
Synopsis

The process of trust administration after death and estate administration can be daunting, especially to someone with no prior experience with probate or estate matters. The process will be much less intimidating, however, if you provide your successor trustee and/or executor with detailed instructions about your wishes, your assets, your advisors, and other important matters.

Serving as the successor trustee of a trust and executor of an estate are important responsibilities. The person(s) that you have asked to serve will be charged with gathering and protecting your assets, paying your debts, filing tax returns, and seeing to it that your final wishes are carried out. In most cases, people name family members or close friends to serve in this role. Naturally, this means that the person being asked to serve will also be dealing with the emotional loss of a loved one. You can make the jobs easier if you take the time now to provide them with a letter of instruction. This letter will serve as a roadmap showing where to find the people, papers and other things that will help to complete the job. It can also be used to outline for your family the steps that you hope will be taken to fulfill your wishes, and can include any general advice that you want to provide.

The letter of instruction does not need to be given to your successor trustee or to the executor during your lifetime. Many clients prefer to keep the sensitive information contained in the letter totally confidential until it is needed. However, your successor trustee, executor, and/or family members do need to know: (i) that you have prepared such a letter; (ii) that it should be reviewed immediately in the event of your death; and (iii) how to locate the letter when the need arises. The letter of instruction should be updated periodically.

I. Encourage; Don't Mandate.

A letter of instruction should provide helpful information to your successor trustee and/or executor, and it should set out your preferences and feelings. It should not purport to be a legally binding document that is required to be followed. Your revocable trust and your Will contain the directions that your successor trustee and your executor are legally obligated to fulfill. Don't create confusion by giving the trustee and executor more than one source for binding instructions. For example, the letter might begin:

*Davis & Willms, PLLC has compiled the *Basics* series to provide plain-English, summary explanations of fundamental estate planning techniques and concepts. As a result, our discussions may gloss over some of the more complex topics. The Basics memoranda are *not* legal advice. Instead, they are generalized, educational tools designed to help our clients and potential clients develop an understanding of the estate planning process. Before engaging in any estate planning, you should consult a qualified estate planning attorney. Some of the material in this memo was adapted from Marjorie J. Stephens, ESTATE PLANNING – THE PROCESS (used with permission).

I am writing this letter in hopes that the information that I have included will be helpful to you in the event of my death. My goal in writing this letter is to provide you with guidance and to let you know about my preferences. I intend for it to be helpful in handling matters which may arise after my death. I hope that you will follow these instructions when they are useful, and that you will disregard them when they aren't. I have tried to think of what you would need to know and what I'd like to have done if I were there to help you.

II. Funeral Arrangements.

In most cases, funeral arrangements are made by the surviving spouse, children, or other family members. If you want to make it more clear who you would like to make your funeral arrangements and potentially leave specific instructions regarding the arrangements that you want made, you should have a document prepared by which you appoint that person as your agent for that purpose (referred to in Texas as an "agent for disposition of remains"). Your wishes regarding your funeral will very likely be respected if they are known, but they do not have to be carried out if they are unreasonable or financially burdensome.

If you do not appoint an agent for disposition of your remains, you may choose to include information regarding your funeral arrangements in your letter of instruction. In this case, you should outline your wishes about your funeral. The instructions may be general or very specific. If you have pre-paid for your funeral, purchased burial plots, or otherwise made specific prior funeral arrangements, you should be certain that your family members, agent, successor trustee, and executor are aware that you have done so. You should also include information to let your family know where to locate the paperwork that was prepared for those arrangements.

III. Location of the Will.

Although your estate plan is implemented through your revocable trust, if all assets are not held in the trust at the time of your death, there may be a need to also probate your Will. Texas law generally requires that the original of your Will be filed for probate. If you have the original in your possession, and it cannot be located at the time of your death, the court will presume that you destroyed the Will, intending to revoke it. As a result, it is critically important that your executor know how to locate your original Will. If the Will has been kept by your attorney, his or her address and phone number should be listed. If the Will is located in a safe deposit box, the location of the box and the key should be spelled out in your letter of instructions. If you choose to store your Will in a safe-deposit box, please remember that it is sometimes difficult (and costly) to retrieve a Will from a safe-deposit box after the listed owner of that box has died. Therefore, we recommend that you add the executor, a trusted family member, or a family friend as a signatory on the box so that it can be entered without difficulty after you pass away.

IV. Contact Information.

If your successor trustee and/or your executor is your spouse or another family member, he or she probably has contact information for your family. Remember, though, that family members may be overwrought upon your passing, and having all of your contact information for them in a single location will be very helpful. This information should include not only the names, addresses and phone numbers of your family and friends, but also contact information for your

attorney, accountant, banker, stockbroker, insurance agent, assistants at work, business associates, and other individuals whose assistance may prove helpful.

