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Sample: Letter of Wishes to Guardian

Below is a sample letter of wishes to the guardian of your minor children.

Name: _____

Address: _____

Date: _____

Letter of Wishes to Guardian

Dear _____:

Purpose and Scope of this Letter

This letter is to express my wishes with respect to the care and raising of my children. In addition, this letter describes some of my personal values and beliefs that I wish for my guardian to consider when bringing up my children. The following are the family values that are most important to me:

- 1. _____
- 2. _____
- 3. _____

The characteristics of the home environment I wish for my children to be raised in are:

My religious beliefs and core values that I would like to be instilled in my children are:

The cultural traditions that I want my children to participate in are:

The education that I want for my children is:

The relationship that I want my children to have with work (including chores) is:

The relationship that I want my children to have with money is:

The healthy lifestyle characteristics that I want my children to maintain are:

What you should know about my family members (personality, preferred frequency of contact):

What you should know about my children (personality, interests, talents, learning style, health conditions, daily routine, favorite foods, cherished items):

What I want my children to remember/know about me:

In summary,

Sincerely yours,

[Your Name]



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Sample: Letter of Wishes to Trustees: Descendants' Trusts

Below is a sample letter of wishes that can be sent to the trustees or to the administrators of your trust. The letter outlines your intentions for the trust purposes, guidance on distributions to the beneficiaries, and the tax characteristics of the trust. Specific wishes for distributions are outlined at the end of the letter for your trustees' consideration. Bracketed sentences are for your consideration- cross them out if they do not apply or reflect your wishes.

Name: _____

Address: _____

Date: _____

Letter of Wishes to Trustees: Descendants' Trusts

Dear _____:

Purposes:

It is my express intention that these trusts provide the maximum legal protection of the assets held in trust against the claims of any person. My other purposes are:

1. _____
2. _____
3. _____

Overview on Distributions: Purpose and Scope of this Letter

This letter is to express my wishes to you when exercising discretion as to making or not making distributions to beneficiaries. I appreciate that my wishes do not bind you in any way and that you remain free to make distributions as you see fit in the exercise of your discretion. I have no understanding or agreement with respect to distributions, and this letter is not meant to establish any such understanding or agreement. The contents of this letter are **not** intended to constitute terms of any trust and are **not** intended to establish or imply any standard to guide any

fiduciary in exercising discretion. **These wishes are merely for your consideration to the extent that you deem advisable under the circumstances.**

In general, it is my wish that my assets remain protected over time from the reach of any creditor or potential creditor of my descendants. [Please consider preconditioning any distribution on the beneficiary's undertaking to enter into a valid marital property agreement or valid choice of governing marital property law that, in your judgement, would serve to protect the distribution(s) from the claims of a spouse or a former spouse.]

In administering these trusts, you would do well as trustees if you would coordinate among yourselves when a distribution request is made by a beneficiary or when one of you perceives a need to act. Furthermore, when you determine to make distributions, I would suggest that you keep in mind the tax-sensitivity of these trusts. The trust is not exempt from generation-skipping transfer tax. [Therefore, it would be tax-advantageous if distributions were made first from non-exempt trusts.]

Tax Characteristics of the Trust:

Have your accountant, attorney, or both complete this part

1. _____
2. _____
3. _____
4. _____
5. _____

Specific Guidance on Distribution of Trust Funds:

In exercising the discretion granted to the trustee(s), the trustee(s) should consider the following values, which I wish each of my descendants to emulate:

Cross out statements that do not apply and add those that should apply.

- The pursuit of higher education culminating in a four-year degree from an accredited U.S. college or university or the foreign equivalent.
- Gainful employment, including employment in the arts, academia, or the helping professions and military service.
- Care for minor, disabled, and elderly family members.
- Support of charitable organizations.

- Healthy lifestyle choices, including avoiding abuse of or dependence on alcohol, legal or illegal drugs (other than as prescribed by the beneficiary's physician).
- Fiscal responsibility and the avoidance of excessive debt.
- _____
- _____
- _____

Accordingly, my wishes are as follows:

Cross out examples that do not apply and add those that should apply.

