

DEAR TRUSTEE ... A LETTER OF WISHES ADDS HEART AND SPIRIT TO YOUR TRUST DOCUMENT

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A Letter of Wishes is an informal document that can accompany your trust document to provide your chosen trustee with an understanding of your specific directions and intentions. It is not legally binding, but provides insight and guidance from the heart of the trust maker (or grantor). It may also be called a “side” letter or memorandum of wishes. In taking the time to write such a letter, a grantor will add tremendous substance to his or her estate planning file.

Trusts are written to achieve desired legal and tax outcomes. As a result, the heartfelt intent of the grantor may be difficult to determine. While the author of a legal document may set out to minimize ambiguity, this well-intentioned goal is not always consistent

with the realities faced by a trustee when tasked with making distribution (or other) decisions.

This is where a Letter of Wishes comes in. This document can provide the heart, or the human element, so often lacking in a legal instrument. Think of this as a window into the state of mind of the grantor at the time the trust was created. This letter is especially valuable in the case of discretionary trusts, where the trustee has the responsibility to determine when and if income and/or principal should be distributed to a beneficiary. A discretionary trust document may discuss distributions for health, education, maintenance, and support (HEMS) and outline desired tax treatment, and then leave it to the trustee to use this generic language in considering future requests from a potentially diverse group of beneficiaries. As anyone with multiple children can tell you, the individual beneficiaries of a trust document are quite often unique, with varied strengths, weaknesses and life challenges; yet trust documents are often presented as one size fits all. A grantor's Letter of Wishes, for example, can make nuanced distinctions between his or her intended beneficiaries that can be very valuable to a trustee in making appropriate decisions.

Remember that a Letter of Wishes is not a binding legal document, and does not supplant the trustee's duty to act in accordance with the trust document and applicable law. The letter is simply intended to give the trustee an opportunity to step into the grantor's shoes and breathe heart and soul into the trust, and therefore aid in trustee decision-making.

WHAT ELEMENTS SHOULD A PROPER LETTER OF WISHES CONTAIN?

In contrast to the language of the trust document, a Letter of Wishes may include anything the trust maker believes will assist the trustee in making decisions in the future. It may outline the trust maker's request to consider certain circumstances when making decisions about distributions.

Possible questions a trust maker may want to answer in the context of such a letter include:

- What is the main purpose or driving force behind the creation of the trust?
- What values are important to your family?
- How was the underlying wealth created (this may be especially helpful for

beneficiaries in future generations)?

- How would you like the resources of the trust to be utilized, or not be utilized, in the future?
- Should the availability of other resources be considered by the trustee?
- Should distributions be made to assist with the purchase of a residence or the start-up of a business? To what extent, or under what circumstances?
- Should the trustee manage or retain unique family assets, such as family homes, intellectual property, artwork or collectibles? What about disposition of these types of assets in the future?

If you decide to draft a Letter of Wishes for an existing trust, it is recommended that you review this document with your trust officer.