Some of these advisers may be able to provide information or guidance in a particular area such as the sale or management of a business. For example, the letter of instruction may provide:

As you know, I have always counted on Bill Johnson to serve as a sounding board for my business. He has been my mentor for many years. I trust his knowledge, experience, business judgment and intuition, which have been invaluable to me. I encourage you to consult with Bill about the best way to handle the business after I am gone, or to position it for a possible sale.

V. Assets, Liabilities and Important Papers.

The letter of instruction should contain either a detailed inventory of your assets and liabilities, or a description of where this information can be found. Sometimes handling matters after a person's death requires more detective work than organizational skills. Tracking down financial information can be especially daunting if your financial papers are disorganized, or if you tend to be very private about personal and financial matters.

The process can be greatly simplified if you list or describe the whereabouts of information such as bank names, addresses, and account numbers; savings bond denominations, numbers and location, or copies of account statements; stock, bond and mutual fund names, location of certificates, and number of shares, or copies of account statements; real estate descriptions or deeds; pension/profit sharing account information; insurance policy information and the location of policies; motor vehicle descriptions and the location of titles; and mortgage amounts and information about other loans. It is also helpful to let the successor trustee and/or executor know where to find other important papers, such as birth, adoption, or baptismal certificates; marriage licenses; divorce decree or property settlement agreements; income tax returns; gift tax returns; and cemetery site deeds. As noted above, the location of your original Will and the location of any safe deposit box (and key) should also be listed.

In the information age in which we live, many clients keep important information in electronic format. If the information you maintain is stored in a program like Quicken® or Microsoft Money®, please let your successor trustee and executor know how to access the information. Often, this information is protected with a password known only to you. Keeping the password confidential is important, but all of your efforts at staying organized will be lost if the successor trustee and/or executor do not know (or know where to find) your password. Please include this essential information in your letter of instruction. For example, your letter of instruction may provide:

I have passwords for all of my important computer applications written down and placed in a sealed envelope. The envelope is located in the top right drawer of the desk in the study, under the black binder.

VI. Dividing Personal Items.

The division of household furnishings, jewelry and other personal effects often causes more dissension among family members than the division of money. While the conflict may sometimes be over who gets "more," in most cases, it arises over the division of items with "sentimental value." A family member may have a general sense that you want him or her to have a certain item, or that a certain item "means more" to that person than to others. Unfortunately, it seems, there is rarely agreement among the family about who holds these items most dear. We therefore encourage our clients to provide detailed instructions to their successor trustee about how to dispose of specific personal items. If you know that you want specific items to pass to named individuals, those instructions should be set forth in your revocable trust or in handwritten instructions.* The letter of instructions to your successor trustee may outline more general ideas that you have about disposing of personal items. For example, you may tell the trustee to informally appraise the items and have the children draw lots to decide the order that items are chosen, with a different person starting each round. If a child chooses an item with a disproportionately large value, that child may be skipped in later rounds until values are more or less equalized.

VII. General Advice and Counsel.

General advice may encompass a wide range of matters. To formulate your thoughts, it may be helpful to visualize yourself talking with your family, successor trustee, or executor to assist them after you are gone. What would you say to them to help them, guide them and comfort them? You may add to this advice from time to time as new issues enter your life, or as new ideas occur to you. The advice may be very specific or very general. For example, you may have some specific ideas about an investment that you've made:

When we bought that lot up on Lake Travis, we thought that we would build on it, but we later decided to hold it for investment. I thought that when the price got up to \$50,000 or so, I would sell it. I suggest that you talk to Sam Jennings, a realtor in Hudson Bend, about prices and what he thinks the market up there will do.

If you are leaving money to children or grandchildren, or to trusts for their benefit, you can include thoughts about your wishes for how these funds are to be invested and spent. Your wishes may depend upon the age and circumstances of the recipients, but again, they should be expressed as your non-binding wish, and not as a legal requirement. Many clients prefer to write a separate letter to each of their children (and grandchildren) with private advice and counsel specific for that child. Others prefer a more general letter, suitable for the entire family. An example from a person with adult children reads:

My primary objective was to make sure that each of you got a good education and a start in life. My original intent was to spend the rest. However, with a little late-coming maturity and prudence on my part, I have actually been able to accumulate some property to leave to you. My hope is that you will gain that maturity and prudence earlier than I did, and that you will keep this money as the

* We generally provide our clients with a detailed memo, entitled "Making a Personal Effects Memo to Your Revocable Trust," which describes how to prepare a personal effects memorandum.

beginning of your own nest egg. As I've told you, I left each of you a share in a trust, with each of you as the Trustee of your own trust. I want each of you to be able to invest the assets in your trust as you decide. The funds are always available to you if you need them, but I hope that you will save these funds as your own nest egg for your retirement, and not spend them on "things" that may seem important to you now, but which will really only serve to clutter your lives. I intend for the funds to be for your security. I know some of you have the feeling of "Why have money if you don't use it to enjoy life more?" To an extent I agree. I only ask that you defer that use for a while. I have come to learn that your judgment of the type of use which will enhance your life may change over time. I want you to develop strength and talent, which you can use not only to support yourself, but which will also give you a sense of satisfaction and self-worth. Sometimes, we only gain that sense of accomplishment in our struggle to "make a living." I love and trust you. I've seen your life "in process," and I feel confident that each of you is mastering that process called life.