1. If an adult beneficiary has sufficient maturity and has demonstrated prudence with financial affairs, to distribute each year up to _____ for his or her benefit.
2. To pay for any major health care costs that are not covered by insurance.
3. To pay for education at any level and related expenses such as books, supplies, room and board, whether at public or private institutions in the U.S. or abroad, and including graduate school and post-graduate studies.
4. To expend for educational [or leisure] travel.
5. To enable the beneficiary to go into business, if his or her business plan appears viable.
6. To expend for medical or psychological treatment when may be warranted by an addiction or other harmful condition.
7. To pay the costs of adequate health insurance, life insurance, disability insurance, long-term care insurance, and liability (umbrella) insurance for a beneficiary, and such other coverages as you may deem fit.
8. To pay the legal and other professional costs associated with the beneficiary's planning of his or her own estate plan, with a view to appropriate structures for the succession of wealth and wise tax planning or multiple generations.
9. _____
10. _____

In summary,

Sincerely yours,

[Your Name]

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Appointing your Fiduciaries
Factors to Consider When Preparing your Estate Plan

A fiduciary is a person to whom property and/or responsibility and authority are entrusted for the benefit of another. In estate planning, fiduciaries include executor(s), trustee(s), guardian(s), and the power-of-attorney agent(s). The fiduciary must prioritize the interests of all beneficiaries over his or her own interests, even if the fiduciary is also a beneficiary. Fiduciaries may be paid or they may be asked to waive their compensation, if for example, the executor is a family member.

THE EXECUTOR

The executor is named in the Will and is in charge of carrying out a decedent's final wishes with respect to the distribution of his or her property. The executor's duties include collecting and distributing property owned by the decedent, paying debts, and generally wrapping up the decedent's personal affairs. A person who is named as executor is not required to serve and may decline. The executor typically hires an attorney to assist with the legal work and to guide the executor in fulfilling his or her fiduciary responsibilities. An executor may be an individual or a financial institution, such as a bank or trust company.

KEY QUALITIES FOR AN EXECUTOR

- ◇ **Organized:** An executor should be someone who is diligent about being on top of administrative tasks and completes such tasks in a prompt and timely manner. Much of the administrative work requires precise recordkeeping and follow-ups, which necessitates a close attention to detail.
- ◇ **Responsible:** An executor should be a responsible, patient, and trustworthy person who you feel exercises good judgment.
- ◇ **Good Communication Skills:** An executor should be good with people (even when they are not at their best) and able to act fairly toward all beneficiaries.
- ◇ **Knowledge of Family and Assets:** An executor will need to contact the family and collect the property of the decedent. Accordingly, having good knowledge of the family and the decedent's assets is helpful.

In the event that a person dies without a Will, then the person who takes responsibility for the decedent's estate is called an Administrator. An administrator carries out the same duties as an executor, but state laws will dictate how the decedent's property will be distributed among the heirs.

OTHER CONSIDERATIONS IN CHOOSING AN EXECUTOR

- ◇ Personal liability to the beneficiaries, creditors, and taxing authorities (IRS).
- ◇ Tax-Filing Responsibilities (e.g., preparing and filing tax returns such as the decedent's final income tax returns and the estate's income and estate tax returns).
- ◇ This is a very time-consuming and potentially stressful process and may take 2-3 years to complete. The executor must have the time, energy, and emotional capacities to see the job through to completion.

THE TRUSTEE

A trustee is a fiduciary named in a lifetime trust agreement or a decedent's Will who takes legal title to property and holds that property in trust for the benefit of the trust beneficiaries. It is the trustee's duty to make trust property productive of income for current income beneficiaries and to preserve the trust principal for beneficiaries who may receive trust corpus. A trustee must use reasonable skill and prudence when making decisions regarding appropriate investments of trust property. The trustee often hires an investment advisor to assist in these decisions. When choosing a trustee, you should consider the nature of the trust assets, the needs of the beneficiaries, and the flexibility of the trustee.

