

Explanatory Preface – Protected Limited Testamentary Power of Appointment

The Settlor has elected to retain a limited testamentary power of appointment under this Trust for specific tax and planning purposes, including the intent that trust property be includible in the Settlor's gross estate for federal estate tax purposes and that transfers to this Trust constitute incomplete gifts for federal gift tax purposes.

At the same time, the Settlor recognizes that traditional state-law standards for testamentary capacity are intentionally minimal and may be insufficient, standing alone, to protect elderly individuals from undue influence, coercion, or exploitation during periods of cognitive decline. In particular, individuals experiencing aging-related cognitive impairment, dementia, or Alzheimer's disease may technically satisfy baseline testamentary capacity requirements while nonetheless being highly vulnerable to suggestion, manipulation, caregiver dominance, or relational distortion.

The Settlor further recognizes that the exercise of a testamentary power of appointment may occur without the knowledge of trustees, beneficiaries, or long-standing advisors, and that post-death challenges based on capacity or undue influence are often factually constrained, costly, and inconsistent with the Settlor's intent.

Accordingly, the provisions that follow are intended to preserve the Settlor's retained limited testamentary power of appointment while imposing reasonable, protective, and administrative conditions on its exercise. These conditions are designed to ensure that any exercise of the power reflects the Settlor's knowing, voluntary, and independent intent, consistent with the Settlor's long-standing dispositive objectives, and not the influence of circumstances or individuals present at the end of life.

These provisions are not intended to restrict a competent Settlor, nor to create or expand any beneficial interest in the Trust. Rather, they are intended to function as safeguards against misuse of the power during periods of diminished capacity, while preserving the tax and planning objectives for which the power is retained.

The Settlor expressly directs that these provisions be construed as protective and administrative in nature, and that no exercise of the limited testamentary power of appointment be given effect unless it complies strictly with the requirements set forth below.

Clause Language (Maine)

Article Four Protected Limited Testamentary Power of Appointment

Section 4.01 Purpose and Construction

This Section governs the exercise of any limited testamentary power of appointment granted to the Settlor under this Trust (the “Settlor’s Limited Power of Appointment” or “Settlor’s LPOA”).

This Section is adopted to preserve inclusion of trust property in the Settlor’s gross estate for federal estate tax purposes, preserve the intended incomplete-gift treatment of transfers to this Trust, protect the Settlor from exploitation, coercion, or misuse of the Settlor’s LPOA during periods of diminished capacity, and protect the Trust’s dispositive scheme from unauthorized alteration.

This Section shall be construed as imposing administrative and protective conditions only, and not as a release, relinquishment, limitation, or termination of the Settlor’s LPOA.

Section 4.02 Definition of Incapacity for Power-of-Appointment Purposes

For purposes of exercising any power of appointment under this Trust, the Settlor shall be deemed “Incapacitated” and to be in a “Period of Incapacity” upon satisfaction of one or more of the following:

(a) **Medical or Neurocognitive Determination.** Delivery to the Trustee of written certifications, stated in independent signed writings, based upon in-person clinical evaluation of the Settlor (and not solely upon record review or telehealth screening),

that in the certifying practitioner's professional judgment the Settlor lacks sufficient cognitive capacity to exercise a testamentary power of appointment in a manner that is knowing, voluntary, and free from undue influence.

In making such determination, the certifying practitioner shall consider the applicable state-law standard for testamentary capacity as a minimum threshold, but shall not be limited to that standard. The purpose of this determination is to assess not only whether the Settlor meets the technical legal elements of testamentary capacity, but whether the Settlor possesses sufficient cognitive independence, judgment, and resistance to influence to exercise the Settlor's Limited Power of Appointment in a manner consistent with the Settlor's long-standing intentions.

Accordingly, in addition to evaluating the Settlor's ability to understand the nature and significance of executing a testamentary instrument, the general nature and extent of the Settlor's property, and the natural objects of the Settlor's bounty, the certifying practitioner shall also evaluate whether the Settlor exhibits clinically significant vulnerabilities commonly associated with aging and neurocognitive decline that materially impair autonomous decision-making, including but not limited to:

- (i) undue suggestibility or heightened compliance with perceived authority figures, caregivers, companions, or recent advisors;
- (ii) impaired executive functioning affecting the ability to weigh competing considerations, resist pressure, or appreciate long-term consequences;
- (iii) relational distortion, including idealization or disproportionate trust of individuals providing recent care, assistance, or emotional support, particularly where such trust is inconsistent with prior expressed relationships or estate plans;
- (iv) memory impairment or confabulation resulting in over-reliance on recent interactions or the "last encountered" individual when identifying trusted persons or decision-makers;

(v) diminished capacity to detect manipulation, deception, or self-interested behavior by others;

(vi) emotional dependency, loneliness, grief, fear, or anxiety that increases vulnerability to influence; and

(vii) cognitive or behavioral features of dementia, mild neurocognitive disorder, or Alzheimer's disease that are clinically associated with impaired judgment, reduced insight, or increased susceptibility to undue influence.

The practitioner's evaluation may rely upon clinical interview, collateral history, behavioral observation, standardized cognitive or neuropsychological testing, and other diagnostic methods customarily used within the practitioner's professional discipline, including those addressing executive function, judgment, insight, susceptibility to influence, and decision-making autonomy. The certification shall briefly describe the observed deficits or vulnerabilities that materially impair the Settlor's ability to exercise a testamentary power of appointment freely and independently.

Such determination may be established by written certification from any two licensed health-care practitioners whose lawful scope of practice includes the evaluation of cognitive or neurocognitive capacity, including physicians, licensed clinical neuropsychologists, licensed psychologists, psychiatrists, advanced practice clinicians, or other similarly qualified professionals.

Each certification shall state that the practitioner is duly licensed and in good standing in the jurisdiction of examination, that the evaluation was conducted in person, and that the practitioner has no familial, financial, or personal relationship with any beneficiary or proposed appointee under the Settlor's Limited Power of Appointment.

(b) **Judicial Determination.** Entry of a court order appointing a guardian, conservator, or comparable fiduciary for the Settlor on the basis of incapacity, whether or not such order expressly references testamentary capacity.

(c) Commencement and Termination. A Period of Incapacity shall commence on the date specified in the relevant medical certification or court order and shall terminate only upon written certification from a licensed health-care practitioner that the Settlor has regained sufficient cognitive capacity to exercise a testamentary power of appointment under this Section, or entry of a court order restoring the Settlor's legal capacity.

Section 4.03 Affirmative Capacity Requirement; Default Rule

Notwithstanding any presumption of capacity under state law, the default rule under this Trust is that the Settlor shall be deemed unable to exercise the Settlor's Limited Power of Appointment unless and until capacity to do so is affirmatively established in accordance with this Section.

Accordingly, no exercise or attempted exercise of the Settlor's LPOA shall be valid or effective unless, contemporaneously with or immediately prior to the execution of the instrument purporting to exercise the power, there is delivered to the Trustee written confirmation, satisfactory to the Power-of-Appointment Gatekeeper, establishing that the Settlor possesses sufficient cognitive capacity to exercise the Settlor's LPOA in a knowing, voluntary, and independent manner, free from undue influence.

In the absence of such affirmative written confirmation of capacity, any purported exercise of the Settlor's LPOA shall be void and of no force or effect, regardless of facial validity or compliance with testamentary formalities.

Section 4.04 Automatic Suspension of Power During Incapacity

During any Period of Incapacity, the Settlor shall be conclusively deemed unable to exercise the Settlor's LPOA.

Any purported exercise or attempted exercise of the Settlor's LPOA executed or signed during a Period of Incapacity shall be void and of no force or effect,

notwithstanding any contrary presumption of capacity or facial validity of the instrument.