VIII. An "Ethical Will."

You may also consider including an "ethical Will" with your final instructions. An ethical Will does not dispose of assets, but rather passes along your wisdom, values and ideals. An ethical Will can create a thoughtful, memorable and documented legacy for your family. In today's hurried society, rarely do older generations have the opportunity nor do they take the time to record their personal beliefs, values, dreams and their hopes for the loved ones they leave behind. An ethical Will is a wonderful legacy to leave your family, and can include any or all of the following:

- Thoughts of gratitude and thanks
- Favorite memories or moments with each family member
- Life lessons learned
- Personal values/spiritual beliefs
- Hopes and dreams for loved ones
- Encouragement and recognition
- Forgiveness or apologies

Avoid being negative or judgmental. The true purpose of an ethical will is to offer a loving and teaching legacy. Because ethical Wills are personal documents, there is no required format. They can be handwritten or typewritten, or audio or video recorded. While many clients wait until after their deaths to share the ethical Will with their families, others do so while they are still living. However they are created, ethical Wills leave a personal legacy that will live for generations to come.

IX. Conclusion

Naming someone to serve as the successor trustee in your revocable trust or executor of your estate imposes a tremendous responsibility on that person. You can ease their burden, and ensure that your wishes are carried out to the greatest extent possible, by providing a written road map. While there is no single "best" format for these instructions, a template to get you started is attached.

LETTER OF INSTRUCTION

To my trustee, executor, family and loved ones:

I am writing this letter in hopes that the information that I have included will be helpful to you in the event of my death. My goal in writing this letter is to provide you with guidance and to let you know about my preferences. I intend for it to be helpful in handling matters which may arise after my death. I hope that you will follow these instructions when they are useful, and that you will disregard them when they aren't. I have tried to think of what you would need to know and what I'd like to do to help you if I were there.

1. I have expressed my wishes regarding the disposition of my remains as follows:

_____ I have entered into a prepaid funeral arrangement with:

Funeral Home or Other Provider (such as Neptune Society): _____

Location of Contract: _____ Date of Agreement: _____

Location of Cemetery Deed (if applicable): _____

_____ I have executed an Agent to Control Disposition of Remains. The original of this document is located: _____

_____ I have prepared written directions regarding the disposition of my remains, which have been signed by me in the presence of a notary. The original of this document is located:

2. Here is information about my Revocable Trust and Last Will:

Date of Revocable Trust: _____ Date of Last Will: _____

Location of Original Revocable Trust: _____ Location of Original Will: _____

I have signed the following amendments and/or codicils and other documents that are located with my Revocable Trust/Will:

Name of Attorney: _____

(See contact information on page 2)

3. Contact Information:

My Full Legal Name _____
Birth Date: _____
Soc. Sec. No.: _____
Driver's Lic. No. _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____
Citizenship: _____
How long in Texas? _____
Employer: _____
Occupation: _____
Marital History: _____

Spouse Full Legal Name _____
Birth Date: _____
Soc. Sec. No.: _____
Driver's Lic. No. _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____
Citizenship: _____
How long in Texas? _____
Employer: _____
Occupation: _____

Child's Full Legal Name _____
Birth Date: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

Child's Full Legal Name _____
Birth Date: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

Child's Full Legal Name _____
Birth Date: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

Child's Full Legal Name _____
Birth Date: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

My Attorney: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

My Accountant: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

My Investment Advisor: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

My Insurance Agent: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

My Banker: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

Other Advisor: _____
Name: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

Other Advisor: _____
Name: _____
Firm: _____
Address: _____
Phone: _____
Cell Phone: _____
E-mail Address: _____

4. Location of Important Information, Papers, etc.

I have passwords for all of my important computer applications written down and placed in a sealed envelope. The envelope is located: _____

I have a safe deposit box located at:

I keep the key to the safe deposit box at: _____

I keep my bank records:

I keep my brokerage account records:

I keep my receipts for bills I have paid, etc:

Copies of my tax returns can be found:

Deeds, mortgages and other information about real estate are kept:

Information about my retirement and employee benefits can be found:

Information about insurance policies is located as follow:

- Life Insurance: _____
- Homeowner's insurance: _____
- Car insurance: _____
- Medical insurance: _____
- Long term care insurance: _____
- Other insurance: _____

I keep the title to my car(s):

Other important papers such as birth certificates, passport, and marriage license, etc.:

5. Household Goods and Personal Items

When it comes to dividing up household goods and personal effects, please think about the following:
