DIRECTION MEMO™

HOW TO WRITE A LETTER OF INSTRUCTIONS FOR YOUR ESTATE PLAN

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How to Write a Letter of Instructions for Your Estate Plan
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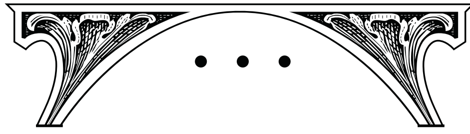
SECTION I

Informational



Introduction

"Only put off until tomorrow what you are willing to die having left undone. "
-Pablo Picasso

One Hundred Pieces, One Allen Wrench, and No Instructions

ONE SATURDAY MORNING MY WIFE Dana and I purchased a new desk for our home office. We loaded the big box in our car and quickly drove home to put it together. When we opened the box and viewed the contents, we discovered that we didn't buy a desk. We bought one hundred pieces of something, and an Allen wrench. The box didn't even include assembly instructions! We agonized the entire weekend and finally finished putting the desk together Sunday evening after many trials and lots of errors. Not only did we have to start over several times, we also were left with extra pieces that seemingly had no purpose.

It seems that gone are the days when you can buy a piece of office furniture that comes fully assembled and ready for use. It seems there are more pieces and that the instructions are actually more confusing than helpful. Sometimes there aren't any instructions at all. When you see a beautiful piece of furniture on display in the store you tend not to think about the time, energy, and raw emotion involved in the assembly process.

Your Estate- Some Assembly Required!

The story above is similar in many ways to what I've observed when family members are left to organize a loved one's estate, but the anguish is multiplied by 1000 times. When you die or become incapacitated, the steps your important people will go through are similar to assembling a new piece of office furniture. They are:

- Searching for the pieces (locating your property)
- with limited tools (legal documents)
- and no instructions (what specifically needs to be done)

If you think the stress level is high while assembling office furniture, visualize the emotions when your family is trying to organize your affairs after your death or incapacity. As a Certified Financial Planning Practitioner™, I have observed a wide range of emotions experienced by children, widows, executors, trustees, and other important people. Many of them spend dozens of hours searching for answers that could have been easily provided. The average individual works 40 years to accumulate wealth, spends the next 20 years conserving what they earned, and invests less than 2 hours planning for what happens when they are gone.

You could be thinking that since you met with an attorney and signed traditional estate planning

documents, your estate plan is invincible. Traditional estate planning documents (e.g., wills, powers of attorney, and living trusts) are "tools" used to assemble your estate. Ironically, many attorneys even refer to their documents as "tools" from their "toolbox." While the tools are critical, the instructions are a vital prerequisite for the proper "assembly" of your estate.

So, what can you do beyond drafting legal documents to help your family and other important people "assemble" your estate? Create an instruction manual! Your important people need both reliable tools and clear instructions to understand how all the pieces fit together. As you continue to read, you will understand that there is a big difference between "tools" and "instructions" when it comes to your estate plan.

The problem becomes clear when you meet with your Executor after drafting your estate planning documents. It is almost impossible to explain what their responsibilities will be with your estate, by simply providing them a copy of the will. If it does nothing else, the Direction Memo™ makes it easier to sit down with your Executor to explain each of your goals. Your Executor should have a copy of your will, of course, but don't give him or her "a tool and a bunch of pieces," without also providing the instructions.

My Observations and Inspiration

Overcoming the fear of talking about mortality is the most important step in the estate planning process. I know that planning for your incapacitation or death probably doesn't take top priority in your thoughts. It is often easier for people to think privately about mortality rather than talk to others about these topics. Family discussions about these matters can be difficult and stressful. Sometimes the older generation is secretive about their finances, and may even be suspicious of the younger generation for asking about their planning.

Then, when you finally summon the courage to confront these issues, your family members may not be comfortable enough to listen. Although verbal discussions about these topics are important, written directions are better. Therefore this book will help you complete your directions and thereby make it easier to discuss these issues with your loved ones. If that conversation with your loved ones never happens for some reason, your thoughts and wishes will be present in your Direction Memo™. While estate planning requires you to think about the end of life, it can also help you discover meaning, joy, peace of mind, and gratitude.

My inspiration to encourage everyone to write a Direction Memo™ comes from communicating with widows and children upon the death or incapacity of their husbands and fathers. I see widows making financial decisions, perhaps for the first time in their lives, while simultaneously dealing with the loss of their spouse. The opposite is also true if a husband loses a wife who was the primary financial manager for the family. The absence of a letter of instruction is one of the leading causes of stress at the death or incapacity of a family member.

When I was younger, I remember watching Willard Scott on The Today Show and it was rare when someone reached 100 years of age. Today Willard is acknowledging people who are turning 110, and living to 100 is no longer a rare occurrence! Medical advancements that allow us to live longer haven't yet solved the problem of preserving our mental capacity. This means that your "tools" and "directions"

are important not only for death but also for a period of incapacity during life. You should establish a "tool" referred to as a Durable Power of Attorney for financial affairs. You will learn more about this document throughout the book, and how your Direction Memo™ will help the person you name as agent in that legal document.

Finally, my inspiration for creating a simple way to write your Direction Memo™ comes from more than 15 years of experience working with people who wish they had received a set of directions from their loved ones before it was too late. And it's not always because the surviving spouse is ill-equipped to make financial decisions. Sometimes they just wonder if their late spouse would have agreed with their financial decisions. A typical question from a surviving spouse is, "What would Bob have done in this situation?" Sometimes a surviving spouse doesn't have the mental or emotional energy to make any financial decisions at all.

My Hopes for You

My first hope is that you finish this book and complete your Direction Memo™. This is the set of instructions for the "assembly" of your estate. The first chapter explains how a Direction Memo™ differs from your traditional legal documents, and why both are important. I will warn you that as you get towards the end of the book it gets more emotionally difficult. I hope this book provides you a "safe harbor" to create your directions at your own pace. Regardless of your age, planning your estate is an important and selfless act. After all, it's not for your benefit, but rather for the benefit of your loved ones and other people and causes that are important to you.

I genuinely hope you learn something from reading this book, but more importantly, I want you to have something from reading this book. I want you to complete your first Direction Memo™ so that you can express what you specifically want to happen, and avoid those things that you don't want to happen. Without directions, your loved ones can only assemble your estate through their own guesses about what you might have wanted. If you have already drafted your legal estate planning documents (the tools,) upon completing this book you will also have the "instructions" for the use of those tools. If you haven't yet drafted your estate planning documents, or if you need to update them, your attorney will appreciate a copy of your Direction Memo™ when you meet to discuss your planning. The Direction Memo™ provides much of the information needed to accurately draft your documents.

One of my clients made several attempts to get his wife and three adult daughters involved in financial and estate planning, with little or no success. They just weren't interested. It weighed heavily on him that they might have difficulties when he was no longer able to help them manage their financial decisions. Since my client has completed a Direction Memo™, however, he no longer pushes them to learn something they aren't interested in understanding. He knows they will take an interest when they are ready, and in the mean time, they have clear instructions if something happens to him.

How to Get the Most from this Book

This book was written in a way to make it simpler to complete your Direction Memo™ in small, manageable sections. The numbers listed on the subtitles in each chapter match the numbers in your

Direction Memo™ where you record specific information. You will notice each chapter ends with action items for you to complete. The action items will direct you to the Appendix where you will complete a section of the Direction Memo™ related to the subject matter you just read. Completing the Direction Memo™ is much easier while the material from the chapter is fresh in your mind.

Before you get started, consider the following:

1. Do not be afraid to mark in this book! This book retails for $19.95, which is about the cost of a pizza. This is your book and it's your Direction Memo™. When you are reading, take notes and highlight important details that relate to you and your situation.
2. There are three parts to your Direction Memo™: Informational, Financial, and Personal. Speak with your loved ones and your professional advisors on topics for which you'd like their advice.
3. Don't move on to the next chapter until you complete the Direction Memo™ from the previous chapter to your satisfaction. Don't jump ahead in the book. Each chapter is designed to help you discover information that you may need in the following chapters. At the same time, don't agonize over a question you can't immediately answer or that requires more research. Continue to move forward. You can always mark the question and come back to it later.
4. Do not be intimidated by the Direction Memo™ and don't be paralyzed by analysis and indecision. Your Direction Memo™ isn't about perfection. It's probably not possible to write perfect instructions.
5. Take your time, and look at each chapter as a separate section of your Direction Memo™. If there is a section of the book which doesn't apply to you, ignore it if you wish. It's almost as important to communicate what's not relevant to your plan, so that those who come after you aren't searching for unnecessary items.
6. It doesn't matter if you complete your Direction Memo™ in 2 weeks or 2 years. What is important is that you eventually finish and then periodically update your instructions.

A Word or Two about Nomenclature

As a reader, you would quickly tire of me referring to each individual person in your life who may be involved in your financial and estate planning. Therefore, I will use the term "important people" throughout the book. "Important people" is a general term that conceivably includes any of the following:

- Agent Under a Power of Attorney
- Trustee
- Fiduciary
- Executor
- Personal Representative
- Guardian
- Conservator
- Attorney

- CPA
- Certified Financial Planner®
- Broker
- Banker
- Insurance Agent
- Property Manager
- Real Estate Agent
- Appraiser
- Spouse
- Partner
- Children
- Parents
- Other Loved Ones

I will use specific titles when necessary, but otherwise you will see the term "important people."

Each section is designed to help you think about some of the decisions you would want your "important people" to make in your physical or mental absence. There will be people you trust who must help you when you no longer can help yourself. Some of these people are **fiduciaries** and some are not. A fiduciary has a legal responsibility to act in your best interest as well as follow the terms of your legal documents. Fiduciaries might include an agent under a power of attorney, an executor, or a trustee.

You will encounter the word "incapacitated" throughout reading this book. **Incapacity** is a legal concept, the definition of which varies from state to state. In many states, it means the lack of an individual's ability to legally act when generally agreed upon by two or more physicians. Your Direction Memo™ can provide your own definition of incapacity. Perhaps, for example, you might want to include family members in the decision-making process, not just doctors. The word "incompetent" may be used synonymously with "incapacitated," but the word "disabled" should not be. A disabled person is someone who is unable to perform certain activities of daily life, but that doesn't' necessarily mean they are mentally incapacitated. That is an important distinction.

The other term to which you've already been introduced is **Direction Memo™.** The Direction Memo™ is a term and a document that I have trademarked and designed as a template for writing instructions for your estate plan. The Direction Memo™ is in the same category as other non-binding documents referred to as a "side letter of instruction," "letter of intent," or a "model side agreement." The Direction Memo™ has some of the attributes of these documents, and allows you to combine them into one letter.

Chapter 1: The Importance of a Direction Memo™ in Your Estate Plan

"I'm overwhelmed to the point of being immobilized."-
From a recently widowed Baby Boomer. (www.caring.com)

The Aftermath

I'VE SELDOM MET A WIDOW or widower who lacks the *ability* to organize their finances and make decisions, yet a large percentage of households lose financial continuity at the death of the first spouse. It's natural for couples to have one person take the lead with the financial planning. In my experience, the partner taking the lead is most often the male in a traditional relationship. You would think that since females outlive males about 80% of the time, this would motivate women to insist they have complete understanding of the household finances, but that is typically not the case. You would also think this might motivate the men who manage the household finances to insist their wives be prepared to take over, but again that is typically not the case. According to the National Center for Women and Retirement Research, 80-90% of women will, at some point in their lives, be solely responsible for all the household financial decisions. It's clear that women do not lack insight about financial matters, but simply lack interest, and are attracted to other activities.

A recent study of affluent married households found that men have higher perceived knowledge in every wealth management category than their spouse.[1] Regarding control and involvement with the financial decisions in their household, once again the women scored considerably lower than their husbands. There was only one question women answered with more confidence than the men in the study. 77% of women said "my wealth management affairs are in order" while only 75% of the men surveyed agreed with that statement. It's surprising that the women interviewed believed their wealth management affairs to be in order (more often than their husbands) when they have less knowledge in every wealth management category, and little involvement with the family's finances! Whether single or married, our daily routine distracts us from planning for the future. Planning for the future involves using our imagination, and it's easier to plan for upcoming events that are enjoyable rather than unpleasant, such as the loss of a spouse/partner.

A separate study in 2008 from Fidelity Research found that merely 15% of couples feel confident that either spouse could assume full responsibility for their joint finances if necessary.[2] In other words, 85% of couples are unprepared to pass financial management to the other spouse when something happens. Instead, the widow (or widower) is forced to react and prepare for an independent future at the worst possible time.

Some professionals advise that a widow or widower should wait at least one year before making any major financial decisions because of the challenges of the first year after a spouse's death, particularly due to the grieving process. I certainly have compassion for someone who's lost a spouse, but I'm certain that waiting one year to make decisions is not the best advice for everyone. The world of investments, tax, and law constantly evolves and sometimes you can't wait a year to make important decisions. The Direction Memo™ can help someone who lost their spouse expedite financial decisions because a plan has already been prepared. Even if the plan isn't fully executed, it's a critical "leg up" for someone who could otherwise miss opportunities.

Absorb the Shock (Sections 1.1-1.4)

Section 1 of your Direction Memo™ is to explain the purpose of this letter so your important people understand your intentions and have a roadmap for your estate plan. Widows and widowers can benefit tremendously from this document, beyond the drafting of traditional estate planning documents. Why is it important to write a Direction Memo™ if you already have your traditional estate planning documents drafted? If you review your documents (and understand them) you will realize that your estate planning documents are written to determine who gets what, not what needs to be done. In fact, many people wouldn't want to list every specific estate instruction in their binding documents. Rather than adding excessive instructions to your will or trust, you can write a Direction Memo™, which is the logical place for basic information.

The second reason you may not want to write all of your instructions into your binding estate planning documents is because it may cause people to hesitate becoming a fiduciary for you. Each fiduciary role comes with potential litigation risks. The greater the number of unnecessary elements in your binding estate planning documents, the more concerned fiduciaries will be about taking on the role. If there are issues important enough to be legally binding, those details should go into your traditional legal documents. All other issues, for the most part, can be addressed in your Direction Memo™.

Binding vs. Nonbinding (Section 1.5)

The distinction between your traditional estate planning documents drafted by an attorney and your Direction Memo™ is that the documents are legally **binding,** while the Direction Memo™ is **non-binding**. Attorneys are the only professionals who can, by law, draft legal documents for you. Your financial planner, or other "important people," may help you write your Direction Memo™ since it carries no legal authority. This means you can take advantage of their expertise in specific areas that relate to their professional or personal relationship with you. Regardless of what you write in your Direction Memo™, your legal documents supersede a non-binding document. Your Direction Memo™ should be construed as planning instructions rather than a legal agreement.

If a Direction Memo™ doesn't carry legal authority, then why is it important? When it comes to your estate, it's critical to provide directions. As previously mentioned, fiduciaries want to mitigate as much risk to themselves as possible, so you should carefully prioritize what needs to be incorporated into your

binding documents. Most corporate fiduciaries, such as bank trust departments, will critically review your legal documents before accepting the legal responsibility as your fiduciary. On the other hand, fiduciaries appreciate your Direction Memo™ because it explains your requests that are "suggestive" in nature.

Generally speaking, granting a specific power, or bequeathing certain property to a beneficiary, must be completed through a legal document. Many of the decisions you make about your estate will require that you determine whether the instructions are required to be legally binding as opposed to merely suggestive.

Example: Ann has a 45-year-old son Tom who's had a variety of legal problems since the age of 17. Tom has never been gainfully employed for more than 6 months at a time, and owes a lot of money to creditors. Despite the mental anguish, pain, and money Tom has already cost Ann, she doesn't want to disinherit him from her estate plan. Upon Ann's death, however, she wants to ensure that Tom will receive no more than $1,000 per month because she knows it will quickly vanish otherwise. Secondly, she wants whoever is "in charge" to invest Tom's inheritance only in Corporate Bonds because she feels that is the best investment for his situation.

1. The first goal of having a management mechanism to prevent Tom from receiving his full inheritance immediately at Ann's death must be specifically written into a binding legal document empowering someone to oversee this process, such as a trustee.
2. Since Ann's son has creditor problems, she may not want the trust document to specify that he is to receive $1000 per month. If she does, Tom's creditors will simply assign themselves to the income stream of the trust. Instead Ann can create in her trust a "sprinkling provision" that gives the trustee discretion as to when and how much income to pay Tom. Ann then writes in her Direction Memo™ that her son should receive no more than $1000 per month, increasing with the rate of inflation. This allows the trustee to understand and be guided by Ann's intentions as he exercises his discretion over the distributions.
3. Since the future is always uncertain, especially with investment choices, Ann should not specify in a binding trust document, such narrow parameters as investing only in Corporate Bonds. If she does that, her trustee will have no choice but to follow those instructions. Ann can, however, write this instruction in her Direction Memo™. That way her trustee will know about her investment philosophy, but can also modify the investments if this asset type is no longer viable. At the turn of the 19th century, for example, many people specified in their legal documents that their bequest was to be invested only in railroad bonds in perpetuity. Now in the 21st century, the subsequent generations of heirs are finding that railroad bonds don't carry the same relevance as they did over 100 years ago!

It is important to prioritize and balance those things that must be ensured with a binding legal document, and those instructions that are suggestive and constructively written within your Direction Memo™. Both play an important role in a successful estate plan.

Answer the Questions *Before* Your "Important People" Have To Ask

There are hundreds of questions that your important people will be asking after you're gone. They won't find these answers in your traditional estate planning documents, and typically they aren't written anywhere else. For some reason, you never "got around" to telling them how you felt about some very important topics. As attorney Victoria Dalton says, "Having a Letter of Intent as an additional estate planning tool will add flavor to your planning — icing on the cake so to speak. It will provide the 'why' to your wishes."[3] Your Direction Memo™ helps you answer these anticipated questions today by recording your wishes and intentions.

Here are just a few questions that could be asked by your "important people" in the future:

- "How would my late husband want me to invest his life insurance proceeds? Should I pay off the mortgage or save for my own retirement?"
- "What would my mother have wanted me to do with her jewelry?"
- "Who is the Primary Financial Advisor I can trust now that my husband's gone? "
- "What happens with his retirement plan now that he is gone?"
- "Why did Uncle Harry leave his antique collection to someone else? He knew how much his antiques meant to me."
- "How did Dad pay all the bills each month and who do we owe? What subscriptions and services should be cancelled?"
- "Did Dad want to be cremated? I thought he mentioned that awhile ago."
- "Who is a good real estate agent in Mom's neighborhood we can hire to sell her home now that she is permanently moving to the nursing home?"
- "As the agent under my Uncle Jack's Power of Attorney, do I have a clear understanding of my responsibilities? What is his investment philosophy and current financial situation?"

Are you beginning to see where writing a Direction Memo™ can help? How many of the questions above do think will be answered from your will, power of attorney, or trust documents? Remember those legal documents are the "tools." The Direction Memo™ is your set of instructions. No matter the magnitude of the estate, by writing your Direction Memo™, you will help your important people to make the right decisions.

Let's look at several other examples where your Direction Memo will complement your traditional estate planning documents:

Can Provide Clear Direction for Investment Decisions. This is one of the most important areas of the Direction Memo™ because surviving family members are often left to make financial decisions they've never had to make before on their own. As mentioned in the introduction, a widow might ask herself, "What would Bob have done in this situation?" If Bob writes his Direction Memo™, his surviving spouse may have the answer. At a minimum, her confidence in making investment decisions can increase dramatically from having Bob's written guidance. A corporate fiduciary, such as a bank, might also have a clearer understanding of how to invest beyond the scope of the legal documents. This creates a system of "checks and balances" to

measure whether those handling your investments in the future remain true to your overall investment policies and philosophies.

Can Prevent Elder Abuse. As the population ages, elder abuse is becoming more common. This can be in the form of family members attempting to gain unauthorized control of a senior's finances, or even a complete stranger with some fraudulent investment scheme. The elder can't see that they are being taken advantage of, but their Direction Memo™ can remind them of their intentions before they began losing their faculties. While the Direction Memo™ doesn't carry legal authority, it can be a powerful reminder to your important people of your intentions. That way if your important people begin to notice major changes in finances and behavior they will know to investigate for fraud.

Can Suggest to Your Family How to Use Your Life Insurance Death Benefits. After the loss of the family's primary breadwinner, many financial decisions must be made quickly. How does the surviving spouse best use the life insurance proceeds? The insurance agent who delivers the death benefits check to your surviving spouse may have ideas on how the money should be used, and they could differ greatly from your own plans. The Direction Memo™ is the proper solution to influence how the benefits should be used for your family in the event of your death. This exercise may also help you evaluate your current life insurance coverage and determine if you have the appropriate coverage.

Can Direct the Distribution of Personal Property, Including Pets. What do you do with your antique collection, jewelry, tools, and golf clubs? You may have personal property that you'd like a certain person or charity to inherit. You can certainly make specific bequests in your will, but most people do this only for the most valuable items of personal property. The Direction Memo™ helps you take inventory of your non-titled personal property and direct who should receive each item. You can also suggest a particular appraiser your executor should use for your antiques and other collectibles. This is also a practical place to outline your desires for who should take care of your pets should they outlive you.

Is the Direction Memo™ A New Concept?

The concept is not new, but it is seldom used. Your attorney may refer to the Direction Memo™ as a "side letter of instructions," "model-side agreement," or "letter of intent," although most attorneys do not proactively write these letters for their clients. Estate Attorneys examine your affairs so they can draft the legal "tools" necessary to dispose of property and transfer power to your important people. Estate planning attorneys draft the "governing instruments" that ensure that your intended beneficiaries receive your property and that taxes are mitigated. It takes written plans from both attorneys and financial planners to maintain continuity in transferring wealth from one generation to the next. Most professional advisors are trained to expedite that transfer to your heirs, but not in preparing heirs to receive those assets.

Financial Planners understand the importance of "continuity" because they often witness a breakdown in a financial plan 3-6 months after the death of the patriarch/matriarch. Your financial planner may understand your wishes, but they have no written evidence to provide to your family. A 2008 survey indicated that 70 percent of women fire their financial advisor within one year of their husband's death. [4] That is often because the advisor was hired by the husband, and had the closest relationship with the husband. The widow decides she wants "her own" advisor. Other family members may also be skeptical of a Financial Planner they don't know, and who they had no part in choosing. In fact, 92% of heirs switch financial advisors soon after receiving their inheritance.[5] If your loved ones don't trust your primary financial planner, a breakdown in continuity may occur. Despite knowing this will happen when their clients pass away, very few financial planners tend to recommend a side letter of instructions or similar instrument.

The good news is the Direction Memo™ is raising awareness among professional advisors. The few professional advisors who do recommend a letter of instructions provide a distinctive service to their clients. Respected author and well-known estate planning attorney, Martin Shenkman, wrote a precise description of the importance of a side letter of instructions. In an excerpt from his website, www.laweasy.com, Shenkman says:

> "Letters of instruction are not really talked about enough. They do not save taxes, and they certainly don't substitute for properly written, current planning documents. Even the best drafted will or trust will not address key personal issues. These issues also change over time. Everyone needs to write a letter of instruction to their fiduciaries and revise it at least every couple of years. Nothing can fill in the "blanks" better than a detailed, well thought out, heartfelt letter. No trust or will gives these details but after you are gone your fiduciaries will want to carry out your wishes. They need to know more than what just a sterile legal document contains."[6]

Some financial planners will provide you a handbook commonly referred to as a "Roadmap" where you can list the location all of your financial records in one place, but this is not the same as a comprehensive letter of instructions. A Direction Memo™ does much more because, in addition locating important information, it helps you guide your loved ones in making decisions when you are gone.

In Case You Still Need Motivation

If you are still wondering why comprehensive estate planning, accompanied by a Direction Memo™ is important, consider the following:

- In 1900, the average life expectancy for a newborn was 47 years. If you are reading this and you over age 65, you have a very high likelihood of being around well into your late 80's. Medical breakthroughs are preserving our bodies but not our minds. Cases of Alzheimer's and other forms of dementia continue to grow precipitously for people over the age of 80. This means the Power of Attorney Agents need more instructions today than ever before.

- We live different and busy lives with less personal communication between loved ones. Geography plays a role in this lack of communication for many families, and the Direction Memo™ helps to "bridge the gap."
- People are often reluctant to speak with their loved ones about estate planning. Sometimes when you finally get the courage to speak with them about your mortality, your loved ones are uncomfortable listening. Written instructions are critical.
- Family dynamics continue to change, especially with blended families from divorce. Since divorce rates exploded in the 1970's and 80's, many of these baby boomers are now beginning to review the estate plans for their adult children and spouses, both from their existing and previous marriages. Traditional estate documents are important in blended families, but may not provide all of the clarification necessary. Writing your Direction Memo™ and communicating with your family today may prevent animosity when settling your estate.
- In the past 20-30 years, retirement plans have evolved significantly from **defined benefit plans** (i.e., "pensions") to **defined contribution plans**, such as 401(k)s. Pensions simply guaranteed a lifetime payment calculated as a percentage of an employee's salary, with no investment options by the employee. 401(k)s and similar retirement accounts, on the other hand, require the participant to make all investment decisions. Your beneficiaries will need a plan for how to invest and structure your retirement plan assets should something happen to you.
- Women live longer than men, and recent studies suggest women's investment knowledge is 10% lower on average than their male counterpart.[7] In fact, the majority of men say that they make financial decisions entirely on their own. The reality is that most married women will face a time in their life when they will make 100% of the financial decisions. There are already one million baby boomer widows in the United States and that figure will rise since there are still nearly 25 million boomer women. Widowhood is the worst time for financial uncertainty and to learn "Investing 101."
- 58% of adult Americans haven't written a will and other critical estate plan documents.[8] Perhaps completing your Direction Memo™ will encourage you visit your attorney and draft or update your estate planning documents.

This information isn't meant to intimidate, but rather to motivate you to make sure your important people are prepared after you are gone. The Direction Memo™ could be the most important link between you and your important people when they need you most.

A Template Is Better Than a Blank Canvas

If there are so many reasons why an individual should write a Direction Memo™, why do so few complete this task? Why don't professional advisors stress the importance of a letter of instruction? Most people who don't create a letter of instruction believe that it is a complex and difficult task, and they don't know where to begin and end. It takes an artist to translate a vision from the mind to create a picture on a blank canvas. Those of us who are not artists need a template to paint a picture. For the same reason, most people can't take a blank sheet of paper and write their letter of instructions without

any guidance. The template for writing your Direction Memo™ is provided to you throughout this book. Although this book may not specifically cover everything, it will get you most of the way along the path to writing your letter of instructions.

Your Direction Memo™ creates an environment for your important people to view your comprehensive financial picture through your "lens." Your drafted estate planning documents will not accomplish this task standing alone. Remember that you didn't write your estate planning documents, your attorney did. Your legal influence will be represented in your estate planning documents, while your personal influence will be represented in your Direction Memo™.

If you understand the intent of the Direction Memo™, you are now ready to move on to Chapter Two and learn how the Direction Memo™ assists with the task of locating all your important information.

Action Steps

Review and Complete Section 1 of your Direction Memo™:

Fill in your legal name and address of domicile.
1.1-Defines the purpose of the "Direction Memo™."
1.2-Describes the sections of the "Direction Memo™."
1.3- Addresses immediate concerns in the event of incapacity.
1.4- Addresses immediate concerns at death, and provides the contact information for your attorney.
1.5- Explains to your important people that this letter is non-binding as compared to traditional estate planning documents drafted by an attorney.
1.6- Your Direction Memo™ should be edited and updated every two years.

Did you know that Paul will email an additional "soft" copy of the Direction Memo™ Workbook for free? Simply email the author your Proof of Purchase of this book to paulcaspersen@hotmail.com and ask for a copy.

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Chapter 2: General & Biographical Information

"If you treat your wealth as a hidden kingdom, a box that no one can open until you're gone, you're setting your family up for disaster."
Norman Ross, The Ross Companies, a New York estate planning and benefits consulting firm.

YOUR DIRECTION MEMO™ WILL NOT only convey your intent on many topics, but also make it simpler for your important people to locate everything. This chapter is dedicated to helping you organize a "central data hub," which is an important part of the Direction Memo™. A central data hub can save time and money when it comes to processing an estate. Organizing this information today will also be helpful for your attorney and other professional advisors who serve you.

A state program in Iowa called "The Great Iowa Treasure Hunt" maintains the records for millions in unclaimed property that has reverted to the state. "Treasure" isn't easy to find or recover. According to the National Association of Unclaimed Property Administrators, each state has consumer protection laws that turn forgotten funds over to a state official who will then make a "diligent effort" to find your heirs, by law. An astounding $33 billion is currently being safeguarded by state treasurers and other agencies for 117 million accounts with anything from un-cashed dividends, payroll checks, and personal contents of safe deposit boxes.

Most of these unclaimed funds were missed because executors didn't know where to find all of the decedent's property. Assets aren't the only thing that gets lost. One of my clients insisted that his mother had drafted a will, but they could not locate it when she died in 2006. Nothing could be done since they couldn't find the attorney who drafted the will in Illinois, nor did the mother file her will with the local probate court for safekeeping. The way that most executors find things is by searching through the deceased's paperwork for cancelled checks, policies, account statements, and tax returns. Of course, some people hide cash and other valuables in places like mattresses, wall safes, or jars buried in the back yard! There are countless reasons to organize a central hub for your important people to locate legal and financial records if something happens to you.

Perhaps you have already organized a system that makes it easy for your loved ones to find everything, and this chapter will clarify where (and how long) to keep your critical records. Maintaining your privacy is important, but so is preventing your important people from spending months searching for and organizing your information in the future, when you can easily do it today. Your goal should be to avoid sending your loved ones on the "Great Treasure Hunt!"

Also, if you anticipate inheriting the responsibility as executor or caretaker for your parents or other loved ones, you should insist that they organize their financial records for you. You don't want to go on a "treasure hunt" either. Don't assume that even your immediate family members know where to find your information. Do you know where to find theirs? At the death of a loved one, a portion of the anxiety normally stems from the uncertainty of locating everything such as estate planning documents, financial statements, and other important information. Many executors close an estate with feelings of

insecurity, questioning whether or not they found everything, or if they might have missed important information.

Important Information for Your "Important People" (Section 2.1)

Your Direction Memo™ serves as a central data hub of information. Your important people need to know about you, including the location of anything and everything you own, and the documents that prove ownership. This book will help you categorize your Direction Memo™ in 14 distinct areas which correspond with the chapters in this book:

1. Explanation and Purpose of Your Direction Memo.
2. General and Biographical Information, Information about your family including a family tree, birth certificates, military records, safe deposit boxes, pets, tax records, occasional expenses, and subscriptions.
3. Estate Planning documents-Last Will and Testament, Power of Attorney for Finance, and Health Care Documents, Direction Memo™, Trusts, etc.
4. Estate Planning II-Ownership & Transfer of Property
5. Personal Risk Management & Insurance
6. Debts- both your encumbrances and people who are in debt to you
7. Real Estate
8. Nonqualified "After-Tax" Savings and Investments
9. Retirement Plan Assets
10. Your Personal Property, information for Business Owners, and Miscellaneous
11. Philanthropy-Planned Giving Instructions
12. Legacy Planning
13. Final Arrangements
14. Personal Financial Statement and Glossary

You, Family & Pets (Sections 2.2-2.5)

You will begin your Direction Memo™ by providing some important information about you and your family. Information will include things like your legal name, full-time residence, education, military service, church affiliations, and other organizations of which you are a member. Next, complete your family tree which includes contact information for your extended family. While it's not required to list your social security number, your important people should know where to locate your social security card so they can find your number when they need it. It will be used frequently upon incapacity or death.

There is one group of family members that often get overlooked when planning: your pets! It's wonderful that pets enrich our lives, but who will care for them upon your incapacity or death? Will your pets have to move if something happens to you? According to the Delta Society, an estimated 87% of pet owners surveyed consider their pets to be members of the family. Yet hundreds of thousands of

these family members are euthanized annually because of the death or disability of their owner. In the United States, pets are considered personal property, thus plans for including your companion animals in your estate plan may ensure they have a good life if you can no longer care for them.

Some people include pets in their legal documents so that a trustee will be legally responsible for your pet when you are gone. A "Pet Trust" is the typical legal arrangement that provides for your pet in the event you become incapacitated or die. A Pet Trust provides a trustee/caretaker the finances necessary to care for your pet. If you go to this extent in your planning, you should seek the counsel of an estate planning attorney. He or she can advise if a Pet Trust is available in your state, and how to select a trustee, as well as a primary and secondary caregiver. Some people who use a Pet Trust put the actual care of the pet in one person's hands, and the distribution of the finances in another.

A second option without drafting a legal document is to ask friends or family members if they would care for your pet if something happens to you. When you find those who will oblige, record their names in your Direction Memo™; including care instructions, vaccination, prescriptions, and other medical records. While this is not a legal agreement, it significantly improves the odds your pet will have a better life than in an animal shelter. The courts legally must appoint guardians for minor children, but they don't for your pets.

Third, with an endowment in your estate plans, many veterinary schools will care for pets throughout the rest of their lives after you're gone. The pets are well cared for in these environments and have medical personnel readily available at the vet school. Currently the vet schools offering this care are:

Vet School	Phone Number
Kansas State University	785-532-6266
Mississippi State University	662-325-3815
Oklahoma State University	405-385-5100
Oregon State University	541-231-7247
Texas A&M University	979-845-9043
University of California, Davis	530-752-6261
University of Georgia	706-542-1807
University of Illinois at Urbana-Champaign	217-333-5545
University of Missouri	573-882-1902

Figure 1-Vet Schools Offering Pet Endowments

It's a sad fact of life, but sometimes our pets outlive us. Give your pets the respect and love they give you by making plans for their future.

People Who Are Acting As Fiduciary (Section 2.6)

You must communicate with all of the individuals or entities you have named as your fiduciaries. These could include agents under a power of attorney, executors, successor trustees, or others assigned responsibility for your care. These people generally have the right to refuse serving in those capacities if they expect problems and complexities which will cause liability or other risks.

You also deserve to know if you are named in any estate planning documents as a fiduciary of your loved ones. You should acknowledge those responsibilities in your Direction Memo™. That way if something happens to you, your important people can contact them to make sure they remove and replace you as a fiduciary. This is especially important with siblings as they grow old together. For example, imagine that your sister is diagnosed with Alzheimer's and you forget that you had previously named her as executor of your estate. Things will become complicated if something happens to you, and she is unable to serve in that role. The Direction Memo™ is the essential reminder to all parties to update their estate plans should something happen to one of the fiduciaries.

Location of Personal Papers (Sections 2.7-2.9)

Papers such as your military records, birth certificates, naturalization documents, marriage/divorce papers, and passports could be essential information needed by your important people for a multitude of reasons. Your central data hub should include the location of all these documents so they can easily be found. This section also provides space to list your personal family service providers. This includes your family physician, other health providers, and clergy. Your professional advisors for financial and legal issues will be named in subsequent sections of your Direction Memo™, and the fiduciaries named in your estate planning documents will also be listed in sections 3 and 4 of your Direction Memo™.

Your income tax documents should be easily located by your important people because an audit can happen to any individual or their estate. It's also helpful to describe any inquiries or other communication you've had with the IRS. You should list any tax preparers who have served you over the last seven years. If you have prepared your own taxes, you can suggest a tax professional your family may hire in your absence.

Where Should I Put It? (Sections 2.10-2.12)

There are several considerations when it comes to storing important information. A safe deposit box can be a central place to hold many of your important documents and possessions. According to the FDIC,[1] you should store any item in your safe deposit box about which you would say, "If I lose this, I'm in deep trouble." You should list the location of any safe deposit boxes that you rent in your Direction Memo™, and make it easy for your important people to gain access to those boxes. This doesn't mean simply giving your important people the key, but rather providing the appropriate documentation for the bank to allow them access to your box. It's very frustrating for your important people if you keep the original legal document which appoints them as fiduciaries, in the very safe deposit box to which they are trying to gain access!

Although the state laws regarding safe deposit boxes vary, there are some general rules you can

follow to avoid problems and delays. You can put anything in your safe deposit box **except** for the following:

1. Original durable power of attorney and trust documents.
2. Original last will and testament naming your executor/personal representative.
3. Passports in case of an emergency trip.
4. Original living will and other health care directives.
5. The Direction Memo™ you have prepared after completing this book.

Feel free to put copies of these documents in your safe deposit box, but not the originals. Failure to do so could require your important people to secure a court order just to get into your safe deposit box which could be sealed for weeks in the event of your death or incapacity.

Instead of putting the original legal documents in your safe deposit box, put them in a file cabinet or safe in your home. You should consider a fire and water resistant safe for your home and provide a key for your most important person that doesn't live with you. Do not put that key for your home safe in your safe deposit box! If you are uncomfortable keeping these original documents in your home, you can ask your attorney if he or she will store them at the office or file them with the courthouse. Your attorney and other professional advisors should also have a copy of your current Direction Memo™.

Most businesses today have implemented a disaster recovery plan so they can continue to operate if a disaster occurs. One thing a business generally does is to duplicate their operations at multiple locations, so if one of them is "down" the other locations are still fully functioning. Similarly, you should provide duplicate copies of your Direction Memo™ for each of your important people so that someone will always be prepared to act immediately.

Finally, make sure your documents and other possessions are protected from water damage in containers and airtight plastic bags with your name on them. This applies not only to the contents at your home, but also for the items in your safe deposit box. Remember, there is no FDIC insurance coverage on items in a safe deposit box – it is just a storage space provided by your bank. Your homeowner's insurance may cover some of the loss for your safe deposit box, but you should verify that with your insurance agent.

Storage facilities often go unclaimed after someone dies because the executor isn't aware that the deceased person had items stored outside their home. Chapter 10 covers your personal property issues, but you'll want to record in your Direction Memo™ whether you are separately storing items outside your home. This also applies to Post Office boxes as well.

Occasional Expenses and Memberships (Sections 2.13-2.14)

Your "occasional" expenses are financial obligations that you pay less often than monthly. They might include such things as quarterly income tax estimates, property taxes, or insurance premiums. You should record the details of each of these occasional expenses. Second, you should list your utility companies and their contact information in this section so your important people can adjust or discontinue service, and don't have to wait for the bills to be mailed. Finally, make a list of your

newspaper and magazine subscriptions, book clubs, and any other accounts and memberships so they can be paid or cancelled. Providing your important people with this information saves hours of time if they need to help you with your finances.

To Keep, Or Not To Keep: That Is the Question

I am not an expert at preventing identity theft, but I believe that a person who keeps their personal and financial records better organized, significantly reduces their chances of becoming a victim. Being organized also means knowing what information to keep and what to destroy. Before we address what information to keep, and for how long, consider the following:

1. **Know the general time frame to keep documents.** (See Figure 2 below for suggestions)
2. **Document all the contents of your wallet/purse in your Direction Memo™.** Losing the information in a wallet is often worse than losing the money in the wallet (depending how much was in it). This way you immediately have the phone numbers to your credit card companies. Furthermore, you'll know what needs to be replaced, such as forms of identification, licenses, and other information.
3. **Decide where to keep your central records**. Whether it's a safe or a desk in your home office, you should keep everything in one central place if possible.
4. **Buy a small home shredder.** You should shred anything and everything that holds personal information. This includes items with your signature, account numbers, your social security number and date of birth, medical information, and legal information. You should also shred credit card solicitations before throwing them in the trash. Shredding can also be a fun event for the whole family!
5. Purchase a self-purging home filing system. Such a system eliminates the need to clean out and reorganize files, while ensuring you keep your records for the appropriate amount of time.
6. **Flash Drives for the "tech savy".** Scanning your documents onto your computer and backing them up with a flash drive or other storage device is a simple way to ensure protection of your data.
7. **Online Vaults.** Many financial service providers are now offering "e-vaults" where you can put all of your information in one place. This is through a secure online infrastructure that protects your information. With an e-vault, you have a personal home page that allows you to log on and see all of your financial information in one place.

If you have saved all your bank statements since the turn of the century, you may be excited to buy a shredder and immediately "downsize." Before you begin, however, read the guidelines in Figure 2 for what to keep or shred.