Section 4.05 Independent Consent Requirement

Notwithstanding any other provision of this Trust, no exercise or attempted exercise of the Settlor's LPOA shall be effective unless prior written consent is granted by the Trust Advisor, an Independent Trustee, or another independent fiduciary designated in this Trust (the "Power-of-Appointment Gatekeeper").

The Gatekeeper's consent shall be in a signed writing delivered to the Trustee, may be granted or withheld in the Gatekeeper's sole and absolute discretion, and shall not be subject to review, challenge, or compulsion by any beneficiary or other person.

Section 4.06 Capacity Verification Authority

As a condition to granting consent, the Gatekeeper may require medical or neuropsychological evaluation of the Settlor, written findings addressing the Settlor's cognitive capacity and vulnerability to undue influence, and confirmation that the Settlor understands the nature, scope, and consequences of the proposed exercise of the Settlor's LPOA.

Failure or refusal to comply with any such request shall be sufficient grounds to withhold consent.

Clause Language Florida

PROTECTED LIMITED TESTAMENTARY POWER OF APPOINTMENT

(Florida Version – Undue Influence Enhanced)

Section .Protected Limited Testamentary Power of Appointment; Capacity Verification and Gatekeeper Consent

This clause packet is for education only. It is not legal advice, it is not a substitute for independent legal counsel, and it is not intended to be used verbatim in any jurisdiction. Trust and estate drafting is highly state-specific and fact-specific, and you should consult your own statutes, rules of professional responsibility, tax counsel as appropriate, and your own judgment before using or adapting anything. © 2026 LifeCounsel®

The Settlor retains a limited testamentary power of appointment (the “Settlor’s Limited Power of Appointment”) with respect to the remaining principal and undistributed income of this Trust. The Settlor’s Limited Power of Appointment is retained for the purpose of preserving inclusion of Trust property in the Settlor’s gross estate for federal estate tax purposes and preserving the intended incomplete-gift treatment of transfers to this Trust.

Notwithstanding any presumption of capacity under Florida law, the default rule under this Trust is that the Settlor shall be deemed unable to exercise the Settlor’s Limited Power of Appointment unless capacity to do so is affirmatively established in accordance with this Section.

No exercise or attempted exercise of the Settlor’s Limited Power of Appointment shall be valid or effective unless, contemporaneously with or immediately prior to the execution of the instrument purporting to exercise the power, there is delivered to the Trustee written confirmation, satisfactory to the Power-of-Appointment Gatekeeper, establishing that the Settlor possesses sufficient cognitive capacity to exercise the power knowingly, voluntarily, and independently, and that such exercise is not the product of undue influence, coercion, or over-persuasion.

Capacity and Undue Influence Evaluation Standard

In evaluating capacity, the minimum Florida standard for testamentary capacity shall be considered a threshold requirement only and shall not be dispositive. The evaluation shall further assess whether the Settlor possesses sufficient mental strength, judgment, and independence of will to resist undue influence and to make a voluntary dispositive decision consistent with the Settlor’s long-standing intentions.

Accordingly, the evaluation shall consider whether the Settlor exhibits any condition or vulnerability that, alone or in combination, materially increases susceptibility to undue influence under Florida law, including but not limited to:

- (a) weakened intellect or diminished mental acuity associated with aging, illness, dementia, mild neurocognitive disorder, or Alzheimer's disease;
- (b) dependence upon, dominance by, or disproportionate trust in a caregiver, companion, family member, or other individual who is actively involved in the Settlor's daily care, transportation, medical access, or legal arrangements;
- (c) heightened suggestibility, compliance, or willingness to defer to perceived authority figures or recent advisors;
- (d) impaired executive functioning affecting the ability to weigh alternatives, appreciate consequences, or resist persuasion;
- (e) relational distortion, including idealization of recent caregivers or companions or displacement of long-standing relationships;
- (f) over-emphasis on recent interactions or events to the exclusion of the Settlor's established estate planning objectives;
- (g) isolation from family members, long-standing advisors, or customary sources of counsel; or
- (h) circumstances suggesting active procurement of the exercise of the power by a person who would benefit directly or indirectly from such exercise.

