



Matrix Capital

Financial Planning

7 things you need to know before writing a letter of wishes

Anyone setting up a discretionary trust would be well-advised to write a letter of wishes because the trustees are given discretion as to who benefits from 'classes' of beneficiaries, how they can benefit and under what circumstances. Consequently, the trustees might benefit from understanding the wishes of the person(s) who set up the trust - i.e. the settlor(s).

The trust might be settled as part of planning your estate (either whilst you are alive or incorporated within your will) or it might form part of an investment, life assurance policy or your pension death benefits.

Either way, here are the seven most important things to bear in mind when writing a letter of wishes.

1. What information does it provide to the trustees that the trust deed doesn't?

A letter of wishes should explain what a settlor(s) (the person(s) setting up a discretionary trust) would like the trustees (the people appointed by the settlor to control the trust) to do with the trust assets. A discretionary trust sets out 'classes' of beneficiaries, such as child or widow of the settlor, and not named beneficiaries with an absolute right. Consequently, the trustees may not always know the full personal circumstances of all the beneficiaries – indeed, they may not have been born until after the trust was set up. So, the letter of wishes provides information to assist them in exercising their discretion.

2. Is it confidential?

It has been established through case law that any letter of wishes is confidential between the settlor(s) and the trustee(s). Usually, therefore, the trustees should not disclose the letter of wishes to the beneficiaries unless a court has ordered its disclosure, or it is a necessity for the administration of the trust. This stands in contrast to a will or trust deed (which can be disclosed).

3. Do the trustees have to adhere to the letter of wishes?

The letter of wishes expresses the settlor's thoughts on how the trust should be used but it is in no way binding upon the trustees.

However, it is very unlikely that a letter of wishes will be ignored as it represents the best estimate for the trustees of what the settlor's wishes would be. It can be used to give additional or sometimes

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for the trustees of what the settlor's wishes would be. It can be used to give additional or sometimes sensitive information, for instance, it might be used to explain why someone has been excluded as a beneficiary or to give details about how a child should be cared for.

That said, the trustees should not blindly follow the letter of wishes but be able to show they have followed a robust process (that takes account of the letter) when considering making payments to beneficiaries. It is therefore suggested that trustees keep minutes of any meetings where requests from beneficiaries are considered, and decisions made by trustees.

4. Should the letter of wishes be witnessed?

The settlor should ensure the letter is written in plain English, signed and dated, but never formally witnessed. Witnessing implies the document is a new will, a codicil to a will or an addendum to a trust deed.

Ideally, the letter of wishes is signed at a different time than the trust deed or the will. This provides a degree of separation between the letter and the deed/will to prevent the letter from being part of the trust instrument.

Signing before the date of the deed or will is possible but signing afterwards is more usual.

5. Can it be changed at any time?

Yes, in fact the letter of wishes should be regularly reviewed and updated to ensure the trustees are aware of any changed circumstances.

6. Is it legally binding?

As mentioned above, the letter of wishes is not designed to be legally binding. It is recommended that the letter makes it clear that it is not supplemental to or part of the trust deed; and that the trustees have acknowledged the letter.

7. How do I set up a letter of wishes?

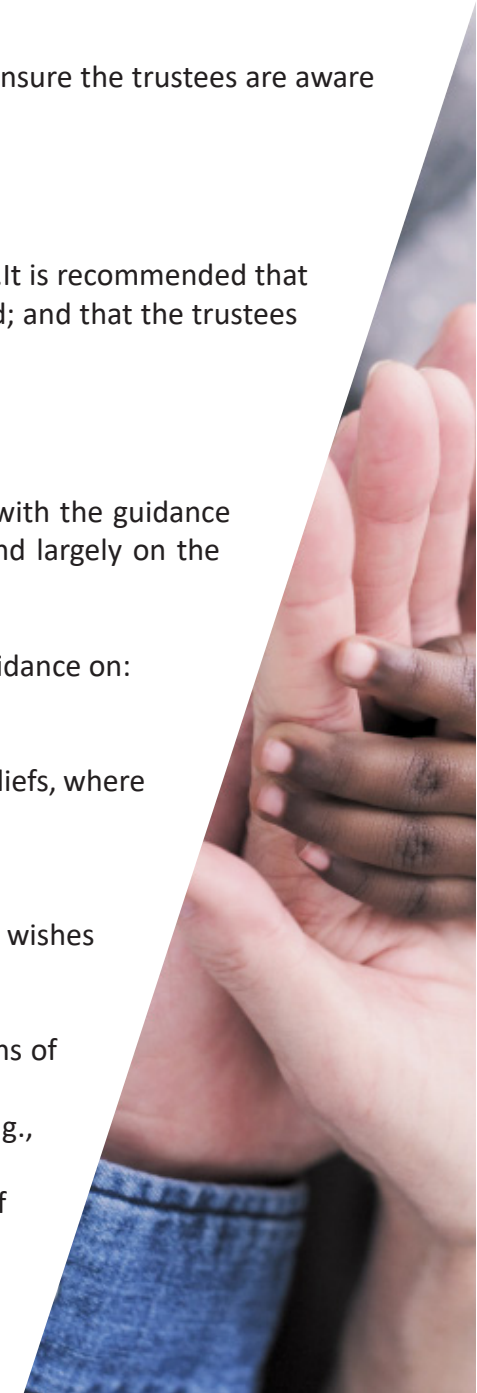
A letter of wishes will usually be a unique document, written by the settlor with the guidance of their legal adviser or financial planner. Of course, the contents also depend largely on the purpose of the letter of wishes. As such, no "standard" letter of wishes exists.

So, where a trust is established in a will, the possible content might include guidance on:

- any gifts you would like to be made
- instructions about how your child/ren should be cared for, e.g., religious beliefs, where they should live
- the funeral arrangements you would prefer

However, where a trust is to be established by way of a trust deed, a letter of wishes typically guides the trustees on issues such as:

- how the trust should be managed in terms of investments and distributions of ongoing income
- the extent to which named beneficiaries or classes of beneficiaries (e.g., children, grandchildren) should benefit
- whether the beneficiaries should be entitled to receive distributions of the trust
- when the trust is expected to end and in what circumstances



- how the trust might benefit younger beneficiaries, e.g., should the trust pay for their immediate education/ fees or be kept intact for the longer term?

If you have any questions or need further assistance, please get in touch.



(STEP and SOLLA logos are attributed to Robin Melley only)

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