Document Type	1 Year	7 Years	Forever	As Long As You Own It
Bills (with no tax implications)	X			
Pay Stubs	X			
Quarterly Bank & Brokerage Statements	X			
Receipts for bank deposits & ATMs	X			
Cancelled Checks (with no tax implications)	X			
Cancelled Checks (with tax implications)		x		
Documents after selling a property		x		
Investment Records (After the Sale) Bills (with tax implications)		x x		
Tax Returns[1] 1040 with W-2 Attached[2]		x	 x	
All Current Legal Contracts			x	
Divorce and Separation Papers Employer Benefits Information			x x	
Insurance Contracts, Life, LTC Disability			x	
Year End Financial Statements			x	
Non Deductible IRA Contributions			x	
Social Security Card			x	
Citizenship-Naturalization/Passport			x	
Birth Certificates			x	
Current Estate Planning Documents			x	
Current Direction Memo™			**x**	
Home purchases/improvements				X

Household Inventory				X
Insurance, Property and Casualty				X
Investment Purchase Confirmations				X
Investment Certificates-Held by you				X
Loan agreements				X
Real Estate Deeds				X
Warranties/Receipts/Service Contracts				X
Vehicle Titles				X

Figure 2-How Long To Maintain Financial Records

You can organize your records by the length of time you intend to keep them. Similar to figure 2, you can categorize files for 1-year, 7-years, forever, and "as long as you own." That way it's easier to purge the records you no longer need to maintain.

Miscellaneous Information (Section 2.15)

This section is an opportunity to provide any additional general or biographical information you'd like your important people to have. This is the section to list any passwords for computer files or combinations to locks.

After reading chapters 1 and 2 you should now understand the two primary purposes of your Direction Memo™:

To answer questions your "important people" need to ask by providing critical details and stating your intentions regarding your estate planning.

To provide one document where your "important people" can locate everything they'll need.

The rest of the book is dedicated to both of these goals as applied to every section of your estate plan. You are now ready to get down to business and complete Section 2. In the following chapters, you'll organize your informational, financial, and personal sections of your Direction Memo™.

Action Steps

Complete Section 2 of your Direction Memo™:

2.1-Defines the purpose of the Direction Memo™ as Central Data Hub.
2.2- Complete your biographical information.
2.3- Provide information about your family.
2.4- Provide information about your pets/livestock.
2.5- Draw a family tree diagram.
2.6- List anyone for whom you are appointed to serve as a fiduciary.
2.7- List the location of all your personal papers in this section.
2.8- Contact information for your personal family services providers, including family physician.
2.9- Contact information for your tax preparer/advisor and where to find your tax records.
2.10-Provide instructions and specific location of your safe deposit boxes.
2.11-List active P.O. Boxes.
2.12- Provide instructions and specific location if you are renting storage space.
2.13-List all "occasional" expenses.
2.14-List your utility companies, subscriptions, and membership contact information.
2.15-Include miscellaneous biographical information in this section.

For the latest information on estate planning, check out www.directionmemo.com

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1. http://www.fdic.gov/CONSUMERS/consumer/news/cnspr97/sfdpstbx.html

Chapter 3: Estate Planning Primer
Part I- Estate Documents (Sections 3.1-3.2)

"Another good thing about being poor is that when you are seventy your children will not have declared you legally insane in order to gain control of your estate." Woody Allen

LARRY WAS A SINGLE MAN who lived with his father and worked on the family farm. As the years passed, his father became very ill. When Larry realized he was going to inherit a fortune when his father died, he decided he needed a spouse with whom to enjoy his fortune. One evening at an investment meeting he was introduced to the most beautiful woman he had ever seen. Her natural beauty absolutely took his breath away. Smitten with her beauty, and handing her his phone number he said, "I may look like just an ordinary man, but in a few months my father will die, and I'll inherit the family business valued at 20 million dollars." The gorgeous woman was impressed and took his number. Three days later, she became his stepmother!

Estate planning isn't just for the 800,000 or so households in America with a net worth over $5,000,000 trying to mitigate estate taxes. It's about thoughtful planning for spouses, children, grandchildren, and favorite charities; ensuring their prosperity without you. Estate planning involves a team of professional advisors whose individual work is interdependent on the rest of the team working and communicating together. Estate planning takes a small amount of time and money now or a lot of time and money later. The "old school" estate planning is creating "boiler plate" documents with a "one size fits all" mentality. "Old school" estate planning ends when you do, and today more planning needs to be done to ensure the financial continuity of a household upon losing the patriarch/matriarch.

A passage from my grad school textbook defines estate planning as "financial planning in anticipation of our client's inevitable death."[1] This means there needs to be a system where professional advisors collaborate with each other to achieve the objectives of their client's estate plan. By providing each of your professional advisors a copy of your Direction Memo™ and other estate planning documents, you'll ensure that your advisors are on the same page. Without this type of cooperation among all the important people, the best laid plans can fail.

The goal of sections 3 and 4 of your Direction Memo™ is to provide the names of all your important people; identify the location of your current original estate planning documents; review asset titling; and to outline some of your estate planning objectives. In section 3 of the workbook, you will also see a checklist of tasks provided for your important people to complete when they are called upon to act for you. You can also add to the checklist provided, but the checklist will ensure your important people will know the basics of what needs to be done. By the end of estate planning chapters 3-4, you should have a clear understanding of the following:

1. What are your goals and priorities for your estate plan?
2. The different estate planning documents (tools) and how to use them.
3. Why you selected the people that you did to serve as your power of attorney agent, executor, or trustee, ensuring they have an adequate checklist of tasks when necessary.
4. Asset titling and the probate process.

The Direction Memo™ will provide a central place for you to prioritize your common estate planning goals. Some of the common goals are:

1. To transfer property to the correct beneficiaries.
2. To minimize taxes related to estate planning.
3. To minimize your legal costs.
4. To provide liquidity at your death for legal costs, taxes, and final expenses.
5. To make your own future health care decisions so that no one else does this for you.
6. To identify charitable objectives with your estate.
7. To identify all of your beneficiaries and ensure the inheritance they receive from you helps your beneficiaries rather than hurts them.
8. To leave directions for your important people and minimize the decisions they have to make on their own.

Obviously your important people should understand your goals before something happens to you, but it's not a bad idea to incorporate your general estate planning goals into your Direction Memo™ as well.

Do You Own The Right Tools?

Attorneys often refer to the legal documents they draft as "tools" for their clients, and these tools are not all the same. Your attorney is the "toolmaker" and will draft the governing documents used to carry out your wishes and dispose of your estate. Let's examine some of the basic documents involved in a typical estate plan.

Where there's a Will… (Section 3.3)

The last will and testament is read during the probate process under court supervision to ensure that everything is completed in accordance with your wishes as stated in the document. This section of your Direction Memo™ is intended to provide your executor clear instructions during the probate process. Therefore, if one of your goals with your estate plan is to avoid probate, you will not accomplish this by simply using a will. Plus, depending on how your assets are titled, certain property may not be transferred under your will. This topic is expanded upon in greater detail in Chapter 4 on asset titling. By the end of the estate planning chapters, you'll understand what assets you own that will pass through or avoid probate.

If you never draft a will or if the one you've written is invalid, then your state determines who your beneficiaries are. Technically, therefore, you have a will even if you have never drafted one; it's determined by your state **laws of intestacy**. Each state has their own laws determining what happens with your assets if you die without an estate plan to determine who inherits your property. Your state of residence must also designate a **guardian** for your minor children if you die without appointing a guardian in your will. As you can see, a will is an important component of your estate plan, no matter the size of your estate. The many types of wills and clauses are beyond the scope of this book and should be discussed with your attorney.

With or without a will, a substantial part of your property may transfer through probate. In the next chapter, you will learn more about the pros and cons of probate. Clearly understanding property titling may help you plan to avoid probate. Even if you decide to use a **living trust** as your primary dispositive document, a will could still be important for several reasons.

Do I Need a Will if I Plan to Avoid Probate?

Yes. Even if you have taken the measures to avoid probate that you will read about in chapter 4, you should still have a will. As mentioned above, a will is necessary to appoint a guardian for minor children. It's also possible that not all of your assets will be properly titled to avoid probate. Some of your personal effects may need to be transferred through your will. You also need a will to cover the unforeseen. Let's say that you died in an accident and your estate was awarded money from an ensuing wrongful death lawsuit. Your will would make sure your chosen beneficiaries benefit from the additional funds in your estate. In this case you may not even need to name the beneficiaries in the Will, but rather just create a "pourover will." This picks up the assets that pass through probate and "pours" them into a trust. The trust then governs these assets and ensures that they transfer to your beneficiaries in a way you determine.

Trusts (Section 3.4)

According to the IRS, a **trust** is a relationship in which one person holds title to property, subject to an obligation to keep or use the property for the benefit of another. There are many types of trusts, both revocable and irrevocable. A **revocable living trust** is a document that is created during your lifetime and becomes irrevocable at your death. An **irrevocable trust** established during your lifetime is less common and typically used as a tool for mitigating estate taxation or achieving asset protection. Assets titled in the name of your living trust should avoid the probate process. With a revocable living trust, you can serve as the trustee and beneficiary of the trust while you're alive and well; and you can name others to become successor trustees and beneficiaries in the event of your incapacity or death. The role of trustee for a trust is similar to the executor named in your will. According to trust expert Martin Shenkman, there are five key elements of every trust:[2]

1. Grantor- the person who transfers the property to the trust.
2. Trust property- the principal or subject matter of the trust. This essentially means the trust is "funded" and the property is transferred into the trust. The exception to this is a trust formed

under your last will and testament, with the property being transferred to the trust at your death. This is typically referred to as a testamentary trust.

3. Trustee- the person responsible for managing and administering your trust. This is one of your "important people," and you should name at minimum one successor trustee in case the first person who have selected is unable to act for you. With a revocable trust, the grantor is often the trustee until they can no longer handle the task. Eventually another trustee can take over, at which point a separate tax identification number is issued, and taxes are filed separately. If the grantor is the trustee, their social security number is the ID of the trust and they continue to file an individual tax return.
4. Beneficiary- The people or charities that are to receive the benefits and advantages of the property from the trust. A trust can provide for income beneficiaries and remainder beneficiaries who aren't necessarily the same individuals.
5. Intent of the trust- The reason you create the trust which can be for many different objectives. Your letter of instruction (Direction Memo™) aids you in creating intent outside of your trust document as previously mentioned. Sometimes what you express outside the trust document is as important as what is said within the document.

A common use of a revocable living trust is to avoid the challenges of probate. Another reason is to provide a trustee the authority to oversee how fiscally responsible the beneficiaries are, and to ensure that the bulk of the assets are protected from their creditors or "predators" to the inheritance. This is commonly referred to as a "spendthrift clause" which ensures that the inheritance is protected from an event such as a lawsuit or divorce. Similarly, trusts can protect your adult children who have special needs and ensure they don't lose their Medicaid and other government support. Occasionally your attorney may recommend that you establish a trust in another state in order to accomplish your goals. Some states are more "trust friendly" than others.

A trust is also an important device to ensure your children (or other beneficiaries) receive an inheritance if you die and your spouse gets remarried. There are volumes of books written about the elements of trusts, and trust planning can be quite sophisticated, and even complex. While it's not important that you become a trust expert, you should acknowledge the trust documents you have drafted in your Direction Memo™. If you decide to use a revocable living trust as your primary dispositive document, it's common that most attorneys will also draft a companion "pour-over will" that allows your executor to fund assets that weren't transferred into the trust during your lifetime.

If you've drafted a living trust, your attorney likely advised you to re-title your property to the trust. This is also referred to as **funding the trust**. This is a critical part of the planning process to ensure the property you want handled by the terms of the trust is titled appropriately. Not all your property should be re-titled to your trust. For example, your IRAs or the ownership of life insurance policies should not usually be titled in your living trust. Throughout this book it will become clearer what property should be "funded" in your living trust, if you have one. Your estate planning attorney is the #1 resource to help you make the determination of what property should be re-titled to your trust, and all of your professional advisors can help with the retitling process.

What Is A Testamentary Trust?

Many people have **testamentary trusts** written into their will. A testamentary trust is any trust that arises on death through a will and funded at the death of the grantor. An estate plan organized this way will still pass assets through probate. Often people are confused about testamentary trusts believing their estate won't go through probate, which is untrue.

There are reasons to establish testamentary trusts in your will, but you should explore with your estate attorney why you wouldn't consider funding the trusts during your lifetime in order to avoid probate. There may be logical reasons why you can't transfer assets into a living trust today. One exception where you may want your trust to go through probate is when you want the court to supervise the trustee to ensure they are doing an adequate job for the trust beneficiaries. But most people appoint trustees that they trust, and therefore want to avoid the extra time, cost, and inconvenience of court supervision. Testamentary trusts are more common when households have minor children, and are used to protect the minor's assets until they reach an age of financial responsibility.

Example. You have a responsible adult daughter and an irresponsible adult son. You make the decision that it's safe to leave your daughter's inheritance directly to her because she is responsible. You establish a testamentary trust in your will that names your daughter as trustee of your son's trust, since she is responsible. You trust your daughter, but you want to ensure she handles your son's trust adequately. In this case, you may want the probate court to supervise the trustee (your daughter) to ensure things go smoothly.

Of course in the above scenario you could also name a corporate fiduciary (such as a bank or trust company) to serve as trustee rather than your daughter, and the need for court supervision may not be as important. That may also prevent fights between your son and daughter after you're gone! If you have testamentary trusts included in your will, it's helpful to explain the purpose of those trusts in your Direction Memo™. This will help your executor and future trustee understand your goals for establishing these trusts at your death.

Caring for Others-Minors & Individuals with Special Needs (Section 3.5)

A comprehensive estate plan includes a set of instructions that must be followed to accommodate your loved ones who require special care. For children with special needs, it's important to include your wishes for the future and should include pertinent information about your child's history, medical needs, hobbies, and interests. One way to think of this is the "baby-sitter instructions" that eager parents leave behind when they embark on a weekend away from the kids. The baby sitter rolls her eyes as she listens to the ½ hour orientation and is quizzed on the rigorous checklist and contact information that she must memorize.

The estate documents should be written from the perspective of parents who, sadly, won't return from that weekend away from the kids. These documents are typically a combination of a will (naming the guardian) and Direction Memo™ (providing personal and medical information) all for the benefit of your children. Not only should these instructions explain to the guardian and trustee how to use the

money and property to care for the beneficiaries, but it should also include parents' knowledge of their children that no one else might know or understand.

Planning for a child with special needs goes beyond your Direction Memo™. You must meet with an attorney who practices in special needs to determine your optimal planning strategy. Just as in all other aspects of your estate planning, you must decide in conjunction with your attorney what instructions should be incorporated into binding vs. non-binding documents. Your attorney can help in making these determinations and may suggest a **Special Needs Trust** - a trust that must meet certain legal criteria to protect the special needs beneficiary and preserve any type of governmental aid they might be receiving. The Direction Memo™ serves as a guide for you to plan ahead for the care that will be needed by your children, other minors, and special needs adults who currently rely on your support. Describing the past is not nearly as difficult as predicting the future, however the new caretakers will have a head start in getting to know and care for these individuals, if they are provided with instructions.

Durable Power of Attorney for Finance (DPOA) (Section 3.6)

The durable power of attorney for property is a legal document wherein you appoint a primary person or entity called your "attorney- in- fact" or "agent" to manage your finances. The DPOA doesn't necessarily have to manage all your affairs. For example, you might want someone different to run your business, and that arrangement would be drawn up in a separate agreement. Your agent manages your finances from the moment of your incapacity until death, which can be for a short or very long period of time. Be sure to establish a **durable** power of attorney because a standard POA becomes invalid at your incapacity. Another type of POA is a **springing power of attorney** which does not become active during the regular life of the person until he or she becomes incapacitated. The power then "springs" into action allowing your agent to manage your finances when you no longer can.

A living trust may replace a durable power of attorney for your trust assets because the grantor names a successor trustee in the trust document to manage the trust assets upon incapacity. But if you have only a will, you should also have a durable power of attorney because a will doesn't appoint anyone during your lifetime to assist in your financial matters. A will is strictly a death instrument. Your Direction Memo™ may be of tremendous benefit for the person acting as your agent, or successor trustee in the case of a revocable living trust. Your Direction Memo™ helps you maintain control over your assets and can suggest the appropriate financial professionals to assist in the management of your affairs.

Unfortunately, those who become incapacitated without a valid power of attorney will be subject to the probate court's appointment of a conservator to manage their finances. People don't want this to happen, yet millions of adults are without a durable power of attorney document.

You should know, however, that even when the DPOA is valid and current, banks and brokerage firms, as a matter of policy, often reject any document that wasn't executed within the previous six months. Their concern is that a much older document may have been rescinded by the grantor. Of course, that policy is based upon tradition, not logic. Any DPOA of any age may have been rescinded by the grantor, and even a DPOA that is dated the same day may have been obtained under duress. They have no way of knowing. To further complicate matters, some financial institutions (especially

brokerage firms) will only accept their own "approved" DPOA drafted by in-house attorneys.

Therefore, if you're going to depend on a DPOA, you should provide a separate copy to each of your financial institutions, using their own internal form when required. In the alternative, this is why revocable living trusts have become such a popular planning tool. With a trust nothing changes with the institution when you become incapacitated – the account continues to be owned by the trust, but another trustee is signing the checks and managing the assets.

Health Care Documents (Advance Directives) (Section 3.7)

In 1990 Terri Schiavo suffered cardiac arrest in her St. Petersburg, Florida home. She suffered brain damage from a lack of oxygen, and eventually lapsed into a vegetative state. Her husband said Terri wouldn't have wanted to be kept alive and urged the doctors to remove all life support. Her parents disagreed, stating that Terri would not have wanted her feeding tube removed. After a seven-year court battle, Schiavo's feeding tube was removed March 18, 2005. She died 13 days later at age 41. The autopsy conducted after her death established that her brain damage was even worse than experts had believed while she was alive. There was no chance she could have recovered.[3] Schiavo didn't have a living will, health care power of attorney, or other health care directives which could have prevented the controversy.

The **living will** is a legal document that gives instructions for a future scenario where you can't physically voice your decision whether to keep you alive or "pull the plug." Once again, if you don't make this decision ahead of time, someone else will have to. Unfortunately, a national survey of 1,000 American adults found that 67% of them don't have a living will.[4] There are thousands of cases like the Schiavo case, but most don't garner media attention or spark a national debate, because few have such strong differing opinions between family members.

State laws differ with respect to how a living will operates during incapacity. You should use an attorney to draft a living will that complies with the laws of your state, and update it periodically. In the case of inter-family contention, a poorly drafted living will may be disallowed by the court.

Durable Power of Attorney for Health Care (DPOAHC)

A health care power of attorney document is, in many ways, more powerful than a living will. It goes beyond stating your wishes concerning extended life support, and actually appoints an agent to make your ongoing medical decisions when you cannot. In a DPOAHC, your instructions can be very specific. People without this document may experience over-treatment, under-treatment, or medical care that does not reflect their values. Health Care Powers of Attorney can be used to determine a wide variety of issues such as home care versus nursing home care, visits by clergy, the use of hospice care, and a myriad of other things.

As life expectancies increase, so does the length of time your agent under the power of attorney for health care may need to make medical decisions on your behalf. Without a DPOAHC document, the court may appoint a guardian or conservator for your health issues similar to a guardian or conservator for financial affairs. Attorney and Registered Nurse, Ruthe Ashley, refers to a conservatorship as "living

probate" because it is supervised by a probate court and often subject to the same problems as death probate with its costs and loss of privacy.[5]

If you feel you don't need a DPOAHC document because your spouse or children can make these decisions, think again. The reality is that in many states your family has no express guaranteed legal authority to make treatment decisions when a situation is brought before a court. In fact, the courts may anticipate differing opinions among family members, and therefore avoid granting power to *any* of your family to make medical decisions. Most people would prefer to have family members make the decision, even in the face of dissent, than to have it made by a court-appointed stranger.

You should provide copies of your advance directive documents to your physicians, hospital, health care plan, close relatives, and the person named as your agent in your durable health care power of attorney. Sometimes the two documents (Healthcare POA and Living Will) can be combined into one efficient document that covers both lifetime care and end-of-life decisions, but that varies from state to state, so be sure to check with your estate planning attorney. A health care directive should never be commingled with your power of attorney for finance because these documents involve different situations and are drafted for different purposes.[6]

Do You Have The Right Person For the Job?

Throughout this book you have seen the words "important people" many times. Let's take a few minutes and review what the tasks are for each of the important people named in your estate planning documents. Whether serving as an executor, an agent under a financial or health care power of attorney, or as trustee, the individual or corporate entity you have selected is serving you in a fiduciary capacity. That means they must act in good faith when handling your affairs, and look out for your best interests at all times. They cannot take advantage of the position or unfairly profit from the responsibility you have given them.

Keep in mind that your "important people" are bound to work within the specific parameters of the legal documents you have drafted. Your executor, trustee, or agent can be sued for negligence, whether intentional or not. Therefore, you want to find the right person for the job. The most important tasks for each position are reviewed below. Take some time to reflect on your choices for both primary and secondary fiduciaries. Why have you selected them? Are they the right person for the job? Are they still living? Have you told them they have been named in your documents?

Executor

Your executor is named in your last will and testament, and is responsible for administering your estate. Your will names your executor and the probate court will officially appoint them to serve at your death. Your executor should reside in the same state you do, in order to efficiently take care of paperwork and attend court appearances. However, if the person you consider most trustworthy and capable lives out of state, you may use that person if your state law allows it. Your estate planning attorney should know whether or not your executor must be a resident of your state. You should also select a successor if the first person cannot or will not act as your executor.

Most of the tasks for an executor are administrative in nature and require attention to detail. A completed checklist is provided in section 3.3 of your Direction Memo™ with space for additional instructions for your executor. The checklist is sequential in processing an estate and grouped into five parts:

1. Preliminary Administration
2. Court and Estate Administration
3. Financial Management
4. Estate Tax Planning
5. Closing the Estate and Distributing Assets

Agent Under a Durable Power of Attorney

Your agent under a Durable POA for financial matters will be responsible for handling your financial affairs. Your agent under a Durable POA for Health Care will be responsible for making medical decisions on your behalf. Although the executor's role is not easy, there is closure in the foreseeable future after a person has passed away. Because incapacity can last for years, however, being the agent under a POA for finance or health care can be the most difficult task of all your "important people." Sometimes an agent is forced to make difficult financial or health care decisions on your behalf that causes controversy among family members and other important people. The tasks of your agent are similar to the tasks of a trustee, but the power of attorney agent's job is finished immediately at your death.

The Durable Power of Attorney is active once it's signed by you (the principal) unless you have drafted a "springing" power of attorney, which takes effect only in the event of your incapacity, as previously mentioned. A **General Power of Attorney** gives the agent (the person you named) broad power to handle essentially everything. General Powers of Attorney are not often recommended because it's like handing the agent a blank check, and relinquishing all control of all your affairs to them. A **Limited Power of Attorney** will give your agent only powers that you have specified in the document. A power of attorney for financial matters and a power of attorney for health care are both examples of limited powers of attorney. Again, a "durable" power of attorney means that it will remain in effect (endure) if you become incapacitated, and stay in effect until death. At the death of the principal, all power of attorney documents are null and void.

You should inform your appointed agent where the original power of attorney document is located, or give them an original. Keep in mind this is one of the documents for which the original should not be kept in your safe deposit box. Secondly, your agent should also have a copy of the most current Direction Memo™ prepared by you. You always have the right to revoke a power of attorney document at any time, as long as you are competent.

If you are married, you'll likely want to make your spouse your agent unless you have a convincing reason not to. This prevents conflicts between a separate agent and your spouse regarding any jointly held property you own with your spouse. If your spouse is ill, you should discuss who the best alternate agent is who can serve you. Of course if you get divorced you should revoke your power of attorney documents and draft new ones.

If you have agreed to be an agent under a power of attorney for someone else, make sure they have taken the necessary steps to make your duties as clear as possible:

1. Ask them to complete a Direction Memo™ so it will be easier for you to make financial decisions for them.
2. Make sure you have the original power of attorney document where it can be easily retrieved and that you have a current copy.
3. Ask if the principal will file the current power of attorney document with their banks and other financial institutions to avoid problems in the future.

The Role of Trustee

You will typically serve as the current trustee of your own revocable trust. At incapacity or death a successor trustee will step in for you. A trustee is similar to an agent under a power of attorney; however the successor trustee follows only the specific instructions of the trust document. Why then might you need a power of attorney if you have a revocable trust? Because all of your assets are not necessarily titled in the trust, and the successor trustee only manages the trust assets. Your agent under the DPOA would then make financial decisions for property outside the trust.

As your financial advocate and fiduciary, your Trustee may be granted very broad or very limited powers. It is entirely up to you. In either case, the law holds your Trustee to an extremely strict standard of care in performing trust functions. Generally, your Trustee will:

- Hold and protect Trust property.
- Invest the Trust assets (with guidance from you both in your Trust and Direction Memo™). You can also seek advice from an attorney for state trust laws regarding prudent investing.
- Distribute Trust income and/or principal as designated by you in the Trust Agreement.
- Make tax decisions concerning the Trust.
- Keep records of all Trust transactions.
- Issue statements of account and tax reports to the Trust beneficiaries.
- Serve as a resource to your beneficiaries.
- Terminate the trust. At the death of the grantor, some trusts are terminated immediately or after a period of years. Trusts can actually last for several generations, but very few trusts are designed to last in perpetuity.

Competence and compassion are what makes one Trustee more effective than another. Competence comes from having sound instructions from you and also having first-rate professional advisors. Compassion comes from the genuine concern the trustee has for you and your beneficiaries.

Those attributes should be the same whether you have asked a family member to serve as successor trustee or if you are hiring a corporate trustee. Some people are hesitant to use a corporate trustee because they fear they will lack the compassion of a family member. By the same token, some people are hesitant to appoint family members as trustees, because they fear that they won't know what to do.

The primary job of ANY trustee is to be a steward of your wealth and your wishes, and help you fulfill the dream you created for yourself, your family, friends, and community. Completing your Direction Memo™ will help them perform this job as trustee so the influence you've had can continue.

Selecting Your Spouse or Adult Children

It's understandable that you might want to select a family member to serve as your executor, trustee, or agent under a power of attorney, but you must ask yourself an important question. If that person were not a member of your family, would you still have selected them? If you answered "probably not" then you need to reflect on your decision. Consider why you want them to serve as your fiduciary. Most often it will be based on a high level of trust – the compassion factor rather than the competence factor, although a family member can certainly be competent to serve as well.

One way to ensure family involvement even if you feel they can't fully handle the administrative tasks is to assign a "co-executor" or "co-trustee," such as a corporate trustee to help them through these challenges. Your children or spouse will often be confronting their own grief at your loss and it might be wise to have someone else participate where emotions are not involved. You end up with the best of both worlds – the family member for the compassion, the corporate trustee for the competence. Of course, you'll still have to decide how potential disagreements between the co-trustees will be decided. Your spouse and children should also know your attorney and other professional advisors to ensure an adequate level of comfort so they can work together. The desire for family involvement, and to what extent, is unique with each person.

Again, it's important to make sure that those who have been named to serve know they have indeed been selected. Being selected to serve as a fiduciary is more often a job than an honor. The person needs to be ready to roll up their sleeves and work, and they need to understand that there are liability risks as well.

How Often Should You Review Your Estate Planning Documents?

Who initiates the future conversations between you and your estate planning attorney? The answer is you both should be accountable to call each other for different reasons. Proactive estate planning attorneys should call you when state or federal laws change, or when better planning techniques are developed that might apply to your plan. You should call your attorney when your family dynamics change, when property changes hands, or when any life event occurs that might impact your estate plan. Your attorney won't know about these things unless you inform them. Use the following checklist to determine if it's time to review your existing estate planning documents with your attorney.

Since you last updated your estate planning documents, have you:

Moved to another state?	Yes/No
Added a new child or grandchild?	Yes/No
Lost a family member?	Yes/No
Have children who are now adults?	Yes/No
Developed a desire to establish or change your philanthropic legacy?	Yes/No
Learned that a child is contemplating or has been divorced?	Yes/No
Significantly increased the size of your estate?	Yes/No
Been divorced or remarried?	Yes/No
Decided to change your executor/successor trustee?	Yes/No
Witnessed changes in the tax laws?	Yes/No
TOTAL "YES" ANSWERS	

If you answered yes to more than one or two of the previous questions, you certainly have reasons to schedule a visit or phone call with your attorney to review your estate plan.

The Value of an Estate Planning Attorney (Section 3.8)

Do not circumvent any of the professional advisors from your team, especially your estate attorney. There are many "do-it-yourself" options. These are opportunities to make big mistakes which you can and should avoid. As you think about your estate planning goals and research your options, you'll soon learn that software, mail order plans, and "boilerplate forms" cannot meet your specific estate planning goals. They are designed as a one-size-fits-all option, and no family's personal or financial circumstances are the same as any other family.

Attorney fees vary widely based on geography, the experience of the attorney, and the complexity of the estate. Many estate planning attorneys will provide an initial consultation at no cost, and once they know more about your specific situation, will be able to quote a flat fee to develop and implement your plan. Some attorneys still charge on an hourly basis, but they should be able to give you a price range for your plan. Estate planning is one of those areas of law where "you get what you pay for." A general practitioner who writes an occasional will is likely less expensive than an attorney who limits his or her practice to estate planning. But the specialist is more likely to spot all the issues and provide the strongest plan for your situation. And remember that the fees to design and draft the plan are not ALL the costs of estate planning. There will still be costs to update and maintain the plan, and costs to settle the estate – whether through probate or trust settlement.

Very few people ask their estate planning attorney what their fees will be when they have to settle the estate, and they may be surprised at the answer. It can be a difficult question for the attorney to answer because they can't anticipate the magnitude of your estate many years in the future, or how well your family will get along. They may, however, quote you an estimated range based on whether

the attorney charges an hourly rate or as a percentage of your estate. Remember that after you're gone, you will no longer be the client – your successors will need to hire the attorney to settle the estate, or they may choose to use another attorney. Note that a written fee agreement is required by law in some states and spells out the details of your attorney's fees.

Side Letter of Instruction (aka Direction Memo™) (Section 3.9)

A Letter of Instruction carries no legal authority, but is an integral (though often overlooked) part of an estate plan. The document you are drafting in this book, the Direction Memo™, is often classified as a "side letter of instruction," "letter of intent," or a "precatory memorandum." A side letter of instructions should include everything from your wishes on how to manage your assets to preparing your funeral arrangements. As you understand from the previous chapters, the side letter of instruction provides the directions for your important people in the assembly of your estate.

Copies of Your Estate Planning Documents

You should have at least two original copies of your estate planning documents: one for your attorney's files, and one for your files at home. I encourage professional advisors to remind their clients to keep an original copy of the estate planning documents with their advisor so that they can't be destroyed by someone who may not want those documents to be located. Note that some states will only allow one original of a last will and testament to exist. In that case, your original should be kept with your attorney or in a home safe, or other secure location – with copies to other important people.

Action Steps

Complete Section 3 of your Direction Memo™:

3.1-Defines the purpose of the of estate planning primer, which is to prioritize your estate planning goals, provide the location of your estate documents, and create a procedure manual for your fiduciaries.
3.2- Outlines your estate planning priorities.
3.3- Review and complete procedures for your executor.
3.4-Identify any trust documents you have established. Review and complete procedures for your successor trustees.
3.5-Describe children and adults with special needs who are your dependents.
3.6- List your agent under your power of attorney for finance and the location of your original document.
3.7- List your advanced health care directives, the location of your original documents, and the name of your surrogates.
3.8- Provide detail about your primary estate planning attorney and contact information.
3.9- List any other estate planning documents or information relevant to this section.

Become a fan of Direction Memo™ on Facebook to stay abreast on issues related to estate and financial planning.

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2. Martin Shenkman, "The Complete Book of Trusts" Third Edition
3. http://www.nndb.com/people/435/000026357/
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5. Ruthe Ashley, RN, MSN, JD "Why Are Advanced Directives Legally Important?" Critical Care Nurse Vol. 25 No.4 August 2005
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Chapter 4: Estate Planning Primer, Part II – Ownership and Transfer of Property (Section 4.1)

"My greatest anxiety is to leave all these concerns in such a clear and distinct form, that no reproach may attach itself to me, when I shall have taken my departure for the land of spirits."
George Washington

ELVIS PRESLEY AND MICHAEL JACKSON had a lot in common. For one thing, had Elvis been living in the 1990's, Michael would have been his son-in-law for a couple of years. They were both "kings" of two of the most popular genres of music ever created. They both died young; Elvis at 42 and Michael at 50; both from drug overdoses. Their lifestyles and their clothing were eccentric to say the least.

From an estate planning perspective, both of them died with tremendous wealth. At the time of their deaths, they both had minor children with women from whom they were divorced. At both deaths there was media frenzy, controversies, and questions about their estate plans and many people interested in collecting a piece of the estate.

A major difference between these two "kings," however, is in the estate planning that was done prior to death. Presley's estate was in turmoil for years after his death due to insufficient planning and was open to public curiosity because his entire estate went through the probate process. At Presley's death in 1977, an astounding 73% of his estate was lost to legal fees and taxes, leaving his heirs with less than 3 million dollars.[1]

It appears that Jackson titled and transferred most of his assets into a revocable trust during his lifetime. Since assets titled in a trust avoids probate, it's nearly impossible to know how much Jackson had or who his beneficiaries are. It's speculated that Jackson left 40% to his children, 40% to his mother, and 20% to charity but this may not be confirmed since it isn't a matter of public record.[2] Although Michael Jackson had a will, it was used in his estate plan simply to name a guardian for his minor children and as a "pour-over" will to recognize any assets that weren't already titled in his trust. We may never know how much of Jackson's estate was lost to legal costs and taxes, but we can assume it's a substantially smaller percentage than with Presley's estate.

Although most of us aren't "kings," we can take a lesson from both Presley and Jackson's estate planning. In this chapter, you'll see that how your assets are titled at death will have a profound effect on who inherits your property. The way you title your assets often determines whether your property must go through probate. Assets that are incorrectly titled can complicate an estate plan. Therefore it's important that asset titling matches your estate planning objectives.

Holding Title to Your Property (Sections 4.2-4.3)

You can spend thousands of dollars on legal documents only to find that they are ineffective if your asset titling isn't coordinated with those documents. Estate planning documents can only be applied to the assets under that document's purview. This section of the book is written so you can become familiar with the different types of asset titling and ensure that your property will be transferred efficiently and effectively.

As you consider your property interests, you should ask the following questions:

1. Is this property included in my probate estate at my death?
2. Does this property have an automatic right of survivorship?
3. Do I have the option to name a beneficiary for this asset directly on the title?
4. Have I drafted a living trust and properly titled my assets in the name of the trust?

The answers to these questions are all determined by how the assets are owned. Most real, tangible, and intangible property requires that it be registered and titled to determine ownership rights. There are several ways to title property, and some of them vary by state.

Sole Ownership- This is complete ownership and full control by one person who has the right to do whatever they wish with the property. Sole ownership assets commonly pass through the probate process at the owner's death. That means either the decedents will, or the state laws of intestacy, determine the beneficiaries.

Joint Tenants With Right of Survivorship (JTWROS) - This is an interest in a property held by two or more people with each person holding an undivided equal interest. Although this is typically used for married couples or domestic partners, this type of ownership can be used for any relationship. At the death of the first owner, the property transfers to the remaining owner(s) without going through probate. Typically half of the property value is included in the estate of the first owner at death, depending on the surviving owner's contribution to the property. One risk with this type of ownership is that a creditor may be able to seize the entire property due to the debt of just one of the owners. Many people add their children or other family members to a joint tenancy title, unaware of the inherent risks of making that property subject to the creditors of that other family member. If you wish to avoid probate when passing property to children, there are better ways to accomplish it, while also protecting the property from your children's creditors.

Example: Two single brothers own a rental unit as joint tenants with right of survivorship. They bought the property together, fixed it up together, and now they collect the rent together. Brother A gets married and has a family. Brother A dies and his interest in the rental unit goes to brother B rather than to his family. Had the brothers changed their ownership to tenants in common, brother A's interest could then transfer to his family under his will.

Tenants in Common – This is most commonly used as a joint interest property between two or more non-spouses. Unlike JTWROS, a tenant in common doesn't always mean there is equal ownership between stakeholders. For example, three people could own a lake property separately as 60%, 30%, and 10% owners as tenants in common. Another difference between tenants in common and JTWROS is that creditors typically can't seize the property of the other tenants in common owners if one of the owners has creditor issues. Because the structure of tenants in common in some ways resembles sole ownership, the owners' interest will pass through probate at their death. That means the will or the state laws of intestacy determine the beneficiaries.

Tenants By the Entirety – This type of ownership can only be used by a husband and wife during marriage. This type of title is similar to JTWROS, but offers better protection if one spouse is sued or files for bankruptcy.

Example: John and Karen are married. John is a teacher and Karen is a physician. They reside in a state that recognizes tenancy by the entirety and title their property as such. If one of Karen's patients sues her for malpractice and wins a judgment which is larger than her malpractice coverage, this leaves John and Karen's assets vulnerable. Even with the judgment, the patient may not take John and Karen's personal assets because they are held by tenancy by the entirety.

Since TE ownership is similar to JTWROS, the property does not pass through the probate process at the time of the first spouse's death. TE is available in the following states:

Alaska*	Arkansas	Delaware*	District of Columbia
Florida	Hawaii	Illinois*	Indiana*
Kentucky*	Maryland	Massachusetts	Michigan
Mississippi	Missouri	New Jersey	New York*
North Carolina*	Ohio*	Oklahoma	Oregon*
Pennsylvania	Rhode Island*	Tennessee	Utah*
Vermont	Virginia	Wyoming	

Figure 1-States with tenancy by entirety ownership
*Tenancy by Entirety Ownership only available for real estate

Community Property – This is used in a handful of states whose laws for property ownership originate from French and Spanish law, rather than from English common law. Currently the nine states that have a form of community property ownership are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

If you are married, and currently reside, or previously resided, in one of these states, you must

maintain records of property ownership during your marriage, as well as a record of income that was acquired during those timeframes. Community property generally retains its character even if you move to a non-community property state. The state where you purchased the property generally determines the character of the property. Since many of the community property states are in warmer climates, many people own community property even though they're not permanent residents of that state.

Community property laws mandate that the income and property acquired during marriage is considered community property. This means each community property spouse owns 50% of the property and most property is automatically considered jointly owned. There are exceptions for inheritances and gifts that occur during the marriage and those may be kept as separately owned property. Property acquired before a marriage can also be kept as separate property as long as it isn't commingled.

Example: Betty, a widow who lives in a community property state, wants to leave all her property to her children. She meets Frank, a widower, and decides to marry him despite that fact he is not in a good financial position. Frank convinces Betty to sell her home and buy a "better" one for them to live in, although Frank contributes nothing to the purchase. She now has sold a property in which she had sole ownership and has purchased a new home that is community property during her marriage. Half of their new home would be considered Frank's. Betty met with her attorney because she wanted to title her new home in a manner that ensures her children are the ultimate beneficiaries. Betty obviously loves Frank, so in her marital agreement and estate documents she provides him a life estate in the home so he can live there until his death, should Betty predecease him. Her home will ultimately transfer to her children.

Community property states have different rules governing probate, so it's important to understand your own state's rules when planning your estate. For example, five states — Alaska, Arizona, California, Nevada and Wisconsin allow couples to avoid probate on the death of the first spouse by titling their property as **community property with right of survivorship**[3]**.** You have an opportunity in this section of your Direction Memo™ to acknowledge your community property.

Other Methods of Holding Title

Custodian for a Minor. An adult can hold property for a minor under the Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA). Once the minor becomes an adult under state law, the minor assumes full control of the assets and the custodian has no authority. These types of accounts have lost interest over the last decade because Section 529 college savings plans are a more desirable option to save for a minor's higher education expenses.

Life Estate. A life estate is granting the use of real property that terminates at the death of the tenant and won't be part of their estate. In the previous example of Betty, she grants Frank a life estate in her property. A life estate also works when someone donates their home to a qualified charity but wants to live in the home until their death, called a **life estate reserved.**

The Probate Process (Section 4.4)

Probate is a legal process by which property is transferred by court supervision to someone's heirs, with or without a valid will. If you have a valid will you are said to be "testate," and your executor will use the instructions in your will to determine how to dispose of your property. If you die without a valid will you are said to be "intestate," and the personal administrator appointed by the probate court follows the laws in your state governing who inherits your property. The first thing your executor must do is produce a valid will for the probate court. Therefore it's important for your executor to know where to locate the original document.

Most often the appropriate probate court will be the domicile of the decedent, but an additional probate court must be consulted if the person holds real property outside of their state of permanent residence. The executor petitions the court and provides a death certificate, the last will, and contact information for all the heirs, as well as a list of creditors. Since you are reading this book and proactive in completing your Direction Memo™, your executor will have few problems locating the information they'll need for probate.

