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# GUIDELINES FOR WRITING A LETTER OF WISHES



The purpose of this brief document is to raise questions and scenarios that:

- > Encourage introspection and reflection, spark conversations between couples, and promote family discussions during the process of establishing a trust.
- > Help define key aspects that should be considered during the settlors' lifetime and when transferring their assets.

These reflections should also be addressed when deciding to use other estate planning tools or vehicles that are less versatile, but they become particularly important in the context of trusts, especially when preparing the "letter of wishes".

## WHAT IS A "LETTER OF WISHES" AND WHAT IS IT FOR?

Is a document where the creator of the trust (known as the "settlor") specifies their wishes in the event of incapacity or death. It is somewhat like a will, but the wishes can be as broad as the settlor desires and can extend over time. This means that not all instructions must be carried out immediately after their passing.

This document allows individuals to express their wishes using informal language. It also guides the trustees, the protector, and the trust advisors, who will need to act after the settlor's incapacity or death or, in some cases, even if neither of these situations has occurred.

### **10 KEY QUESTIONS TO ADDRESS DURING THE SETTLORS' LIFETIME:**

- 1 Roles and responsibilities:** what roles will the protector, trustee, and financial advisor play in the trust?
- 2 Replacement in case of vacancies:** how will vacant roles be filled? (For example, with pre-designated substitutes, by appointment from the trustee or the person leaving the role, or by naming someone exclusively responsible for appointing replacements).
- 3 Recurring expenses:** what regular expenses will the trust need to cover? (e.g., fees, education, healthcare, gifts, professional advisors, asset maintenance, etc.)
- 4 In case of incapacity or medical emergencies:** how should these situations be handled for the settlors or beneficiaries?
- 5 Distributions to beneficiaries:** can beneficiaries request distributions? Under what circumstances? Who decides whether to authorize them? Are there limits on amounts?

**6 Loans from the trust:** will loans be allowed from the trust to beneficiaries? Under what conditions, terms, and interest rates?

**7 Loan repayments:** how will the granted loans be repaid? For what purposes and under what conditions will they be granted?

**8 Transmission of values:** will the trust seek to pass on values such as philanthropy, entrepreneurship, or education, in addition to assets?

**9 Investment restrictions:** are there any types of assets or investments that should not be made under any circumstances?

**10 Non-blood-related beneficiaries:** will beneficiaries not related by blood be included (e.g., spouses, in-laws, adopted children)?

### **10 QUESTIONS TO REFLECT ON EACH ASSET AFTER THE SETTLORS' DEATH:**

- 1 Preservation or division of assets:** do you want the asset to remain within the trust structure or be divided among the beneficiaries?
- 2 Equitable distribution:** do you want all beneficiaries to receive an equal share of the trust?
- 3 Family business management:** if the asset is a family business, how will it be managed if it remains in the trust and is not proportionately assigned to the heirs or sold?
- 4 Income-generating assets:** should it be retained and managed, or sold, with decisions made on how to use the funds obtained?

**5 Distribution timing:** do you prefer the distribution of assets to occur as a one-time event or over time?

**6 Conditional distribution:** do you want distributions to be made regardless of context, or for someone to consider special situations such as incapacity, health issues, business problems, or marital difficulties?

**7 Age differences among beneficiaries:** how will assets be partially or gradually divided when beneficiaries are of different ages, especially if there are more or less liquid assets?

**8 Minor beneficiaries:** can minor beneficiaries receive distributions? If so, who will manage these funds (parents, guardians, protector, etc.)?

**9 Ongoing management by trustee or protector:** is there any beneficiary that, even if they receive a portion of the trust, you prefer to be managed always by the trustee and/or the protector?

**10 Conditions for distributions:** are there conditions that beneficiaries must meet to receive distributions or participate in decision-making? (e.g., signing a prenuptial agreement or completing a certain educational program)?

### 3 FINAL RECOMMENDATIONS:

#### BE SIMPLE AND CLEAR WHEN WRITING

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This will avoid misunderstandings among the various people responsible for administering the structure (trustees, advisors, protector, etc.) and even between them and the beneficiaries. Furthermore, the simpler the document, the less likely it is to require modifications. It is generally recommended to review it in light of significant events such as marriages, deaths, beneficiaries reaching adulthood, international moves, substantial changes in the trust content, liquidity events, tax reforms, among others, and, if there are none, every 3 to 5 years.

#### CONSIDER THE TRUSTEE'S ACTUAL ABILITY TO FULFILL THE WISHES

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It is always better to choose a trustee who knows the language and, above all, the culture of the family, who feels comfortable with the source of the funds, the countries where they are invested, and the types of assets that will be ceded to the trust. Over time, it is beneficial for them to get to know the different family members and interact with them.

#### PRIVACY

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There is a possibility that the heirs may see your letter of wishes. How do you think they would feel if they did?

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This guide is designed to facilitate estate planning and help families discuss these topics and make informed decisions aligned with their long-term goals. At UNTITLED Sherpa, we are here to support you in this process and provide the advice you need at every stage.



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