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Basic Estate Planning Fact Sheet Series

Letter of Instruction

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The tool discussed in this fact sheet is a letter of instruction. There is no legal requirement for a letter of instruction, so it may contain what you wish and be typed or handwritten. Also, the letter of instruction is not legally binding. Attorneys do not need to be involved with the preparation of a letter of instruction, but may be and they should be made aware of its presence and contents. However, the letter of instruction may be very important, and in most families, the desire of the family to carry out the wishes of the deceased is so strong that the letter of instruction carries authority despite its lack of legal backing. Even spouses may not have completely communicated their wishes, so a letter of instruction may be quite helpful to a surviving spouse. A good letter of instruction may save a lot of time, effort and expense in administering your estate.

If you do not feel that in your case your spouse and/or family will support your wishes and you want your plan to be legally binding, put

your wishes in your will, not in a letter of instruction.

It is imperative that the executor and heirs know that there is a letter of instruction and know where it is located. Details to help family, friends, and surviving spouses through the trying hours after the death of a loved one are the first order of business in a letter of instruction. If your loved ones do not know there is a letter of instruction or do not know where it is, the letter is useless. Remember that when writing a letter of instruction, at the time it is read, your loved ones will need all the help they can get. Otherwise competent people may just not be thinking straight at that time. A suggested list to be included in a letter of instruction follows:

Name, address, e-mail, and phone number of each of the following:

- family and friends to contact directly
- your funeral director

- your attorney
- your stock or bond broker
- your life insurance agent(s)
- property and liability insurance agent(s)
- present and/or former employer(s)
- business associates
- clergy

Location of important papers:

- will
- birth certificate
- marriage certificate
- income tax returns
- insurance policies
- deeds
- social security card
- checking account books
- savings account books
- certificates of deposit
- credit cards and statements

Information regarding:

- location of safety deposit box
- inventory of deposit box contents
- stock and bond holdings
- real estate holdings
- military service
- insurance
 - life including beneficiaries
 - property
 - liability
 - medical
 - accident
 - income disability
- retirement system(s) including beneficiaries
- annuities including beneficiaries
- debts

Arrangements you have made such as:

- durable power(s) of attorney
- living will
- location of burial lot
- donation of anatomical gifts
- funeral instructions and preferences

The above list points out many of the details of concern. A letter of instruction containing the above information may be much appreciated by the person(s) handling your affairs. However, letters of instruction may contain additional details concerning disposition of property that are normally not in the will. The details may not be in the will because they are too sensitive, too numerous to take up the attorney's time, or wishes for disposition of personal property may change often enough that one wishes to be able to change these without seeing an attorney. Memorabilia and selected personal property items are good candidates for a letter of instruction. Remember, there is no legal basis to back up a letter of instruction, so if an heir is likely to disagree or dispute an item in the letter of instruction, put it in the will. It is better to list items in a letter of instruction than to put name stickers on items. Stickers can fall off or be switched.

The letter of instruction should supplement the will. It should never contradict the will, as if it does, the will takes precedence. Direction of property outside the will and incorporated in the will should predate the will. In a letter of instruction, pay attention to details. Details are of much assistance to the executor and may make the difference between heirs getting along or feuding. Specific details are important even if the executor is very close to you. The closer the executor is to you, the harder it may be to think straight when affairs need to be settled. If details are in writing, even if not in the will,

it is much better than verbal communication. It is especially better than having told some of the heirs verbally and not having told other heirs. Details, too little or too sensitive to be included in the will, are often the stumbling blocks that cause friction among heirs. The more details taken care of by the estate owner, the less chance for problems upon the settling of the estate.

Instructions for the disposition of all assets are important, not just for the major assets. Some of the biggest disagreements and lifelong hard feelings occur due to the distribution of items of high sentimental value. The deceased generally is revered upon death, which allows a unique credibility that none of the heirs will have, even the surviving spouse or executor. Parents can do their children a great service by saving them from a bidding war, a public auction, or a draw of the straws for items with sentimental value. However, some families prefer to have children take turns selecting items one piece at a time or to have a private family auction, with cash in the estate used to equalize values for the children who do not “buy” as much. However, if money is needed to settle the estate, these options may not be possible.

Parents and elders have not only a unique credibility, but also may have the responsibility to decide the disposition of sentimental items. This responsibility gives rise to the need for input from heirs before the decision. You may think you know the preferences of heirs, but their preferences may have changed. The best way to know their thoughts is to ask them!

Executors are often put in a no-win situation when forced to decide which child or heir gets an item that several desire. Further, executors often don't get their “fair share” because they want to make sure the other heirs don't feel

they have used the power of the executor to their advantage.

The letter of instruction is under-used. The fact that the letter is not legally binding is seldom a problem as there are few heirs that will go against the wishes of the deceased. The more frequent case is that the deceased has not communicated in writing all wishes, and the heirs disagree as to what the wishes were.

Allow us to relay an instance where one sentence in a letter of instruction or will could have averted disharmony, hurt, mistrust, and conflict. The will of a widow stated that all assets would be divided equally among the children. According to some of the children, the widow's desire was for one of the children to purchase the home farm from the other children. After the mother's will was read, but before the farm was appraised, one child indicated that it was the mother's intention that the farm be sold to the other child for \$800 per acre. The farm was later appraised at \$1,200 per acre. The mother had not communicated the \$800 price to all of the children. The farm was sold to the child for \$800 per acre without discussing it with all of the children. The “excluded” children were very hurt. The children will not be as close as would have been the case if the intentions were in writing, even if in a letter of instruction. The excluded children did not necessarily disagree with the price or what was done, but would have liked to have been informed and included. The “inside” children thought the excluded children to be greedy.

The issue has not been discussed since then. The excluded children will not bring up the issue. The children fear that any mention would be viewed as wanting more money. The excluded children did not even pursue asking if, when, how, and to whom the \$800 figure

was mentioned. The excluded children are of the opinion that such questions would be seen by the others as challenging the wishes of the mother.

All the above hard feelings and misunderstandings did not occur because any of the children were or are greedy. It was the wish of all the children to do the will of the mother. But the desire of the mother was not communicated to at least part of the family. In this case, a simple sentence in a letter of instruction would have sufficed.

Preferably, a parent will decide the disposition of property after consultation with all the heirs in an equal manner. A parent may not be aware of an heir's preferences without talking to him or her. Also, there will not be surprises in either the letter of instruction or the will if all the heirs are involved. It is our opinion that it is the owners' obligation to consider heirs' comments and reactions. Then, the owner needs to make decisions. If clear and communicated to all in a similar manner, the decisions will be accepted by the heirs in most cases. However, if it is clear that all the heirs are not in agreement with and comfortable with the owner's decisions, the parent may choose to communicate wishes only through the will.

One thing is for sure, heirs will accept the deceased owner's decisions better than decisions of the executor. Even if owners cannot bring themselves to communicate unpopular decisions to heirs before their death, it is their responsibility to make the difficult decision. It is the owners' responsibility to do what is right, not what is popular. If the decision is not made clear legally, the letter of instruction is next best.

One last point. Do not put off making decisions concerning disposition of property. Many people put off difficult property disposition decisions. Then, in their last days, their declining health robs them of the motivation necessary to take care of important details.

If all the detailed decisions of your property disposition are not now in order, decide now and consider communicating them, at least verbally, to all heirs. Then put them in a letter of instruction and/or put them in your will. Do that now while you can, and while you care.

This concludes the discussion on letter of instruction. The next fact sheet will discuss life insurance as a tool in estate planning.

These fact sheets should in no manner be considered as a replacement for consulting with estate planning professionals, nor should the general principles in these fact sheets be applied to specific situations without consulting with an attorney.

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Your Response

Fact Sheet 5

1. Do you have a letter of instruction?

Yes _____ No _____

2. If you have a letter of instruction, does the executor(s) named in your will know of it and where it is located?

Yes _____ No _____ Don't have one _____

3. Are there items of yours that more than one of your children or heirs would like to have?

Yes _____ No _____

4. If there are items of yours that you think more than one of your children or heirs would like to have, have you confirmed that with the children or heirs?

Yes _____ No _____ No items that more than one want _____

5. Have you done your best to inform all heirs of the contents of your will and letter of instruction?

Yes _____ No _____ Don't have a will or letter of instruction _____

Answers

Fact Sheet 5

1. Do you have a letter of instruction? **If you don't, write one. If you update your will, have the letter of instruction dated before the date of the will.**
 Yes _____ No _____
2. If you have a letter of instruction, does the executor(s) named in your will know of it and where it is located? **A letter of instruction is of little use if no one knows of its existence or where it is located.**
 Yes _____ No _____ Don't have one _____
3. Are there items of yours that more than one of your children or heirs would like to have? **If the above answer is yes, you are the best person to decide which child or heir receives it. After you decide, we suggest you let all children or heirs know your decision. If the decision is so difficult you can't face all the children or heirs with it, the will is the place to state it so all children or heirs find out at the same time and in the same manner. If the designation is not in the will, at least put it in the letter of instruction.**
 Yes _____ No _____
4. If there are items of yours that you think more than one of your children or heirs would like to have, have you confirmed that with the children or heirs?
 Yes _____ No _____ No items that more than one want _____

If the above answer is no, talk to all the children or heirs and see if they in fact want the item(s). Talk even to the children or heirs you don't think would want the item. If they want it too, they may feel slighted. When you talk to them, make sure they understand it is your decision and you are merely trying to find out if more than one child or heir does in fact desire the item. After this discussion, there may be no conflict.

Do not feel compelled to talk to all heirs at once but do treat them as equally as possible and as much as possible allow equal input. Do not attempt to do the discussion at a social family gathering. This is serious business, so make sure everyone gets equal opportunity for discussion. Do talk to all children. Do make a decision and communicate to all children or heirs in the same manner. If the decision can't be communicated to children or heirs, put it in the will or in the letter of instruction.

5. Have you done your best to inform all heirs of the contents of your will and letter of instruction?
 Yes _____ No _____ Don't have a will or letter of instruction _____

Others don't always feel as we think they do or should. If possible communicate and confirm that others think as you think they do. Then make your decision and communicate that. It is your decision and your responsibility to make it and communicate it!

Note the above question asks if you have done your best. Surprises in the will or letter of instruction are not the best, but better than putting off the difficult decisions and leaving it to your heirs to try to figure out your wishes.

Granted, some may not have the willpower, the inclination, or the fortitude to make difficult asset disposition decisions and discuss the decisions with their loved ones. However, if family harmony is one of your estate planning objectives, communication before and after, and making the difficult decisions is imperative.