Affirmative Proof of Capacity

Affirmative proof of capacity may be established by written certification from licensed health-care practitioners whose lawful scope of practice includes evaluation of cognitive or neurocognitive capacity, including physicians, licensed clinical neuropsychologists, licensed psychologists, psychiatrists, advanced practice clinicians, or other similarly qualified professionals. Such certification shall be based on in-person evaluation and shall briefly describe the clinical findings and functional

limitations relevant to capacity, independence of judgment, and susceptibility to undue influence.

Independent Gatekeeper Consent

Notwithstanding any other provision of this Trust, no exercise or attempted exercise of the Settlor's Limited Power of Appointment shall be effective unless prior written consent is granted by the Trust Advisor or other independent fiduciary designated in this Trust to serve as the Power-of-Appointment Gatekeeper.

The Gatekeeper may grant or withhold consent in the Gatekeeper's sole and absolute discretion and shall have no duty to consider or balance the interests of any beneficiary or proposed appointee. No person shall have any right to compel the granting of consent.

Failure to provide affirmative proof of capacity or failure to obtain Gatekeeper consent shall render any purported exercise of the Settlor's Limited Power of Appointment void and of no force or effect, regardless of facial validity or compliance with testamentary formalities.

Incapacity Suspension

During any period in which the Settlor lacks sufficient cognitive capacity to exercise the Settlor's Limited Power of Appointment in a manner free from undue influence under this Section, the power shall be conclusively suspended. Any purported exercise executed during such period shall be void and of no force or effect.

Default Disposition

Any Trust property not effectively appointed in strict compliance with this Section shall be distributed in accordance with the default dispositive provisions of this Trust as though the Settlor had not exercised the Settlor's Limited Power of Appointment.

Construction; Tax Intent

This Section shall be construed as imposing protective and administrative conditions on the exercise of the Settlor's Limited Power of Appointment and not as a release, relinquishment, limitation, or termination of such power. This Trust shall be construed and administered so as to preserve inclusion of Trust property in the Settlor's gross estate for federal estate tax purposes and the intended incomplete-gift treatment of transfers to this Trust, to the maximum extent permitted by law.

TA-001 Trust Advisor Nonfiduciary

Explanatory Preface – Protected Limited Testamentary Power of Appointment

The Settlor has elected to retain a limited testamentary power of appointment under this Trust for specific tax and planning purposes, including the intent that trust property be includible in the Settlor's gross estate for federal estate tax purposes and that transfers to this Trust constitute incomplete gifts for federal gift tax purposes.

At the same time, the Settlor recognizes that traditional state-law standards for testamentary capacity are intentionally minimal and may be insufficient, standing alone, to protect elderly individuals from undue influence, coercion, or exploitation during periods of cognitive decline. In particular, individuals experiencing aging-related cognitive impairment, dementia, or Alzheimer's disease may technically satisfy baseline testamentary capacity requirements while nonetheless being highly vulnerable to suggestion, manipulation, caregiver dominance, or relational distortion.

The Settlor further recognizes that the exercise of a testamentary power of appointment may occur without the knowledge of trustees, beneficiaries, or long-standing advisors, and that post-death challenges based on capacity or undue influence are often factually constrained, costly, and inconsistent with the Settlor's intent.

Accordingly, the provisions that follow are intended to preserve the Settlor's retained limited testamentary power of appointment while imposing reasonable, protective, and administrative conditions on its exercise. These conditions are designed to ensure that any exercise of the power reflects the Settlor's knowing, voluntary, and independent intent, consistent with the Settlor's long-standing dispositive objectives, and not the influence of circumstances or individuals present at the end of life.