KEY QUALITIES FOR A TRUSTEE

- ◇ **Responsible:** A trustee should be responsible, stable, and trustworthy.
- ◇ **Honest:** A trustee must act honestly and in good faith in the administration of the trust and exercise reasonable care and prudence in all actions.
- ◇ **Communicative:** A trustee must keep the beneficiaries informed about the trust when appropriate.
- ◇ **Excellent Record Keeper:** A trustee will eventually render an accounting of all trust transactions, which requires accurate and complete records. In addition, the trustee will need to prepare and file the trusts' income tax returns (i.e., IRS Form 1041).
- ◇ **Proactive:** A trustee should be proactive in the execution of the many tasks required in the administration of a trust.

OTHER CONSIDERATIONS IN CHOOSING A TRUSTEE

- ◇ Personal liability and responsibility to the trust beneficiaries.
- ◇ Accountability for losses – could be surcharged for breach of fiduciary duties.
- ◇ Detailed administrative work for a long period of time (term of trust could be for the beneficiary's lifetime).
- ◇ Potential personal conflicts with beneficiaries.



THE GUARDIAN

The guardian is perhaps the most important person in your estate plan if you have minor children. The person whom you appoint as guardian serves as a parent to your minor children and makes personal decisions concerning their development and welfare.

KEY QUALITIES FOR A GUARDIAN

- ◇ **Shared Values:** Ideally you and your guardian share the same values, beliefs, goals, and parenting styles.
- ◇ **Relationship:** Choose someone who has a loving relationship with your children.
- ◇ **Financial Stability:** While a guardian does not have to be wealthy, he or she should have some monetary resources and sound financial judgment to provide a stable home for your children.
- ◇ **Lifestyle:** Raising children should fit into their lifestyle and they should physically be able to carry out the role.

RESPONSIBILITY OF BEING A GUARDIAN

- ◇ The guardian may need to rework his or her life to care for your children both emotionally and financially.
- ◇ It can be challenging to meet the children's emotional and physical needs.
- ◇ If the family has existing children, a potential conflict exists with new children joining the family.

THE HEALTH CARE AGENT

A health care agent is a person whom you choose in advance to make health care decisions for you in the event you become unable to do so. A health care agent can help make medical decisions on your behalf at the end of your life or any other time you are not able to communicate your wishes.

FACTORS TO CONSIDER...

- ◇ **Living Will:** Do you have a Living Will that directs your end-of-life wishes to your health care agent?
- ◇ **Values:** If you do not have a living will, does your health care agent understand your core values and beliefs about end-of-life care?
- ◇ **Trust:** Do you trust your health care agent to carry out your wishes as you direct?
- ◇ **Emotional Demands:** Will your health care agent be able to handle the stress and emotional demands that come with making end-of-life decisions?



THE AGENT UNDER YOUR POWER OF ATTORNEY

Your Power of Attorney agent manages your financial affairs while you are living. Such agent is named by you in a Power of Attorney which can be a Springing Power of Attorney (i.e., it 'springs' into effect when you become incapacitated) or a Durable Power of Attorney (i.e., it becomes effective as of the date it is signed). The Power of Attorney ends at death at which time the executor takes over your affairs.

FACTORS TO CONSIDER...

- ◇ **Trust:** Your Power of Attorney agent will have control of your finances so you must have complete trust that he or she will act in your best interests.
- ◇ **Knowledge of Assets:** Your Power of Attorney agent should have sufficient knowledge of your financial affairs in order to manage them properly should you become incapacitated. Financial management skills are also particularly beneficial.
- ◇ **Family Dynamics:** Keep in mind potential family conflicts when selecting your Power of Attorney agent. If family members have any existing communication challenges, it may be prudent to choose a professional person such as an accountant.



When Your Estate Planning Documents Should Be Updated

It is generally recommended that estate planning documents be updated every 5 years or if there is a change in your personal and/or financial circumstances. Some examples are:

- Change in marital status (marriage, divorce, legal separation, death of spouse).
- A significant change in financial situation either positive or negative.
- Your presently named guardians of your minor children are no longer an appropriate choice for the role.
- Your presently named executor or trustee of your Will or Trust is no longer an appropriate choice for the role.
- The birth of, or legal adoption of a child or grandchild.
- Change of state of residency.
- Purchase of real estate outside of your state of residence.
- Significant changes in the estate and gift tax laws.
- Death or disability of a family member.

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