power to direct the Trustee to decant under Michigan Law if the Trust Protector believes doing so will better achieve the intent of the Settlor/Settlers.

Notwithstanding the foregoing, the Trust Protector shall not amend this Agreement in any manner that would limit or alter the rights of the Beneficiary in any Trust assets held by the Trust before the amendment, unless the amendment modifies an existing provision in the Trust that defeats the Trust's intent of preserving public benefits.

An amendment to this Agreement shall be made in a written instrument signed by the Trust Protector. The Trust Protector shall deliver a copy of the amendment to the Beneficiary, and the currently serving Trustee.

- (b) The Trust Protector has standing to begin a legal action if the Trust Protector believes the Trustee is not administering the Trust in the Beneficiary's best interests, or if some other individual or entity has caused harm to the Trust. Nothing in this paragraph shall be interpreted to prevent the Trustee from initiating or defending a legal action.

7.4 Other Powers Given to Trust Protector. The Trust Protector shall also have the following powers:

- (a) To appoint a successor Trustee as necessary under paragraph 3.1, including a corporate trustee if the Trust Protector believes a corporate trustee is in the best interest of the Trust. [OPTION] My Trust Protector shall have a fiduciary duty to act in the Beneficiary's best interests when appointing a successor Trustee.
- (b) To remove the Trustee, if in the discretion of the Trust Protector, replacement is in the best interests of the Beneficiary and/or the Trust estate. [OPTION] This notwithstanding, the Trust Protector may only remove a Trustee specifically named in paragraph 3.1 without their Agreement upon petitioning the probate court for his or her removal. Any other Trustee may be removed by the Trust Protector delivering a writing to the then serving Trustee. [OPTION] My Trust Protector shall have a fiduciary duty to act in the Beneficiary's best interests when removing a Trustee.

7.5 Authority to Advise. My Trust Protector shall have authority to advise the Trustee regarding the needs of the Beneficiary, and to make recommendations to the Trustee as to distributions to or for the benefit of the Beneficiary. The Trustee shall give great weight to the recommendations and advice of the Trust Protector in making decisions regarding such distributions.