This clause packet is for education only. It is not legal advice, it is not a substitute for independent legal counsel, and it is not intended to be used verbatim in any jurisdiction. Trust and estate drafting is highly state-specific and fact-specific, and you should consult your own statutes, rules of professional responsibility, tax counsel as appropriate, and your own judgment before using or adapting anything. © 2026 LifeCounsel®

These provisions are not intended to restrict a competent Settlor, nor to create or expand any beneficial interest in the Trust. Rather, they are intended to function as safeguards against misuse of the power during periods of diminished capacity, while preserving the tax and planning objectives for which the power is retained.

The Settlor expressly directs that these provisions be construed as protective and administrative in nature, and that no exercise of the limited testamentary power of appointment be given effect unless it complies strictly with the requirements set forth below.

Clause Language (Maine)

Article Four Protected Limited Testamentary Power of Appointment

Section 4.01 Purpose and Construction

This Section governs the exercise of any limited testamentary power of appointment granted to the Settlor under this Trust (the “Settlor’s Limited Power of Appointment” or “Settlor’s LPOA”).

This Section is adopted to preserve inclusion of trust property in the Settlor’s gross estate for federal estate tax purposes, preserve the intended incomplete-gift treatment of transfers to this Trust, protect the Settlor from exploitation, coercion, or misuse of the Settlor’s LPOA during periods of diminished capacity, and protect the Trust’s dispositive scheme from unauthorized alteration.

This Section shall be construed as imposing administrative and protective conditions only, and not as a release, relinquishment, limitation, or termination of the Settlor’s LPOA.

Section 4.02 Definition of Incapacity for Power-of-Appointment

This clause packet is for education only. It is not legal advice, it is not a substitute for independent legal counsel, and it is not intended to be used verbatim in any jurisdiction. Trust and estate drafting is highly state-specific and fact-specific, and you should consult your own statutes, rules of professional responsibility, tax counsel as appropriate, and your own judgment before using or adapting anything. © 2026 LifeCounsel®

Purposes

For purposes of exercising any power of appointment under this Trust, the Settlor shall be deemed “Incapacitated” and to be in a “Period of Incapacity” upon satisfaction of one or more of the following:

(a) Medical or Neurocognitive Determination. Delivery to the Trustee of written certifications, stated in independent signed writings, based upon in-person clinical evaluation of the Settlor (and not solely upon record review or telehealth screening), that in the certifying practitioner’s professional judgment the Settlor lacks sufficient cognitive capacity to exercise a testamentary power of appointment in a manner that is knowing, voluntary, and free from undue influence.

In making such determination, the certifying practitioner shall consider the applicable state-law standard for testamentary capacity as a minimum threshold, but shall not be limited to that standard. The purpose of this determination is to assess not only whether the Settlor meets the technical legal elements of testamentary capacity, but whether the Settlor possesses sufficient cognitive independence, judgment, and resistance to influence to exercise the Settlor’s Limited Power of Appointment in a manner consistent with the Settlor’s long-standing intentions.

Accordingly, in addition to evaluating the Settlor’s ability to understand the nature and significance of executing a testamentary instrument, the general nature and extent of the Settlor’s property, and the natural objects of the Settlor’s bounty, the certifying practitioner shall also evaluate whether the Settlor exhibits clinically significant vulnerabilities commonly associated with aging and neurocognitive decline that materially impair autonomous decision-making, including but not limited to:

- (i) undue suggestibility or heightened compliance with perceived authority figures, caregivers, companions, or recent advisors;
- (ii) impaired executive functioning affecting the ability to weigh competing considerations, resist pressure, or appreciate long-term consequences;
- (iii) relational distortion, including idealization or disproportionate trust of individuals providing recent care, assistance, or emotional support, particularly where such trust is inconsistent with prior expressed relationships or estate plans;
- (iv) memory impairment or confabulation resulting in over-reliance on recent interactions or the “last encountered” individual when identifying trusted persons or decision-makers;
- (v) diminished capacity to detect manipulation, deception, or self-interested behavior by others;
- (vi) emotional dependency, loneliness, grief, fear, or anxiety that increases vulnerability to influence; and
- (vii) cognitive or behavioral features of dementia, mild neurocognitive disorder, or Alzheimer’s disease that are clinically associated with impaired judgment, reduced insight, or increased susceptibility to undue influence.