Pundits make excellent arguments both in favor of, and against the probate process. After reading the next few paragraphs, you may reach your own conclusions about probate, but remember that probate laws vary from state to state. Ultimately, a discussion with your attorney will direct you to the right plan. In spite of popular perceptions, avoiding probate is not usually the major goal in planning. And while it can be advantageous to avoid probate, in some cases using the probate court is an important part of achieving certain estate planning goals. Again, your estate planning attorney can help guide the decision-making process.

Advantages of Probate

It's easy to find well-documented reasons why you may want to avoid probate. Before we discuss the disadvantages of your estate passing through probate, however, and in the interests of objectivity, let's acknowledge some of the situations when probate can be helpful. First of all, some states have adopted the **Uniform Probate Code**, which simplifies the probate proceedings and mitigates some of the common problems usually encountered in the probate process. The states that have adopted the UPC are:

- Alaska
- Arizona
- Colorado
- Florida
- Minnesota
- Montana
- Nebraska
- New Mexico
- North Dakota
- South Carolina

- South Dakota
- Utah

Probate may also be important if you have minor children. Generally the only document that can name guardians to care for minor children is a will. It's common for the probate court to honor the wishes of the deceased unless there is any reason the person named as guardian is ill-equipped to take care of your children. If you anticipate quarrelling among beneficiaries and/or fiduciaries, you may want the probate court to supervise the process.

The probate notice to any creditors of your estate sets a period of time (usually less than a year) for creditors to make claims against the estate. A notice to creditors is usually published in the local newspaper and the "clock" begins ticking for your creditors to make a claim. If your creditors fail to make a claim before the statute of limitations runs out, they could be out of luck in collecting a debt claim. If you avoid the probate process creditors can, in theory, make claims years into the future beyond the statute. Pundits who are "pro-probate," claim this as one of the reasons you shouldn't try to avoid probate. With proper notices and due process, probate cuts off claims against the decedent, and the decedent's property forever.

When probate is completed for an estate, it puts an exclamation point at the end of the clean-up process using court supervision. Depending on how you feel your heirs will behave during this time, the court may need to be involved to provide order.

Disadvantages of Probate- The "Triple Threat"

In almost every book about estate planning, there typically appear three primary reasons you would want your estate to avoid the probate process. The triple threat is:

1. **Lack of Privacy.** The events of probate are a matter of public record, and you may have seen notices in the paper usually entitled "Notice to Creditors." Generally, your estate isn't going to make the headlines unless you are Elvis or Michael Jackson, but that doesn't prevent anyone from going to the courthouse and asking to review your estate documents at the probate court. This is legal and readily available for anyone who wants to read your will. There are many "predators" interested in who your beneficiaries are and what they'll inherit from you. Plus, if you have a business to sell, this can reveal important confidential information to competitors or potential buyers.
2. **Time**. 6-24 months is the typical time that it takes to process an estate in probate, where it might take only several weeks for heirs to receive the assets by avoiding probate. The duration of probate varies by the size and complexity of the estate. During this time, money is tied up and households can be financially challenged until probate is settled.
3. **Probate Costs**. The costs include appraiser fees, executor fees, and attorney fees. The attorney's fees can be calculated on a percentage of your total probate estate or on an hourly basis, and can be expensive. Most states have statutory limits on how much executors and attorneys can receive for compensation for services rendered, however it could be 5-10% of the estate. In

many states the fees for probate are based on the value of the assets that pass through probate, but attorneys may not reduce the fees by any debts on those assets.

Example- Say you have a $400,000 home with a $200,000 mortgage and 5% average probate costs in your state. Is the probate cost $20,000 or $10,000 for your home? It is $20,000 because generally encumbrances aren't subtracted from the calculation of the property value when the attorneys calculate their fees.[4]

Two More Reasons to Avoid Probate

The three problems listed above may not be the only, or even the worst, problems that can occur with probate. Here are two more to consider:

4. **Ancillary Probate**. If you own real property in more than one state, not only do you have to probate in your state of residence, but <u>also in the other states where you own real estate</u>. Each state requires a separate probate court proceeding. You can expect this to be even more costly than probate in your home state because you'll need to retain another attorney licensed in the additional state(s). If you title your real estate in a revocable living trust or corporate entity, however, there is no need to probate the assets because the owner (trust or corporation) hasn't died.
5. **Will Contest**. This is a challenge to the validity of a Last Will and Testament. Even if you have a "no contest" clause in your will, that doesn't mean an heir won't feel slighted and attempt to challenge your final wishes. Because probate is a public forum, there is no way to keep the terms of your will private. This is a concern for many households, especially in non-traditional relationships. By avoiding probate through the use of alternative estate planning tools, and thereby avoiding a public record, it becomes much harder for an estate plan to be challenged.

Robert D. Kaufmann inherited substantial wealth and was a major stockholder in his family's business, Kay Jewelers. Kaufmann had an intimate relationship with Walter Weiss from 1948 to 1959. The last will of Kaufmann gave virtually his entire estate to Weiss, and named Weiss as sole executor. The family had suspected a non-traditional relationship between the two, and Kaufmann's brother, Joel, claimed that Weiss had exercised undue influence over Robert and contested the will. Despite Robert leaving a letter as part of his will explaining the reasons he left everything to Walter, the Kaufmann family convinced two juries and an appellate court that Walter had manipulated Robert. As a result, a will contest resulted in the decedent's wishes not being followed[5].

Will Substitutes (Sections 4.5-4.6)

You now understand the advantages and the disadvantages of probate. Keep in mind whether assets pass through probate (or not) is typically based on how you hold title to those assets during life. Individuals who title their asset as sole ownership are certain to have property probated, and also

tenants in common and community property may pass through probate. Property that passes outside of the probate process includes property transferred by contract law, by titling with survivorship features, and by trust law[6]. Let's review the details of each of these **will substitutes**.

Transfers by Contract Law: Property that passes by contract generally means that designated beneficiaries have been established prior to the owner's death. These beneficiaries do not have any rights or control of the property until the owner's death. The most common types of property that pass by contract law include: retirement assets such as IRA, 401(k), and 403(b) plans; life insurance and annuity contracts; bank accounts with payable-on-death designations; and any other asset that allows you to appoint a death beneficiary.

Since these assets pass by contract, they are outside any will or trust that you draft, and cannot be controlled by the terms of these planning documents. Therefore it is extremely important you have updated designated beneficiaries on all of these assets. A common mistake occurs with people who don't update their beneficiaries after a divorce, leaving an ex-spouse as primary beneficiary. Even if they completely update the instructions in their last will or trust, only by updating the beneficiary designations on the asset will the property transfer to the intended recipients.

Brokerage accounts can have a **T.O.D. (Transfer on Death)** designation. All of the states have adopted some law allowing you to avoid probate with your stocks and bonds with the exception of Louisiana and Texas.[7] Even though Louisiana and Texas haven't adopted the act, you can utilize the T.O.D as a resident of these two states in several other ways[8]:

- If your stockbroker's principal office is located in a state that has adopted the law.
- If the issuer of the stock is incorporated in a state that has adopted the law.
- If the transfer agent's office is located in a state that has adopted the law.

A transfer on death application should be offered through your broker or transfer agent. In either case, the beneficiaries you designate will receive the securities immediately at your death, thereby avoiding probate. For jointly held assets, the POD or TOD beneficiaries receive property at the death of the final joint owner. Transfer on death for vehicle registration and for real estate is offered in some states and will be addressed further in the appropriate chapters.

Transfers by Operation of Law in Jointly Owned Property: Joint tenants with rights of survivorship (JTWROS), tenants by the entirety (TE), and some community property (CP), is transferred outside the probate process by operation of law because there is more than one owner of the property. For a married couple the property titled one of these ways passes outside the probate process at the death of the first spouse. If the surviving spouse subsequently re-titles the property as a sole owner, the property will not avoid probate following the second spouse's death. Therefore unless further planning is done, joint tenancy ownership does not completely avoid probate. It only delays probate until the final property owner's death.

Transfers by Trust: Although there is a larger upfront expense for drafting trust documents, it is the most convenient way to ensure that your estate avoids probate when you die. Of course, in order for the trust to work, you must re-title your assets in the name of the trust. All trust property avoids the probate process.

Prior to the mid-1970s, little was known about revocable living trusts and they were highly controversial. Planning to avoid probate was out of the "mainstream" until more attorneys began to recognize the value of establishing living trusts for their clients. The 1980s brought a living trust revolution, and today most of the public is aware of the advantages of avoiding probate compared to a "will-based" estate plan. The opponents claim the cost of drafting a trust is too expensive, but in reality the cost of drafting a will and the future cost of probate outweighs the cost of drafting and funding a living trust.[9] In addition, very few trusts are contested for their validity. In fact, some states may not allow a contest to a trust document.

In addition to avoiding probate, a trust is very useful if the grantor becomes incapacitated, since the successor trustee can immediately step in to manage the affairs of the trust. One challenge with joint tenancy is that, if one of the owners becomes incapacitated, the other owner may have to get legal permission to sell the property or to make other financial decisions. This is usually accomplished by exercising a durable power of attorney document or by petitioning the court for a conservatorship. The trust alleviates many of the concerns that otherwise exist for joint tenants and tenants by the entirety property.

Transfers by Gift: Another way you can mitigate probate at your death is to give your property away during your life. Anyone can give anyone else $13,000 (under current law) per calendar year free of gift tax, and a married couple can gift up to $26,000 under the **annual exclusion.** You can also give unlimited property to qualified charities. Gifting your property may not be economically feasible, so you should review your financial plan and consult with your financial advisors before gifting your property.(For more details, see the discussion of Gifting and Gift Tax below.)

You should now have a sense of what can be accomplished with will substitutes, and the importance of asset titling. Hopefully, you're concluding that individual ownership is one of the least effective ways to hold property. You should now be able to review the title of each of your assets, and understand what document or operation of law governs the transfer of that specific property if something were to happen to you.

Current Federal Estate Tax Law (Section 4.7)

Estate tax is the cost to transfer property to your heirs and has been part of the American tax system off and on since it was first passed in 1797 to pay war debt. Estate taxes reappeared again during the Civil War in 1862 to raise revenue for the war. The current federal estate tax has been in place since 1916 and has evolved over the last 100 years[10]. In 1982, Congress raised the amount of the estate tax exemption

to $225,000 which gradually increased to $600,000 by 1987. The decade of the 1990s was particularly challenging because the exemption remained at $600,000 while wealth was growing quickly with the economic expansion of the United States.

As of 2011, when someone dies with an estate greater than $5 million, a federal estate tax return (form 706) must be completed by the executor, attorney, or CPA. A gross estate includes the value of the decedent's assets on their date of death. An **alternative valuation date** six months after death may be used if the asset values decline during this period. The gross estate is reduced by any deductions and credits allowed on form 706 to calculate the taxable estate. Any estate tax owed from the estate is due nine months after the death. Essentially it takes nine months to come into this world and nine months to leave it!

Gifting and Gift Tax (Section 4.8)

When the current estate tax system began in 1916, the wealthy attempted to give away their property before they died, to avoid estate taxes. Recognizing this loophole, gift tax began in 1926 to prevent the practice. In 1976, Congress unified a total combined "credit" an individual can give away during life and at death. Under current law, an individual can give away $5,000,000 to their heirs before they begin to pay gift tax, but that reduces their estate tax credit. In addition, the annual gift exclusion allows you to give $13,000 to anyone each year, without using any of your $5,000,000 gift tax credit. Any gift over $13,000 to a non-spouse requires you file a 709 gift tax form, where part of the unified credit may be utilized. A married couple can give any individual $26,000 per year since they can each use their exclusion for that person. The annual exclusion was increased to $10,000 in 1982 and has increased over the years adjusted for inflation.[11] The annual gift exclusion is an effective way for people to make gifts without paying gift tax.

In your durable power of attorney document, you may allow your agent to make gifts on your behalf. That way your agent can continue to take advantage of your annual exclusion. Keep in mind that your agent will need enough information to think and act like you would, in order to carry out your wishes. By providing your agent your durable power of attorney document accompanied by your Direction Memo™, you can feel confident with the continuity of your gifting program. You should also write specifically to your spouse in the Direction Memo™ about your thoughts on gifting to your children and others.

There are two ways to make a gift to someone other than your spouse for more than the $13,000 annual gift exclusion, and still avoid gift tax. The first is to directly pay for someone's qualified educational costs. The payment must be sent directly to the institution. This can be an efficient way for affluent households to reduce their taxable estate while making sure their gift goes to something valuable, like the education of their grandchildren or others. The second is to pay someone's medical expenses, once again directly to the medical organization.

Unlimited Marital and Charitable Deductions (Section 4.9)

There are two deductions on the federal estate tax return that are unlimited. If you are married, the

first is giving all of your property to your spouse. The second unlimited deduction is to give property to qualified charities at your death.

You may give all of your property to your spouse providing he or she is a U.S. citizen. If your spouse is not a citizen, you could consider drafting a **qualified domestic trust (QDOT**) which will have a similar result to the unlimited marital deduction. Giving all your property to your spouse may not eliminate estate taxes; it simply defers taxes until the second spouse dies. The unlimited marital deduction is only available at the death of the first spouse, and it's not always advantageous to leave all your property directly to your spouse. In fact many estate planners find strategies to "equalize" estate sizes between affluent married couples to mitigate estate taxes owed at the second spouse's death. Note the "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" has introduce "portability" allowing the surviving spouse to utilize their late spouse's remaining federal estate exemption. If portability prevails in Washington past 2012, estate equalization could be less relevant in the future.

The assets included in your gross estate can be transferred to non-profit organizations defined as **qualified charities** under Internal Revenue Code 170 and utilized as an estate tax deduction. Charitable planning will be further reviewed in chapter 11. Some high net worth households create plans with formulas in their estate documents in order to leave as much to their family as possible without paying estate taxes, with the remainder going to charities.

Probate Estate vs. Gross Estate (Section 4.10)

A common misunderstanding occurs when individuals remove property from their probate estate thinking that it is also removed from the "taxable" estate for estate tax purposes. It isn't. The gross estate is reduced by creditors' claims, funeral and estate expenses, the marital deduction, charitable deductions, and any state death taxes.[12] Below is a common list of assets generally included in your gross estate:

- All property you have an interest in at your death.
- Money that you transfer to a revocable living trust will be part of your taxable estate. Transfers to an irrevocable trust will generally be excluded from your gross estate if transferred more than three years before your death.
- 50% of jointly owned property is generally included in your gross estate.
- Life insurance owned by you that you've transferred within three years of death.
- Survivorship of any of your annuities or pensions to be received by your spouse or others.

If the sum of the property in your gross estate is more than the unified estate tax credit, (minus deductions) any amount above the exemption will be taxed.

The "Step Up" Basis

Property that passes to a beneficiary upon a person's death takes a **stepped-up** basis for income tax purposes equal to its fair market value at death. This eliminates capital gains tax liability for a beneficiary,

for appreciation that accrued from when the original owner purchased the investment. For example, Martha owns a home she originally purchased for $35,000. Her basis in the home is equal to its cost - $35,000. On the day Martha dies, the fair market value of the home is $200,000. If Martha bequeaths the home to her son Mike, his basis in the home will step up to the fair market value of $200,000. In contrast, had Martha given the home to Mike before her death, he would receive a **carry-over basis,** which would be equal to the Martha's adjusted basis in the home, $35,000. Thus, when Mike sells the house, he will have capital gains tax liability.

Since 1981, only one-half of the value of joint property held by spouses is included in the gross estate of the first spouse to die, and therefore only one-half of such property gets a stepped-up basis for income tax purposes in the hands of the surviving spouse. There is an exception for community property states. In those states, all the property, not just the deceased spouse's half, gets a stepped-up basis equal to the fair market value of the property at the decedent's death.[13]

It's critical that your important people consider the capital gains ramifications each time they sell an investment. If your trustee or agent under a power of attorney agent fails to review all angles of selling an investment, they aren't doing a complete job. The step up in basis is referenced on several occasions in your Direction Memo™ for just that reason.

Not all inherited property may transfer to your heirs without income tax obligations. **Income in respect of a decedent (IRD)** occurs when income is accrued, but not yet distributed at the time of the death of the decedent. Income in respect of decedent assets may include deferred compensation, qualified retirement plans, accrued interest, stock dividends, contract receivables, and gains on installment sale contracts. The income is not reported on the decedent's final tax return, but rather should be included in the gross income on the beneficiary's tax return. The basis does not step up to the fair market value at death, even though the IRD is included in the gross estate. IRD will be covered in further detail in chapter nine regarding retirement plan assets.

Generation Skipping Transfer Tax (GSTT) (Section 4.11)

GSTT is the third potential estate transfer tax, in addition to estate and gift tax. The GSTT can occur when an individual transfers property to a **skip person.** A skip person is defined as a natural person assigned to a generation which is 2 or more generations below the generation of the transferor, or a trust that has one or more skip persons. For those who may encounter the tax, it can be extremely expensive and very difficult to navigate. If you have a large estate, and you plan to pass money to a "skip person" like a grandchild, you should seek counsel from your professional advisors.

It's simple if you think of a grandparent gifting property to a grandchild but a skip person does not have to be a family member. Any individual other than a spouse or ex-spouse is considered a skip person if they are at least 37.5 years younger than the transferor. As you can imagine, this is a way for the government to ensure each generation of a wealthy family pays transfer taxes. One way that a skip person becomes a "non-skip person" is when their parent in the lineal bloodline dies before the grandparent. In this case, the grandparent does not face generation-skipping transfer tax if they gift property to their grandchild, since the grandchild's parent is already deceased.

Similar to regular estate taxes, the generation-skipping transfer tax has an exemption equal to the

unified credit which is $5 million dollars in 2011 and 2012. A wealthy widow, for example, may transfer $5 million directly to her grandchildren (or trust for the benefit of the grandchildren) without paying estate tax or GSTT. Any amount over $5 million to her grandchildren could cause estate and generation skipping transfer taxes to be owed.

State Inheritance and Estate Taxes (Section 4.12)

At least half of the states in the U.S. have some method of collecting a death tax. Many states have an estate tax that is calculated using the amount that once was the state portion of the federal estate tax. This is commonly known as the "pickup tax." While the federal rules have changed, many states still use the calculation to determine the amount of state inheritance tax your estate will pay. Many states also have an exemption amount, and collect tax only on the excess value over that amount.

Other states have an inheritance tax. The amount of the tax may depend on the person who inherits the property. Beneficiaries are separated into classes according to their relationship to the decedent, with different exemptions and tax rates applied to each class. A spouse, a child, a grandchild, and a niece may all have a different tax rate.

Finally, some states have a combination of estate and inheritance tax. The following table is a summary of state death taxes. Each state's death taxes will likely evolve depending on the federal estate tax exemptions. Most people are familiar with the federal estate tax system, but you should also review your state tax law. And remember that both state and federal tax laws are in a constant state of flux, so check with your professional advisors for current laws.

State	Type of Tax	Exemption
Connecticut	Estate tax	3.5 million
Delaware	Estate tax	5 million
District of Columbia	Estate tax	1 million
Illinois	Estate tax	2 million
Indiana	Inheritance tax	$100
Iowa	Inheritance tax	none
Kentucky	Inheritance tax	$500
Maine	Estate tax	1 million
Maryland	Estate & Inheritance Tax	1 million & $150
Massachusetts	Estate tax	1 million
Minnesota	Estate tax	1 million
Nebraska	Inheritance tax	$10,000
New Jersey	Estate & Inheritance Tax	$675,000 & None
New York	Estate tax	1 million
North Carolina	Estate tax	5 million

Ohio	Estate tax	$338,333
Oregon	Estate tax	1 million
Pennsylvania	Inheritance tax	none
Rhode Island	Estate tax	$859,350
Tennessee	Inheritance tax	1 million
Vermont	Estate tax	2.75 million
Washington	Estate tax	2 million

Figure 2-Estate tax by individual states. Source CCH

As of the time of this writing, state death taxes are allowed as one of the deductions in calculating federal estate transfer taxes.

Miscellaneous Asset Titling Information (Section 4.13)

This space is an opportunity to provide any miscellaneous information or requests you wish to provide regarding subject from this section. This section of your Direction Memo™ is written to educate your important people on the topic of asset titling and probate, so they have a better understanding of your goals. This section will also provide important personalized information such as your history of gifting to loved ones, and whether you resided in community property states. Section four will also make the entire financial section of your memo easier to understand.

The next chapter begins the financial section of this book and your Direction Memo™. Sections three and four are critical to cover before you begin the financial section, and what you've learned about estate planning documents and asset titling is critical to chapters five through ten. Don't hesitate to read sections three and four again if you feel that may help with the rest of the book.

Action Steps

Complete Section 4 of your Direction Memo™:

4.1-Defines the purpose asset titling and property transfer.
4.2- Describes how your fiduciaries should examine asset titling to determine the beneficiaries.
4.3-Defines the property types.
4.4-Complete this section in order to describe your objectives in avoiding (or using) the probate system with your estate.
4.5- Defines will substitutes so your fiduciaries know when property transfers outside of probate.
4.6- Complete this section to describe your wishes regarding current and future gifting to loved ones. Also include gifting history if you've ever filed a 709 federal gift form.
4.7- Describes the current federal estate tax system as a guide for your fiduciaries.
4.8- Describes the current federal gift tax system as a guide for your fiduciaries.
4.9-Describes the unlimited marital deduction. You can include disclaimers or trusts that relate to transferring property after the first spouse's death.
4.10- Explains to your fiduciaries whether your estate must file form 706.
4.11- Describes the current generation-skipping transfer tax system as a guide for your fiduciaries.
4.12- Describes the current state (your domicile) transfer tax system as a guide for your fiduciaries.
4.13- Miscellaneous Asset Titling Information not included previously in this section.

Did you know that you can email Paul anytime with questions?
His email address is paulcaspersen@hotmail.com

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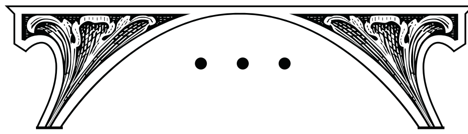
SECTION II

Financial



Chapter 5: Personal Risk Management and Insurance

"Either you deal with what is the reality, or you can be sure that the reality is going to deal with you."
- Alex Haley

A SOUND RISK MANAGEMENT PLAN doesn't mean buying insurance for every potential risk, but rather planning to control and finance your personal risks. When something bad happens to you, by your own negligence or someone else's, the normal action is to indemnify or "make one whole." In other words, replace whatever you are missing as a result of the negligence. We are often told we live in a litigious society, and that medical malpractice is the most common litigation target. But there are literally hundreds of tort claims you could make against someone (or they against you)!

Methods of Handling Risks (Sections 5.1-5.2)

Only after you identify those events which create a financial risk, can you learn to manage them by creating a personal risk management plan. There is a free online resource created by Karen Chan at the University of Illinois Extension where you can create your own plan. You will find that it not only helps to illuminate potential risks, but the program helps you determine the best way to treat each risk. The webpage is: http://urbanext.illinois.edu/risk/intro.cfm

According to Chan, there are four methods of handling risk:

1. **Bear the risk-** This is also called retaining or assuming the risk. This is when you bear the financial burden and do not actively seek to reduce the likelihood of the event or its financial severity. Sometimes people mistakenly refer to this as "self-insurance," which is an oxymoron. The goal with insurance is to transfer risk and you can't transfer your risk to yourself.

Example. An aging person decides not to buy long term care insurance and does not properly diet, exercise, etc.

2. **Transfer the risk-** You arrange for someone else to bear the financial responsibility for the event.

Example. Investing in various insurance policies, hold harmless agreements, etc.

3. **Reduce or control the risk-** You reduce the likelihood of an event and/or you take actions that would reduce the financial loss if the event occurred.

Example: You wear seatbelts, which would reduce your chance for injury in the event of an accident. You buy smoke detectors for you home and test them periodically.

4. **Remove the risk-** You go beyond reducing or controlling the risk and avoid it entirely.

Example: You remove the diving board from your personal swimming pool, or you get rid of the giant trampoline in the back yard the neighbor kids may get hurt jumping on.

The purpose in the risk management section of your Direction Memo™ is to record a list of your insurance policies, and guide your loved ones on how to use the death benefits from those policies. This section also includes the description and location of any legal arrangements designed to reduced risk. Hold harmless agreements, prenuptial agreements, and limited partnerships are a few of the documents that you'll include in section 5.2. You may also provide information about legal protection documents in the subsequent sections of your Direction Memo™ under topics such as loans, real estate, charitable giving, and business interests.

Life Insurance (Section 5.3)

If you own life insurance at your death, your survivors may only have one opportunity to make the best financial decisions they can with the life insurance proceeds. Imagine for a moment:

- Your family or other important people are searching for the whereabouts of your insurance information at your death.
- Your spouse or other beneficiaries are trying to make important and rational decisions how to best use the life insurance death benefits while, at the same time, grieving your loss.
- The life insurance company will deliver a check, but probably will have an agenda of retaining that money. The insurance company may propose ideas to your beneficiaries that you wouldn't agree with, and that might not be in their best interests.

Some selfless planning today can avoid much anguish and uncertainty for your loved ones at some unknown, but inevitable, time in the future.

Your life insurance section of the Direction Memo™ should serve two purposes. First, the Memo ensures that everyone knows about all of your life insurance, along with the companies' contact information. In the event of your incapacity, the Memo should direct others to safely monitor your life insurance policies (i.e. pay the premiums and make sure the cash value is properly invested if it's a variable life policy). A survey in 2004 exposed that 83.5% of professional trustees said they lacked any guidelines and direction for handling life insurance owned by a trust. An astounding 95% of trustees in the survey indicated they have no guidelines for allocating the assets in a variable life policy.[1] You should provide guidance for managing all your investments, including life insurance.

Secondly, the life insurance section of your Direction Memo™ can provide your loved ones guidance

on how to use the life insurance proceeds. This is critically important because your loved ones are forced to make important financial situations during a period of grieving. Even though you won't be there, your directions may be the most important communication to ensure those resources are best utilized. To determine how much life insurance to purchase, you'll need to think through the various uses your family will have for the death benefits. The amount of insurance needed will change throughout your lifetime depending on your circumstances and theirs.

A 2003 study by LIMRA International discovered that only 55 percent of the people who died had life insurance. Furthermore, a MetLife survey indicates that for two-thirds of those who did have life insurance, the coverage replaced less than three times their personal income, with an average of 2.1 times personal income.[2] Not surprisingly, a majority of those families receiving a death benefit of less than three times earnings considered the deceased's life insurance coverage inadequate.

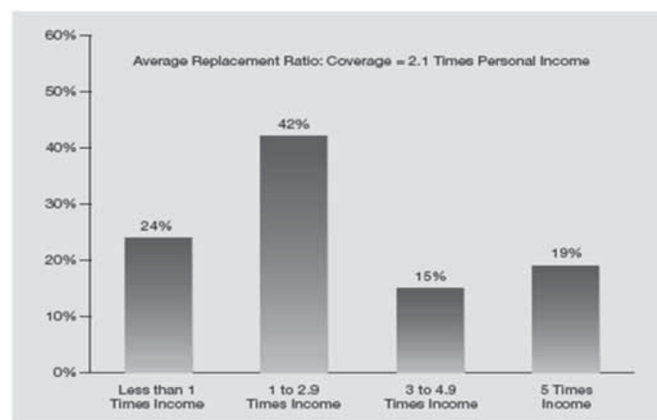


Figure 1-From the Study "Financial Impact of Premature Death: The Value of Adequate Life Insurance when Tragedy Strikes", MetLife, 2003

The "checkered coat" life insurance agents are fortunately on the verge of extinction. Many agents today are more sensitive and consultative to the needs of each individual client. If someone has been successfully selling insurance for any extended period of time, they are probably doing business the right way. You must trust this person for many reasons, not the least because they may one day deliver a large life insurance check to your family when you are gone.

Life insurance is very important for younger households who lose the primary breadwinner. However there are also many advantages to owning life insurance later in life. With the death of a family member, most households will need to do more than pay debts. Life insurance can be used in a variety of financial strategies, including:

- To pay off mortgages and other debts, replace income for the household, and provide liquidity for the surviving spouse if he/she requires long-term care at an older age.
- To replace a "clunky" asset that's difficult to divide. Your children will probably appreciate tax-free cash from life insurance that's not subject to probate, more than a fractional ownership of an antique collection, for example. And perhaps a charity will appreciate the antique collection.

- To allow a retiring employee to take a "single life" pension payment from his employer's retirement plan. If he dies, his spouse can replace the missing income stream from his pension with the life insurance proceeds. This is a strategy often studied by individuals who are retiring with a defined-benefit retirement plan form their employer.
- To pay for funeral, probate costs, and estate taxes, or keep a business running at the owner's death. Life insurance can also equalize an estate for the children who are not involved in the family business to ensure everyone receives an evenly balanced inheritance, if that is a priority.

The Right Policy for You

Life insurance is available in many types of term and permanent policies. A consultative life insurance agent will match the product with your needs. The agent should use at least four factors when helping you make educated life insurance decisions:

1. **Your personal preferences and priorities**. On one end of the spectrum, you should purchase **term insurance** if you have a "leasing" mentality towards life insurance. On the other end of the spectrum, own a whole life or another **permanent insurance** policy if you see life insurance as an investment and you want something to show for the premiums paid.
2. **The amount of coverage you need**. Most financial planners can help you calculate a reasonable composite death benefit for your life insurance portfolio. Computer programs are helpful, but make sure the financial planner is using their own logic as well as the results of the software. One of the best ways to determine how much life insurance you need is to complete the Direction Memo™ in conjunction with the life agent's needs analysis tool. This will help you think through how the death benefits will be spent or invested when you are gone, so you can provide guidance to your loved ones. .
3. **Your capacity to pay the premiums.** A level term policy will make it easy to budget for the cost of the premiums. If you are interested in owning permanent insurance, consider purchasing a universal policy that allows for flexible premiums and death benefits as your needs change over time.
4. **The duration in which you need the current level of coverage**. If the time frame you need to own life insurance is for 10 years or less, you might consider owning term. If you are buying insurance at a younger age, your premiums will generally be lower, and you might want to consider a permanent policy. Either type of insurance works to pay funeral expenses and taxes, but term insurance gets more expensive every year as you age. So if your goal is to offset a very large estate tax liability, term will eventually become too expensive. Many people own a blend of permanent and term coverage.

In summary, the amount of life insurance coverage you need over the course of your life will fluctuate, and a competent life insurance agent will help you determine what you need. The agent will likely use the four factors mentioned above to help you determine the types of life insurance you should own.

Once you address your life insurance needs, you can use your Direction Memo™ to suggest priorities for how your beneficiaries can use the funds if something happens to you.

Homeowners Insurance (Section 5.4)

Your important people will need to ensure that the homeowner's insurance policy is managed if something happens to you. Over time, as the value of the home increases, your coverage should also increase. In order to maximize the value of your homeowner's insurance, periodically review the following:[3]

1. **Insure your home, not the land**: Homeowners policies do not provide protection for your land, so make sure the value of the land is not included as part of your coverage amount. This is something to double-check with your agent or insurance company.
2. **Make sure you are receiving all the discounts to which you are entitled**: Discounts are mostly given to those who have more than one policy with the same insurer; have security or safety systems, such as smoke detectors, deadbolts, and fire alarms; are 55 or older and retired; or live in homes located in eligible homeowners associations. Some insurers even offer discounts if all residents of the home are non-smokers. Ask your agent or insurance company what discounts you are receiving.
3. **Consider increasing your deductible**: If your deductible is $250, raising it to $500 should decrease your premiums. Raise it to $1,000 and you could save even more. Just two caveats: 1) Make sure you can pay the higher deductible if disaster strikes; and 2) Check with your mortgage lender, as some home loans have a clause that requires a specific property insurance deductible.
4. **Make home improvements**: Upgrading your electrical, plumbing, and heating systems could improve the safety of your home and, thereby, reduce your premiums.

Flood and earthquake insurance are typically the most common exclusions of coverage from homeowners insurance. Separate policies covering flood and earthquake insurance are sometimes required from mortgage companies, depending on where you live. Record your homeowner's policy information in your Direction Memo™.

Auto Insurance (Section 5.5)

For your auto, motorcycle, watercraft, and other vehicle insurance policies, you might consider increasing the deductible for collision coverage. Most insurance companies will aggressively increase the premiums for a low or no deductible auto policy. The goal of having auto coverage is to protect you from big loss, but you don't have to be "whole" on every dollar[4]. Vehicles also depreciate, while other investments, like your home, usually appreciate. Make sure you prioritize insuring your appreciating assets. This doesn't mean that you should reduce your auto policies' coverage for medical and physical damage you might cause in an accident, but rather increase the deductible before the insurance company will pay to fix your vehicle when you are "at fault." If you consider increasing your deductible,

make sure you have the cash to cover it. Most states mandate a minimum amount of coverage that must be carried by every licensed driver in that state.

Do you need to buy the rental agencies insurance when renting a car? Before you rent a car:

1. Call your auto insurance company and verify you are covered under your personal auto policy with car rentals. This is even more important when traveling outside the U.S. since your personal auto policy may only provide coverage only in the U.S.
2. If you are renting a car for work, ask your employer if they have an existing auto policy for their employees covering you.
3. For those who don't own a car but are frequent car renters or borrowers, another option for avoiding repetitive insurance fees is to purchase a non-owner liability policy. These can cost anywhere from $200 to $500 per year, but could save you money if you normally purchase insurance from the rental agency.

List all your vehicle insurance policy information in your Direction Memo™.

Umbrella for a Monsoon (Section 5.6)

Umbrella coverage provides additional liability coverage above and beyond the coverage provided by your homeowner's and auto policies. Umbrella insurance doesn't cover property, but rather your personal liability for property damage, bodily injury, or personal injury caused by an accident.[5] Rather than increasing both your home and auto coverage, most households are better served purchasing umbrella coverage. The minimum coverage with an umbrella policy is typically $1,000,000 and many insurers will cover up to $10,000,000.[6] An umbrella policy will not only offer additional liability coverage, but will also provide wider coverage for other risks not carried by your traditional homeowner's or auto insurance.

You do not have to be wealthy to be the target of a civil lawsuit, so most households should probably carry personal umbrella coverage. Umbrella insurance may only be purchased when adequate homeowner's and auto policies already exist. Like all insurance, underwriting is part of the process and not everyone can obtain coverage. You may record any umbrella policies you own in this section of the Direction Memo™.

Long-Term Care Insurance (Section 5.7)

Regardless of healthcare reform in the United States, it's very unlikely you can ever fully depend on the government to take care of you when you need long-term care. In recent surveys, as many as half the respondents thought long-term care expenses were covered under their medical plan, which is a myth. For retirees, Medicare covers long-term care expenses for only the first 20 days. After that, the individual must use all of their own resources before applying for additional governmental assistance, such as Medicaid.

Today many Baby Boomers are evaluating their options as they look at future priorities. Their children are grown up, their mortgages are almost paid off, the need for life insurance is decreasing, and the concern for long- term care protection is increasing. Because they generally live longer than men, women often find themselves caring for an aging husband, and later requiring long-term care for themselves. Adult children are also finding themselves helping their aging parents and approximately 64% of home care comes from "donated" care, usually from a family member.[7] Family caregivers report they incur significant financial losses themselves due to the time away from their careers. Baby Boomers typically have fewer children than did their parents' generation, and therefore fewer family members to rely on for future care.

On average, those who purchased long term care insurance budget about 5-6% of their annual income to pay the premiums. Clearly if you purchase a policy in your late 40's or early 50's you'll find the premiums to be more reasonable. A 2005 study indicated that the average long-term care policy, with identical benefits, had the following annual premiums based on what age it was purchased:[8]

Age	Annual Premiums
40	$422
50	$564
65	$1337
70	$5,330

Figure 2-Average Annual Premium Costs for LTCI

In recent surveys, the "cost" of long-term care insurance was cited as the main reason people didn't purchase a policy, followed most often by the opinion that the product was too confusing to purchase.[9] Most people overestimate the cost of long-term care *insurance* and underestimate the cost of long-term *care*. Those suffering from dementia can expect to pay even higher costs, for a longer period of time, than a patient with full mental capacity.

Should you consider long-term care insurance?

The following questionnaire can help you determine if you should consider long-term care insurance:

Question or Concern	Yes/ No
1. **Other than your home, do you have more than $300,000 in assets?**	Y/N
2. **If you answered YES to #1, do you want to protect those assets from the cost of a nursing home?**	Y/N
3. **Has anyone in your family needed long-term care?**	Y/N
4. **Would taking care of you be a hardship for your spouse and/or your family?**	Y/N
5. **If your spouse or parents needed care, are you certain that you'd be able to provide it?**	Y/N
6. **Are you concerned that the people who would have to care for you will be able to maintain the quality of their own lives?**	Y/N

7. **Do you value your independence, privacy and dignity?**	Y/N	
8. **Do you refrain from enjoying retirement because you are worried about needing resources for long-term care expenses in the future?**	Y/N	
Total the answers in each column	# of Yes	#of No

Figure 3-LTCI Needs Assessment

If you answered five or more of the questions in Figure 3 as "yes", you should consult with an agent. If your family insurance agent doesn't understand the nuances of long-term care insurance, you can typically find local agents who specialize in long-term care. The American Association for Long-Term Care Insurance provides a useful website if you'd like an additional resource. The website is www.aaltci.org or you may call them at 818-597-3227.

Choosing an Affordable LTCI Policy

It may not be possible to find the perfect policy. You simply review your options and choose the best policy that's optimal for your goals and budget. Your employer may offer a group long-term care policy that appears to be the most inexpensive, but the premiums may increase significantly down the road due to **adverse selection**. Adverse selection can be caused by low participation or by the fact that sick or disabled employees are more likely to enroll in the group plan because there is often no requirement for a physical. Therefore you may be better off with your own individual policy than you are sharing the long-term care insurance risks with a pool of sick people, in spite of the group discount.

An important statistic to keep in mind if you are considering long-term care insurance:

- The chance of needing homeowner's insurance is 1 in 88, and for auto insurance 1 in 47.[10] The odds of needing long-term care insurance are about 1 in 2½.

For married couples, you may consider purchasing a "joint" long-term care policy which typically

gives each spouse up to four years of benefits, with a carry-over of the unused benefits to your surviving spouse. A joint policy may provide "peace of mind" knowing if you don't need long-term care, your benefits can be used by your spouse. Joint policies are typically about 10-15% more expensive than a comparable individual policy.

In this section of your Direction Memo™, you should record any long-term care insurance policies you own or any other arrangements you have made with long-term care facilities. Arrangements sometimes include an upfront "endowment" to a retirement community. If you have made these arrangements, your important people will need all the requisite paperwork. This will make the process much easier for your agent under a power of attorney and your family members.

Veterans Aid and Attendance Benefit

Any war time Veteran with 90 days of active duty, and 1 day beginning or ending during a period of war, is eligible to apply for disability, medical, and long-term care assistance from the Veterans Administration. Benefits for a surviving spouse may also be available if the marriage ended due to the death of the war time veteran. The Veteran Aid and Attendance Benefits are not Medicaid, and require separate applications and eligibility criteria. War time Veterans qualify for three tiers of care:

1. Basic
2. Housebound
3. The Aid and Attendance Benefit

The Veterans Administration offers Aid and Attendance as part of an "improved pension" benefit that is largely unknown. This Improved Pension allows for Veterans and surviving spouses who require the regular attendance of another person to assist in eating, bathing, dressing, undressing, medication dosing, or taking care of the needs of nature, to receive additional monetary benefits. It also includes individuals who are blind or a patient in a nursing home because of mental or physical incapacity. Assisted care in an assisted living facility also qualifies.

This important benefit is overlooked by many families who need additional money to help care for an ailing parent or loved one who is a veteran or the surviving spouse of a veteran. This is a "Pension Benefit" and is not dependent upon service-related injuries for compensation. Aid and Attendance can help pay for care in the home, nursing home, or assisted living facility. Currently, a veteran is eligible for up to $1,632 per month, while a surviving spouse is eligible for up to $1,055 per month. A couple is eligible for up to $1,949 per month[11].

For addition questions go to http://www.va.gov and review the "Veterans Pension Program" or call the Veterans Administration at 1-800-827-1000. If you are a war time veteran, you must include this section in your Direction Memo™ regardless of whether or not you immediately need the benefits. Your important people may not realize that these benefits are available without a reminder to contact the VA.