The practitioner’s evaluation may rely upon clinical interview, collateral history, behavioral observation, standardized cognitive or neuropsychological testing, and other diagnostic methods customarily used within the practitioner’s professional discipline, including those addressing executive function, judgment, insight, susceptibility to influence, and decision-making autonomy. The certification shall briefly describe the observed deficits or vulnerabilities

that materially impair the Settlor's ability to exercise a testamentary power of appointment freely and independently.

Such determination may be established by written certification from any two licensed health-care practitioners whose lawful scope of practice includes the evaluation of cognitive or neurocognitive capacity, including physicians, licensed clinical neuropsychologists, licensed psychologists, psychiatrists, advanced practice clinicians, or other similarly qualified professionals.

Each certification shall state that the practitioner is duly licensed and in good standing in the jurisdiction of examination, that the evaluation was conducted in person, and that the practitioner has no familial, financial, or personal relationship with any beneficiary or proposed appointee under the Settlor's Limited Power of Appointment.

(b) **Judicial Determination.** Entry of a court order appointing a guardian, conservator, or comparable fiduciary for the Settlor on the basis of incapacity, whether or not such order expressly references testamentary capacity.

(c) **Commencement and Termination.** A Period of Incapacity shall commence on the date specified in the relevant medical certification or court order and shall terminate only upon written certification from a licensed health-care practitioner that the Settlor has regained sufficient cognitive capacity to exercise a testamentary power of appointment under this Section, or entry of a court order restoring the Settlor's legal capacity.

Section 4.03 Affirmative Capacity Requirement; Default Rule

Notwithstanding any presumption of capacity under state law, the default rule under this Trust is that the Settlor shall be deemed unable to exercise the Settlor's Limited Power of Appointment unless and until capacity to do so is affirmatively established in accordance with this Section.

Accordingly, no exercise or attempted exercise of the Settlor's LPOA shall be valid or effective unless, contemporaneously with or immediately prior to the execution of the instrument purporting to exercise the power, there is delivered to the Trustee written confirmation, satisfactory to the Power-of-Appointment Gatekeeper, establishing that the Settlor possesses sufficient cognitive capacity to exercise the Settlor's LPOA in a knowing, voluntary, and independent manner, free from undue influence.

In the absence of such affirmative written confirmation of capacity, any purported exercise of the Settlor's LPOA shall be void and of no force or effect, regardless of facial validity or compliance with testamentary formalities.

Section 4.04 Automatic Suspension of Power During Incapacity

During any Period of Incapacity, the Settlor shall be conclusively deemed unable to exercise the Settlor's LPOA.

Any purported exercise or attempted exercise of the Settlor's LPOA executed or signed during a Period of Incapacity shall be void and of no force or effect, notwithstanding any contrary presumption of capacity or facial validity of the instrument.

Section 4.05 Independent Consent Requirement

Notwithstanding any other provision of this Trust, no exercise or attempted exercise of the Settlor's LPOA shall be effective unless prior written consent is granted by the Trust Advisor, an Independent Trustee, or another independent fiduciary designated in this Trust (the "Power-of-Appointment Gatekeeper").

The Gatekeeper's consent shall be in a signed writing delivered to the Trustee, may be granted or withheld in the Gatekeeper's sole and absolute discretion, and shall not be subject to review, challenge, or compulsion by any beneficiary

or other person.

Section 4.06 Capacity Verification Authority

As a condition to granting consent, the Gatekeeper may require medical or neuropsychological evaluation of the Settlor, written findings addressing the Settlor's cognitive capacity and vulnerability to undue influence, and confirmation that the Settlor understands the nature, scope, and consequences of the proposed exercise of the Settlor's LPOA.

Failure or refusal to comply with any such request shall be sufficient grounds to withhold consent.