Disability Insurance (Section 5.8)

Becoming disabled, even for a short period of time, can be financially devastating to a family. It's said that you have a far greater chance of becoming permanently disabled than dying, in any given year.[12] The average long-term disability absence from work lasts 2.5 years, according to the Council for Disability Awareness. If your ability to earn income is your best income-producing investment, how do you protect that investment if you can no longer work? Financial experts refer to your capacity to earn income as "human capital." Your human capital is largest early in your career and declines as you age, which is opposite of your investment capital that tends to be smallest early in your career and gets larger as you grow older. The purpose of disability insurance is to protect your human capital when your investment capital is low.

If you are not yet retired, you likely own **disability insurance**, which is an essential component of your overall risk management plan. Disability insurance typically pays two-thirds of a person's regular income. Retirees normally don't own disability insurance. If you are retired, you obviously have concluded you have enough income to meet your needs whether or not you are employed.

You can review the disability insurance offered through your employer or meet with your agent to ensure you have adequate disability protection. If you have 3-6 months of expenses saved in an emergency fund, you may find it's unnecessary to own short-term disability insurance. If you don't have adequate savings, you should own both short and long-term disability policies. Remember that a severely disabled person may not physically be able to claim their own benefits. Therefore, it's important to record any short or long-term disability insurance policy information in your Direction Memo™ so that your important people can file claims on your behalf.

Health Insurance (Section 5.9)

As this book is written we may be perhaps witnessing an evolution (or revolution) with the healthcare system in the United States. An average retired household can spend as much as 20% of their income each year for medical care.[13] Since Medicare doesn't begin until age 65, an individual who retires prior to age 65 should ensure that they have adequate medical coverage. If your spouse is still working, perhaps you plan to join their employer's plan. You may also study the options with your former employer or select **COBRA**. With COBRA, you pay your former employer the full premiums for your health insurance as well as a 2% administrative fee. COBRA normally applies only to employers with more than 20 employees and coverage can last up to 18-36 months depending on the triggering factor, and ends when you enroll in another plan or Medicare.[14] If you are under age 65, but would like to retire, you've undoubtedly debated the cost of health insurance versus your desire to retire.

Medicare was launched in 1965 to help senior citizens afford healthcare. Although Medicare covers a majority of health related expenses for those over 65 who qualify, many older Americans also have a "Medigap" policy designed to cover what Medicare doesn't. The Medicare system has historically addressed aging Americans who suffer from chronic health conditions and many other health concerns, but it doesn't address the need for custodial care. Without the protection of long-term care insurance, an individual's assets must be used prior to qualifying for **Medicaid**, a government program that does include custodial nursing home coverage.

Your current health insurance information should be recorded in your Direction Memo™. You don't have to include specifics regarding deductibles and co-pays, but provide your insurance company's name, policy number, and agent contact information. If you have a copy of your health insurance policy, provide the location of that document. Otherwise your important people may need to request a copy when it's needed.

Other Medical Insurance

If you have other health insurance other than major medical, you should list these policies in your Direction Memo™ so your important people know the coverage exists. Most of these auxiliary policies cover things such as:

- Accident
- Cancer/Specified Disease referred to as "Critical Illness Insurance"
- Dental
- Hospital Confinement Indemnity
- Vision

Once again, it's not important to record all of the details of these policies, but simply acknowledging them in your Direction Memo™ along with the policy number, the insurance company's contact information, and agent information is satisfactory. As your needs for health insurance change, you should review your policies with your agent or employer to ensure you have the best coverage.

Health Savings Accounts (HSA)

In 2003, **Health Savings Accounts** replaced the Archer Medical Savings accounts to allow people to deposit pretax savings into an account which can be used to pay insurance deductibles, or other medical expenses. The withdrawals are not taxed as income to the HSA owner. In order to qualify for a HSA, you must only be covered by a **high-deductible health plan**. Your employer or insurance agent can define exactly what the distinction is between "high" and "low" deductible. For 2011, in order to qualify to open an HSA, your HDHP minimum deductible must be at least $1,100 (personal coverage) or $2,200 (family coverage).[15] If you have invested in a Health Savings Account, you should note your account number and contact information for the custodian holding your HSA funds in section 5.9.

Business Related Insurance (Section 5.10)

If you are a business owner, Chapter 10 will provide a section for you to record all of your business interests. You can record any business-related insurance information either in section 5.10 or you can use section 10, which is reserved for other business ownership issues. The critical business insurance information that should be recorded in your Direction Memo™ includes:

- Employment practices liability insurance
- Malpractice and Errors and Omissions Insurance
- "Key Employee" life insurance on your life (and the other owners of your business)
- Group life and long-term care insurance policies

Miscellaneous Insurance and Risk Management Issues (Section 5.11)

This section concludes with an opportunity to include additional information on risk management and insurance not found elsewhere in this chapter. As you consider your methods of handling risk, determine whether or not your current risk management strategy is sufficient.

Action Steps

Complete Section 5 of your Direction Memo™:

5.1- Defines the purpose of this section explaining the insurance and risk management section of the letter.
5.2- Complete information about legal documents and arrangements you've made to mitigate risks (e.g., pre-nuptial agreement).
5.3- Complete information about your current life insurance and recommendations for your beneficiaries for use of the death benefits.
5.4- Complete information for all your homeowner's and renter's policies.
5.5- Complete information for all your vehicle policies.
5.6-Complete information regarding any umbrella/liability coverage you own.
5.7- Complete information for your long-term care polices and other arrangements.
5.8- Complete information for any short or long-term disability policies that you own.
5.9- Provide general information about your primary health insurance policy and location of the policy document.
5.10-Complete information for insurance related to business ownership.
5.11- Include any miscellaneous insurance and risk management information not covered in the previous sections.

Did you know Paul consults with Individuals & Professional Advisors on charitable and estate planning concepts? You can hire Paul to help you draft a customized Direction Memo™. For more information, go to www.directionmemo.com

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Chapter 6: Debts - People You Owe and Who Owe You (Section 6.1)

"Pecunia, si uti scis, ancilla est; si nescis, domina"
– From the Latin meaning "if you know how to use money, money is your slave; if you don't, money is your master."

IF YOU HAD TO GUESS which generation is having the most difficulty managing debt today, would you believe that it's retirees? From 1992 to 2004, the percentage of households age 55 and older acquired debt faster than any other age group.[1] Retirees normally live on a "fixed income," which means they have limited income sources to cover variable expenses. When an unanticipated expense hits retirees, they have limited solutions to repay the debt in a timely fashion. From 1991 to 2007, the rate of personal bankruptcy filings among those ages 65 and older jumped by 150%.[2]

As a practical matter, households should have 3-6 months of regular expenses in an emergency fund due to a potential short-term disability or job loss. Approximately 40% of households don't have any emergency funds, including a large number of retirees. Emergency funds for retirees are important for similar reasons, but mostly to protect their assets from variable expenses. One positive outcome of the global economic downturn is that retirees are trying to build their emergency funds. In a 2009 debt study report, 40% of retirees are making it a priority to save money for emergencies, up sharply from 29% only two years prior.[3] The same debt study also showed that the Baby Boom generation is moving away from using debt and are living within their means.

This section of your Direction Memo™ is intended to help your important people identify outstanding debts you owe, or debts owed to you. This section is also used to identify your bills and describe how you pay them. If you have simplified your bills by paying them online, this can further complicate the process for your important people when organizing your finances. Your Direction Memo™ is the ideal way of communicating your method of paying bills and identifies your debts. Your executor is responsible for ensuring that all creditors are notified, and recording this information in your Direction Memo™ will greatly benefit your fiduciaries.

Consumer Debt (Section 6.2)

The year 1986 saw monumental federal tax reform with an impact that is still felt today. One of the changes in 1986 disallowed consumer debt from being income tax deductible. This was probably a wise decision since Americans don't need any additional tax incentives to borrow money. In fact, 82% of consumers have debt in addition to their mortgage. Personal finance authors warn people of the

dangers of debt, yet not many heed those warnings. Author Dave Ramsey says, "Don't even consider keeping up with the Joneses. They're broke!"[4]

One debt analogy compares consumer debt to "bad cholesterol" because you are borrowing money for something that depreciates over time. This contrasts with a mortgage and student loans, or "good cholesterol," because you are borrowing for an investment that appreciates in value over time. In any case, it's important to make sure you list outstanding short-term or long-term consumer debts in your Direction Memo™.

Many reading this book will have auto leases rather than loans. Leases are treated like any other financial obligation and it is typically settled during the probate process for the deceased. In other words, the contract must be fulfilled even after death. The executor or lawyer for the estate should contact the lease company for instructions. It's likely the death of the leaseholder is classified as an early termination, and the contractual fees will be owed from the estate.

Mortgage (Section 6.3)

One type of loan where a borrower still has the ability to deduct the interest costs is a mortgage. In the U.S., mortgage interest is generally deductible for up to a $1,000,000 mortgage for both a primary and secondary home.[5] It's important in your Direction Memo™ to identify mortgages you have on properties you own. Your important people must know the terms of your mortgage, particularly if you have an **Adjustable Rate Mortgage (ARM)** or you have a **Balloon Payment** due in the next few years. It's important to document any liens on your properties if you have any. Failure to account for these issues could cause problems for your important people down the road.

Mortgage companies offer various insurance policies that will pay the mortgage at the death or disability of the owner. One form of life insurance that will pay off the balance of the mortgage upon your death commonly referred to as **credit life insurance**. Some insurance professionals will argue that buying regular life insurance is more effective than credit life, but each household should research what is best for them. That said, many people do own the credit life insurance with their mortgage company and this information should be recorded in your Direction Memo™. Failing to acknowledge the credit life benefit can trigger confusion in dealing with the mortgage company at the death of a borrower.

Reverse Mortgage (Section 6.4)

For retirees with limited liquid assets, a **reverse mortgage** could be the best solution when facing an income shortfall, medical costs, or long-term care. Reverse mortgages have been available since 1961, and the Department of Housing and Urban Development (HUD) provides 90% of reverse mortgages through authorized lenders. According to HUD, you must meet the following requirements for a reverse mortgage:[6]

- Be 62 years of age or older
- Own your property outright or have a small mortgage balance

- Occupy the property as your principal residence
- Not be delinquent on any federal debt
- Participate in a consumer information session given by an approved HUD HECM Counselor

How Does a Reverse Mortgage Work?

You can convert equity from your home into cash as a one-time payment, monthly payments or just simply to have an open credit line that lets you determine when you'll need the funds. Since a reverse mortgage works in "reverse," you have rising debt and falling equity; basically the opposite of a traditional mortgage. With a reverse mortgage, you still live in your home, and pay property taxes and homeowner's insurance, as you normally would. When the reverse mortgage terminates, the proceeds of the sale of your home will pay off the reverse mortgage debt. The reverse mortgage becomes due when the last surviving borrower dies, sells the home, or permanently moves (typically living continuously in a nursing home for one year).[7] It is very important to understand your agreement and whether you can move back into your home after a limited stay in a skilled nursing home facility or other "triggers" that could cause immediate repayment of the reverse mortgage.

With a Reverse Mortgage, What If you owe More Than Your Home is Worth?

The debt you owe from the reverse mortgage is usually settled at the death of the surviving borrower or the other triggers previously mentioned. If there is still equity in your home, the remaining proceeds will go to your estate and shared among the heirs. Its' certainly possible the home could have a lower fair market value than the borrower actually owes.

If your estate owes more to the mortgage lender than your home is worth, your estate may have to make up the difference. Some reverse mortgage arrangements have a "non-recourse" limit, which means the lender doesn't generally have a legal recourse for more than the sale price of your home. In this case the lender can't seek repayment of the excess amount owed from your estate, even if the reverse mortgage balance is greater than the current value of your home.[8] Other reverse mortgage arrangements permit the lender to settle their entire debt with your estate if the home is worth less than your debt. Although the reverse mortgage lender may able to seek repayment from your estate, your heirs do not have personal liability.[9]

Do Your Homework and Find an Expert

Since the amount you can borrow in a reverse mortgage depends on actuary tables, you can typically borrow more as you get older. You can estimate how a reverse mortgage might work by using the reverse mortgage calculator at reversemortgagepage.com . On this site, you can also find a directory of lenders who are HUD approved in your area. Because of the fees related to mortgages, experts strongly encourage seniors to exhaust their other assets before entering into a reverse mortgage. Some other options include: selling your home and buying a less expensive one, a home equity loan, or setting up a personal reverse mortgage arrangement with a friend or family member to curtail the fees of a

traditional mortgage. Experts also recommend you avoid a reverse mortgage in your 60's because you can't borrow as much.

Although you may not anticipate a time when you'll need a reverse mortgage, you should inform your important people about your thoughts regarding this topic. If one day your caretakers are looking for resources and also a way to keep you in your home, a reverse mortgage could be the solution. You should record any existing reverse mortgage arrangements in this section of your Direction Memo™.

Business Debts (Section 6.5)

You may have outstanding debts and revolving credit with your business interests. If these debts can affect your personal credit, you should document those debts in this section. As with many small business owners you may be required to take on personal liability for many of your business debts. This means that if you default on your personally guaranteed business credit then the lender can report those items on your personal credit reports.

Some of your business interests, such as LLCs, may have debts that affect your personal credit. A shareholder or LLC member could become personally liable for business debts from signing a personal guarantee or using their property as collateral. If you own a separate business where you believe you do not have personal liability on the business debts, than you don't need to record that information in this section. If your business debt is coupled with your personal credit, record those debts in this section.

Credit Issues and Bankruptcy (Section 6.6)

You should provide your important people any history of credit issues and bankruptcy in the case they need to reference this information. In the event of incapacity, your important people should be prepared to periodically examine your liabilities to defend fraudulent debts you didn't accumulate yourself. Your important people should periodically review your credit report if you are unable to do so yourself. You may also request that your surviving spouse or executor order a credit report at your death to ensure they're aware of all debts, or any suspicious credit activity. You may request another person's credit report if you have power of attorney or are the executor of an estate.

You should review your credit report at least once a year to make sure your identity has not been compromised or that mistakes in credit reporting have not been made. AnnualCreditReport.com provides consumers with the secure means to request and obtain a free credit report once every 12 months from each of the three nationwide consumer credit reporting companies in accordance with the Fair and Accurate Credit Transactions Act. You can also directly call them to obtain the reports at **877-322-8228.** You should record any credit cards or other revolving debt so your important people can identify the difference between legitimate or fraudulent debt.

If you have filed a previous bankruptcy your important people should understand the terms of the liquidation, the attorney whose services were engaged, and what year you filed. This information is relevant for your important people so they can protect your rights from creditors. Even though there are laws preventing past creditors from claiming debts once a bankruptcy is complete, unfortunately the harassment from creditors doesn't always stop. Without this knowledge your important people

may not know the difference between existing debts and those previously settled.

The First National Bank of "You" (Section 6.7)

With respect to loaning money to friends and family, the best advice is usually "don't do it!" The reality is that billions of dollars are lent informally to friends and family members every year, so this topic should be addressed. With the recession still in full swing in the new decade, loans to friends and family are at an all-time high. If you must loan money to friends and family, you should know what you are getting into and make it a formal transaction. You can consider using an organization such as Virgin Money that specializes in formally structuring social loans.

First, the person you are loaning the money to needs to know it's a loan and not a gift. Without a promissory note, the loan could be construed as a gift. You can do this by documenting the terms of the loan and whether you are charging them interest or not. If you are loaning money to someone for a home, you should secure the note. This way the borrower can deduct the interest if it's a home mortgage. You should also write a letter confirming that the borrower was "solvent" at the time of your loan, and state that you expect to be paid back.

There are other reasons to clarify that you intended for the transaction to be a loan and not a gift and the IRS has policies that define gifts versus loans. When you loan amounts to friends and family over $10,000 without charging interest, you should seek advice whether you owe tax on an "imputed interest rate" for the transaction. The IRS will expect you to pay taxes on this income, even if you're not actually receiving any interest from the loan. Also loan amounts you forgive may be taxable income to the borrower. If your loan is $100,000 or less, and the borrower's investment income the year of the loan is $1,000 or less, then the IRS won't tax you on the **imputed interest**.[10] The world of imputed interest is complex, which is one more reason to avoid loans with friends and family. Consult with a tax advisor to assure you handle the loan properly, especially if it's an interest-free loan.

If you expect to be paid back from your loans, whether formal or informal, you should record this information in your Direction Memo™. If you wish to forgive any loans at your death you can express this in your Direction Memo™, but may want to also clarify your intention directly within the loan agreement. If you are selling property on contract, record the property, the location of the original contract, and the attorney who drafted the contract. Unlike with a mortgage, the seller normally retains the deed until the contract is fully paid. The contact information of the buyer should be listed so your important people can communicate with them. You should be aware of state laws for land contracts prior to entering into an agreement. You shouldn't enter into buying or selling anything on contract without considering what will happen if one of the parties dies during the contract. Your important people need to understand the terms of the contract if either the buyer or seller dies.

Other Debts, Bills, Automatic Payments, and Miscellaneous Items (Section 6.8)

The purpose of this section is to provide any miscellaneous information regarding issues related to debt in section 6. If your bills or debts are paid online or through an automatic payment program, you should record that information in this section. More people today are banking and paying their bills

online and these arrangements can be made in many different ways.

The Power of Delayed Gratification (Marshmallow Test)

To conclude this chapter on borrowing and loaning money, you might want to think about passing on important values to your loved ones about financial responsibility. One of the greatest strengths an individual can possess is the Power of Delayed Gratification. Perhaps you can best relate to delayed gratification from a study that was originally conducted about forty years ago at Stanford University by psychology professor Walter Mischel.

The study began with a group of children 4 years old. Mischel optionally offered them one marshmallow immediately, but instead if they could wait for Mischel to return later, the children could have two marshmallows. He left for approximately 20 minutes to return and find the children that who could wait demonstrated they had the ability to control impulse. As you would expect, most children immediately took one marshmallow, and very few children decided to wait and double their rewards.

The test was meant to measure children who could delay gratification. Studies showed that children who could postpone eating a marshmallow at age 4 outpaced their peers in many areas by the time they reached age 18. In fact, the children with controlled impulse scored on average 210 points higher in the SAT when they were 18 and had higher confidence, concentration, and reliability.[11]

Let's face it, when adults receive an inheritance, most of them immediately and impulsively "eat the marshmallow", and few are willing to delay gratification in order to receive the future enhanced rewards. Whether they were born with these characteristics or acquired them later, people can change with the right influences. Maybe the best inheritance you can give your loved ones is to teach the power of delayed gratification. On average, the recipient of an inheritance will purchase a new car within 19 days and exhaust the entire inheritance in 18 months.[12] Your Direction Memo™ can be used to teach your loved ones about the value of organizing their own finances and making fiscally responsible decisions.

Action Steps

Complete Section 6 of your Direction Memo™:

6.1- Defines the purpose of this section addressing debts you owe and that are owed to you.
6.2- List all of your active consumer and revolving debt.
6.3- Provide information about traditional mortgages with your name on the mortgage contract.
6.4- Provide information about reverse mortgages with your name on the mortgage contract.
6.5- List any business debt in this section that's been personally secured by you.
6.6- Include any history of bankruptcy or related credit issues and include instructions for your fiduciaries how to monitor your credit.
6.7- List any debts that are owed to you whether formal, informal, or property sold on contract.
6.8- Additional debts, bills, automatic payments, and miscellaneous.

Did you know you can schedule a free consultation with Paul? Log onto www.directionmemo.com and schedule a phone call.

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Chapter 7: Real Estate (Sections 7.1-7.2)

"The best investment on earth is earth."- Louis Glickman

YOUR REAL ESTATE CAN BE the most challenging of assets for your important people to manage, should something happen to you. Not only does real estate require physical maintenance, but buying and selling it is typically more complex than other assets. Some families own recreational properties, such as a cabin, they'd like the family to keep in their family for generations. You will help your important people immensely by making some advanced decisions regarding the future management of your real estate. Even if your home is your only asset, there are still many decisions to be made by your important people. And if your family lives 500 miles away, who would they call to manage, repair, or sell the property?

In this chapter, you will critically analyze the titling of your real estate and determine if it harmonizes with your estate plan. You will also begin to think about real estate professionals in your area whose services you would want your important people to engage if something happens to you. This may include real estate agents, property managers, title companies, or even handymen. Just because you don't need these professionals today doesn't mean you shouldn't make preparations for the future. A lack of planning with your real estate assets may cost your loved ones a lot of money and stress.

The original deeds, contracts, statements, and other vital paperwork for your real estate should be kept in your safe deposit box or other safe location. You should record the location of these papers in your Direction Memo™ along with other relevant information about your real estate. Your important people may need to review your deeds and understand possible limitations and restrictions for how your property can be used.

You should include in your Memo the "cost basis" or the original price you paid for your real estate. The calculation of basis can be complex if you have traded, depreciated, or made improvements to your real estate. Your Direction Memo™ should provide a contact person, such as your tax professional, who knows the tax basis for your property(s). Your important people need to know the potential tax issues with your real estate, especially if they must sell one of your properties prior to your death.

Classifying Your Real Estate (Section 7.3)

You can identify all your real estate in the Direction Memo™. Real Estate is generally classified into four types:

1. Land
2. Residential real estate
3. Commercial real estate-This generally includes office buildings, retail property, oil & gas and other mineral rights, farms, warehouses, or any other real estate that generates income

4. Industrial real estate- factories and other real estate used primarily for manufacturing or other industry

You may own real estate independently, or your real estate investments can be owned with other investors in entities such as:

- General Limited partnership
- Corporation
- Non-traded Real Estate Investment Trusts(REITs)
- Life Estate
- Timeshares

It's important to describe how ownership of your real estate is structured when owned with a group of other investors. Even more important is to understand how your real estate is accounted for in your estate plan. How your real estate is titled must be clarified in your Direction Memo™, which will help your important people move swiftly through the administrative process of transferring your real estate to your intended beneficiaries.

Asset Titling, Ownership, and Your Estate Plan for Real Estate

The first issue to review regarding the ownership of your real estate is to ensure that the title of your property is "clear". Title problems are not easy to correct and usually stem from the deed being ambiguous in the property description, an encroachment to the property, deed restrictions, unpaid property taxes, or property liens. If you have any doubts whether or not you have a clear title, then take care of the issue today. The problem won't go away if you die or become incapacitated, it will only get worse.

Next, you'll want to study what type of ownership you have with your real estate. The simplest way to confirm your real estate ownership is to look at the recorded deed. In the alternative, you can call your County Assessor's office. Most Assessors have their own websites where you can obtain this information instantly. You should complete this exercise with every property you own and check the consistency of your titles. Your ownership titling is the most important detail as it relates to you having a sound estate plan with your real estate.

You have already read about the pros and cons of the various ways to title property. Remember that when you add another person to the title of your property, you could also be exposed to their creditors. This commonly occurs with widows who want to add their children as owners of their property, to make transfer to the children easier when the widow dies. The widow wasn't expecting one of her children to file for bankruptcy, get divorced, or get sued a few months after she added them as a joint tenant owner. Keep in mind that you are also making a gift when you add another person to your property, which can create a gift tax trigger. So, what's the alternative to adding your beneficiaries to the title? Is there some way to ease the burden of transferring real estate to your beneficiaries, avoid probate, and yet protect yourself from your beneficiary's creditors? To find the answer, let's examine the traditional property ownership titles and how this relates to transferring real estate at death.

Operation of Law

Probate generally occurs when a person passes away who owns property titled as "sole ownership" or sometimes also referred to as "fee simple." This is a common form of ownership with people who've either never married or widows who remove their late spouse from the title. Once that sole owner passes away, the probate process begins. To put it another way, the probate process will be avoided when there are two or more joint tenants with rights of survivorship on the title. Eventually the last surviving tenant's estate must be probated unless additional changes are made to the title of the property prior to the sole owner's death.

Contract Law

Similar to naming beneficiaries "by contract" for your brokerage accounts, "Transfer on Death" (TOD) is also available in several states for real estate property. This allows you to name beneficiaries, to whom the real estate will be directly transferred, avoiding probate. This removes the need to add the beneficiaries as owners on the title of your property.

Since 1995, twelve states have passed new laws allowing a "nonprobate" method for leaving real estate to heirs without adding them as actual owners on the deed. These states are: Arizona, Arkansas, Colorado, Kansas, Missouri, Minnesota, Montana, Nevada, New Mexico, Ohio, Oklahoma, and Wisconsin.[1] This method of leaving real estate to your beneficiaries involves signing a new deed for your property. The various participating states use either the term "Transfer on Death Deed" or a "Beneficiary Deed" and this works by signing the deed before a notary public, and having it documented at the court house in the county where your property is located. Upon your death, the deed automatically transfers your real estate to whomever you named as beneficiary in the deed. If you live in one of these states, you should be able to find the form at your County Assessor or at www.nonprobate.com.

A transfer-on-death deed does not transfer any present ownership interest in the property, and is revocable at any time. Generally speaking, anyone who owns property as a sole owner, joint tenant, or tenant in common, may benefit by adding their beneficiaries directly to their deed.

By Trust

If you own real estate in a state where a Transfer on Death deed isn't available, you may create a revocable living trust in order to avoid probate with your real estate. Titling your real estate in your trust can protect you and your household from a number of negative outcomes. One of the benefits of a trust is that your successor trustee can act for you if you become incapacitated. If you are holding real estate with your spouse as joint tenants, and your spouse suddenly becomes incapacitated, you must exercise a power of attorney to make any changes. This could eat up important time if you are trying to sell or purchase a property. This is generally not a problem with a trust because the successor trustee has the ability to take immediate action if a grantor is no longer able.

In the case of real estate, there are two methods for transferring property to your trust: (a) quit claim deed and (b) beneficiary deed. A quitclaim deed transfers the property immediately to the trust.

A beneficiary deed transfers the assets after your death. Your estate planning attorney can help you choose the appropriate option.

Real Estate and Ancillary Probate

Remember from chapter 4 that if you own real estate in multiple states, your executor will not only need to probate the property in your state of domicile, but also the other states where you own properties. This is referred to as ancillary probate. Therefore probating real estate can be one of the greatest challenges due to the time, costs, and potential travel required. Using a Transfer on Death deed (where available) or a trust will help both with local and ancillary probates.

Another reminder from chapter 4 is that probate costs associated with real estate can be expensive depending on the way probate fees are calculated in the states where you own property. The higher cost is because mortgage debts often aren't subtracted from the property value when the probate fees are calculated. Even if you don't have much equity in the property, the probate cost may be calculated on the full fair market value instead of the equity. [2]

Partnerships, Corporations and REITS (Section 7.4)

You may indirectly own real estate investments in a partnership or pool with other investors. You should provide as much detail as you can for your important people about these investments in your Direction Memo™. Partnerships and non-traded REITs can offer very little liquidity during the investor's lifetime, but may offer liquidity benefits at the investor's death. Sometimes even the owners of these investments do not fully understand the liquidity options with these investments at the death of the owner without knowing what questions to ask the advisor who recommended the investment.

There are a wide variety of business arrangements that can be used to hold real estate. Your Direction Memo™ should include specifics about the type of business entity for this real estate and the professional advisor that helped you create this arrangement. There can be advantages, as well as tax complexities to these types of business entities, and your important people must be informed.

Land corporations, partnerships, and non-traded REITs should be fully described in your estate plans. How will these assets be transferred at your death? Who will manage these investments in the event of your incapacity? What tax forms are necessary for these investments?

The Life Estate

Another form of ownership related to real property is the life estate. In this form of ownership, the life tenant has the right to occupy the property during their life. A retained life estate is an irrevocable transfer of a personal residence or farm where the life tenant retains the use of the property for his or her lifetime, or for a term specified in the transfer agreement. A "retained" life estate is common when parents wish to live in their home for their lifetimes, but choose to gift it to their children today. One reason to gift a home to your children is to "freeze" the value of the property for estate tax purposes, by transferring an asset that will continue to increase in value after your transfer. Your attorney may refer to

a document creating a granted life estate referred to as a **Qualified Personal Residence Trust (QPRT)**. A disadvantage of the QPRT is that it transfers the home to beneficiaries with the original cost basis. Therefore it's important to determine whether the potential savings in estate taxes is worth losing the step up in basis.

Ordinarily the transfer of real property from a parent to child qualifies for exclusion from re-appraisal of the property. This is very important in certain states that have assessments for property taxes much lower than the current market value of the home. For example, in California under Proposition 13, the property is assessed for tax purposes only when it changes ownership. Providing a life estate to someone other than your children may require re-appraisal and you should seek legal counsel to further determine if granting a life estate is an appropriate strategy.

A **granted life estate** commonly occurs when the owner wants to ultimately transfer the property to their children while granting a life estate to someone else. Normally, the individual who was granted life estate to the property is responsible for taxes and maintaining the property at the level it was when the estate was granted. However, the individual does not solely own the property and therefore cannot sell or in any manner encumber the property. A granted life estate is common with second marriages, where the original owner wants the home available to their current spouse during his or her lifetime, but wants it to eventually transfer to their children from a previous marriage.

Another method of life estate is transferring ownership of real property to a qualified charity. A donor may receive a charitable income tax deduction for the transfer of a remainder interest in a personal residence, farm, or ranch to a qualified charity. This works when a donor deeds the personal residence or farm to a qualified exempt charity and reserves a life estate. The life estate reserved will be discussed further in Chapter 11 on charitable planning.

Life estates can be useful in estate planning, but anyone considering retaining or granting a life estate should consult their professional advisors before taking action. Entering into a life estate may have gift, estate, income tax, and other consequences beyond the scope of this book and should be vetted with your professional advisors. Your Direction Memo™ has a section to describe an arrangement whether you are the holder or grantor of the life estate.

Timeshares

A timeshare is a form of ownership in a property that generally lasts for a specified period of time. It may be easy to overlook timeshares in your estate plan when thinking about the other real estate you own. It's generally difficult to sell ownership in a timeshare; therefore many people will pass away owning their timeshares.

Timeshares are generally an interest in real property just like a home, condo, or a parcel of land. Unless you have a revocable trust and title your interest in your timeshare as such, you may once again face the issue of ancillary probate for your estate. If you own a timeshare, you certainly should discuss with your attorney the titling of this property and how to best transfer this investment at your death. Timeshare agreements are written in a variety of ways and you must discuss the ownership with your attorney.

It's not unusual for probate attorneys in Florida to get involved with estates from all over the country

because the decedent owned a timeshare in Florida. There are thousands of timeshares in Florida and most of the owners are not Florida residents. A little planning on your behalf will ensure that your timeshare will avoid ancillary probate.

Identify Your Real Estate "Team" of Professionals (Section 7.5)

Anyone who owns real estate should record in their Direction Memo™ the professionals your important people should contact if something happens to you. Naming these professionals in your Direction Memo™ doesn't require your important people, by law, to use their services. But consider how much time you can save your important people if they already know the names of real estate professionals they can use on your behalf. Using the best professionals may be critical to the successful financial continuity for many households who own real estate.

Naming a Real Estate Agent

If your important people live in a different region from where you own real estate, they probably don't know who would be the best agent to use for listing your property. Even if you plan to own the property for the rest of your life, you should identify a specific realtor, or real estate company your important people can contact. It's rare that your important people will sell your real estate without an agent, unless specific arrangements have been made. If you don't know any realtors who specialize in the markets where you own real estate, you should consider what attributes you'd look for in a real estate agent, if your property must be sold. Below are some questions you can raise as a starting point to finding a quality agent:

- Is the agent keeping up with marketing and customer trends? One of the attributes of a top agent is that they aren't just on the MLS (Multiple Listing Service) but know how to draw shoppers to view your home online. Just about everyone uses the internet to look for real estate today.
- Can this agent work well with other professionals?
- Look for an agent who specializes in selling the type of real estate you own. Is this residential or commercial real estate?
- Is this person a full time real estate agent, or is selling real estate just a hobby? A committed real estate agent generally doesn't work "part-time". They must work nights and weekends and be available at all times.
- Is the real estate agent a REALTOR®? This means they are a member of the National Association of Realtors which is a U.S. trade organization for real estate agents, founded in 1908 and that prescribes a code of ethics for its 1.3 million members.

You can ask friends and family to refer you to an agent, but don't pick them just because of that introduction. Do your own homework and provide information about the agent so your important people can select them with confidence and include the agents contact information in your Direction Memo™.

Property Manager

You may own properties that are rental properties. Like many landlords, you likely had to work hard over many years to earn the wealth created from your real estate. This normally means you handle the maintenance, bookkeeping, leasing, and advertising of the units, on your own. If something were to happen to you, there are many mistakes that can be made if your property is managed by the wrong people.

Real estate management requires specialized education and training. The cost of using a property manager can range from 3-10% of the gross rents depending on the size and dynamics of the property. The expense of a property manager is certainly worth the money if the manager can successfully step in when you can no longer perform the required management tasks.

The Institute of Real Estate Management (IREM) is known for training both residential and commercial property managers to become elite professionals. IREM prepares professionals on many different subject matters and property types to handle complex real estate issues. You can find real estate managers in your area by logging on to www.irem.org go to "about IREM" and click on the membership directory. From there you can find Certified Property Managers (CPM®) and other specialists near your real estate who are qualified to work with your real estate property type.

If you own real estate such as farm, ranch, or timber, you should considering using a professional organization that specializes in agricultural real estate to manage, auction, or act as selling agent. Below are two well-known organizations that specialize in agriculture real estate management.

www.westchester-group.com – Westchester Group is a farm and asset manager. Westchester currently manages nearly 70,000 acres in 11 states and over $400 million in client assets. Westchester manages crops such as Midwest grains, Florida citrus, Arizona vegetables, Mid-south cotton, California almonds and wine grapes, and Washington apples.

www.hfmgt.com – Hertz Farm Management since 1946 specializes in professional farm management, farm real estate sales, real estate auctions, land acquisitions, consulting, and farm appraisals throughout the Midwest.

A good property manager will do everything you do (perhaps even better) when the circumstances change and you no longer have the ability to manage real estate yourself. The manager can administer property inspections, maintain the landscaping, screen tenants, collect rent, and even provide you with financial statements for accounting purposes. Commercial property management is different from residential management and usually requires more effort in terms of the building maintenance. For example, the property manager negotiates contracts for janitorial, security, grounds keeping, trash removal, and other needs.

Other Professionals

It's appropriate in this section to list any other trustworthy professionals in your Direction Memo™ that you feel can help your important people with your real estate. This could be a handyman, a title company, or real estate attorney that you would use. It would also be prudent to name a contingent

real estate agent or property manager if the professionals you have named can no longer serve you.

Real Estate Tax Records (Section 7.6)

If you own real estate, your beneficiaries will receive the property on a stepped-up basis to the current fair market value on your death. While you are living, it may become necessary to sell real estate you have owned for a long time which may trigger capital gains tax or even ordinary income recapture if you've been depreciating the property. Not only should your important people be cautious of these taxable events, they should be aware of your ability to "exchange" your real estate for other real estate should the situation arise. Let's look at income tax issues when selling a home or other real estate.

The Sale of Your Home

If you have a gain from the sale of your principal residence, you may be able to exclude up to $250,000 of the gain from your income ($500,000 on a joint return).[3] If you can exclude all of the gain, you do not need to report the sale on your tax return. If you have more than one home, you can exclude the gain only from the sale of your primary home and you must pay full tax on the gain from selling a secondary home.

You may own multiple homes so it's important you are clear about which home is your principal residence. You are a tax resident if you are either **domiciled** in a state or you spend the majority of your time in a particular state. This is not only important to utilize the home sale tax exclusion mentioned in the previous paragraph but to also make sure there is no confusion what your domicile was at death. States where you have lived may feel your estate owes them estate taxes, and so you must be clear about your domicile.

To ensure you have intended to make a home your domicile, you should take the following steps:

- Register to vote in that state (and don't vote again in your old state)
- Obtain a drivers license and register your vehicles in that state.
- Have a local banking relationship in that state.
- Transfer your medical records to the physicians in this state.
- File your state income tax return in this state.

Depreciation

If you own investment property, you likely are depreciating the building. **Depreciation** makes real estate a favorable investment because it's treated as an expense for tax purposes. The depreciation is only an expense on paper but it can nonetheless offset rental income from taxation. Since a building won't last forever, the owner is allowed to deduct a certain amount each year as depreciation. If you rent part of your home, have a home office, or rent a property and use depreciation, you will be responsible for a recapture tax during your life if you sell the depreciated property. Depreciation recapture is generally taxed at a flat federal rate of 25%.

There are few methods to avoid depreciation recapture taxes. When a property owner dies with a depreciated asset, their beneficiaries will receive a "step-up" in cost basis upon the owner's death. This information could be helpful to your important people so they may avoid income tax pitfalls with depreciated property. Another method to defer taxes is "exchanging" one property for another that meets the guidelines of a qualified exchange.

What is a 1031 Exchange?

A 1031 exchange is a transfer that defers the payment of capital gain and depreciation recapture taxes throughout your lifetime when you "swap" investment real estate. Internal Revenue Code 1031 defines the terms for what is deemed an acceptable exchange of "like-kind" real estate.

There are several key rules in a 1031 exchange that must be complied with to ensure the owner successfully completes the transfer. First, a "Qualified Intermediary" must independently handle the transaction between the exchanger and the new buyer. The Qualified Intermediary should be a company that works on a full-time basis facilitating 1031 exchanges. Secondly, the 1031 rules require that the replacement property must be subject to an equal or greater level of debt than the property sold or as a result the buyer will be forced to pay the tax on the amount of decrease.

Anyone seeking to successfully complete a 1031 exchange must also be aware of two deadlines in the process. The exchanger has 45 days from the day of selling the relinquished property to identify another property for replacement. The exchange must also be completed no later than 180 days after the date on which the person transfers the property, or the due date for the person's tax return for the year of exchange, whichever is earlier. The qualified intermediary, as well as your tax professional, should make certain you abide by these important guidelines to ensure a successful 1031 exchange.

If you own real estate investment property, you may have an opportunity for a favorable trade. It's conceivable these opportunities may occur at a time when your important people will need to work with your professional advisors. Remember that when the owners of the property die, the capital gain and ordinary income embedded in the real estate generally "dies" as well. A "step up" in basis could be a major tax benefit for beneficiaries. Your Direction Memo™ should indentify the basis in your real estate and the potential tax ramifications of selling the property before your death. The 1031 exchange could be useful in the right situation to defer, and perhaps avoid, taxes from a real estate transaction.

Property Tax (Section 7.7)

The Direction Memo™ also reminds your important people to review the annual property tax assessed on your properties. Property values are estimated by a computer, which means that your assessed value could be wrong, and you could be entitled to a lower bill. Lots of people appeal and you should remind your important people to appeal if the assessments are incorrect. In the event of incapacity, the agent under your power of attorney or your trustee would likely be the petitioner to make an appeal.

This section can also serve to remind your spouse or other important people to review their assessments when you are no longer living. Your spouse may now be the sole owner of the property

and it would be his or her responsibility to determine whether the assessments are indeed accurate. In fact, the real estate professionals who have named in your Direction Memo™ would most likely aid in reviewing your assessment. And when they're convinced your assessed value is too high, it's time to get some proof in the form of an appraisal.

Miscellaneous Real Estate Information (Section 7.8)

Any issues that haven't been addressed in previous sections about your real estate should be included in this section. This might include instructions or intent outside the scope of your legal documents that you want people to know about with regard to your real estate. Financial planning in real estate is perhaps as important as any other investment you own. A home or other real estate could be the largest asset in your estate. Due to its lack of liquidity, you can lose a tremendous amount of wealth if real estate is handled incorrectly.

Action Steps

Complete Section 7 of your Direction Memo™:

7.1- Defines the purpose of this section addressing your real estate ownership.
7.2- Record the location of real estate paperwork and legal arrangements.
7.3- List your real estate you own personally.
7.4- List your real estate owned in a business entity with other investors.
7.5- Provide a list of real estate professionals you recommend your important people take into service.
7.6- Record notable tax information related to your real estate.
7.7- Review instructions for property taxes.
7.8- Record miscellaneous real estate information not in the previous sections.

To stay abreast of current issues in financial and estate planning, log onto Twitter and search @PaulCaspersen to follow.

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1. http://www.nonprobate.com/
2. Fadia, Vijay. *The Living Trust-A Cure For the Agony of Probate*. Torrance, CA: National Law Digest, Inc., 1992. Page 9.
3. The Internal Revenue Service. www.irs.gov/businesses/small/industries/article/0,,id=98921,00.html

Chapter 8: Nonqualified Savings & Investments (Section 8.1)

"Advice is one thing that is freely given away, but watch that you take only what is worth having. He who takes advice about his savings from one who is inexperienced in such matters shall pay with his savings for proving the falsity of their opinions."
George S. Clason, Excerpt from "The Richest Man in Babylon" Chapter 4. 1926.

IMAGINE THAT YOUR LATE SPOUSE worked at Northern Natural Gas for 30 years and your primary source of income since your spouse's death was his pension. In 1985, you received a letter from Northern Natural Gas that they were changing their name, through several acquisitions, to a company called Enron and your widow's pension will be transferred into Enron Stock. Perhaps you have some concerns about this change, but you don't know who to talk with about your options, so you hope for the best. In early 2001 you begin to hear rumblings Enron is having problems and then it goes bankrupt by the end of the year. [1]

This true story is extreme, but anyone in widowhood can relate to making difficult financial decisions on their own. It is likely the widow in the above story allowed her late husband to make most of the financial decisions during their marriage. Her spouse passed away and she was thrust into a new financial world, with new people, new vernacular, and new decisions to make. This can be more stress than a widow (or widower) can cope with. Most people learn to cope because they don't have a choice, but they are at incredibly high risks of making uninformed decisions.

Senior citizens in general, tend to be more at risk of making ill-informed investment decisions as they grow older. A study that analyzed how people make investment decisions as people age found that older investors' performance slowly declined with age.[2] This could be a reason that seniors tend to rely more on a financial advisor as they age. It's important to have your primary financial advisor participate in writing sections 8 and 9 of your Direction Memo™. Much of sections 8 and 9 relate to documenting your way of thinking about various savings and investment scenarios.

In this chapter, you'll identify all of your savings and securities that are considered **nonqualified investments**. These are "after-tax" bank or brokerage accounts that are not IRAs or other "pre-tax" investments. Nonqualified investments are generally titled as sole ownership, joint tenancy, or in a living trust. Similar to your real estate investments, your important people should know about the income tax consequences before making any trading decisions with your nonqualified investments. You will also create an **Advance Investment Philosophy** ™so your important people can make decisions with the confidence as if you were there with them (even if you aren't).

All of this planning may help you understand the reasons why a primary financial advisor is critical for your household. You may be as talented an investor as Warren Buffett, but what happens if you can't make decisions anymore? Financial information that you understand may not be so obvious to

your loved ones. At some point in your life (or beyond) a financial professional may be an important consultant for your household, so why not have them help you write the investment instructions for your Direction Memo™? This will provide your loved ones with confidence, which is nearly as important as wealth itself.

Taking Inventory of Your Investments

Most investors take a "random walk" through life acquiring different assets such as stocks, bonds, mutual funds, and certificates of deposit. You may have a transparent investment philosophy or a less obvious investment pattern. It's difficult for your fiduciaries to maintain your investment philosophy. That's why most attorneys intentionally avoid drafting a trust with a narrow focus on how to invest the principal of the trust. Taking inventory of your savings and investments is the first step in this chapter. In this section of your Direction Memo™, you'll list all of the nonqualified assets you own including:

- Bank checking and savings accounts, Certificates of Deposit, Money Markets
- Mutual Funds, Stocks, Bonds, Brokerage Accounts , Employee Stock Options
- After Tax (Nonqualified) Commercial Annuities
- Private Equity, Hedge Funds, Real Estate, Oil and Gas Partnerships
- Anticipated inheritance of nonqualified savings and investments
- College Savings and Minor's Accounts

You will record all of your nonqualified assets in your Direction Memo™ including the names and account numbers at the financial institutions holding your assets, as well as the how those assets are titled.

Bank Accounts (Section 8.2)

Some people who grew up during The Great Depression have accounts with every bank in town because of advice from their parents about the unreliability of banks. Recording all of your banking relationships in one place makes it easier to find all the bank accounts. It will also be important when you get to section 8.10 with creating your Advance Investment Philosophy™ with how much of your overall investment assets should be in **cash equivalent** investments. Since these instruments lose purchasing power over time, it's important to determine how much of your wealth should be in savings accounts, money markets, and CD's.

Mutual Funds, Stocks, Bonds, Brokerage Accounts, Employee Stock Options (Section 8.3)

Most households today own their mutual funds, stocks, and bonds in a brokerage account. This is not only for the convenience of trading investments and tax reporting, but it also makes it easier to locate and re-title assets at the death of one of the account owners. Some people insist on personally

holding their stock certificates, which makes transferring ownership difficult. If you must hold your stock certificates, record the location of the certificates and the name of the transfer agent who is the custodian for the shareholders.

If you own employee stock options, provide as much information as you can in your Direction Memo™, including professional advisors who are knowledgeable about these investments. For some households, a significant portion of their net worth is tied up in employer stock options. As you'll read later in this chapter, certain types of stock options can create dreadful tax consequence if the options are exercised incorrectly.

After Tax "Nonqualified" Commercial Annuities (Section 8.4)

Annuities often get criticized in the media as bad investments sold by rogue salespeople, but that is the exception and not the rule. Annuities are attractive to many people because they are designed in ways for an investor to participate in the potential growth of the equity markets, without full exposure to the downside risk of securities. Agents refer to these benefits as **guaranteed living benefits** and **guaranteed death benefits.** These benefits come with expenses, but it may be an intelligent risk management strategy for an individual investor. Guaranteed living benefits are packaged in many ways and you must understand the limitations as well as the advantages. If you own a commercial annuity that carries with it the "bells and whistles" that sounded attractive when you first purchased it, or if you are thinking about investing in a commercial annuity, you need to ask the agent several questions:

1. What is the rating of the insurance company? All the guarantees mean nothing if the company is not around in the future to fulfill their promises.
2. Am I required to "annuitize" in order to receive the guaranteed living benefit you are offering me? Annuitization essentially is an agreement between you and the insurance company to surrender your assets in return for a guaranteed lifetime income and any proceeds at your death remain with the insurance company.
3. How do withdrawals impact the living and death benefits on this contract? In other words, what additional downside protection does this contract provide compared to other investments? A withdrawal from the annuity may adversely impact the income rider and future income payments.
4. Do guarantees stop or level off when I reach a certain age?

There isn't a "silver bullet" which allows you to participate in the experience of the equities markets, have zero investment risk, and full liquidity. If you own an annuity with guaranteed living and death benefits record this information and provide a reference where your important people can locate the annuity contract.

Private Equity, Hedge Funds, Real Estate, Oil and Gas Partnerships (Section 8.5)

Limited partnerships allow an investor's diversification into alternative investments while passing through income and losses directly to the investor. The tax issues related to these investments are discussed in greater detail in section 8.8, because your important people need to be aware of the additional filing requirements of limited partnership arrangements. From an estate planning perspective, it's important to know how to gain liquidity in limited partnership assets in the event of your incapacity or death.

In this section you should include any limited partnership arrangements where you receive "passive" income and in which you do not materially participate in the business. "Active" income is proceeds from a business where the investor actively participates in the day-to-day operations of the business. Any business arrangements where you receive active income should be included in section 10.8 under business ownership.

Anticipated Future Inheritance, Gifts, or Lawsuit Judgments (Section 8.6)

If you anticipate receiving future assets from a source other than your spouse, you should record what you expect. Although it's not prudent to make financial decisions based on what you *think* you may have in the future, it helps to understand how your overall portfolio may change.

Making plans for funds you expect to receive encourages you to direct how to invest those funds in the event you are unable to. It also helps your important people to remain aware of other inheritance entitled to you, and to marshal those assets. If you are the beneficiary of a trust, you may recall that section 3.4 addresses trust accounts where you expect to become either an income or remainder beneficiary. For all other inheritances, or other instances where you anticipate future assets, record that information in this section.

College Savings and Minor's Accounts (Section 8.7)

A section in this chapter dedicated to college savings and minor's accounts is very important from an estate planning perspective. Any college savings plans you have established for your children, grandchildren, and others are completed gifts you have made and should be identified in your Direction Memo™. The following are most of the common college savings vehicles today:

- Section 529 Plan
- Coverdell ESA or Education IRA (IRC Section 530)
- Uniform Gifts to Minors Act (UGMA) account or in some states, a Uniform Transfers to Minors Act (UTMA) account
- A minor's trust, established under the provisions of Internal Revenue Code (IRC) Section 2503(c)

Since 2001, the interest in the 529 plans has skyrocketed and overshadowed other options for college savings. Despite 529 plans becoming ubiquitous, there are many of the older savings vehicles that still exist, and should be recognized in your Direction Memo™. A commonality of the college savings

vehicles above is they are a gift of "present interest." This means the IRS recognizes the establishment of these accounts as an irrevocable gift to the minor.

Section 529 plans and Education IRAs are distinctive because they are considered a present interest gift, but the account owner still has ultimate control. As account owner, you are allowed to change the beneficiary for any reason. It's rare that you can give a gift of present interest and actually take it away from the donee in the future. You can't rescind a gift from minor who was intended to receive funds through UTMA or UGMA accounts, or the 2503(c) trust, but you can with 529 plans. Under Section 529, the beneficiary can be changed to any of the following family members related to the original beneficiary[3]:

1. Son, daughter, stepchild, foster child, adopted child.
2. Brother, sister, stepbrother, or stepsister.
3. Father or mother or ancestor of either.
4. Stepfather or stepmother.
5. Son or daughter of a brother or sister.
6. Brother or sister of father or mother.
7. Son-in-law, daughter-in-law, father-in-law.
8. The spouse of any individual listed above.
9. First cousin.

Imagine for a moment that you have 3 grandchildren who are ages 8, 5 and 2 in the year 2012 and you've established Section 529 accounts on their behalf. It's now 2022, but you are no longer in the picture. The oldest grandchild is 18, she's getting ready to go to college, and she is very grateful to you for helping to support her education. In 2025, your second grandchild was not a successful student and decides to join the Navy instead of going to college. In 2028, your youngest grandchild is preparing to go to college and she can use as much financial assistance as possible because of the increased tuition and expenses. If you knew today that your 2nd grandchild won't go to college, would you use his funds to help your 3rd grandchild with her tuition or would feel your grandson is entitled those funds? The Direction Memo™ can help you account for most of these scenarios so that the successor owner of your 529 plans can make decisions with your guidance.

There are many options if you choose to change the original beneficiary of a 529 account. Why is this important? Because you may have some wishes how this money gets used for this student. Just about anything can happen, this child could get a "full ride" on an athletic scholarship, enlist in the Air Force, or invent the next Facebook and they won't need the funds from your 529 account for educational purposes. As an account owner of every 529 or Education IRA, you must decide your objectives:

1. Are you giving this account to the beneficiary regardless if they need the funds for higher education? Keep in mind if the beneficiary doesn't use the 529 funds for qualified higher education, taxes and penalties are assessed on the earnings of the account.
2. Do you want the 529 funds to be transferred to another beneficiary if the current one doesn't need the funds for higher education? If so, who are the likely alternative beneficiaries?

3. How should the beneficiary utilize the 529 funds once they are attending college? Should the account owner pay tuition directly to the college or provide the student with a monthly stipend?

Contingent Account Owner and Beneficiary

With great flexibility comes additional planning. Because of the flexibility to change beneficiaries and owners with a 529 or Education IRA, it is important to name a contingent account owner who can make future decisions upon the death of the current account owner. When you fill out the enrollment application for a 529 plan, there is typically a section to name a successor or contingent account owner. For most 529 plans, the rights assumed by the successor owner includes the right to request a refund of any or all account assets.[4] The successor owner has as much power as you do in the future; therefore it's important to have trust and confidence in the one you name as successor owner.

You should leave the successor owner instructions for the ongoing management of 529 accounts in the event of your death. The instructions you leave in the Direction Memo™ could include issues such as those mentioned above like how to spend the money when the child enters college (e.g., on rent, tuition, monthly allowance), or how to continue to invest the funds. You can also instruct the successor owner to change the beneficiary to a different person depending on the future decisions the current beneficiary makes, or other scenarios, as they become adults.

What if you can't find a successor owner you trust to follow your instructions? You can work with your attorney to name the successor owner as a trust. According to Joe Hurley from savingforcollege.com, this could make sense if you want to control the future actions of the trustee through the terms of the trust, ensuring that the 529 assets are used based on your original intentions. Although this doesn't provide as much flexibility and discretion for the successor owner, it does create a binding element for your important people managing your 529 accounts when necessary.

Taxation of Nonqualified Investments (Section 8.8)

If you are privileged enough to have your nonqualified investments increase in value, you'll owe capital gains taxes when you sell them. Your important people should understand the consequences of buying or selling any of your investments before they take action on your behalf. Documenting the cost basis will inform your important people of any "embedded" capital gains that would be realized if they sold your investments before your death. While leaving complete tax advice in your Direction Memo™ is impractical and unnecessary, the extra step of asking your important people to consider every angle prior selling an investment is the important thing.

If you have ever sold an investment for a loss, than you have likely attempted to use those losses to offset any gains you had on other investments. If your total capital losses exceed your total capital gains for the whole year, then you have a net capital loss. **Net capital losses** are deductible up to a limit of $3,000 per year. Net capital losses in excess of the $3,000 limit are carried forward to future year's taxes.

The ideal document to account for any "carryforward" investment losses is your Direction Memo™. If you become incapacitated, your important people could be unaware these losses are available to use. Net capital losses expire in the year that a taxpayer dies. Neither the taxpayer's estate nor the taxpayer's

spouse can claim a capital loss carryover for investment assets held only in the name of the taxpayer.[5] For jointly held assets, your surviving spouse may be able to continue to carryover the losses after your death, but they can't <u>if they don't know about it</u>. In summary, document all of your losses in your Direction Memo™ so your important people know about it. Don't assume your professional advisors have your tax loss information available for the future.

Alternative Minimum Tax (AMT)

Although the genesis of the Alternative Minimum Tax (AMT) was to ensure high net worth households paid their fair share of taxes, AMT is steadily encroaching households in the middle class. For the 2010 tax year, 37% of all tax filers making between $75,000 and $100,000 will paid AMT.[6] The AMT is also more likely to strike taxpayers with large families, who are married, or who live in states with high income and property taxes. AMT mandates a recomputation of your federal income tax bill at a flat 26% rate and you pay the higher of the regular tax or AMT.

If you own certain assets exposed to AMT, it may apply to households earning as little as $40,000. AMT typically applies to people who have a large amount of standard or personal exemptions, exercised incentive stock options, take a net operating loss deduction, own certain other types of municipal bonds, or claimed certain business-related tax credits. Perhaps the most common AMT trigger is exercising incentive stock options. **Incentive Stock Options (ISOs)** have two key advantages over **Nonqualified Stock options (NQSOs).** The first is the growth of ISOs can be taxed at long-term capital gain rates and NQSOs are considered compensation fully taxed as ordinary income. Second, the owners of ISOs don't pay income tax immediately when exercised, like NQSOs, however exercising ISOs can trigger AMT. AMT can be realized just for exercising ISOs even if you don't immediately sell the stock. If you own Incentive Stock Options it's critical both you (and your important people) understand your rights under the agreement and the plan. You should record this information in section 8.3:

- What is the earliest date you can exercise the option? Is it exercisable in phases?
- What do you need to do when you exercise the option? Is cashless exercise available or does the company want to you own the options for an extended period?
- When will the option terminate? Can you exercise after your employment terminates? What if you die while holding the option?

If you've had previous issues with AMT or you own Incentive Stock Options, you should raise a red flag to make sure your important people know what they are doing. It can always help your important people by making them become aware of your current and future tax quagmires. The AMT burden is not going away anytime soon, therefore your important people need to consider AMT as part of their overall planning.

Limited Partnerships

Many investors acquire limited partnerships and receive passive income, which essentially means they aren't "active" or involved in the day-to-day operation of the partnership. Oil and Gas, equipment, and real estate limited partnerships are the most common types of direct participation programs. This type of investment introduces an additional tax filing requirement for investors, using federal schedule K-1.

U.S. income tax law requires limited partnerships to issue a schedule K-1 to each unit holder as a record of that investor's share of the partnership's income. Partnerships are pass-through entities, meaning the partners themselves are responsible for paying taxes on the partnership's income. For example, if you had an interest in the ABC Limited Partnership and received $10,000 of income from the partnership, your K-1 should reflect that income and you would use that schedule to prepare your personal tax return.

Your important people should know about the liquidity of your limited partnership assets as well as the tax consequences of liquidating this asset during your life. Some limited partnerships offer additional liquidity options at the death of the partners and should be acknowledged in your Direction Memo™.

Investment Policy & Investment Philosophy (Section 8.9)

There are four traditional life cycles of an investor where the needs and use of the investment assets evolve. The percentage you invest for the short, mid, and long-term gradually changes as you move through the investor life cycles. You don't have to be a sophisticated investor to know long-term assets should gradually be reduced to more short-term, income-producing assets by the time you reach retirement. In this chapter you'll identify what life cycle you are currently in, and you will create an **Advance Investment Philosophy™** that will provide insight for your important people in the years to come as you move through the Investor Life Cycle.

Life Cycle	Age Range
Accumulation Phase	25-45
Consolidation Phase	45-65
Spending Phase	65-80
Gifting Phase	80 and older

Figure 1

An investment philosophy is something that individuals acquire over many years of positive and negative investment experiences. Investment philosophies are rarely written down or communicated and therefore the individuals influence on their investments stop when they lose the ability to communicate. Your Advance Investment Philosophy™ is the "why" behind each investment decision you make, and clarifies your outlook for your situation, goals, feelings, and family dynamics.

Risk Tolerance and Investment Policy Statement

Generally the closest document that substantiates an investor's philosophy is a risk tolerance questionnaire or an investment policy statement. A risk tolerance questionnaire is commonly requested by a financial planner so they can best measure your aversion to risk at that point in time. This helps a financial planner find an asset allocation that reflects your risk tolerance. A risk tolerance is often a useful tool for an investor to communicate their feelings, but it's not an effective long-term tool. Quite often the way an investor answers questions are influenced by the current economic news. A good financial planner will use more sophisticated questionnaires and have a dialogue with the investor to uncover the real risk tolerance. Some of the effective contemporary questionnaires have as many as 40 questions. A less effective risk tolerance questionnaire will ask less than 10 questions and will not take into consideration that a couple in a relationship may each have completely different perspectives on risk, age, time horizon, and net worth.

An investment policy statement is a document created for a specific investor to implement the investment philosophy and serves as a guidepost for the investment decision-makers, creating a discipline and system for future investment decisions.[7] The investment policy statement can help the investor and financial planner stay on track during volatile times. This is because the investment policy statement is a clear statement of the client's investment goals.

It's important that investors communicate their philosophy before they hire a financial advisor to draft the investment policy statement. The more input you provide for the creation of the statement, the more longevity and usefulness the document will provide. Most fiduciaries, such as trust companies, will require an update of the investment policy statement on an annual basis, which is helpful only if they take into consideration your comprehensive financial picture, and put forth an effort to incorporate your input.

Investment policy statements do not generally establish which individual securities will be selected, but rather provide a rationale on which such selections will take place. The investment policy statement will typically address the following questions in writing:

- "How long is your time horizon to invest the money?"
- "What are your cash flow needs from the portfolio?"
- "How much volatility and how much of a decline in value could you stand emotionally and financially in a year?"

Advance Investment Philosophy™ (Section 8.10)

An **Advance Investment Philosophy™ (AIP)** can improve your current investment policy statement by identifying more of your principle investment strategies and values. The AIP provides you the power to communicate your over-arching beliefs as if this was the last time you had the opportunity for the rest of your life to convey these ideals. You may be surprised how much other people, who know you well, don't know anything about your investment philosophy.

At some point you may wonder how you can continue to have influence, not necessarily control, over your money if you die or become incapacitated. The AIP should be completed in conjunction

with an investment policy statement, and helps document the investor's intent. The AIP measures your general attitude about investing so that your important people have your input after you are gone, to help them make investment decisions.

Your investment philosophy is almost as unique to you as your DNA. It would be difficult to classify a range of philosophies and ask you to pick one, because that would not serve you well. A philosophy can be one sentence long such as "I invest only in FDIC Certificates of Deposits with maturity dates of 1-5 years." Although that is a brief statement, it's clear enough that your important people know what you want, and what you don't want. Another person could state the following:

> "I own one individual stock, 3M, and I don't want to own any other individual stocks. My broader stock market exposure comes from my mutual funds with Fidelity and the American Funds Group. I believe in the diversification of mutual funds and find owning individual stocks too unstable. I also believe in active mutual fund managers as opposed to passive management. This gives me confidence that the fund manager can take advantage of opportunities in the market at different points in time. For my bond positions, I believe in owning tax-free municipal bonds that vary from 15-25 years in maturity. My wife, Jean, can take the income from these bonds to supplement her income. Finally, we shouldn't have any more than 10% of our assets in one investment and no less than $50,000 in short-term cash positions at any given time."

In order to help you create an AIP, you'll find some very basic questions in section 8.10 of your Direction Memo™ to extract your true feelings and put them down on paper. This covers the four areas of the Advance Investment Philosophy™ which measures attitude about your financial situation, goals, feelings, and family dynamics.

Software Used to Manage Investment Risk

Today most Certified Financial Planners® (CFP®s) and Financial Analysts are trained in Modern Portfolio Theory, which was introduced in the 1950's by Nobel Prize winner Harry Markowitz. Modern Portfolio Theory attempts to maximize return and minimize risk by carefully choosing different assets. The chief aim of Modern Portfolio Theory is diversification, and a fundamental understanding that with increased risk (standard deviation) typically will come higher investment returns.

Markowitz has inspired much of the research in understanding the behavior of investments, and creating models that help individual investors with diversification. In a recent Interview, Markowitz said that financial advisors should use five dimensions to measure their clients risk exposure: The client's time horizon, liquidity needs, net income, net worth, and their knowledge and attitude toward risk.[8] Is your financial advisor helping you appropriately manage risk? How will your advisor continue to properly manage investment risk for your survivors when you are gone?

Although there is software that financial planners can purchase off the shelf that embodies some of the work of Markowitz and other developers of asset allocation theory, no program will ever fully measure all five of the risk management measures recommended by Markowitz. You shouldn't depend on a financial planner who doesn't contribute anything other than regurgitating software "output"

without fully discussing your individual needs regarding investment risk.

Quantify the Value of Your Financial Advisor's Counsel (Section 8.11)

The choice of an objective financial advisor is an important one that requires a deep level of trust. "Objective" means that the advisor's interests are aligned with yours. Many people feel their financial advisor is the most important member of the financial team. They communicate with their attorneys when there is a legal need, they communicate with their accountant once per year at tax time, but their financial advisor is often the "quarterback" of the financial team, and the one with whom they have the most frequent communication.

A primary advisor is imperative and your household needs to know how you feel about the long-term relationship with your advisor. Do you want your spouse, partner, children, trustee, or agent under a power of attorney to decide who should be the future family advisor without your input? Long-term investors are more successful with a qualified financial planner. In my opinion, an ideal financial planner is a fiduciary and family consultant; they absolutely –positively cannot see their relationship with you in any way as "opportunistic." If their primary goal is to sell you a product, than they are not a fiduciary.

I recently spoke with someone who was indecisive about selecting a financial planner because she didn't know what questions to ask due to her limited knowledge about investing. It is important to ask questions when your advisor is recommending investment products and strategies, but also to learn more about your advisor's experience and method of compensation. Below are ten questions you can ask your financial advisor which may be helpful:

10 Questions to Ask When Choosing a Financial Planner:

1. What experience do you have?
2. What are your qualifications?
3. What services do you offer?
4. What is your approach to financial planning?
5. Will you be the only person working with me?
6. How will I pay for your services?
7. How much do you typically charge?
8. Could anyone besides me benefit from your recommendations?
9. Have you ever been publicly disciplined for any unlawful or unethical actions in your professional career?
10. Can I have it in writing?

Source: Certified Financial Planner-Board of Standards, Inc.

Whether you are interviewing new advisors, or have worked with the same one for years, it can be helpful to ask your advisors those questions. In this section of your Direction Memo™ you should speak about your current financial advisor, and recommend whether or not your family and fiduciaries should maintain a relationship with that advisor when you are gone.

For the "Do-It-Yourself" Investor (Section 8.12)

When I was a young financial planner, I would strongly dislike talking with individuals who felt they could circumvent the use of a financial planner. I was naïve enough to believe that I could convert them into relying on my services; however, I finally gave up and focused on people who did want my services. One thing that I realized in the late 1990s was that I was battling one of the most prolific bull markets in history. Everyone was making money, whether or not they had allocation advice, so why use a financial planner? The first decade of the following century would explain why a financial planner is an important member of your team. Despite the value a competent financial advisor can add, studies suggest Americans still take more financial advice from their family and friends than a financial advisor.[9] If you determine that you can invest without the help of a financial planner, create a contingency plan in case something happens to you. That will usually mean doing more than telling your spouse to call your best friend for financial advice after you're gone!

How many times in your life will the stock market be as stress-free as the 1990s? Wouldn't it be nice to have a professional available to help with both the good and bad times? I no longer have any animosity towards an individual who invests without a financial planner. What I now spend my time doing is helping those individuals find a primary financial planner for their household to retain if the "do-it-yourselfer" can no longer manage the finances. Remember, you might be a smart investor, but what happens when you're gone? A contingency plan ensures that your household will be served by a qualified professional advisor. The "cost" of a financial planner is only an issue in the absence of value.

Action Steps

Complete Section 8 of your Direction Memo™:

8.1-Defines the purpose of this section of the letter for nonqualified savings and investments.
8.2-List your bank savings and checking accounts
8.3-List your nonqualified investment accounts for brokerage, mutual funds, etc.
8.4-Nonqualified Annuities
8.5-Limited Partnerships such as Private Equity, Hedge Funds, or Oil and Gas
8.6-Anticipated future inheritance, gifts, or judgments
8.7-Minor's accounts and college savings plans
8.8-Provide important tax information such as embedded gains and recognized losses.
8.9-Provide the location of your Investment Policy Statement if you have one drafted.
8.10-Create your Advance Investment Philosophy™
8.11-Name your primary financial planner
8.12-Name your contingent financial planner if you currently invest on your own without a planner.

For the latest information on estate planning, check out www.directionmemo.com

1. http://harkin.senate.gov/press/column.cfm?i=181145
2. http://www.nytimes.com/2005/12/04/business/yourmoney/04stra.html
3. IRS Publication 970 http://www.irs.gov/pub/irs-pdf/p970.pdf
4. "Choosing a Successor Account Owner" by Joe Hurley, founder, Savingforcollege.com Monday, November 20th 2006. http://www.savingforcollege.com/top-tip/top-tip.php?top_tip_id=12
5. http://taxes.about.com/od/taxglossary/g/Capital_Loss.htm
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Chapter 9: Retirement Plan Assets

"Before anything else, preparation is the key to success. " Alexander Graham Bell (1847 - 1922)

How She Spent $750,000 in Less Than 365 Days

ONE OF MY CLIENTS REFERRED me to a recently widowed woman in her early 60s who lost her husband unexpectedly. She was a college educated individual who spent most of her married years at home with the children while her husband worked. She was a caring mother who had been battling depression since her husband's death. She received over $650,000 from her husband's retirement plan and $100,000 of life insurance death benefits. There was approximately $200,000 remaining on her mortgage that she wanted to pay off immediately. It was obvious that she needed distractions and was taking trips, shopping, and doing whatever she could to be away from home. In the 12 months following her husband's death, I'd receive a phone call about every month that she'd need another $25,000 for something. I cautioned her that she'd really need to withdraw $40,000, in order to get $25,000 because of the income tax imposed on retirement plan assets, but that didn't faze her. She had pushed herself into the highest tax state and federal tax brackets losing as much as 50% of her inherited retirement benefits.

While she did pay off her mortgage, in less than a year she had spent all of the resources that had taken 30 years for her and her husband to acquire. Although she has Social Security income for her future, she now has nothing else besides her home. The greatest disappointment to me was that the federal and state governments were as much a beneficiary of her husband's retirement assets as the widow herself.

Why is this story important? Because it illustrates that this individual was operating without guidance, or at least without guidance she would follow. Whatever her attorney or I suggested, she wouldn't take our advice. There's no formal training for a professional advisor to help a client cope with their emotional issues that would make an otherwise rational person irrational. In 15 years of financial planning, this is one of the few times I knew that I was powerless against a person's path to self-destruction. I have little doubt that the only remedy to that situation would have been if she had a Direction Memo™ from her late husband. No one else's opinion mattered to her except his!

If it's Complex for You, it will be Complex For Your Family (Section 9.1)

The handling of retirement assets is fraught with mistakes that commonly occur at death or the incapacity of the owner. And these aren't always irrational mistakes like the example above, there are simply more pitfalls and complexities with retirement plan assets. Your selection of beneficiaries for retirement assets is more complicated then selecting beneficiaries for life insurance because retirement plans owe income tax, and beneficiaries have several withdrawal options depending on who they are.

This section of your Direction Memo™ will help your important people plan for any changes they'll have to make, or actions they'll have to take at your death with your retirement plan assets. This section also addresses Social Security benefits, in the event your important people are required to make Social Security-related decisions. A financial planner can be instrumental in helping you with this section because he or she can educate you about the decisions your loved ones will have to make in your absence.

Retirement Plan Evolution

The retirees of yesteryear were almost certain to have three predictable and reliable income sources during retirement: Employers "Defined Benefit" Pension, Social Security, and Personal Savings.

Today, America's Baby Boomers are chasing the dream of retirement, but for many it may become a race to see which will occur first: their retirement party or their funeral. Workers today seem to be less prepared than their parents or grandparents, but there's more to it than that. There are simply a lot more uncertainties facing retirees in the decades ahead. To name just a few:

- The rising cost of health insurance and uncertainty about the future funding of Medicare.
- Workers today have fewer Defined Benefit Plans and more Defined Contribution Plans. The Defined Benefit (pension) plans of the past made it much easier to decide when to retire because of predictability.
- Retirees are phasing into retirement by working part-time. Ironically, retirees report that 21% of their income comes from employment income.[1]

In this chapter, we'll cover all of the critical details your important people need to know about your retirement assets and benefits.

Your Work History- A Place to Begin (Section 9.2)

There are a number of reasons why your important people should know how to reference your work history in your Direction Memo™. First of all, it's beneficial for your important people to have a contact person in the Human Resources office so they can fully understand your benefits. In many cases, it's the HR department from your current or former employer that helps the family members sort out the health & life insurance benefits as well as educating them (not advising) about the retirement plan.

Your important people shouldn't just stop with your current or most recent employer if you are already retired. It's important to reach out to all of your past employers during your career to search for benefits awarded to you at any period of time, including death. Believe it or not, retirement plan assets are one of the primary types of unclaimed assets that end up passing to the State Treasurer when people die. In section 9.12 of your Direction Memo™ there is a sample letter provided for your important people to send to your former employers to inquire about any benefits to which your family or estate is entitled.

What Type of Retirement Assets Do You Own? (Section 9.3)

Retirement plans have evolved in the last 30 years in the United States. The reason is probably a combination of employers wanting less responsibility, and employees wanting more options. The result is a shift from defined benefit plans to defined contribution plans. Between 1994 and 2004, the percentage of men age 55-64 who participated only in a defined benefit plan decreased from 33% to 13% and, the percentage who participated only in a defined-contribution plan increased considerably.[2] A defined benefit plan guarantees a certain payout at retirement, according to a fixed formula which ordinarily depends on the participant's salary and the number of years of participation in the plan. A defined contribution plan will provide a payout at retirement that is conditional upon the amount of money contributed and the performance of the underlying investments. Some types of retirement plans, such as cash balance plans, combine characteristics of both defined benefit and defined contribution plans.

If you are retired or approaching retirement, chances are you may possess a defined benefit plan. For the most part, the only employers who are still offering defined benefit plans to new employees are the federal and state governments. Defined benefit plans can be more difficult for your surviving spouse to understand, should the benefits decrease or even terminate at your death. You owe it to your household to communicate what they can expect from your plan at your death. Note that most defined benefits plans are protected by employers through the Pension Benefit Guaranty Corporation (PBGC). PBGC is a federal corporation created by the Employee Retirement Income Security Act of 1974 (ERISA). If your former employer files for bankruptcy protection, the PGBC will cover a reasonable portion of your lost pension.

If you own defined contribution assets such as 401(k) and 403(b) plans, the result is altogether different from a defined benefit plan. Your beneficiaries will inherit the remaining balance of your defined contribution plan assets when you are gone. You owe it to your household to communicate your Advance Investment Philosophy™ so they continue to have your input how to manage the assets they inherit from you. Traditional IRAs should be classified the same way as a defined contribution plan, especially since most individuals "roll" their defined contribution plans into an IRA when they terminate employment. In this section you should list all of your qualified retirement plan accounts including both defined benefit and defined contributions plans. You should also include Traditional and Roth IRA accounts.

Non-Qualified Retirement Plans (Section 9.4)

Non-Qualified Retirement Plans are often geared toward highly compensated employees to provide cash payments when that employee retires. If you have qualified as a senior level executive within your organization as a "highly compensated employee," you may be a participant in a non-qualified deferred compensation plan. The types of plans offered are generally referred to as either Nonqualified Deferred Compensation Plans (NQDC) or Supplemental Executive Retirement Plans (SERP).

Broadly defined, a nonqualified deferred compensation agreement is a contractual arrangement in which an employee agrees to be paid in a future year for current services rendered. Deferred

compensation payments generally begin at retirement, disability, or death. The main purpose of these plans is to defer income to tax years when the household is in a lower income tax bracket. Note the term "non-qualified" is different with these accounts than your assets from chapter 8. These accounts are still pre-tax (like your other retirement assets) but are defined as non-qualified because they aren't covered under ERISA. Some of the common types of NQDC plans are rabbi trusts, top-hat plans, and 457 plans. These plans often include the employees' personal contributions.

A Supplemental Executive Retirement Plan is a non-qualified retirement plan for key company employees, that provides benefits above and beyond those covered in other retirement accounts, such as 401(k) plans. There are many different kinds of SERPs available to companies wishing to ensure that their key employees are able to maintain their current standards of living in retirement. Quite often a SERP consists only of contributions from the employer rather than the employee's personal contributions.

If you have a NQDC or SERP plan, there are two things your important people should understand and be prepared to address:

1. Your assets in these plans are subject to the claims of the creditors of your employer. It's possible that if your employer files bankruptcy, these assets could be lost since they don't have the protection under ERISA that regular qualified retirement plans have. In order to avoid the economic benefit doctrine, your assets in these plans must be at a substantial risk of forfeiture in order to not count as immediate income. It's likely you understand this, but your family must also be knowledgeable about this condition.
2. When the assets are no longer at a substantial risk of forfeiture, or you withdraw from a non-qualified retirement plan, it will be taxed as ordinary income in the same tax year including FICA/FUTA withholding. Your important people should be tactical in determining the optimal timing, from a tax perspective, to draw from these types of accounts.

If you have a NQDC plan it's critical to inform your household on the particulars so they can make informed decisions.

Social Security (Section 9.5)

Social Security will not (and was never designed to) provide all the income you'll need for retirement. For the average retired American, Social Security makes up about 42% of a retiree's income.[3] You may think Social Security is pretty straightforward so why do you need to include details in your Direction Memo™? Your local Social Security office is a great resource, but most people don't visit them prior to age 62. There are many different personal scenarios that may impact an individual's Social Security prior to that age, such as:

"I'm 59 years old and my spouse just passed away." Most people don't realize they can begin drawing on their late spouse's Social Security when the surviving spouse turns age 60.

"My ex-spouse was the breadwinner." Others don't realize they can claim Social Security benefits from their ex-spouse if they were married at least ten years, if you don't get remarried prior to age 60.

"My deceased ex-husband made more than my current spouse." If you remarry before you turn 60, and if that second marriage terminates, you may become entitled or re-entitled to benefits on your prior deceased spouse's earnings record.

Your Direction Memo™ is a helpful resource for your loved ones to help your spouse (or minor children) claim your Social Security benefits, but it doesn't address every circumstance. Section 9.5 provides the national Social Security phone number where your important people can get answers to questions, or find a local Social Security office. The toll free number is 1-800-772-1213.

Single vs. Married Women Enrollment with Social Security

This might be interesting, particularly for married female readers since women tend to marry older male partners and also live longer. Married women are entitled to one of three types of benefits:

1. Income based on their own earnings record
2. A spouse's benefit equal to 50% of their husbands earning records, regardless when husband begins Social Security.
3. A survivor's benefit equal to 100% of husband's benefit, if greater than their own.

The Social Security Administration uses the average life expectancy somewhere in the middle of both men and women in order to calculate benefits. Based on that structure, it may seem like men should begin Social Security early and for women to delay to optimize their benefits. Research supports this is typically true for single females. Current research also found that single women and married women face different decisions regarding the optimal time to begin drawing Social Security.

Professor Alicia Munnell, at the Center for Retirement Research at Boston College has conducted extensive research with Social Security benefits and written papers on the topic. Professor Munnell and Mauricio Soto discuss this issue in a journal article entitled, "When Should Women Claim Social Security Benefits?" Surprisingly Munnell and Soto's analysis of married couples is counter-intuitive to what most think about this subject. They found the optimal claiming pattern for married couples was, in most cases, for the female to claim benefits as early as possible (age 62) and for her husband to delay benefits until age 69 (See Figure 1). If you are skeptical about this finding, consider the following:

1. The married female's decision when to begin receiving Social Security benefits includes factors such as the age difference with her husband, his life expectancy, and if she worked outside the home.
2. A married couple can normally benefit from delaying the husband's benefits until age 69 because it increases the value of the survivors benefits more than it reduces his own benefit

because of his lower life expectancy.

3. #2 is made possible by eventually utilizing all three of the Social Security benefit types previously mentioned. The female will begin with her own benefits immediately at age 62, will receive 50% of her husband's benefits when he begins drawing at age 69, and will receive 100% of his benefits after his death.

Figure 1 is a table from Munnell and Soto's study of when it's mathematically optimal for a married couple to begin receiving Social Security benefits. For example, a married couple the same age where the wife has less than 30% of her own Primary Insurance Amount (PIA) compared to her husband should both begin receiving benefits at age 66. In all cases where the wife's benefits were at least 40%of her husband's PIA, she should begin receiving her Social Security Benefits immediately at age 62 and her husband should delay until 69. Each household has different scenarios and the health or financial issues of the family must also be factored into the decision when to begin drawing Social Security benefits.

		Retirement Ages (Male, Female)	
	PIA as a Percent of Husband's PIA	PIA as a Percent of Husband's PIA	PIA as a Percent of Husband's PIA
Age Difference	0-30	30-40	40-100
0	66,66	67,66	69,62
1	67,66	67,66	69,62
2	68,66	68,65	69,62
3	68,65	69,62	69,62
4	68,64	69,62	69,62
5	68,62	69,62	69,62
6	68,62	69,62	69,62
Percent of Households	32.1	11	47.2

Figure 1-Optimal Ages for Married Couples to Begin SS Benefits by Relative Earnings and Age Difference (Munnell & Soto)

Your Direction Memo™ should include the contact information of the local Social Security Administration including the name of any representatives with whom you've previously communicated. If you are within 5-10 years of retirement, keep your most current copy of your Social Security Statement with your Direction Memo™. You will receive a statement each year about three months before your birthday. Check your earnings and make sure it's accurate based on how much you and your employer should have contributed in the previous year. If you change your name or marital status, make sure your legal name and Social Security number are correctly reported on your employer's records. Whenever you make a major decision in your life such as retirement, divorce, or remarriage it is always wise to consult with your Social Security office and professional advisors to see how these decisions could affect your future.

A Rebalancing Act (Section 9.6)

Consolidating your IRAs into one account isn't just for simplicity; it also makes it easier for you to rebalance your retirement assets. Essentially, rebalancing is selling a portion of your "winning" positions and simultaneously buying your portfolio's "losing" positions, during a specific period of time. While this may seem counterintuitive to sell winners and buy losers, there are two reasons for doing this:

1. A rebalancing strategy enforces adherence to the "buy low and sell high" objective of investing, which research indicates, can improve your portfolios return over time. Keep in mind that eventually losers become winners and winners become losers with economic change.
2. Rebalancing helps reduce the risk of future losses associated with a portfolio that is over-weighted by a particular asset type, sector, or even an individual investment. This is because rebalancing provides a discipline to help you stick to your **target asset allocation**.

Your target asset allocation is based upon your goals, time horizon, and risk tolerance, and it evolves throughout your life. A target asset allocation is much easier to manage with one IRA, and becomes a chore to rebalance with multiple retirement accounts. It's also more tax efficient to rebalance in your IRA and other qualified retirement accounts because these assets are "sheltered" until you withdraw them. Therefore your retirement accounts are the logical place to rebalance strategically because buying and selling doesn't impact income taxes.

Many retirement plan custodians offer an automatic rebalancing service which takes the pressure off you to manually rebalance. A study from The Principal Financial Group suggests during early 2009 that nearly 28% of the respondents were making changes to their allocations and the majority of those were moving their money to into "stable" investment options.[4] It's very likely those same people waited for the stock market to recover and later in 2009 put money back into equities, therefore selling *low* and buying *high*! Rebalancing creates a discipline to successfully adhere to your target asset allocation of buying low and selling high, which is the opposite from most investors based on The Principal study. Which strategy is more successful in the long run…"buy high and sell low" or "buy low and sell high?" Obviously, it is the latter. There are several common methods of rebalancing:

1. Rebalance your retirement accounts every three months (quarterly).
2. Rebalance you retirement accounts once per year (annually).
3. Rebalance your retirement accounts when your investments move more than 5-10% from your target asset allocation.

There is no conclusive evidence that supports one method being better than another. It's more important that you select a method and stick with it over time. Your options of automatic rebalancing may be limited based on who is managing your money. Rebalancing can be done manually, but it's much easier to let the company who's holding your retirement assets do it for you.

Taxation of Retirement Plan Assets (Section 9.7)

Another reason that it's important to have separate sections in your Direction Memo™ for retirement and non-retirement assets is because they are taxed differently. Distributions from retirement plan assets such as 401(k) plans and IRAs, are taxed as ordinary income at your beneficiaries' highest marginal rate. In fact, any "person" who inherits your retirement plan assets will pay ordinary income tax. Most beneficiaries can't escape the income tax on retirement assets under Internal Revenue Code 691 referred to as Income in Respect of a Decedent. This differs from nonqualified assets which have the ability to "step-up" to the fair market value at the owner's death so that your heirs do not pay income tax on the transfer. No human beneficiary of your retirement plan assets will escape paying the income tax, although qualified charities are exempt from income taxes if you name them as beneficiary. We'll discuss the advantages of leaving retirement assets to charity in greater detail in chapter 11.

Another potential tax on retirement plan assets is estate taxes. While the current exemption is $5,000,000 per individual, it can be a disaster if estate taxes are owed and the majority of the household's wealth is in retirement plans. If the only way your heirs can pay the estate taxes is to withdraw funds from your retirement plans, they will be simultaneously subject to income taxes. Between the two types of taxes, the retirement accounts can be eroded by as much as 70%. The income tax system provides some relief from double taxation by estate and income taxes from retirement plans. The relief is commonly referred to as the **IRD deduction**. The problem is that it's rarely used because the beneficiaries have to claim the deduction on their personal tax return, and their tax preparer won't even know it's available unless the preparer also knew the person whose estate was assessed the double taxation.

If your household has a high majority of its net worth in retirement plan assets, you must consult with qualified financial, tax, and legal counsel to ensure that your family doesn't lose the majority of the retirement plan assets at your death due to income and estate taxes. You should have a frank discussion with your family and professional advisors (together) and put a written plan into your Direction Memo™ for the best outcome with your retirement assets.

Do You Own Your Employer's Stock in Your Retirement Plan? (Section 9.8)

If you own your employer's stock in your company's retirement plan, you should be aware of an opportunity that could save you and your beneficiaries a significant amount of taxes on your retirement plan. It's called net unrealized appreciation (NUA). A qualifying distribution of your employer's stock provides an option whereby you don't have to pay ordinary income tax on the entire distribution. Rather, you pay ordinary income tax at the time of withdrawal only on the plan's "basis" in the stock, which is what the stock was worth when the employer first placed that stock in your retirement account. The additional growth beyond the basis is the net unrealized appreciation. The NUA is not taxed until the employee later sells the stock, and then it is taxed as long-term capital gain instead of ordinary income.

If the employee dies before taking the distribution, his beneficiaries are entitled to take the distribution with the same preferential treatment the employee would have received. If your beneficiaries take the distribution from the plan incorrectly, they will forfeit the NUA tax advantage. If done correctly, your heirs will receive their inherited stock and will pay only capital gains tax on the NUA.

If you have taken the NUA distribution during your life and still own the stock at death, the NUA becomes taxable income when your beneficiaries sell the stock. There is no step-up in basis for the amount of NUA that was never taxed to you.[5] However, if there is any growth between the date you distributed the stock from your retirement plan and the date you die, the value of the appreciation will receive a step-up in basis. A step-up in basis means that for tax purposes your beneficiaries receive the stock at the value it had on your date of death.

Example. Assume Tom's 401(k) plan holds $1 million in his employer's stock at retirement. The cost basis of the stock is $400,000, so the NUA is $600,000. Tom takes a lump-sum distribution of the entire balance, pays tax on the cost basis of the stock, but does not sell any of the shares. At Tom's death years later, the stock has a value of $2 million. Tom's beneficiaries inherit the stock and receive a basis of $1.4 million. This is an incredible amount of tax savings from a qualified retirement plan. Normally Tom's beneficiaries would be taxed on the full $2 million as ordinary income. Had Tom died prior to his NUA withdrawal, his beneficiaries can qualify for NUA, but most people don't know this option exists.

If you own your company's stock in your retirement plan, you should mention in your Direction Memo™ the tax advantages of using NUA. This option will not be explained by your former employer to your beneficiaries and they must work with a professional advisor qualified to assist them with NUA. The NUA tax break applies to shares in the company where you are/were employed and should be considered when your stock has appreciated significantly from the time it was purchased by your plan. The types of qualified retirement plans that potentially offer NUA are Employee Stock Ownership Plans (ESOPs), 401(k) plans, and profit-sharing plans. Distributions from an IRA, 403(b) plan, SEP-IRA, or 457 plans cannot qualify for this treatment. Your Direction Memo™ has a sample letter in section 9.12 you (or your important people) can send to your employer to make sure they receive accurate information regarding NUA.

Retirement Plan Assets and Estate Planning (Section 9.9)

You may recall from chapter 4 that most retirement plan assets pass directly to whoever the current primary beneficiaries are at your death, avoiding probate. Your important people should know that retirement assets should not pass through the probate process if you have appropriately named **designated beneficiaries**. An overlooked beneficiary designation can void all the planning you may have completed in drafting your estate documents. In fact, households with the majority of their net worth in retirement plan assets may find it's more important, for estate planning, to review their beneficiary designations than other legal documents. For many pre-retirees who are 60 or older, their 401(k) could be worth 5-10 times more than their home.

If you haven't reviewed your retirement plan papers recently, you may find that your designated beneficiaries are not who you think it should be. This is especially the case if you have divorced, remarried, or had children/grandchildren since your retirement plan account was established. There

have been many estate cases where the testator had been divorced and remarried, but neglected to update his beneficiary designations accordingly. This can be quite frustrating for their survivors, who must battle in court for a legal determination of the beneficiaries. Plus, the court's decision may not be what the testator had intended. In section 9.12 of your Direction Memo™ there's a sample letter you can send to your retirement plan custodian to periodically review your beneficiaries.

If you neglect documenting your beneficiary designation, your beneficiaries may be determined by federal law, state law, or by the plan document that governs your retirement accounts. A default beneficiary would also be used if your beneficiaries predecease you and you haven't updated your paperwork. In many plans, the default beneficiary is the "estate" of the deceased – meaning that a previously non-probated asset must now go through probate. Many financial institutions allow you to customize your beneficiary designations with a letter that addresses "what if" scenarios in case your beneficiaries predecease you. These instructions are generally written by your attorney. Perhaps the worst part of neglecting this issue is your beneficiaries may lose their ability to "stretch" the taxes on their inheritance from your retirement accounts over their lifetimes.

The Stretch IRA (Inherited IRA)

What is a stretch IRA and how do you get one? There is actually no such term but rather, it's a nickname for when a beneficiary stretches out, for a lifetime, distributions from an IRA they inherited from someone other than their spouse. When someone inherits a non-spousal IRA, they must begin taking required minimum distributions by December 31 of the year following the death of the original owner of the IRA. The advantage for the "stretch" IRA is the beneficiary is only taxed on the required minimum amount withdrawn each year, rather than fully taxed on the entire IRA balance in one calendar year. In other words, this is the slowest rate the IRS allows the money to come out of the deceased person's IRA based on the beneficiaries' life expectancy calculation.

The beauty of the stretch IRA is that if a young beneficiary withdraws only the minimum amount required throughout their lifetime, and the IRA continues to grow their investment, the beneficiary could have a significant amount remaining in the account by the time they are retired. This can complement anything, above and beyond, what the beneficiary has invested for their own retirement. For example, if a 36-year-old inherits an IRA from her late father, her life expectancy divisor is 47.5. That means she only has to withdraw a little more than 2% the first year, and then slightly more each subsequent year, as the divisor is recalculated based on her increasing age.[6] The income from an inherited IRA will be taxable and so it's wise, as a beneficiary, to take only the minimum payment required. When a retirement plan accumulates tax-deferred over your lifetime and your beneficiary's lifetimes, there are tremendous growth opportunities.

There are several ways your beneficiaries will lose the option to stretch the IRA payments over their own life expectancies and you should be aware of them. If you have named your "estate" as the beneficiary of your IRA, than the life expectancy payout option won't work. When the IRA owner dies prior to the beginning date for the owner's required distribution (70 ½) and there are no designated beneficiaries, the retirement plan must be exhausted by the end of the calendar year in the fifth anniversary of death year. If the IRA owner dies after age 70 ½ the benefits must be distributed over the

remaining life expectancy of the *decedent* if there are no designated beneficiaries named.

If you have named a trust as the beneficiary of your IRA, a stretch is allowed in a "see-through trust" and the payments can then be stretched out based on the life expectancy of the oldest beneficiary of the trust.[7] Before you name a trust the beneficiary of your retirement plan assets, you should confirm that your beneficiaries will indeed have the ability to "stretch" their inherited IRA. This discussion is best to be had with your estate planning attorney.

Decedent IRAs

When a beneficiary wishes to stretch an IRA they inherit from someone other than their spouse, they'll establish a **decedent IRA**. If you inherit a retirement plan from anyone other than your spouse, you cannot roll it into your own IRA under any circumstance. You also cannot withdraw the assets from an inherited IRA and then deposit them into a new IRA. You cannot consolidate IRAs you inherit from different people into one account. Any of these actions will trigger income tax on the entire value of the inherited IRA.

Decedent IRAs can often last for two generations by taking the minimum distributions. This is because the successor beneficiary of a decedent IRA will be able to continue to take minimum distribution payments, although withdrawals are based on the original beneficiary's life expectancy, not their own.

> For example, let's say you inherited an IRA from your deceased brother, who was the original owner, and you have been taking only the minimum distribution based on your life expectancy (i.e., the stretch). If you name your son as your beneficiary of this inherited IRA, the slowest your son can take the distributions at your death is based on what would have been your remaining life expectancy. Your son will likely be the last owner of this IRA because of his younger age and his minimum distribution is based on your remaining life expectancy.

The "stretch" from the original IRA owner doesn't last forever, but it may last for several generations.

Spousal Beneficiaries

You just reviewed the options if you inherit a retirement plan from a non-spouse. What if you inherit a retirement plan from your spouse? You can roll your late spouse's retirement plan into your own IRA. If you have rolled your late spouse's retirement assets into your own IRA, then your beneficiaries (usually children) can still stretch the IRA minimum distribution payments over their own life expectancy at your death. You will notice that this is different from when your children inherit an IRA from you that you previously inherited from a non-spouse.

Without spousal consent, your spouse is required under ERISA to be the sole beneficiary of your 401(k), 403(b), and with most defined benefit plans. Employees of government and church organizations are typically exempt from requiring spousal consent to remove a spouse as the primary retirement plan

beneficiary. IRAs are also exempt from requiring spousal consent, except in community property states where your spouse has the right to at least 50%.

If you have inherited retirement plans from your late spouse, you should roll those assets to your own IRA. This is not only for the sake of simplicity, but also because, as the surviving spouse, you will likely reduce the required minimum distribution upon turning 70 ½. When you pass away, the next generation will be able to "stretch" the distributions over their life expectancies. If you, as the surviving spouse, leave the money in your late spouse's employer retirement plan, this strategy may not work.

When would a surviving spouse decide not to roll her late spouse's retirement assets into her own IRA? There are several exceptions[8]:

1. When the surviving spouse is considering disclaiming the retirement assets of her late spouse's estate.
2. A surviving spouse who is concerned about their own creditors. Leaving money in the late spouse's plan may offer more protection. You should consult an asset protection specialist if you have concerns.
3. If the surviving spouse is under age 59 ½, there is a 10% penalty (in addition to ordinary income tax) for withdrawing from her own IRA. If the assets remain in the decedent's plan, however, the withdrawals are exempt from the 10% penalty no matter how young the surviving spouse. Once the surviving spouse is over 59 ½, she can roll her spouse's plan over to her own IRA.
4. If the surviving spouse is older than the deceased spouse, and older than 70 ½, and can get more deferral by delaying their own higher required minimum distribution.

If none of these potential circumstances would apply to your household, the surviving spouse should normally roll their late spouse's retirement assets into their own IRA.

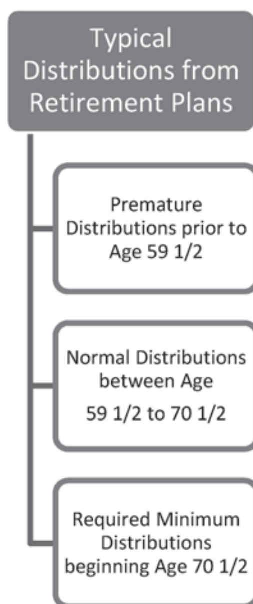

Figure 2-Retirement Plan Distribution Ages

If you feel retirement plans are confusing, your beneficiaries will probably feel the same way. I strongly encourage you to take advantage of this section of your Direction Memo™ and encourage your beneficiaries to take their time and review their options before they take any action with your retirement assets. After reading this section, you may want to express your own personal wishes in the Direction Memo™ for how your beneficiaries use your retirement assets. For example, perhaps you want to let your children know that you want them to take only the required minimum distributions each year from the IRA they inherited from you.

The Roth Retirement Accounts

Some people feel federal and state income tax rates will rise in future years and Roth Accounts promise to become a valuable retirement tool for tax purposes. Although most people are interested in the income tax benefits of a Roth IRA, they offer estate planning benefits as well.

- First, a Roth IRA lets you leave money to your beneficiaries, income tax free.
- Second, you can leave more to heirs because the Roth IRA can keep growing tax free until you die with no required minimum distribution.
- Third, you can leave more because you can keep putting money into a Roth IRA if you have employment income even after age 70. With a regular IRA, you can't make contributions after you turn 70½, even if you are still working.

Your beneficiaries will not have to pay income taxes when they withdraw money from an inherited Roth IRA. Please note that Roth 401(k) and 403(b) currently do require a minimum distribution at age 70 ½, but you can typically roll those accounts into a Roth IRA upon your separation of service to avoid minimum distributions.

While annual withdrawals must be made from all inherited IRAs, if your heirs can be disciplined to withdraw only the minimum required, the Roth IRA can be stretched out for decades while continuing to enjoy tax-free growth. So while Roth IRAs can be very advantageous for retirees, they can be equally beneficial as an estate planning strategy providing income tax benefits to your heirs.

If you want to influence your heirs to fully take advantage of "stretching" their Roth IRA inheritance from you, it's imperative to acknowledge these instructions in your Direction Memo™. You can even go to the extent of enforcing the stretching of retirement plans in your legal documents depending on your convictions on the topic.

What is an Appropriate Withdrawal Rate? (Section 9.10)

Many pre-retirees with IRAs and 401(k) plans want to know how much they should draw from their retirement plan to make it last over their lifetime. It was much easier in the past for retirees with defined benefit pensions to determine how much income to withdraw, than it is for today's retirees. The rule of thumb is that a 4.1% annual withdraw rate may last for 30 years from a retirement plan.[9] Using an

optimal asset allocation and a prudent withdrawal rate could help your IRA last for you and your spouse/ partner's life.

There is sophisticated software today that can help simulate your retirement in a number of scenarios which can help you and your financial planner determine a sensible withdrawal rate. According to recent studies, nearly 70% of pre-retirees overestimate how much they can draw down from their retirement savings without quickly exhausting their resources.[10] If your annual withdrawal rate is between 6-8%, it's very likely you will exhaust your assets if you retire at 62 and you live to your normal life expectancy.

Your Direction Memo™ should identify what a sensible withdrawal rate is for you, and whether it needs to be adjusted in good years and bad. Predicting the future is difficult, but it may provide your spouse or other important people with the instructions they require should something happen to you. This exercise will not only help your important people, but will also serve as a guide for how well-funded you are for retirement. If the widow in the story at the beginning of this chapter had withdrawal rate parameters suggested by her late husband in a Direction Memo™, perhaps she would have made more rational decisions after his death.

If your spouse is age 70 ½ or older, you may suggest in your Direction Memo™ that they withdraw only the Required Minimum Distribution (RMD) from your retirement plan. In order to determine if the RMD will produce satisfactory income for your spouse, some simple math can get you the answer. To estimate your RMD, divide your retirement plan balance by the divisors from figure 3. For example, in figure 3 you'll notice the divisor for someone age 75 is 22.9. Therefore an individual with a retirement account balance of $750,000 at the beginning of the year which they turn age 75 will create a RMD of $32,751($750,000÷22.9=$32,751).

Required minimum IRA distributions

Age	Divisor	Age	Divsor
70	27.4	93	9.6
71	26.5	94	9.1
72	25.6	95	8.6
73	24.7	96	8.1
74	23.8	97	7.6
75	22.9	98	7.1
76	22.0	99	6.7
77	21.2	100	6.3
78	20.3	101	5.9
79	19.5	102	5.5
80	18.7	103	5.2
81	17.9	104	4.9
82	17.1	105	4.5

83	**16.3**	**106**	**4.2**
84	**15.5**	**107**	**3.9**
85	**14.8**	**108**	**3.7**
86	**14.1**	**109**	**3.4**
87	**13.4**	**110**	**3.1**
88	**12.7**	**111**	**2.9**
89	**12.0**	**112**	**2.6**
90	**11.4**	**113**	**2.4**
91	**10.8**	**114**	**2.1**
92	**10.2**	**115 or older**	**1.9**

Figure 3- Source Bankrate.com

A December You Won't Want to Remember

After turning age 70 ½, it's not wise to wait until December to take your required minimum distribution from your retirement accounts. There are too many opportunities for errors to occur and no time to fix them before the year is over. Even if your financial service company causes the error, they will not reissue 1099s and could create tax nightmares for you. Because everyone else waits until December, financial services companies are swamped and short-staffed as the year draws to a close. Whatever business you need to get done, do it before December.

One IRA, Please!

If you have an IRA at a financial institution that can provide a full breadth and depth of investment options, why must you have more than one IRA? The more retirement accounts you own, the greater your opportunity for mistakes with your beneficiaries, asset allocation, and taxes. As you change jobs and eventually retire, you should have one IRA as the receptacle for all of your retirement assets.

The primary reason for one IRA is you can manage the asset allocation. Rebalancing was one of the previous asset allocation strategies mentioned in this chapter. Managing your asset allocation becomes even more difficult when you retire because retirement typically includes creating an income stream. The only exception when you should have two IRAs is to own one traditional and one Roth IRA.

Your Primary Financial Planner (Section 9.11)

As previously stated in chapter 8 if you are a "do-it-yourself" investor, at a minimum, you should seek out a financial planner who can step in as a contingency. Not having a back-up is one of the greatest tragedies of the "do-it-yourselfer" who has no succession plan in place for his family and little chance for financial continuity.

While it's conventional that your primary financial planner be responsible for consulting you on all

of your investments, sometimes households will use a separate planner to manage their retirement plan assets. Regardless of who will be working for you with regard to your retirement planning, they must also understand your estate planning goals. If you are a pre-retiree, the projections of how large your 401(k) balance may reach by retirement won't matter if you die tomorrow. What happens to your spouse without that large 401(k) balance that wasn't achieved due to your untimely death? In relation to both retirement and estate planning, your financial planner should be asking the following questions[11]:

- If the wife survives the husband, how will she be provided for? Are there benefits such as life insurance, pension, or a trust that would ensure her standard of living?
- If the husband survives the wife, what standard of living will he have? Are there benefits such as life insurance, pension, or a trust that would ensure his standard of living?
- Other than property listed in your estate planning documents, do you own assets for which arrangements have been made at your death? Examples could include a buy-sell agreement or pledges to charity outside of your estate documents.
- What property could be sold to generate retirement income for the surviving spouse? Alternatively, what personal property should *not* be sold that you may want to leave for a child, grandchild, or someone else?

If your financial planner hasn't encouraged your household to have these conversations, find a planner that will. If your financial planner isn't helping review your long-term plans, then that advisor shouldn't be a part of your long-term plan. You should have these types of discussions with your financial planner at your annual review each year. That way you can write the retirement section of your Direction Memo™ with complete confidence.

Letters for Your Important People (Section 9.12)

Finally, section 9 contains four letters regarding your retirement plan assets that can be used in the future. These letters are provided to make it simple to gather information and notify former employers or retirement plan trustees of your death. The significance of these letters is that they allow your important people to gain insight by asking questions they may not otherwise ask. Section 9.12 includes:

A. Letter of inquiry to your current and former employers, used by the executor of your estate.
B. Letter of notification to retirement plan custodians notifying them of death.
C. Letter of inquiry about Net Unrealized Appreciation (NUA) for employer's stock in your retirement plan. This letter can be used by you for your own inquiry or by the executor of your estate.
D. Letter of inquiry to confirm current beneficiaries for retirement accounts. This letter can be used by you for your own immediate inquiry or by the executor of your estate.

Action Steps

Complete Section 9 of your Direction Memo™:

9.1-Defines the purpose of this section of the letter regarding retirement plan assets.
9.2- List your employment history.
9.3- List all qualified retirement accounts you own.
9.4- Provide information about non-qualified retirement plans you own.
9.5- Include Social Security Information.
9.6- Instructions on rebalancing or other investment strategies.
9.7- Tax issues with retirement assets.
9.8- Net Unrealized Appreciate (NUA) if applicable.
9.9- Estate planning issues with retirement plan assets.
9.10- Withdrawal rate during retirement.
9.11- Name your financial planner. If you don't use a financial planner, name one for a contingency.
9.12- Review retirement plan form letters. You may immediately use letter 9.12(d) to request confirmation of your current beneficiaries in your retirement plans.

Become a fan of Direction Memo™ on Facebook to stay abreast on issues related to estate and financial planning.

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Chapter 10: Personal Property, Business Interests, and Miscellaneous

"When I die, it will be a shipwreck, and as when a huge ship sinks, many people all around will be sucked down with it." - Pablo Picasso

IT IS OFTEN SAID ABOUT earthly possessions that, "you can't take it with you." This is the case, unless of course you ask that your personal effects be buried with you. Considering that the distribution of personal property is a common cause of estate litigation, perhaps it's not a bad idea to have your personal property buried with you! This type of legal clashing generally occurs among siblings. Since most of these personal effects are of high emotional value, the siblings are really fighting for status or "love" from their parents based on who inherits specific sentimental items. Executors, who are usually one of the siblings, are often put in a no-win situation when forced to decide how to divide personal property. Further, the executor often doesn't always inherit a fair amount because they want to make sure the other heirs don't feel they are abusing their powers as executor.

Julie Hall, otherwise known as "The Estate Lady" is a professional estate liquidator and certified personal property appraiser with over 18 years experience dealing with families. Hall says "more than 80% of the estates I have liquidated involved some type of fighting among siblings. You may think your own nice adult children would never fight over your stamp collection, but most of these 'eighty percenters' were otherwise close families who always got along.[1]" Without adequate planning, the executor could be motivated to sell all personal property at an estate auction and divide the proceeds among the beneficiaries simply to avoid interfamily conflict. That is unfortunate when your beneficiaries wanted a certain item more than cash, and it may not be your wish that everything should be sold simply to make things "simpler."

I once heard of a situation where two siblings had to divide their father's cremated remains because neither was willing to negotiate about *any* part of the father's estate. The executor insisted all the personal property (including their father's ashes) must be divided equally, because the father's will stated everything should be divided equally. Surely the father expected a higher level of cooperation from his children, but his legal document had to govern every item in his estate, including his ashes. Family members could easily end up spending more in legal fees than the value of the personal property they are fighting about.

You should take the disposition of your personal property within your estate plan very seriously. Many estate planning attorneys and other professional advisors neglect to fully explore issues with your "silent" assets because they are focused on the "big ticket" items such as real estate, cash, securities, and retirement plans. Meticulous estate planners will take the time to fully develop a plan for your

personal property, even if the monetary value isn't large. In this chapter you will learn about several useful ways to ensure that your personal property gets into the right beneficiaries' hands, and the best ways to avoid family conflict.

This chapter will also provide advice on how to organize your business interests and incorporate your instructions for your business into the Direction Memo™. It's critical in the successful continuation of a family business to have a plan. After you're gone, the people running the business may find guidance and influence from referring to your Direction Memo™. Finally, section 10.10 provides a section where you can provide any miscellaneous information that hasn't specifically been provided in the financial section of this workbook. After chapter 10, the remainder of this book addresses the personal issues related to your Direction Memo™.

What is Personal Property? (Section 10.2)

Personal property is normally classified as either tangible or intangible and may (or may not) have a legal title of ownership. Tangible personal property is "moveable" property and intangible personal property generally refers to "paper" items. Although the list of personal property is vast, here are several examples of tangible vs. intangible:

Personal Property Type	Tangible	Intangible
Livestock and Crops	X	
Jewelry, Antiques, Heirlooms	X	
Artwork and Collections		
Guns and Tools	X	
Automobiles and other Vehicles	X	
Fractional Ownership of Unique Assets	X	
Household Furniture, China and Silverware	X	
Currency	X (if a collectible)	X
The right to sue someone		X
Copyrights and Patents		X
Season Tickets to Sporting Events		X

Country Club Membership Interests	X
Unincorporated businesses	X
Frequent flyer/traveler miles	X

Figure 1-Examples of Personal Property

There are personal property items where the monetary value is low and the sentimental value is high. Family heirlooms, photo albums, genealogy work, and the list goes on and on. Sometimes these low-cost, high-sentimentality items have a greater risk of causing interfamily hostility than do the more expensive assets!

Documenting Your Personal Property Inventory (Section 10.3-10.4)

Creating a list of all of your personal property is beneficial beyond naming beneficiaries of your effects. You should also have an inventory of personal property items in case of a natural disaster. Just for a moment take a look at all of the "stuff" in your home and imagine that a fire destroys everything. When the insurance adjuster asks for the inventory of items you lost, all you need to do is reference the Direction Memo™ (assuming you put a copy where it's safe from fire).

Forming a comprehensive list of your personal property also helps measure how much coverage you'll need from your homeowner's or renter's insurance. Only when you add up the value of your personal property will you realize whether or not you have adequate coverage. Does your homeowner's insurance fully cover that special fur coat or rare baseball card collection? Some of your items may be valuable enough to get them professionally appraised. If you have anything appraised, make sure a copy of the appraisal is attached or recorded in your Direction Memo™.

A personal inventory list is essential after a catastrophe, but sometimes more "proof" will be necessary for the insurance adjuster. This is why you should also take photos of your personal property. Some people even hire a professional to videotape their personal property so the evidence is readily available after a loss. You should keep a duplicate copy of your personal property inventory, including photos or video, in your safe deposit box.

How to Effectively Make Your Personal Property Inventory

1. Make your list one room at a time. List all the items in the room including the estimated date of purchase, serial numbers, and anything else you think is worth mentioning. You should also record the location of the warranty paperwork for high value items.
2. Videotape or take lots of pictures of the room. Move around the room clockwise and attempt to capture everything in the room that you can.
3. Use the forms provided in your Direction Memo™ to create your personal property inventory.

You should think about your personal property that is not located in your primary residence. If you own more than one home, create an inventory for each residence. If you have loaned personal property or it's in an obscure location, make sure that's it's accounted for in your Direction Memo™.

Your household inventory list not only helps you to begin thinking about what special people or charities you'd like to receive your personal property when you're gone, but how to protect it while you are alive.

Where is all of your personal property currently located? Is it loaned out to anyone? Another major headache for the family is locating all of the personal property of someone incapacitated or deceased. It's important to keep this section of your Direction Memo™ updated so your important people know the whereabouts of your personal property.

Personal Property with a Title (Section 10.5)

Personal property that is registered, such as cars, motorcycles, RVs, and boats, will transfer under state laws similar to your other assets. Many people register their personal property under the ownership of their revocable living trust, similar to their real estate and other assets, in order to avoid probate. If you haven't drafted a revocable living trust, there are five states that currently allow you to complete a transfer on death (TOD) application where you can directly name a beneficiary of your registered vehicles and avoid probate[2]. These states are:

- California
- Connecticut
- Kansas
- Missouri
- Ohio

Personal Property With No Title (Section 10.6)

Most personal property items do not have a formal document of title; possession is the simplest indication of your ownership. You likely own an extensive list of property (e.g., jewelry, lawnmower, piano, golf cart) for which you do not have a registered title, and that you haven't specifically identified in your last will. Without specific bequests, these items will likely be divided among the beneficiaries in accordance with your estate planning documents to the best of the executor's abilities.

Dealing with unregistered personal property can be very difficult for your executor and family members, because nobody knows who should get what items if it's not identified in your estate documents. Some attorneys suggest drafting a **Memorandum of Tangible Personal Property** if you have a will. For a living trust, an **Assignment of Tangible Personal Property** may be drafted to fund your non-titled personal property into your trust. This document is separate from your traditional dispositive document, so you are free to update your personal property and beneficiaries without the need to modify your trust or last will. All that's needed to update this document is crossing out personal property that you no longer own, and adding new items you've acquired. If multiple changes need to be made, create a completely fresh inventory and destroy your old one.

A document, such as an Assignment of Tangible Personal Property, is known as a "blanket assignment" that transfers all of your personal effects that do not have a legal certificate of title into your trust. Any personal property <u>with</u> a legal certificate of title will not transfer into the trust with a "blanket assignment."[3] For personal property with a legal certificate of title, you have to change each item's title to your trust if you want your trust to govern the disposition of the asset.

Whether or not these "side" documents, such as the Memorandum of Tangible Personal Property, are legally binding depends on your state law. Most states require the Memorandum to be specifically referenced in your will or trust to be considered binding. Other states will simply not allow an ancillary document to be referenced in your legal documents. Whatever your situation, the most important question to ask is "what is important to me when it comes to the disposition of my personal effects?"

Author and estate attorney Julie Garber says the practical side of making your personal property inventory list is that, in most situations, your heirs will not fight over personal property if you take the time to communicate your wishes in advance. Once your family sees your handwriting or initials that you wanted a specific person to have a certain item, the quarrelling will generally cease. There may be other situations where you want additional certainty that the law will govern a beneficiary receives specific personal property. In that case, you should provide that information to your attorney and ask him or her how to proceed under the laws in your state. Otherwise your personal property inventory in your Direction Memo™ could serve as a guidepost to ensure that your personal property is transferred to the right people. One thing is certain; your heirs are more likely to accept your decisions by moral force than decisions of the executor.

You have three clear options to address transferring personal property without a title. First, you can make specific bequests in your will or trust regarding personal property that is a priority for you. Second, you can ask your attorney if state law allows you to create a side document as previously mentioned that, if referenced in your will or trust, is considered legally binding. If that is your desire, you must consult your attorney to add language to your dispositive documents and create the side document in the format that makes it binding. If you're not concerned that the statement for disposing of minimally

valued personal property must be binding, you can list those instructions in your Direction Memo™. You may also provide a framework in your Direction Memo™ for resolving disputes with personal property, should they arise.

Tax Issues and Personal Property (Section 10.7)

Collectibles have one of the highest rates of taxation of just about any investment property. Long-term capital gains from the sale of collectibles are taxed as high as 28%. Collectibles include stamps, coins, baseball cards, precious metals, fine wines, antiques, glassware, and other common (and not so common) collected items. This is significantly higher than the long-term capital gains tax rate for most other investments, which are currently at a 15% rate or even lower.

To understand what you may owe in capital gains when you sell your personal property, you have to have an understanding of your cost basis. If you purchased the item, then your calculations start with the purchase price. If you inherit a collectible, your basis is the collectible's fair market value at the time of the previous owner's death (i.e., "step-up" basis). If the property you received was a gift from another person while they were still living, your basis is the original basis of the person who made the gift to you. Some collectibles require special care or restoration which allows you to increase your basis in the property due to any expenses you incur in maintaining the property.

Be aware that mutual funds that buy and sell gold for their shareholders, exchange-traded funds which buy and sell gold for their shareholders, and direct purchases of gold bullion and gold futures, are considered collectibles. Other precious metals and gemstones are also considered collectibles.[4] There are two tax efficient methods to owning precious metals mutual funds:

1. For example, if you want to invest in gold, buy the gold mining stocks which would qualify for the 15% capital gain or
2. Own your funds that directly own precious metals in your "tax sheltered" accounts such as IRAs.

Precious metals can be a useful instrument for diversification from other investments, but you should also invest in them tax-efficiently. If you choose to hold precious metals in your IRA, you should seek tax and investment advice on what's permissible.

Estate Taxes and Personal Property

Your executor will be grateful if you provide an updated personal property inventory list in your Direction Memo™. When an attorney or CPA files a form 706 estate tax return, all the decedent's items of personal property must be listed separately on the form unless they have a value less than $100. Items with less than a $100 value can be grouped together if they are contained in the same room. The executor will need appraisals for the following:

> If the decedent at the time of death owns any works of art or items with collectible value in excess of $3,000 or any collections whose artistic or collectible value combined at date of

death exceeds $10,000.[5]

It's important to let your executor know about certain items that will require an appraisal in your Direction Memo™, as well as who you'd recommend as a qualified appraiser. If you are an astute collector, it is almost certain that you know vastly more about the subject than your executor, therefore any knowledge you can impart is helpful. With sound guidance, your important people will ensure that your property is professionally valued, protected, stored, packed, shipped, and finally, distributed to the intended beneficiary.

Avoid Mistakes with your Personal Property

Tell your important people that no one may take any of your personal property upon your death until there has been enough time to review your Direction Memo™ and other legal documents to fully understand your wishes. Your family needs to know your executor or trustee is in charge. It's not uncommon for family members after the funeral to start claiming personal property and rummaging through the home like they are on the Supermarket Sweep game show.

Suddenly your personal property begins to disappear. Sometimes family members from out of town will want to settle this and take it back home immediately after the funeral. This simply may not be feasible and the beneficiaries must respect the process. The executor has a responsibility to manage the property distribution in an orderly way and until they can be legally permitted to distribute property.

Do not simply draft a will or living trust that states everything must be divided equally, without a side letter that specifically identifies beneficiaries of your personal property. Cash and marketable securities are simple to divide equally, but a rare collection, grandfather clock, or diamond ring, is not. It is important in your personal property list to describe the asset and the beneficiary completely, so a third party would be able to identify both. Make sure you specifically describe the particular property. You should also give the name of the beneficiary, as well as your relationship status (e.g., brother-in-law).

"My watch should go to George"	Too vague
"My silver Rolex Daytona Oyster Perpetual Men's Watch goes to George Smith"	Better
"My silver Rolex Daytona Oyster Perpetual Men's Watch goes to my brother-in-law, George Smith"	Best

If you are married, you may want your surviving spouse to retain the majority of your personal property until their death, and subsequently given to your beneficiary. In your Direction Memo™, make sure you check the box "only if my spouse predeceases me" if you want your spouse to retain specific personal property for their lives and then have it transferred to the beneficiary.

Item, Description & Location	Estimated Value	Beneficiary and Special Instructions	* only if my spouse predeceases me	Location of Documents
Cleveland Golf Clubs	200	My sons Gabe first and Garner second		
Wedding Band	250	First son to get married	*	
Electronics Equipment	4000	My sons Gabe and Garner divide	*	
Clothes	2000	Give to Goodwill		
Movado Watch	300	To my son Gabe, because he loves watches		
Furniture	2000	My sons Gabe and Garner divide	*	

Figure 2-Sample Personal Property Inventory Without Registered Title

Suggestions to Quell Bickering About Your Personal Property

- If you have a revocable living trust, fund your personal property into your trust and specify who should get your personal property with a document such as the Assignment of Tangible Personal Property. Also give the successor trustee complete discretion to settle disagreements.[6] This will ensure that your trustee will handle the disagreement rather than the probate court.
- Review your personal property list often because it will evolve. Talk to your loved ones and ask them what personal property they want when you are gone. You can begin to draft your list using your Direction Memo™ to determine what individual or charities you want to inherit your personal property.
- There is personal property you own that may not make your list. Primarily because many people have too much "stuff" and they will never account for every item. For items you miss, or that aren't a priority, attorney Julie Garber suggests setting up a lottery system in your estate plan so that your loved ones will pick a number allowing them to select the next item. [7]
- If you anticipate there will be certain personal property that will cause your beneficiaries to fight, you might want to specify that your executor sells these items and splits the proceeds among your loved ones. Sometimes it's just better that way.

Business Ownership (Section 10.8)

It could be argued that this topic deserves its own chapter, although it's fitting to talk about business succession planning in the same chapter as personal property because it's the second most common reason family members will quarrel over an estate. Living most of my life in Iowa, I have seen families torn apart debating what to do with the family farm after the parents are gone. Many of these farms had at least 5 children, who are now aging Baby Boomers, with divergent interests affecting the family business. Normally one of the siblings stayed home and worked on the farm while the other children went off to college and moved away. The farmer child would like to buy out his other sibling's interest and keep the farm in the family; however he can't afford to buy out his other four siblings. Some of the

kids want the farm to be sold immediately, while the others want to keep the land and share the income generated from the farm.

One thing is for certain. You can put a multiplier on each child in a family to calculate the amount of tension involved in settling the family business. Personal property and family businesses are the fuel added to the fire of sibling rivalry without proper planning. This part of the chapter discusses the importance of business succession planning and allows you to incorporate succession information with your Direction Memo™. You should also record any information regarding intellectual property, royalties, franchise rights, and other requisite information for your important people.

Business Succession Planning

Generally speaking, entrepreneurs have incredible business savvy but procrastinate on planning for business succession. In addition, very few business owners have appropriate economic protection devices in place, such as life and disability insurance, to ensure that the business will succeed in their absence. If you have a substantial interest in a closely-held business, usually one of three dispositions will occur at the owner's death: it will be sold, liquidated, or continued by the family. Your Direction Memo™ is a beneficial document to provide additional post-mortem guidance for your successor management. If you have a professional practice, you may wish to describe the steps taken to close it down or transfer it to another colleague.

You may have already created an official business succession plan document, and if that is the case, the location of your plan must be referenced in your Direction Memo™. You can certainly broaden your business succession plan by using your Direction Memo™ to make discreet remarks (including the strengths and weaknesses of specific key employees). You may also provide your observations as to whether the business should be retained by your estate, sold (and if so, some likely candidates for purchase), or liquidated.

Succession planning is a process of determining critical roles within your company, identifying and assessing possible successors, and providing them with the appropriate skills and experience for future opportunities. Perhaps the greatest advantage of a succession plan is having the right people with right skills doing the right activities. It can be difficult for many entrepreneurs to work "on the business" because they have to spend most of their lives working "in the business," but it's important to take time to get organized for the future. Depending on your situation, business succession planning can be family-focused, business-focused, or both.

The process of business succession planning will be different for each business. For example a family business that is privately held may have a succession plan in three phases:

Phase 1: Begins with the reorganization of equity, updating wills/trust and other legal agreements, and reviewing existing insurance policies. Phase 1 should also include family discussions and address the emotional issues of family business succession.

Phase 2: Buy-Sell Agreements are drafted, compensation procedures are reviewed, and an advisory board is established which will strategize, outline, and implement employee incentive plans. The process generally involves the counsel of independent professionals who contribute

objectivity and specialized skills.

Phase 3: The ongoing process of maintaining close working relationships with the financial planners, accountants, bankers, and attorneys dedicated to working together to achieve the family's goals. As the circumstances change within the family and the business, the succession plan should evolve over time.

Your business succession plan should be recorded in your Direction Memo™ naming important people, such as your business partners and professional advisors, who are part of this process. You should also record other important business documents and their location in your Direction Memo™ so that nothing is overlooked. You may add to your Direction Memo™ the type of business for which you are an owner, as well as any other estate planning arrangements you've drafted for the business. This includes, but is not limited to:

- Family Limited Partnerships
- Grantor Retained Annuity Trusts (GRAT's)
- Installment Payments, Self-Cancelling Installment Notes (SCIN's)
- Private Annuities
- Sale-Leaseback Transactions
- Additional strategies for business valuation discounts and methods for transferring the business during life, or at death.

There are few things as destructive to a family business as members fighting over the future of the business after the death of the owner. The communication between your family, other business partners, and professional advisors, is as important to the future success of your company as anything else. You may find it helpful to hire a business consultant to moderate meetings with all interested parties to create a functional succession plan.

If your business has inventory, livestock, or anything else that requires immediate care, you must acknowledge those arrangements in your Memo for a disaster recovery plan so your important people can protect the assets of your business.

Intellectual Property (Section 10.9)

If you are an inventor or author, you should note information regarding any patents, trademarks, and copyrights which you hold and the Intellectual Property Attorney that organized these matters. If you are not the creator of the intellectual property, but have attained ownership through gift or inheritance, you should also address the ownership of this property in your estate planning.

Most people choose to transfer intellectual property rights through their estate planning documents, and it is critical this be drafted correctly. Some trusts contain a bequest of "tangible personal property", as previously mentioned, but you may consider a specific bequest for intellectual property. The ownership of your intellectual property could be transferred to the incorrect beneficiaries if proper care isn't taken in the drafting of your documents. It's also important to understand and communicate how royalties,

franchise rights, or other intangible ownership interests transfer through your estate plan.

Miscellaneous (Section 10.10)

There could be important financial issues that haven't been addressed in this workbook. This section is an opportunity for you to address those issues as the book transitions from the financial to the personal segment of your Direction Memo™. Chapters 5-10 should include all financial information that's relevant to you. If you haven't found a separate section for all financial information that pertains to you, this is the logical place to record it.

Action Steps

Complete Section 10 of your Direction Memo™:

10.1-Defines the purpose of this section of the letter regarding personal property, business ownership and miscellaneous financial issues.
10.2- Defines "personal property."
10.3-Provides a section to document proof of your personal property in the event of a catastrophe.
10.4-Honors your wishes of civility among heirs when determining who inherits your personal property.
10.5-Create a list of your personal property with a registered title of ownership.
10.6-Create a list of your personal property that doesn't carry a title of ownership.
10.7-Instructions regarding tax issues with personal property.
10.8-List any business ownership interests, paperwork, and other instructions.
10.9-List any intellectual property interests.
10.10-List any miscellaneous financial information that hasn't been addressed from Chapters 5-10.

Did you know that you can email Paul anytime with questions?
His email address is paulcaspersen@hotmail.com

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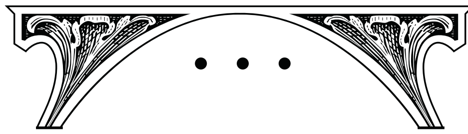
SECTION III

Personal



Chapter 11: Philanthropy-Planned Giving Instructions (Section 11.1)

"This is mankind's age-old dilemma in the face of death: what man really fears is not so much extinction, but extinction with insignificance. Man wants to know that his life has somehow counted, that it has left a trace, a trace that has meaning; its effects must remain alive in eternity some way."
Ernest Becker - Pulitzer Prize Winning Author

BEN FRANKLIN UNDERSTOOD HOW TO make an enormous philanthropic impact with his estate plan, and a small sum of wealth. When Franklin died in 1790, a bequest in his will left 1,000 pounds (or about $55,000 in today's dollars) each to the cities of Boston and Philadelphia, in trust to gather interest for 200 years. One hundred years after his death, a small part of the endowment was to be used in 1890 and the remainder distributed in 1990. In 1990, more than $2,000,000 had accumulated in Franklin's Philadelphia trust, which had loaned the money to local residents. When the trust came due, Philadelphia decided to invest the funds in scholarships for local high school students. Franklin's Boston trust fund accumulated almost $5,000,000 during that same time; at the end of its first 100 years a portion was allocated to help establish a trade school that became the Franklin Institute of Boston and the entire fund was later dedicated to supporting this institute.[1] Today many Americans endow charities through planned giving that will leave a long-lasting impact, just like Ben Franklin.

Americans are perceived as egregiously greedy spendthrifts, yet we have the world's greatest and most creative philanthropic culture. Today there are even lists, such as the Slate 60, that recognize the top philanthropists in the country. What a novel idea to recognize not only those who amass a fortune, but those who share their wealth. Although Buffet and Gates get the most recognition, millions of Americans give for many reasons, including the tax incentives. The charitable intent to make the world a better place is, and will always be, the primary motivator for giving. That said, the U.S. tax code encourages charitable giving. On average, approximately 89% of Americans give nearly $300 billion per year to charity. Regardless of your giving philosophy, I hope you will read this chapter because you might learn something about giving that may cause you to rethink your legacy plans.

Millions of Americans not only give immediate gifts every year to nonprofit organizations, but they also add charities as beneficiaries to their estates. Even households with children and grandchildren often decide that philanthropy should be part of their estate plan. Why wouldn't people want to leave as much as possible to their adult children and grandchildren? Warren Buffett best explained it when he stated "the idea that you get a lifetime of privately funded food stamps based on coming out of the right womb strikes at my idea of fairness." Furthermore, someone who lost a loved one to cancer or other terminal disease may be motivated to leave a legacy, in their loved ones honor, to research that disease.

Many donors have made arrangements to provide for charities at death, with a stream of income paid to their adult children for life, rather than leaving the entire inheritance directly to the children. This is especially motivating when donors know their children can't handle large amounts of money. These people have a desire to help their children, but not hurt them. There is an unavoidable contradiction at the heart of passing too much wealth to future generations. Hard work produces wealth and wealth discourages hard work. That said, your last name doesn't have to be Rockefeller, Carnegie, Gates, or Buffett for you to be philanthropic with your estate planning.

This chapter is not a complete educational source on charitable planning, but it does address most scenarios that would make it important to include your charitable plans in your Direction Memo™ and other estate documents. The purpose of this chapter is to make it easier to administer charitable intent through your estate plan, and present a few of the possible ways to accomplish this. A comprehensive charitable plan involves collaboration with your family, professional advisors, and the development staff at the nonprofit organizations you support.

Make an Impact

You don't need to be wealthy to be a philanthropist, but you need to give enough to make an impact. What's the difference between someone who makes annual contributions by writing a $5,000 check to one charity versus one hundred $50 dollar checks to 100 charities? The difference is impact.

Every nonprofit can make a case for support and can tug at your heartstrings, but you are probably much better off narrowing your focus to only a couple of charities to support annually, as well as in your estate plan. This not only benefits the charities, but may also give you a voice in how your investment in the charity should be used.

By making larger gifts to fewer charities it's likely that more of your dollars will actually be used for the intent of the gift. If you are one of those people who can't say "no" every time a fundraiser calls your home, just know that ½ of the gift you pledged probably went to administrative fees rather than directly to the cause. When you make a larger gift directly to the charity, rather than over the phone, the administrative fees will be closer to 5% than 50%. Do you want to make an impact? Give more, but to fewer charities.

Tax Incentives of Giving to Qualified Charities (Section 11.2)

Before you begin to explore the tax benefits of giving to charity, you'll want to make sure you're giving to a qualified charity under the policies of the Internal Revenue Code, Section 170(c). Generally a tax deduction is available for educational organizations, churches, hospitals and medical research, and community organizations such as the United Way and Habitat for Humanity. IRS Publication 78 contains a cumulative list of organizations described in Section 170(c) of the Internal Revenue Code. There is a user-friendly online version at http://www.irs.gov/app/pub-78/ so you can verify if an organization is a qualified charity.

The tax incentives of giving can be divided into three categories: estate, gift, and income tax. The estate and gift tax deduction is simple to understand because its unlimited, meaning an individual can

leave their entire estate to charity and the estate would not owe estate tax. Similarly, an individual can give an unlimited amount to a qualified charity during life without paying federal gift tax. This is, in essence, how people as wealthy as Warren Buffett or Bill Gates could avoid paying significant estate and gift taxes. You will recall from chapter 4 that the current exemption for an individual to transfer wealth to heirs is $5 million, prior to the levy of federal estate taxes. So if your net worth was $10 million, you could transfer $5 million to your heirs, $5 million to charity, and pay zero estate taxes.

Gifts to qualified charities are deductible for estate tax purposes if you leave assets directly to a charity at your death. There are many options in the world of planned giving to support charities in your estate. Most planned gifts are revocable and can be rescinded prior to the donor's death; however some planned gifts are irrevocable and can't be changed once the arrangements are made. Sections 11.4 through 11.8 address most of the common irrevocable planned gifts today. Typically, planned gifts that are irrevocable may reduce estate taxes, but they also provide income tax incentives during the donor's life.

Income Tax Deduction

Taxpayers must itemize their deductions in order to benefit from an income tax deduction for charitable gifts of a present interest. Therefore it's important to weigh the pros and cons of itemizing versus simply taking the standard deduction for your household. There is also a limited amount of a taxpayer's adjusted gross income (AGI) that can be deducted each year from charitable contributions. For example, if you earn $1 million per year, you couldn't donate all $1 million, and deduct the entire amount from your income taxes for that year. The maximum you are able to deduct is 20-50% of your adjusted gross income if you make a major gift in a calendar year. If you can't use the entire income tax deduction in the same calendar year as the gift because of AGI limitations, you may carry over your deduction for 5 additional years. If you are carrying forward charitable deductions, you should include that information in your Direction Memo™ for future reference on tax matters.

Another difference within qualified charities is whether they are public or private. Private foundations can be more closely scrutinized by the IRS than public charities. This is evident by how much individuals are allowed to deduct from their income depending on whether the charity is public or private.

Type of Property	Valuation of the Deduction	Annual AGI Limitation for Public Charity and Private Operating Foundations*	Annual AGI Limitation for Private Non-operating Foundations
Cash	Fair Market Value	50%	30%
Long-Term Capital Gain Property (held over 12 months)	Fair Market Value**	30%	20%

Ordinary Income and Short-Term Property (held less than 12 months)	The lesser of the basis or the Fair Market Value	50%	30%

Figure 1-Charitable Contribution Deductions and Annual AGI Limitations

*Certain private non-operating foundations can qualify for a higher AGI deduction limitation if they are a "pass-through private foundation." Your professional advisor should help you determine the deductibility for private charities.

**If the property is tangible and is for an unrelated use to the charity, the donor may deduct the *lesser* of the cost basis or the fair market.

For any contribution of $250 or more, you must have written acknowledgment from the organization to substantiate your donation. To deduct charitable contributions of items valued at $500 or more you must complete Federal Form 8283. In order to deduct certain personal property items, a qualified appraisal is necessary. Below are general guidelines to keep in mind with property that requires a qualified appraisal:

- Articles of used clothing or household items with a value of $500 or more.
- Books, coin collections, artworks, jewelry, furniture, etc. with a value of $5000 or greater.
- Cars, airplanes, boats, non-publically traded stock valued at $10,000 or greater.
- Individual items defined as "art" with an estimated value of $50,000 or more require an IRS statement of value before filing a return to claim a deduction.[2] Although there is a small fee for the statement of value, it could be worth the peace of mind when making a major gift of tangible personal property.

You must attach the qualified appraisal to your tax return if the deduction is more than $500,000 but it may always be a good idea to include your appraisal. Generally most publically traded securities do not require an appraisal.

It's also critical that you confirm whether your gift of personal property to the charity will be classified as "related use" or "unrelated use." This impacts the amount you may deduct. If you donate a painting to your local museum, they will probably have a related use for it and you may deduct the fair market value. On the other hand, if you give the same painting to the Girl Scouts it will likely be classified as unrelated, and you may only deduct your original "basis" in the item.

Revocable Deferred Gifts (Section 11.3)

What does your charitable planning have to do with your Direction Memo™? Your important people should understand your charitable intent with your deferred gifts. They need to know what you'd like the charity to do with your gift and they need to know who to contact at the nonprofits. Occasionally your important people need to know why you are giving to charities and not to your heirs, which can alleviate any resentment.

I have encountered upset family members who feel slighted when they find out their wealthy uncle gave some, or all, of his estate to charity instead of to them. A family member may contest the last will and testament, claiming that the individual was not of sound mind, or was under duress when they made those decisions. Charities who are aware that you plan to leave property to them from your estate stand a much better chance of defending a will contest because they have documented communication with you about your wishes throughout the years. Charities who are unaware they are in your estate plan have a much higher risk of having to battle upset heirs who feel they deserve more of your estate than the charity does.

Be very specific when naming a charity in your estate plans. Many charities are nationwide, but also have separate local chapters you may rather support. Many universities have several campuses; you want to select the right one. This means using the full legal name of the nonprofit as well as their tax ID number in whatever document that names the non-profit as one of your beneficiaries. Simply stating "my church" is generally not specific enough. If you go to the planned giving section of your favorite charity's website, it's likely they'll provide suggested text for your estate planning documents. It makes your attorney's job much easier if they can replicate the bequest language directly from the charities you wish to support.

It's also important to communicate with the charity so they may honor your wishes with the proceeds they receive from your estate. Most charities will draft a separate agreement with you referred to as a Gift Agreement that dictates how the charity will use your funds when the gift is received. A gift agreement can help you feel confident the charity will honor your wishes. If you have any gift agreements in writing from your charities, you should keep these with your basic estate documents. Some people choose to give with no restrictions, but most donors want their gifts to support a specific purpose, which is why a gift agreement is important. Few donors will allow the charity to use 100% of the funds immediately, but often the funds will be endowed with only a small amount (4-6%) paid out each year to support the charity with the remainder invested for future years.

The goal of establishing an endowment is essentially to create a gift that will last in perpetuity, although that doesn't always have to be the case. Some nonprofits allow term endowments which are meant to last for a set period of years rather than forever. You should make these arrangements at the nonprofit before they receive the funds, so that they understand your intent. You can also suggest that one of your family members, or other important people, periodically review your endowment to ensure that the nonprofit is spending and investing the endowment appropriately. The nonprofit should know that you'll have an advocate, usually a descendant, who will review your endowment periodically after you are gone.

Donors can remain anonymous both publically and privately with the charities that they support. While I can respect a donor who wishes to remain anonymous publically, it's critical you communicate with the nonprofits you have named as beneficiaries of your estate how you want the charity to use your gift. Sometimes charities won't be able to accept your gift, especially if you give them unconventional property or attach unattainable restrictions. Communicating with the charity today can save your estate disorder if the charity has to disclaim your gift.

Charitable pledges are very common with a major gift. If you signed a pledge form, chances are the pledge isn't binding, unless otherwise stated. If you made a traditional nonbinding pledge, your

estate isn't obligated to complete the pledge payments. If you intend on following through with your pledge, even in the event of your death, you should add a pledge section to your Direction Memo™. You may also ask your attorney if your pledge commitment should be reinforced in your binding estate documents, depending on the size and scope of the pledge.

You must make specific provisions in your estate planning documents if you want charities to receive a gift from your estate. You can also name charities directly as beneficiaries of your retirement plan assets, life insurance, and transfer on death assets without using a legal instrument such as a trust or will.

The Charitable Bequest through a Last Will and Testament

Bequests, which are gifts made through a will, have long been a popular way to provide continuing support to important charities in your life. In fact, most studies suggest that approximately 8-10% of people who have drafted wills include at least one charity as a beneficiary. Plus, 33% of Americans are willing to consider a charitable bequest.[3] Charitable bequests allow you to make a statement about your personal values and bring the satisfaction of knowing you are benefiting future endeavors at your charities. Bequests can be made in modest amounts, as a percentage of your estate, or as specific property, and can be structured to ensure that you realize other objectives for your estate. You retain full use of your assets during life, so you experience no immediate out-of-pocket costs, reduced net worth, or adjusted cash flow.

Five Charitable Bequests

In most cases, charitable bequests are made as a directive to distribute a specific asset or a certain sum of money to the designated charitable beneficiary "outright." Among the forms of charitable bequests most frequently used are:

Specific bequests, usually a distinct sum of money, are disbursed before all other bequests in your will. However, if the value of your estate decreases, this may impact how the rest of your intentions for your assets are fulfilled.

Percentage of value bequests ensures that both your heirs and the charities receive proportional shares of your estate. The benefit of this kind of bequest is that your intent to divide your estate stays in place, regardless of fluctuations in value.

In-kind bequests including, for instance, a piece of real estate or personal property such as a work of art — can provide a particularly personal, lasting statement of support for important charitable institutions in your life. Note that your estate may be required to seek individual appraisals for personal property in excess of $3,000 and collections over $10,000.[4] If you want the charity to preserve the particular asset you plan to leave them in your will, it's important to communicate that request with the charity as soon as possible.

Residuary bequests are those of any assets remaining after all other specific bequests, estate taxes, and administrative expenses have been satisfied. This arrangement ensures that all your

personal bequests will be satisfied first. The nonprofit, as your beneficiary, receives the residue of your estate.

Contingent bequests become effective if your primary beneficiary predeceases you or disclaims the bequeathed property. This type of bequest ensures that your property will not go to unintended beneficiaries.

When considering making charitable bequest designations in your will, remember that you have a wide range of options that allow you to tailor your designations so that your desires for your legacy are satisfied.

The Charitable Bequest through a Living Trust

You have essentially the same options with naming your beneficiaries in a living trust as with a will. If your primary estate planning dispositive document is a living trust, you will specifically name beneficiaries in an article in your trust. Normally the title of this article is something like "Trust Beneficiaries after the Death of the Grantor," and is where beneficiaries are named, including charities. It's also possible to name charities in the residuary estate of your trust if you want to ensure that other beneficiaries are taken care of first.

Ideal Beneficiaries of Retirement Accounts

As you contemplate your current and future charitable goals, it may be helpful to consider the tax implications of giving certain types of assets to nonprofits during life or at death. Your professional advisors should put collaborative thought into helping you reach your goals of retirement, as well as leaving a legacy with your family and charity. With proper tax planning, donors can give more to their charitable beneficiaries than they may have thought possible. Part of the solution can be to determine, at your death, what assets you want your loved ones to inherit, and which assets to transfer to charity.

As discussed in Chapter 9, Income in Respect of Decedent (IRD) assets do not qualify for a "stepped up" basis at your death. IRD is income earned by you during your lifetime but not includible in your gross income prior to death, such as qualified retirement plan accounts and traditional IRAs. This simply means your heirs will be subject to income taxes on IRD property they inherit from you. Retirement plan assets are better for use as charitable bequests than assets that qualify for a "step up" in basis, because qualified charities do not have to pay income taxes when they inherit IRD assets from you.

Let's use the example of Marie, an 80-year-old widow who has $500,000 in her IRA, and $500,000 in stocks with her local financial planner. Her original investment (basis) in her stocks is $175,000. She wants to equally divide her estate between her daughter and the local University from which her late husband graduated. As seen in figure 2, Marie should leave her stocks to her daughter and name the local University as beneficiary of her IRA. In this example, the daughter inherits her mother's stocks with a basis valued at her mother's date of death, not the original $175,000 investment. This is referred to as the "step up" basis. Since the University is a qualified charity, the IRD taxes are erased from the retirement assets. Marie maximized her estate gift and legacy as well as saving her daughter income

taxes, compared to leaving the IRA to her daughter.

	Daughter Would Receive	Local University Would Receive
Marie's Stocks	$500,000	$500,000
Marie's IRA	$275,000*	$500,000
Income Tax Liability if daughter gets the stocks and the University gets the IRA	$0	$0

Figure 2-Giving IRD assets to a Qualified Charity vs. Giving to Your Heirs

*Using a marginal federal tax rate of 35% and state income tax of 10%

Since the University is income tax exempt, it will not pay tax on the IRA proceeds. Had the daughter inherited the IRA instead of the stocks, she could pay as much as $225,000 between federal and state income taxes.

Before you update your estate planning documents to include a provision for charities, it could be more effective to simply name a charity as a beneficiary of your retirement plan assets. Please note that the designation of a beneficiary with retirement plan assets isn't generally directed from your will or trust. The charity must be designated as a beneficiary on record, which is a form you complete directly with your retirement plan custodian. The federal and state income tax collectors essentially see themselves as already owning between 30-50% of your retirement assets. Imagine an opportunity to circumvent the government from receiving further tax revenue from your remaining retirement plan assets through your estate through planned giving.

Keep in mind, however, that if you leave retirement plan assets to a charity, your children will not be able to take advantage of potentially multi-generational tax deferral through a stretch IRA discussed earlier.

Revocable Gift of Life Insurance

A donor may wish to name a charity as a beneficiary of life insurance as a way to make a sizeable deferred gift. The donor retains the lifetime ownership of the policy, keeping the right to cash it in, borrow against it, and change the beneficiary. A revocable gift of life insurance is treated similarly to a bequest made through a will, and is not income tax deductible. Because the donor retains the ownership of the policy, they will not receive an income tax charitable deduction for this revocable gift. The policy's proceeds will be included in the donor's gross estate for calculating taxes; however the estate can take a charitable deduction if a qualified charity receives the insurance proceeds.

Personal Property: Give Away Now or in My Estate?

Sometimes it's more advantageous to make a charitable bequest of tangible personal property at death, rather than as a gift during your lifetime. This is especially true if the property is unrelated to

the charitable organization's tax-exempt purposes. In that case, the deductible amount of the gift is limited to your basis, rather than the property's fair market value. Similarly, making a charitable bequest of ordinary income property offers significant advantages over a lifetime gift of such property. By bequeathing such property, your estate qualifies for a full estate tax charitable deduction based on the property's fair market value.If a nonprofit has a related use for your personal property, you may consider the tax advantages of donating such property during your life. For example, if a museum wants a piece from your art collection, you may deduct the full fair market value, typically accompanied by an appraisal. That way you can receive the optimal income tax deduction and also remove the property from your estate.

You may write suggestions in your Direction Memo™ for any personal property you'd like your important people to give to charity should you become incapacitated and can no longer enjoy the benefits of the property. This won't require your important people to do this under law, but your fiduciaries can use their judgment to make your estate easier to settle if certain property is given away before your death, as well as gaining a potential income tax deduction during life.

Irrevocable Gifts (Section 11.4)

There are certain planned gifts that are irrevocable after they are established. One of the primary differences between a revocable and irrevocable deferred gift is an income tax incentive for creating an irrevocable gift. A revocable planned gift may reduce estate taxes at the donor's death, but there isn't an income tax deduction when a gift is revocable. If you have established irrevocable deferred gifts during your lifetime you must account for your tax deductions. Your important people must also know where to locate the paperwork for theses irrevocable deferred giving arrangements.

Sections 11.4-11.8 will identify most of the conventional deferred giving vehicles that are classified as irrevocable gifts. Keep in mind that just because a gift is irrevocable, it doesn't necessarily mean that you can't change the charities that are involved. Irrevocable means that you can't rescind the giving vehicle once the donor has structured the gift vehicle.

Life Income Charitable Plans

There are several options for those who'd like to give property to a charity in exchange for a stream of income for themselves and other income beneficiaries. Life income plans have become popular because the donor may enjoy income and estate tax deductions, receive income, and be esteemed during their lives for making the gift. This section of the chapter will describe several types of life income charitable plans, sometimes referred to as split interest gifts, and how to record them in your Direction Memo™.

Charitable Gift Annuities (CGAs). A gift annuity is a contractual relationship between you and the charity you want to benefit. When you make an irrevocable transfer of cash or property to the charity, they agree to pay you and/or another annuitant a fixed amount periodically for your lifetime(s).You may designate yourself and/or another person (two lives total) to be the beneficiary of your gift annuity.

The amount of the annuity payout and charitable deduction is based on the age of the income

recipient and the amount or value of the gift made to your charity. Generally, the older the annuitant, the higher will be the payout rate.

> For example, John (age 70) and Mary (age 68) Doe are in a 28% marginal federal income tax bracket.
> The Does gifted publicly traded securities with a fair market value of $100,000 from an original investment five years ago of $75,000. Based on their age when they made the gift, the Does will be paid an annuity of 5.1% ($5,100 annually) for the remainder of both of their lives.

A portion of the amount transferred to a gift annuity program is deductible as a charitable contribution on your federal income tax return. Generally, you may claim the deduction in the year of the gift, subject to limitations. As previously mentioned, excess deductions not usable in the year of the gift may be carried over for up to five tax years. When you take into consideration your tax deduction, your effective payout may be substantially higher than the rate of return from investments like money market funds or CDs. In the example above, the Does have an income tax deduction of $29,201.[5]

Deferred Gift Annuities. A deferred gift annuity allows you to deduct your charitable gift when you create your annuity and postpone the start date of the annuity payments, deferring the income until you choose to receive it. Deferring the income of the annuity increases both the percentage of income and the income tax charitable deduction. Deferred gift annuities offer attractive retirement income to supplement IRAs or other retirement plans. Contributing to deferred gift annuities while you are still working could be effective because you can receive income tax deductions in high-income years. During retirement you will then receive the income from the gift annuities when there's typically a greater need for predictable income and you're in a lower income tax bracket.

Charitable Remainder Trusts. A charitable remainder trust enables you to make a generous gift to your favorite charity(s) without reducing personal income or the security you want to provide for your family. The charitable remainder trust provides a regular income for one or more beneficiaries for life, or a term not to exceed 20 years.

There are two types of charitable remainder trusts: the charitable remainder annuity trust (CRAT) and the charitable remainder unitrust (CRUT). The primary difference between these trusts is the predictability of income to the beneficiaries. The *annuity trust* produces annual income that is a fixed percentage of the value of the gifted assets at the time the trust is created. Under the *unitrust* arrangement, the trust assets will be revalued each year and a specified percentage of the value will be paid to the income beneficiary; therefore the income on a CRUT can vary from year to year. Donors interested in a predictable income stream generally use a CRAT, and those who can tolerate fluctuations in income, with the hope of outpacing inflation, use a CRUT.

How a Charitable Remainder Trust Works. A trust is initiated when you irrevocably transfer cash or appreciated property to a trust that you have created. When you draft a trust agreement, you are able to direct that a specified income be paid each year to you and/or other individuals named in your agreement. Sometimes the charities who are remainder beneficiaries will draft the document for you,

if they can act as trustee under the nonprofit's state law. In order for a charity to draft a remainder trust, they typically require the donor to commit to making their charity at least a 50% beneficiary of the trust.

In your trust agreement, you would select charities as the remainder beneficiary you wish to support. At the death of the last income beneficiary, the income benefits terminate, and the remaining assets within the trust will be disbursed to the charities. When you establish and fund a trust, you may receive an income tax deduction for the present value of the remainder the charity is projected to ultimately receive. You may be able to increase your annual income with a charitable remainder trust. Typically, a donor will retain an income that is 5-7 percent of the value of the trust.

Pooled Income Funds (PIF's). Pooled income funds are similar to charitable remainder trusts because this charitable giving program can provide a lifetime income stream for up to two beneficiaries. After the death of the income beneficiaries, the remainder will be distributed to the charity. A PIF differs from a charitable remainder trust because assets of all the donors to the charity are "pooled" and each beneficiary receives income from the charity based on the performance of the pooled funds. With a charitable remainder trust, the trustee separately manages the portfolio of the grantor's individual assets and multiple charities can be remainder beneficiaries of a CRT.

Charitable Vehicle	**Pooled Income Fund**	**Charitable Remainder Trusts**	**Charitable Gift Annuities**
Definition	Charitable Trust established and maintained by a qualified nonprofit organization. Provides lifetime income stream to you or your chosen beneficiaries.	Irrevocable Trust established and administered by your legal representative and designated trustee(s). Provides lifetime income stream to you or your chosen beneficiaries.	An annuity contract between a donor and a nonprofit organization. The charity guarantees lifetime income payments to designated beneficiaries.
Minimum Contribution	Typically $20,000 or greater	Typically $50,000 or greater	Typically $10,000 or greater
Income Beneficiaries	Limited to 2	Unlimited	Limited to 2

Assets Accepted	Generally at the charity's discretion; most types of securities and property can be donated, including real estate, art, and collectibles. Cannot accept tax-exempt securities.	Most types of securities and property, including real estate, art, and collectibles, provided the donated asset can produce income.	Ultimately at the charity's discretion; typically only marketable securities and cash are accepted as gifts to a CGA.
Tax Treatment On Donated Assets	Partial income tax deduction based on beneficiary life expectancy and a Pooled Income Fund's historic rate of return.	Partial income tax deduction based on IRS-designated rate tables (based on life expectancy) and payout structure.	Partial income tax deduction based on a Charitable Gift Annuity yield set by charity and beneficiary life expectancy.
Charitable Beneficiaries Number of Beneficiaries	Flexible if sponsor has a donor-advised fund (DAF) program — otherwise only one.	Unlimited	One

Figure 3-Compare Charitable Income Options

If you have established charitable life income plans, or if you intend to establish a program in the future, you should record this information in your Direction Memo™. That way your important people will know how long to expect income from the charitable program and who the income beneficiaries are. You will also want to identify the location of any legal documents and gift agreements that designate the purpose for the remainder funds left to charity.

Charitable Lead Trust (CLT)

If you have wealth to the extent you are concerned about exposure to estate taxes, your professional advisors may be reviewing ways to "freeze" the current value of your estate while benefiting charity. A charitable lead trust could be one of those solutions. Although CLTs are very complex and require a skilled attorney, a CLT can mitigate estate tax exposure getting more to your heirs and charity.

A CLT conceptually works the opposite of a Charitable Remainder Trust (CRT) because the income

beneficiary is the charity, and the remainder reverts back to the donor (or heirs) at the trust's termination. CLTs are drafted as either a Charitable Lead Annuity Trust (CLAT) or Charitable Lead Unitrust (CLUT). For example, John and Mary wanted to pledge $750,000 to a new Children's Hospital in their community. They placed a $3,000,000 property into a Charitable Lead Annuity Trust (CLAT) that would make annual payments of $150,000 over five years. This will provide the charity with $750,000, and after five years, the remaining property in the trust will pass to John and Mary's heirs. Because the gift tax deduction and the amount subject to gift tax is determined at the time the assets are contributed to the CLT, most appreciation of the assets that takes place during the term of the trust is not subject to additional gift or estate tax.

A charitable lead trust can be established during the donor's life or at death (then referred to as a Testamentary Charitable Lead Annuity Trust). The final amount funded into the TCLAT is flexible, depending on how much estate tax is due. The charities will then receive annual income for a predetermined number of years. After completing the term of income payments to the charity(s), the remainder is transferred to the heirs.

In addition to the estate tax savings of a CLT, many wealthy families feel this will involve their children in philanthropy and help them realize there's more to life than personal fulfillment. Witnessing the support to charities may also help the heirs manage their inheritance responsibly and perpetuate the family's tradition of philanthropy.

Life Estate Reserved

If a donor plans on leaving their residence to a charity through their estate, they may also consider giving the charity a **life estate reserved** in their home prior to death. A donor may receive a charitable income tax deduction for the transfer of a remainder interest in a personal residence, farm, or ranch. The life estate with remainder to charity is created by deeding the remainder interest to a qualified exempt charity and retaining the right to use the residence for a life, lives, or a term of years. The initial gift qualifies for an income tax deduction, and the eventual transfer to charity will qualify for an estate tax deduction, removing the property from the donor's estate.

Creating a life estate retained arrangement may generate a substantial income tax deduction. The donor continues to live in their home and continues to pay property taxes and maintenance, just the same as prior to amending the deed. This is a unique arrangement where a donor is able to continue to fully enjoy their property for life, yet receive an income tax deduction.

> Example: George and Martha are in their 70's and married with no children. They want to leave a legacy to the private university where they met and both earned degrees. Through the help of their professional advisors, they decide to transfer the deed to their alma mater and retain a life estate in their home. Their home is assessed at $300,000 and land at $50,000 and George and Martha are entitled to a charitable income tax deduction of $144,376.[6]

Donor-Advised Funds (DAF) (Section 11.5)

Over the last two decades, donor-advised funds have vastly increased in popularity. DAFs allow a donor to contribute cash or other appreciated securities to a sponsoring organization to set up a fund acting as a public charity. A sponsoring organization is either a financial services provider or local community foundation. The donor recommends which charitable organizations will receive "grants" from the donor-advised fund itself. The sponsoring organization will monitor the grants made to ensure qualified charities are the recipients. Donor advised funds offer three tax benefits:

1. An immediate income tax deduction
2. Avoidance capital gains tax on investments that are directly transferred to the DAF, and
3. Reducing the gross taxable estate of the donor mitigating potential estate taxation.

Perhaps the greatest attraction to donor-advised funds is your ability to establish a DAF and make grants over a number of years, leaving to the future decisions on which charities should receive the funds. Your funds will also remain invested while in the donor-advised fund pool, following your investment policy. You can also choose to make anonymous grants to charities from your DAF.

Your Direction Memo™ should include the names and contact information for individual(s) and organization(s) you have named as "successors." There are three types of successors who will become either the individual account holders or charities who are direct recipients of the DAF at the owner's death. The first type of successor is the individual successor. Individual successors you name to maintain your donor-advised fund should be identified in your Direction Memo™ and you should direct them who to depend on for the continued management of the assets in your DAF. Some people name one of their children as the successor of the DAF because they'd like to create a family tradition of philanthropy.

The second option for a successor is naming specific charities as beneficiaries immediately upon the owner's death. These must be IRS-qualified public charities who qualify as a successor. At the death of the account holder, the balance allocated is sent immediately to the charity. This could be a significant amount of money, and the owner may wish to create a gift agreement with the public charity to ensure that the money is used in accordance with the owner's wishes.

The third option for a successor with a Donor Advised Fund is creating a permanent endowment with the DAF. Generally, the remaining balance must be at least $100,000 to qualify to maintain an endowment with the Donor Advised Fund, and the donor can name up to 5-6 charities to receive the annual endowment payments. Since an endowment is to ideally last for perpetuity, the spending from the account each year is typically 5% of the principal directed to the charities.

Where do you find Donor Advised Funds?
DAFs can be created through financial service providers or with your local community foundation. Fidelity Investments was the first financial service provider to establish donor-advised funds. In 1991, Fidelity Investments created the Fidelity Charitable Gift Fund which is the nation's largest DAF followed by Vanguard and Schwab. Fidelity's account minimum with the Fidelity® Charitable Gift Fund is $10,000.

Community Foundations (Section 11.6)

A community foundation is like having a Donor Advised Fund right in your back yard. Community foundations are tax-exempt public charities serving thousands of people who share the common concern of improving the quality of life in their community. In its general charitable purposes, a community foundation is much like a private foundation; its funds, however, are derived from many donors rather than a single source, as is usually the case with private foundations.

In a community foundation, individuals, families, businesses, and organizations create permanent charitable funds and the community foundation invests and administers these assets. Although community foundations specifically focus on "local" philanthropy, most of them will distribute grants across the country, per the donor's request. Many community foundations also work with local financial planners so their donors can create a Donor Advised Fund, but retain their assets with their local financial planner. Community foundations are overseen by a volunteer board of leading citizens and run by professionals with expertise and knowledge of their community's needs.

You may have several successor options with contributions to your local community foundation similar to that of a donor advised fund with a financial services provider. Therefore you should consider what your heir's involvement should be with those funds, if any, within your estate plans. The Direction Memo™ is an ideal location to make any statements about your wishes with donor advised funds.

Private Foundations (11.7)

Private foundations share many of the characteristics of a donor advised fund with a little more sophistication, and usually for larger gift amounts. A private foundation is established as either a corporation or a trust, and is required to spend 5% each year for charitable giving. A private foundation is also considered a charitable organization that's not publically funded, but normally through an individual family.

Through its board of directors or trustees, the private foundation decides what causes to support annually. The donor continues to control the assets, which isn't possible with an outright gift to a nonprofit. The donor can also involve younger family members so they can learn about philanthropy at an early age and create family bonds that may last for generations. These same objectives can also be accomplished informally with a donor advised fund for those families who don't have the resources to establish a private foundation.

Private foundations are policed aggressively by the IRS to limit any abuse that can occur with such an arrangement. The special rules for private foundations are strict and can result in stiff penalties if the foundation isn't operated correctly. Nonetheless, private foundations can provide estate tax benefits and engender family involvement with philanthropy for decades. If you have established a private foundation either now or in your estate, you should acknowledge this in your Direction Memo™, including the people who are named as foundation board members.

Irrevocable Gift of Life Insurance (Section 11.8)

You may wish to transfer ownership of a life insurance policy to a charity, or purchase a new policy with the charity as owner and beneficiary. If you make a charity the owner and beneficiary of a policy,

you may be entitled to income tax incentives. Some states may not allow a charity to own an insurable interest on the life of their donors and so you should confirm with your professional advisors and with the charity, that you may transfer ownership of your policy to the charity.[7]

Previously in this chapter, a revocable gift of life insurance was discussed, although some donors may be confident they no longer need the insurance. Using life insurance can make it possible for a household, who otherwise doesn't have the means to make a major gift, to make a significant impact through their estate.

For example, the Johnson Family decided to review their finances since their youngest child recently graduated from medical school. They realized the permanent life insurance they carried while the children were dependent on them, was no longer necessary to the family's well-being. They are interested in donating a fully paid-up policy to their church. Their professional advisors inform the Johnsons that since the policy is paid-up; they are entitled to a charitable deduction of a comparable replacement policy if purchased today.

If the Johnson's policy wasn't fully paid up, additional premiums must be paid to keep the policy in force. The Johnsons would make a cash gift to their church for the amount of premiums due, and their church would simultaneously pay the premiums for the policy. The Johnsons may claim the cash gift for those premiums as an income tax deduction by transferring ownership to their church.

Miscellaneous Charitable Information (Section 11.9)

Any additional information about your charitable planning not included in sections 11.1 through 11.8 can be recorded in this section. It's important to describe charitable plans in your Direction Memo™, but the greatest benefit is the additional communication this section offers between your important people and the charities for any deferred gifts you have established.

As you can see, there are many opportunities to support charities during your life and as part of your estate planning. Some of these strategies are complex and should not be attempted without discussing them with your professional advisors, family, and the nonprofits of interest to you. Charitable planning should be considered in the context of all of the other planning decisions that embody your estate plan. If philanthropy can become a family activity, it's the best investment a parent or grandparent can make to ensure that future generations are financially responsible because it makes money meaningful.

Action Steps

Complete Section 11 of your Direction Memo™:

11.1-Defines the purpose of this section of the letter and the instructions for charitable plans.

11.2-Discusses charitable tax incentives. Document any recent charitable gifts and any "carry forward" of income tax deductions you are allowed for those gifts.

11.3-Document any revocable gift arrangements you have made including future pledge payments.

11.4-Document any irrevocable gift arrangements you have made and the location of the paperwork.

11.5-List any Donor Advised Funds (DAF) you have created, including the future successors at your death.

11.6-Describe arrangements you've made with a Community Foundation. If you've created a DAF at the Community Foundation, include it in section 11.5.

11.7- Describe the creation of a private foundation including the paperwork and contact information for the attorney and board members.

11.8- List any gifts of life insurance where you have transferred ownership of the policy to a charity.

11.9- Include any miscellaneous information on charitable planning not covered in the previous sections.

Did you know Paul consults with Individuals & Professional Advisors on charitable and estate planning concepts? You can hire Paul to help you draft a customized Direction Memo™. For more information go to www.directionmemo.com

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1. Wikipedia- Benjamin Franklin http://en.wikipedia.org/wiki/Benjamin_Franklin
2. IRS Revenue Procedure 96-15. The IRS defines the term "art" to include tangible personal property such as paintings, sculptures, ceramics, antique furniture, decorative art, textiles, manuscripts, silver, historical documents, and other collectibles.
3. Rosen, Michael J. "Effectively Cultivating Prospects at Little or No Cost." Advancing Philanthropy. Jan/Feb 2011 pg.9-10.
4. IRS Form 706. September 2009
5. AFR rate of 3.4% used for this example, subject to change.
6. George is age 71 and Martha 70. The applicable federal rate is 3.4%.
7. IRS Private Letter Ruling 9110016

Chapter 12: Legacy Planning (Section 12.1)

"People will not look forward to posterity, who never look backward to their ancestors." - Edmund Burke

THE LEGACY PLANNING SECTION OF your Direction Memo™ addresses the nontechnical aspects of estate planning. Legacy planning is designing a way to communicate after you're gone to leave memories, values, and advice for your loved ones. If you want to convey something to your loved ones that they will never forget, it should be written rather than oral communication. Legacy planning focuses on the fullness of living and family, not the emptiness of leaving only an estate of material items.

My first understanding of a legacy plan was when I saw the movie "My Life," a 1993 film, starring Michael Keaton and Nicole Kidman. While the movie's box office gross was only $28 million, it is one of the most thought-provoking movies I have ever seen. Michael Keaton stars as Bob Jones, who has just been informed that his wife Gail (played by Nicole Kidman) is expecting their first child. However, Bob Jones has also been told he has terminable kidney cancer and it has spread to his lungs.

Bob is concerned that he will die before witnessing the birth of his child. He begins to videotape himself, communicating to his unborn child what he has learned in life. In the process of the videotape sessions, Bob discovers that his anger resides in the past with his family, and Bob reveals secrets that he has kept hidden from himself and his wife through the years. It turns out the video left a lasting legacy for his son, but also helped Bob express his feelings to his family before it was too late. Most people find themselves weeping as the movie ends, with Bob's son watching his videos long after his passing.

Before watching this movie, I had never understood how important the message of a legacy video, audio recording, or letter can be for someone who's lost a loved one. You can hire the best professional advisors money can buy, and obtain the best financial, tax, and estate planning advice available, but your loved ones will probably appreciate even more something personal from you. A study from 2005 found that non-financial "leave-behinds" such as ethics, morality, faith, and religion—are 10 times more important to Baby Boomers than the financial aspects of a legacy transfer.[1] The coming intergenerational transfer of wealth, said to be the greatest such transfer in the history, may also provide a teachable moment. As Robert Frost wrote, "every affluent father wishes he knew how to give his son the hardships that made him rich."

Put aside traditional estate planning for a moment and imagine the economic benefit to future generations of your family if you can continue to offer advice and counsel beyond your years. Author and family governance expert Jay Hughes states, "to successfully preserve its wealth, a family must form a social compact among its members reflecting its shared values, and each successive generation must reaffirm and readopt that social compact."[2] Many families create wealth, but most fail to maintain wealth more than two generations. The old proverb says, "shirtsleeves to shirtsleeves" in three generations. Transferring wealth without the values that created it produces a disease within a family, often referred to as "affluenza."

Simply put, section 12 encourages communication between family generations because failure

to communicate often results in the younger generation's inadequate understanding of the older generation's intentions. This is not to be confused with those who wish to create management mechanisms that "control from the grave." Such estate plans may be counterproductive, and usually don't incentivize a future generation's personal achievement. Communicating your values and memories, so they may be evoked in the future, could provide understanding to future descendants that you may never meet, like your great-great grandchildren.

Financial History (Section 12.2)

How do you ensure that your future descendants are fiscally responsible people? You can provide your family a brief detail about your financial history and how that's shaped your values about spending and saving. You can provide a concise financial history by answering the questions in Figure 1. This may seem similar to the Advance Investment Philosophy™ (AIP) you completed in Section 8, but the AIP and financial history are two different exercises. Your AIP is designed to communicate with the people who will manage your money and guide them in making decisions based on your attitude about investing. Your financial history is communicating what has shaped you in regard to money so your descendants can better understand who you are.

It makes no difference whether or not you were an ideal example of how to manage money over the course of your life. Nobody is perfect. When teaching your family about money, sharing the mistakes you made is every bit as important as sharing your successes. You can share your financial history in your Direction Memo™ or in a personal letter to your family.

Your Financial History
Your Childhood Influence 1. What do you remember your parents teaching you about money? 2. When you were growing up, who made the financial decisions in your household? 3. What lessons in saving and spending did you receive from your parents?
Current Attitudes 1. What is your definition of "wealthy"? 2. What are the dangers with having money? 3. What is the greatest value of money?
Your Beliefs on Using Money 1. What types of satisfaction have you received without money? 2. Do you live on a budget? 3. Do you feel as though you are a prudent spender? 4. Was/is your family philanthropic?
Family Communication 1. What are the attitudes about money that you would like to teach the future generations of your family? 2. Describe the story behind your wealth accumulation? 3. Is there anything you would do differently in communicating with your family about money?

Figure 1- Your Financial History

Writing Private Letters to Your Loved Ones (Section 12.3)

"Love is how you stay alive even after you are gone." - Morrie Schwartz

There are many books on Amazon.com with the words "ethical will" or "legacy" in the title that you can buy if you want more ideas on how to bestow your personal thoughts for your loved ones. If your chief goal is to write your own personal memoirs, there are plenty of resources to educate you to accomplish this. When it comes to your loved ones, however, they may be most touched by a letter you personally write to them.

The seven steps listed below should provide you the basics of getting started. Figure 2 provides different topics you can write about including values, memories, and future events. Hopefully you'll drop any inhibitions you have about writing because you don't have to win a Pulitzer Prize when writing from the heart. If you don't know where to start, begin by thinking about the memories you have about the person for whom you are writing the private letter. After all, the letter is your gift to them, and everyone likes to read about themselves! But a sincerely written letter can bring you peace of mind, knowing this person will one day read your letter and think about you.

Suggested Method for Writing Private Letters to Loved Ones

1. Purchase a journal or spiral notebook for each person (or small group) for whom you'd like to write a letter. There's also nothing wrong with typing (word processing) a letter. There's really no way to do this wrong.
2. Create a list of people who you'll write to. Your children are an obvious choice, but also consider friends, other family members, and all those you care about. Perhaps you can write a letter to your great-great grandchildren. What would you say to them if you had the opportunity? You should keep these various individuals and groups in mind when you sit down to write.
3. Determine the frequency of how often you'd like to write a letter. It could be only one time or it could be monthly, whatever you prefer.
4. Determine the topics you want to write about (see Figure 2 for suggestions). Write by sharing what you have learned in life, and make it relevant and useful for the reader.
5. Write from the heart, and keep in mind these letters may be viewed by future generations of your loved ones.
6. Many of your letters can be fun and "light-hearted." You don't have to write serious philosophical thoughts in every single letter. For example, you could write a letter about why you love the Chicago Cubs as much as you do, and that you want flowers sent to your grave if they ever win the World Series!
7. Sign the letters and put them in specific envelopes for the person (or group) that you are writing to. The letters can be maintained with your Direction Memo™ and you can ask the letters be distributed after you're gone.

Values	Memories	Future Events of Loved Ones
Family	Stories about the person to whom you are writing the letter	Graduation from College
Standards	Work Ethic, Philanthropy, Appreciation, Honesty/Integrity	Your future hopes for the person to whom you are writing the letter
Religious	An organization/person that transformed your life	Marriage

Figure 2- Sample Topics for Personal Letters to Loved Ones

Ethical Will (Section 12.4)

In addition to writing private letters to loved ones, a legacy statement or **ethical will** is your written legacy to the family (or community) rather than to specific individuals. Sometimes ethical wills are even read at the funeral of the person who wrote it. In fact, if you like the idea of having something read at your funeral personally written from you, section 13 of your Direction Memo™ will provide you the space to make this request.

Ethical wills originate from Jewish tradition dating back over 3000 years with many similar versions in other cultures. An ethical will is not a legal document as compared to your last will and testament. An ethical will describes your riches of the heart, not your earthly possessions. Although they can be written on a number of topics, ethical wills allow you to document your life lessons, hopes, and blessings for future generations. Barry K. Baines, MD who has authored books on legacy planning says that people write ethical wills for the following reasons[3]:

- We all want to be remembered, and we all will leave something behind.
- If we don't tell our stories and the stories from whom we come, no one else will and they will be lost forever.
- It helps you identify what you value most and what you stand for.
- By articulating what we value now, we can take steps to insure the continuation of those values for future generations.
- You learn a lot about yourself in the process of writing an ethical will.
- It helps us come to terms with our mortality by creating something of meaning that will live on after we are gone.
- It provides a sense of completion in our lives.

If the idea of an ethical will is intriguing to you, I encourage you to research the books written by Dr. Baines and the other references at the end of the chapter. Your ethical will has the potential to impact multiple generations, perhaps even hundreds of years from now. Therefore, an ethical will is one of the greatest gifts you can give to your descendants. A basic outline for writing an ethical will is included in

this section of your Direction Memo™.

Family Memorabilia & Genealogy (Section 12.5-12.6)

You may find inspiration in writing your private letters and ethical will through reviewing your family history. This also gives you the opportunity to document in your Direction Memo™ what should be done to preserve the history of your family. When someone dies, many important heirlooms like photo albums, love letters, and genealogy research gets separated or lost. This is your opportunity to stipulate how you'd like your family memories to be preserved for posterity. Your Direction Memo™ can state who should inherit these families' treasures and preserve them for future generations.

Some heirlooms require additional instructions because they can be easily damaged by light, heat, humidity, and pests. Tell your loved ones about your possessions from the past, and special stories or memories about each item. This information is an important link for future generations to connect with their ancestors.

You may have already recorded the majority of your family heirlooms in section 10 regarding the disposition of your personal property. This is a place for additional items you may have forgotten such as precious photo albums, and other items of family history worth preserving.

Maintaining Your Legacy Plans

You should keep your letters, ethical will, and other information in a place where it will be found in the event of your death. Your safe deposit box is a good choice. The location of these items should be identified in your Direction Memo™. You may also want to share the location of your legacy plan documents with your professional advisors to store along with your Last Will and Testament, and other documents.

Your Joint Legacy

You may wish to create part of your legacy plan with your spouse or partner. It's important to be patient and work through the creation of a plan that satisfies both of you. You may feel uncomfortable if you create your legacy with video or audio, but it certainly is a powerful way for friends and family to treasure memories of you. Forget the notion that a legacy plan is superficial or self-serving, it is quite the opposite.

Miscellaneous Legacy Issues (Section 12.7)

Any additional information about your legacy planning not included in sections 12.1 through 12.6 can be recorded in this section. Your legacy planning is an important part of your estate plan and I hope that you take an interest in determining what type of "leave-behinds" you want your loved ones to remember you by. Legacy planning explains who you are, which in many ways explains why you have the type of estate plan you have. Legacy planning is for those who genuinely care about others more than themselves.

Whenever someone tragically takes their own life, people often ask "did they leave a letter?" That question is understandable because a person who has the conviction to go through with the act of suicide obviously had reasons for doing so. When someone dies of natural causes why don't we ask if they left behind a letter? Just because someone doesn't take their own life doesn't mean they pass away with all their personal issues resolved. And if you don't have any unresolved issues, what about helping your descendants 200 years from now as they are conducting genealogy research by telling them a little about yourself? How do you want them to remember you?

Legacy Planning Resources

Websites

- www.ethicalwill.com Examples of ethical wills and additional resources
- www.videoethicalwill.com An organization that provides a service making a *Video Ethical Will*™
- www.familylegacyvideo.com Personal Historians who preserve your stories on video with a personal video biography or with a Legacy Audio CD™ from Family Legacy Video.
- www.lifebio.com Helps people to tell and share life stories, preserving memories and relationships to last for generations. LifeBio simplifies the publishing process so that anyone can create their own book of life's adventures. Customers create an autobiography or the biography of a loved one by using LifeBio's carefully-crafted questions or by using their Memory Journal or other reminiscence products.

Books

- "So That Your Values Live on: Ethical Wills and How to Prepare Them" by Jack Riemer
- "The Legacy Guide: Capturing the Facts, Memories, and Meaning of Your Life" by Carol Franco and Kent Lineback
- "Videotape Your Memoirs: The Perfect Way to Preserve Your Family's History" by Suzanne Kita
- "Beating the Midas Curse" by Perry Cochell and Rodney Zeeb

Action Steps

Complete Section 12 of your Direction Memo™:

12.1-Defines the purpose of this section of the letter and the instructions for legacy planning.
12.2-Complete the section by answering questions about your "financial history."
12.3-Provide the location of any personal letters you have written for loved ones to read after you are gone or for an impending date.
12.4-Provide the location for a completed ethical will or other legacy documents that are written for a group rather than a specific individual. This section includes a worksheet where you can create a short ethical will in your Direction Memo™.
12.5-Record which individuals you wish to inherit your family heirlooms, such as photos, genealogy research, and other memorabilia.
12.6-Provide information regarding audio or video communication that's included in your legacy plans.
12.7-List any miscellaneous issues regarding legacy planning not covered in the previous sections.

For the latest information on estate planning, check out www.directionmemo.com

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1. Results of the Allianz American Legacies Study, released in July 2005 http://www.planyourlegacy.com/professionals/studies/LegaciesStudy
2. "Breaking the Silence: Helping Clients Discuss Estate Plans with their Families." By David Bokman of GenSpring Family Offices
3. http://www.ethicalwill.com/whywrite.html

Chapter 13: Final Arrangements (Section 13.1)

"It is better to spend your time at funerals than at festivals. For you are going to die, and you should think about it while there is still time. Sorrow is better than laughter, for sadness has a refining influence on us. A wise person thinks much about death, while the fool thinks only about having a good time now".
– Ecclesiastes 7:2-4 New Living Translation

IN THE PREVIOUS CHAPTER WE discussed several ways to leave a lasting legacy for your loved ones. This "forward thinking" will serve your loved ones when they are saying goodbye to you. As you near the completion of your Direction Memo™, it's appropriate to conclude with deciding how you want your loved ones to handle your final arrangements. If you find this chapter to be emotionally difficult, keep in mind it will be much easier for your loved ones in the future by completing this section. Hopefully that's enough incentive for you to finish the last section.

Americans often have trouble communicating about death but many cultures and religions in the world view it as celebration. Facing death is frightful, not only because we have to give up everything we love in this world, but because we must confront the unknown. In her book "Talking about Death Won't Kill You," author Virginia Morris tells stories of people coping after the death of a loved one. Most of these people didn't have closure and say goodbye prior to losing their loved one, even when it was apparent they were dying. Physicians generally don't give up exploring options right up to the end, and so we, as loved ones, are hopeful for a chance of survival right to the end. That is why it's even difficult to talk about death with someone we know has a terminal illness because we hold out hope until the end. Often false hope.

Think about this. If you have a life-threatening illness, do you really want to make your final arrangement plans during this time? You can't be fighting for your life and making plans for your funeral at the same time. Your final arrangements must be planned as soon as possible within your Direction Memo™, and well before you are facing a serious illness.

Most people don't plan ahead, so family must quickly congregate and make final arrangements for their deceased family member. There are at least a hundred final arrangement decisions that must be made, unless of course these decisions have already been previously communicated. Wouldn't it be reassuring even if you could make most of your final arrangement decisions today saving your loved ones the agony in the future?

Making plans can also save your family money because you have time today to think through the financial aspects of your final arrangements. If you prepay the funeral home for their services today, they will have your money longer, but it may also protect you from the rising costs of funeral arrangements. On the other hand, you'll also want to ensure that your prepaid investment is safe and transferrable if you move to another part of the country. These are all facts a family must know immediately following the loss of a loved one.

Where Do You Leave Your Final Arrangement Instructions? (Section 13.2)

Your final arrangement requests should be recorded in a letter of instruction, such as your Direction Memo™. Very few individuals who draft a last will and testament record their final arrangement instructions in their will. There are several reasons for this:

- A will is not typically opened and read until sometime after death.
- A letter of instruction is superior because you don't have to modify your last will and testament every time a minor detail changes with your final arrangement plans.
- Documenting final arrangements in your last will inflicts those specific instructions making them binding on your executor. There are many cases where the executor isn't the appropriate person to prepare your final arrangements, let alone have the added pressures of being liable for following instructions that are now part of a legal document.

These are generally the reasons why those who do plan their final arrangements write them in a letter of instruction. Your Direction Memo™ can also outline more personal desires, including such details as whether you wish to be an organ donor, where you want to be buried, and the kind of funeral service that you want. You can specify location, what type of flowers you would like, or if cremated, whether you would like your ashes to be displayed at the ceremony. This chapter will cover your comprehensive final arrangement decisions from beginning to end.

Organ Donation (Section 13.3)

Whether you choose to be an organ donor or not, you will want to complete this section of your Direction Memo™. Your loved ones will be asked about donating your organs if you are a viable donor. Organ donation is a family decision; it doesn't come under the executor's authority. This is one of the first difficult decisions of many your loved ones will have to make, unless you have already communicated your wishes.

In all probability, everyone reading this book has already been asked if they would consider becoming an organ donor. The Department of Motor Vehicles normally asks that question every time you renew your driver's license. It's typical to feel queasy when you are asked about donating your organs, but we all may have the chance to save (or improve) lives after ours is over. Each organ and tissue donor saves or improves the lives of as many as 50 people. Giving the "gift of life" may even lighten the grief of the donor's own family. Many donor families say that knowing other lives have been saved helps them cope with the loss of their loved one.

Specific requests such as organ donation may be included in your living will document. In fact, if you are either strongly for (or against) the donation of your organs, you should express this in your living will. Without your instructions, your family could end up arguing about this issue during a time of grieving. Enrolling as an organ donor with the department of motor vehicles won't ensure that your wishes are carried out. The DMV approach is essentially an "all or nothing" way of asking people to be organ donors. Often people who decline to be organ donors do so because they don't want to necessarily donate all of their organs. The location of a donor card you have completed should be identified, as well

as including organ donation instructions in your Direction Memo™. All but a few states have adopted uniform laws so the states agree on laws related to organ donation. For more information, go to www.anatomicalgiftact.org for the most updated adoption of the Uniform Anatomical Gift Act.

Some religious organizations oppose organ donation, or have restrictions for what organs can be donated, but most of the world's religions support donation as a charitable act of great benefit to society. If you feel strongly about donating your organs, or if you feel strongly against organ donation, the process of documenting your decision should be the following:

If you DO want to be an organ/tissue donor	**If you DO NOT want to be an organ/tissue donor**
You can designate on your driver's license if you want to be an organ donor.	Tell the DMV you do not want to be an organ donor.
You should carry an organ donor card at all times in your wallet reinforcing what is designated on your driver's license. Identify the recipient organizations and provide a telephone number so that the necessary post-mortem medical processes can be performed promptly and effectively.	N/A
You can document in your health care directives your wishes to be a donor. These documents should be on record with your health care provider and hospital to be kept with your medical record. You should ask your primary care physician to place evidence of such intended donations in your medical record. COMPLETE THE ORGAN DONATION SECTION OF YOUR DIRECTION MEMO™	You can document in your health care directives your wishes NOT to be a donor. These documents should be on record with your health care provider and hospital to be kept with your medical record. COMPLETE THE ORGAN DONATION SECTION OF YOUR DIRECTION MEMO™
Register in your state. For your state's requirements, go to http://organdonor.gov/donor/registry.shtm. You can also print a donor card from this webpage.	N/A

Figure 1-Organ Donation Decision

Perhaps the most important action you can take in this regard is to complete the organ/tissue donor section of your Direction Memo™ and provide this to your loved ones and other important people. Communicate with your important people today about organ donation decisions rather than forcing

family members to make the decision at the end of your life.

Disposition of Remains (Section 13.4)

Once your loved ones carry out your wishes regarding organ donation, they will immediately begin making arrangements to prepare funeral and memorial services. Before they do this, they must decide what to do with your remains. There are generally three ways to dispose of remains:

1. Burial
2. Cremation
3. Donating Body to Science

Burial is the most common decision that people (or their loved ones) make concerning of the disposition of remains. The burial can occur after the funeral and other memorial events, or the body can be buried immediately. While there are no federal laws requiring a casket, some cemeteries may require one for burial. It may be more common in some geographic areas to place the body into a mausoleum above ground, but burial generally occurs underground.

Cremation is not as common as burial, but has become more conventional. Today nearly 30% of people choose cremation over burial. Although cremation can cost less than burial, there are still many decisions that must be made. For example, do you want to be cremated immediately, or have your body available for the visitation? If so, your loved ones can rent a casket for the visitation. You also may wish to decide what to do with your remains after cremation. They can be buried, scattered, or placed into an urn. Many cemeteries and churches today have Columbariums that hold the remains for individuals that have been cremated.

Donating Body to Science. Human bodies are used to teach students about the structure of the body and how it works. This is called anatomical examination. Human bodies or parts are also used to train surgeons and other healthcare professionals. No medical schools or state anatomical boards in the United States are permitted by law to purchase bodies from families or estates. It's also important to make back-up arrangements for burial or cremation if a body cannot be accepted by a medical school. If you have an interest in this option, you should communicate with your local medical schools. Most medical schools have a staff member dedicated to informing prospective donors about the process and are knowledgeable with your state laws. For additional questions you can call the Anatomy Gifts Registry at 800-300-LIFE.

Writing Your Obituary (Section 13.5)

Wikipedia defines an obituary as "a death notice which often includes an attempt by an author, publication, or news organization to give an account of the life of someone considered significant who has recently died. It can, however, be simply a death notice (also known as a funeral notice), and may be a paid advertisement written by family members and placed in a newspaper either by the family or the funeral home."[1] No matter the length of your life, your obituary is usually the last words written

publically for the world to know about you.

In this section of your Direction Memo™, you can write a complete obituary, or you can provide a template for your important people to use when they write your obituary. At first thought, an obituary might seem simple to write but it takes between 8-10 paragraphs to include the requisite information that most people want in a review of their life.

Whether you choose to write your own completed obituary or provide the necessary information for someone else to write it, your Direction Memo™ provides a sample template for you to get started. Figure 1 illustrates a fictitious person's obituary written from the template.

Figure 2-Sample Obituary Template

Paragraph #	Information	Sample Text
1	Name Age Address Date of Death Place of Death Cause or suspected cause of death	John C. Doe, age 88, died peacefully at the Bethany Manor Nursing Center in Sun City, AZ on Tuesday, December 29, 2009.
2	Date of birth Birthplace Parents names Educational accomplishments Military service if applicable Which war or conflict they served in Where stationed if overseas Marriages Residential history	He was born January 12th, 1922 in Topeka, KS to the late Emile and Margaret Doe. He attended Washington Township Grade School and graduated from Topeka High School in 1939. John served in the U.S. Army during WW II, and fought in Germany. On June 5, 1945, he was united in marriage to Irene M. Schmitz in Topeka, KS. In 1994, John and Irene began to spend the winter months in Sun City, AZ.
3	Post High School Education Degrees Earned Licenses Held	Mr. Doe graduated from the University of Kansas in 1948 with a Doctor of Pharmacy.
4	Work history and work affiliations	In 1949, John and Irene moved back to Topeka and he began working for Bennett Pharmacy. He purchased the business in 1956 and it was renamed Doe Pharmacy. In 1991, John retired and his son Phil took over Doe Pharmacy.

5	Church membership and organizations within the church. Civic memberships Fraternal Memberships Club Memberships With all the above include any positions or offices the person may have held Hobbies Other interests	John was a member of St. Mary's United Church of Christ where he served three terms as on the church council for several years. He was a member of Topeka Noon Rotary Club, serving as club president in 1977-78 and again in 1982-83. He served on the board of directors for the University of Kansas Endowment and created the "John and Irene Doe Scholarship" proving financial support for students from Shawnee County attending the University of Kansas.
6	Survivors, include spouse in parenthesis and city & state of residence Spouse Children Grandchildren Great-Grandchildren Great-Great-Grandchildren Parents Grandparents Brothers Sisters Nephews Nieces Cousins Friends List family that preceded him/her in death, usually spouse, parents, children, grandchildren, great-grandchildren, brothers and sisters	John is survived by his wife, Irene; his son Phil and his wife Theresa (Topeka, KS); his daughter and her husband, Linda and Mark Biever (Boca Raton, FL); two grandchildren, Kristin (Biever) Rowley, Clive, IA, and James Doe, East Lansing, MI; two great-granddaughters, Ava and Emma Doe, East Lansing, MI; two sisters, Gwen (Doe) Schmidt, and Audrey (Doe) Kugle, of Topeka, KS. He is further survived by nieces, nephews, other relatives, and many friends. In addition to his parents, he was preceded in death by two brothers, Irvin and Norman, and a daughter Elizabeth.
7	Service Include day, date, time and place of service Name of officiant and their title Place of burial or entombment Visitation information including day, time and place of visitation(s) Memorial Services held by others (include day, time and place) Vigil or Prayer Services being held (include day, time, and place)	Funeral services for John C Doe will be held at 1:00 p.m., January 2nd at St. Mary's United Church of Christ, N. 13th St. & Wheaton Ave. The Rev. Gregory Johnson, pastor, will officiate. Burial will be at the Topeka Cemetery. Relatives and friends are welcome at the Benson Funeral Home, 1132 Lincoln Ave., on Monday from 3:00 p.m. to 9:00 p.m. and at the church, on Tuesday, from 10:00 a.m. until the hour of services.

8	Listing of any memorial funds that may have been established and for what cause(s) or organization(s).	Because of John's passion for education, his wish was for any donations (in lieu of flowers) are made to John and Irene's scholarship at the KU Endowment.
9	Mention of any people or groups you wish to publicly thank for care given to the deceased.	We would like to thank all of the staff at Bethany Manor for their care during the last few months.

An obituary needs to be written immediately, along with the other final arrangements, because that is how the public is informed about the death, including information about visitation and the funeral service. Providing even the basic materials for your loved ones to write the obituary is very helpful, and will ensure there is an accurate account of your life.

Memorial Events (Section 13.6)

The stress level of your loved ones will be at the highest when it comes time to select a funeral home, burial plots, caskets, and all of the other plans involved in the funeral decisions. Some of this stress originates from financial concerns, but is mostly due to the overwhelming number of decisions. Family members can often get into a debate over funeral services when emotions are high. The planning is typically done in a hurry, which isn't a problem if you make some of the decisions ahead of time. If you have affirmed your funeral plans in your Direction Memo™ you can relax, knowing your loved ones will unite rather than disband after losing you.

Viewing and Wake

Arrangements can begin with a viewing, visitation, and wake. The viewing and visitation are similar depending on how private the family chooses to be during this time. The wake is a time for the "public" to spend time with the family and celebrate the departed's life. There is a section of your Direction Memo™ that can help you think about some items you can consider for these events. For example, some questions might be:

- Will a casket need to be rented if you decided to be cremated?
- What music, speeches, and prayers will occur?
- Do you prefer flowers be sent, or a donation to a memorial or charitable fund?
- Who is in charge and who should be invited?
- Where and when will the event occur?

Memorial Service

A memorial service normally occurs in the absence of a funeral because the body isn't usually present. Sometimes the memorial service will occur weeks or months after a death so that it may include

all of your friends and family. Memorial services are more common for someone who has decided to be cremated, however it's certainly available for someone who is being buried as well. Generally speaking, memorial services are less expensive than funerals.

Funeral

The funeral service is traditionally the last event where the body is present prior to the burial or cremation. The service generally takes place in conjunction with a mass, or other religious activity. In many cases, the funeral is the largest public event memorializing your death. The funeral is generally the most difficult event to plan because someone is needed to preside, such as a spiritual leader, and there are many other decisions that need to be made. Just to name a few:

- Where will the funeral take place?
- What type of eulogy do you want?
- Who should be invited and how are they notified?
- Will you have a reception after the funeral?

"Important People" Involved At Your Funeral

There are many loved ones and other important people who will participate in your funeral. This section of the chapter is a place for you to contemplate over who you'd like to serve at your funeral and in what capacity. You may have observed from other funerals there are many people involved. Here are just a few:

- Pallbearers (generally there are six of them)
- Will anyone sing and what songs would you like them to sing?
- Who do you want to read at your funeral?
- What clothes or other personal effects would you like buried with you?
- Will you have a funeral procession with the attendees driving to the cemetery?

If you have ever participated in planning a funeral, you understand it can be quite daunting.

You may also ask yourself how can you plan for an event that may be years away. Will you even live in the same area of the U.S. or another country? You should plan your funeral as if it will happen tomorrow and you can always modify your plans down the road if they change.

Headstone/Monument (Sections 13.7-13.8)

If you preferred to be buried, you should decide what type of burial marker or headstone you'd like to have. Burial markers are traditionally flat whereas headstones stand upright from the ground. Sometimes graveyards prefer that a burial marker be used to conserve space. As many people reading this already know, the cost of the burial marker or headstone can be expensive. Prices range considerably

from a $500 marker to a $20,000 marble statue. Your family may overspend on this expense because they don't want to feel "cheap" about the type of marker they select for you. You can do them a favor by describing what you'd like beforehand. In the financial issues section of this chapter, you'll learn how to effectively instruct your loved ones on how much should be spent on items such as a burial marker.

You may also consider advising your loved ones what you'd like for an epitaph written on your headstone or marker. It can be as basic as your name and date of birth/death or you may add a prayer or other descriptions of your life such as "loving husband and father." If you choose to be cremated, you can also request an epitaph which is normally designed on the urn vault.

A burial plot can also be a major expense with your funeral and can radically range in price starting at $1,000 to hundreds of thousands of dollars. In the limited time between the death and burial of a loved one, many family members find themselves rushing to buy a cemetery plot or grave - often without careful attention or a personal visit to the site. That's why it's in the family's best interest to buy cemetery plots before you need them. Usually, the funeral home handling the arrangements can make plans for purchasing the plot, but you can also provide direction on where you want the plot and how much to spend.

Financial Issues (Section 13.9)

Your loved ones, while spending money for your final arrangements, may significantly over-spend, linking this to their expression of love for you. You can prevent this, if you wish, with some written planning and verbal communication. There are two general financial issues to consider regarding your final arrangements.

The first is deciding how to pay for all of your final arrangements. Your estate documents may have language which ensures that your final arrangements and other expenses, debts, and taxes are paid before the beneficiaries receive their inheritance. Some people specifically identify resources, such as life insurance, to pay for their final arrangements. Below is a worksheet you can use to research final arrangement expenses in your local market:

Service or Items for Burial Arrangements	Estimated Costs
Casket or Urn	
Cremation and/or Burial Plot	
Donation of the body to a medical school or hospital	
Casket Rental	
Burial Market or Headstone	
Misc Funeral Home Expenses (Embalming, Transportation)	
Death Certificate Fees	
Service or Items for Burial Arrangements	
Memorial Service and/or Wake	
Visitation/Viewing	

Flowers	
Transportation	
Clergy and Church	
Food and Beverages	
Total Final Arrangement Costs	

Figure 3-Final Arrangements Worksheet

You have the right to stop in any funeral home in the United States and receive a general price list and seek more detailed information. All of the price lists are required to contain much of the same general information, but you may have to seek specific pricing.[2] You may also contact the National Funeral Directors Association and inquire about specific pricing in your market by calling 1-800-228-6332.

The second financial issue with your final arrangements involves services for which you have prepaid. There are important considerations to make before you begin to prepay for your funeral plans. Laws to protect consumers for the prepayment of funeral goods and services are governed at the state level. The protections vary widely from state to state, and some state laws offer little or no effective protection. Some state laws require the funeral home or cemetery to place a percentage of the prepayment in a state-regulated trust or to purchase a life insurance policy with the death benefits assigned to the funeral home or cemetery to ensure your funds are available.

Before you begin prepaying for funeral goods and services, the Federal Trade Commission recommends you consider these issues[3]:

- What are you are paying for? Are you buying only merchandise, like a casket and vault, or are you purchasing funeral services as well?
- What happens to the money you've prepaid? States have different requirements for handling funds paid for prearranged funeral services.
- What happens to the interest income on money that is prepaid and put into a trust account?
- Are you protected if the firm you dealt with goes out of business?
- Can you cancel the contract and get a full refund if you change your mind?
- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost.

Even if you decide not to purchase prepaid funeral plans, this exercise may help you to estimate a range of costs for your funeral. Obviously, while you are alive you have the luxury of gathering information, whereas your family won't have time to negotiate the expenses after you are gone.

Be sure to tell your family about the plans you've made. Let them know where to find your papers and provide the location in your Direction Memo™. If family members don't know that you've prepaid the funeral costs, they could duplicate the plans, creating more confusion and unnecessary expense.

One of the main reasons so many people prepay their funeral arrangements is because they don't want the family to worry about making any decisions. In fact, the primary reason the Direction Memo™ contains a chapter on final arrangements is for you to have a place to make these decisions. Because

you've completed section 13 of your Direction Memo™, purchasing a prepaid plan isn't the only option for taking the burdens away from your family. By including this section in your Direction Memo™, your family won't have to make "last minute" decisions. If you ultimately decide not to purchase a prepaid plan, your family still has your final arrangement instructions.

For Veterans (Section 13.10)

All honorably discharged veterans, some civilians who have provided military-related service, and some public health service personnel are entitled to free burial in a national cemetery, including a grave marker and a flag. There are currently 130 cemeteries with available space but there are limited benefits for those Veterans who wish to be buried in a private cemetery.

The Veterans Administration (VA) doesn't cover 100% of the final arrangement costs for a veteran, just the burial. For example, the VA does not make funeral arrangements or perform cremations. Families should make these arrangements with a funeral provider or cremation office. Any item or service obtained from a funeral home or cremation office will be at the family's expense.

Spouses and dependent children also are entitled to a lot and marker, but only in a national cemetery. According to the VA, their support includes closing the grave, a vault or liner, or setting the marker in a national cemetery. If you are an interested Veteran, it is wise to call the VA before you make any plans or assumptions for what they support. For more information, contact your regional Veterans Affairs office by calling 800-827-1000, or go online to: www.cem.va.gov or www.militaryfuneralhonors.osd.mil. If you want your loved ones to know about this option, make sure you include this information in your Direction Memo™.

Miscellaneous Final Arrangement Issues (Section 13.11)

The purpose of this section is to allow you space to document any additional information regarding your final arrangements not covered in sections 13.1-13.10. Completing this section of your Direction Memo™ is a major accomplishment. It's often uncomfortable completing this section, but many feel tremendous gratitude when they are finished. Even if you feel you haven't covered every aspect of your final arrangements, you've probably done more thinking about the topic than ever before.

Keep a couple things in mind as you complete this section. It's up to you whether or not you want to prepay your funeral, but you should discuss these matters with your family and funeral providers before entering into any prepay arrangements. Before you invest in prepay arrangements, insist they answer the questions from section 13.9. Don't prepay your funeral for the sole reason that you want to make it easier for your family when you're gone. Remember that preplanning your final arrangements to the extent you have recorded your wishes in your Direction Memo™ is an important gift to your family during their time of bereavement. That gift means your loved ones and other important people can congregate and come together to talk, grieve, laugh, and celebrate your life.

Action Steps

Complete Section 13 of your Direction Memo™:

13.1-Defines the purpose of this section of the letter and the instructions for final arrangements planning.

13.2-Reminder for family and fiduciaries to review your estate documents for final arrangement instructions if they are included.

13.3-Provide your personal wishes and instructions regarding organ donation.

13.4- Provide your personal wishes and instructions regarding disposition of your remains.

13.5- Complete template or prewritten obituary.

13.6- Complete requests for details regarding memorial events.

13.7- Complete requests for details regarding burial markers.

13.8- Provide information and/or requests regarding a burial plot, if applicable.

13.9- Complete the final arrangement worksheet by researching local funeral homes and other providers on the costs of final arrangements. Provide your input for how much, in today's dollars, you believe your loved ones should spend on these arrangements. If you've made prepay arrangements, identify the location of the paperwork.

13.10- If you are a military veteran, complete this section.

13.11- Complete any final arrangement requests and instructions not provided in the previous sections

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1. http://en.wikipedia.org/wiki/Obituary
2. Funeral-Related Options and Costs-A Guide for Families, The Funeral Information Project, Center on Aging, University of Kansas Medical Center, Kansas City, KS 66160-7117, 1996, p. 11.
3. Federal Trade Commission. *Federal Trade Commission.* http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm (accessed December 31, 2009).

Chapter 14: Putting It All Together

"I love it when a plan comes together! - Col. Hannibal Smith from TV's "The A Team"

YOU ARE NEARING THE END of the book and the conclusion of your Direction Memo™. Regardless of whether you feel your Direction Memo™ is "complete," you should feel secure and confident in the work you have done up to this point. Regardless of how long it's taken you to get here, you have saved your important people countless hours of exploring, researching, and arguing after you are gone.

The Direction Memo™ introduction clarifies the definition of the purpose of the document. Next, the Memo provides a specific reference to the areas that are required immediately in the event of incapacity or death. That way the introduction can help your important people prioritize the tasks that must be addressed immediately should something happen to you. It's also important to date each section of your Direction Memo™. There could be sections of the Memo that you'll never update while you may find yourself updating other sections annually. The average person buys and sells assets, moves assets, and changes their mind enough that updating the Direction Memo™ every two years is a good idea.

The final section of your Direction Memo™ concludes with three areas: a personal financial statement, your signature, and a glossary. Upon completing section 14 you may instinctively feel there is a step that comes after the completion of your Direction Memo™. That step could be sharing your Direction Memo™ with your important people such as your spouse, children, executor/trustee, agent under your power of attorney, and your professional advisors.

Presenting the Direction Memo™ to Your Important People (Or Not)

Everyone reading this book will likely have their own "Modus Operandi" for how they present the Direction Memo™ to their loved ones and other important people. In my experience, people will do everything from saying nothing about the document to anyone until it's needed, all the way to scheduling a family meeting and providing everyone a copy of their entire Memo. You can decide what is best for you. If sharing information in your Direction Memo™ has a risk of producing a negative outcome, you'll have to decide if it's worth the risk.

If you feel that sharing your Direction Memo™ is the right thing to do, you could consider inviting your adult children, attorney, financial planner, and other advisors to your home and provide them each a copy of your Memo. You can, of course, elect to share only the sections of the Memo that pertain to that person rather than giving them the entire Memo. The first time you invite your important people to a meeting, avoid getting into details about every subject. Merely explain the purpose of the Direction Memo™, how to find records and paperwork, and what you hope your important people will gain from knowing this information.

If you hope to pass along your beliefs and values regarding financial issues to your family, you must communicate with them. Your Direction Memo™ can serve as a catalyst for this type of discussion

because it provides the appropriate dialogue to fuel a meaningful conversation. Communication could be the most important, and least expensive, estate planning tool available to you.

Personal Financial Statement (Section 14.1)

Here is an opportunity, while you have all of your financial information available, to determine your net worth. Your net worth is just a number, but it can be an important factor in making financial and estate planning decisions. Your net worth includes all of your assets that you own, and should be found in the financial section of your Direction Memo™ in Sections 5-10.

It may be easiest to simply add each of sections 5-10 separately and aggregate the total. That way each section can be updated separately as you revise your Memo over time. Under the "assets" column each section has a space for one number that totals the assets from the respective section. When totaling each section, keep in mind the following:

- Section 5 concerning insurance should really have only one asset listed on your financial statement, which is the cash value of any permanent life insurance you own.
- Section 6 should include all your outstanding liabilities to creditors. If anyone owes you money, you may add that to section 6 of the asset column.
- Section 7 should consist of all your real estate assets. Any real estate liabilities should be included in section 6.
- Section 8 should consist of all your nonqualified (i.e., "after tax") assets. This includes bank savings, stocks, and mutual funds.
- Section 9 consists of all your retirement plan assets such as 401(k) and IRA assets.
- Section 10 is listing all your personal property and business assets. This includes personal property with a registered title, like a vehicle, and property with no title, like a rare collection of comic books. You may also list the approximate value of any business interests and/or intellectual property (e.g., patents, copyrights) that you own.

Signature (Section 14.2)

While the Direction Memo™ is not a legal document, it is nevertheless very important. Your signature at the completion of the document signals that importance. You should be the only person who signs the document in section 14.2. Remember that your Direction Memo™ is a letter of instruction from you to your "important people," and these instructions are coming directly from you. Just because your Direction Memo™ is nonbinding doesn't lessen its significance. It could be the most important document used to successfully implement your estate plan.

You should date your completed Direction Memo™ the when you are ready to sign section 14.2. The only time you should sign (or initial) a separate section of your Direction Memo™ is when you update a particular section. It's unnecessary to recreate the entire Direction Memo™ if you only update specific sections, although each section should have the most recent date from your revisions.

Glossary (Section 14.3)

Your important people may not recognize all the terms included in your Direction Memo™. In this section of the Memo your important people will find a glossary that includes most terms found in the Memo. The definition of particular legal and financial terms might enhance their understanding of topics related to the situation.

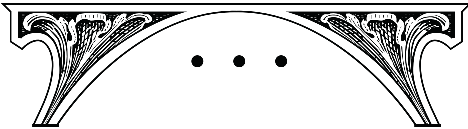
Conclusion

Remember the story I told in the introduction to this book, about the frustration of trying to put that desk together with no instructions? Remember the frustration of looking at 100 pieces of wood, metal, and screws, and one Allen wrench, and trying to figure out where to begin with no instructions? I would have given anything for a clear set of instructions that could have saved time, reduced stress, and provided an internal sense of control and progress that I was on a track to complete the project.

Because of your commitment to completing the Direction Memo™, your important people now have the instructions to assemble your estate. Keep in mind that the "pieces" of your estate change over time, so you have to review your instructions regularly to ensure they are current. As tax laws and other current issues surface, I will write new editions, and you can always go to my website to remain up to date. I know that I speak for your important people when I say "thank you"!

SECTION IV

The Direction Memo™ Workbook



Direction Memo™ for ____________________________dated _______________
Living at: ____

Attention loved ones, professional advisors, fiduciaries, and other important people: If you're reading this, it is because I am incapacitated and no longer able to manage my own affairs, or because I have passed away. Use the following Direction Memo™ that I have prepared for you. My aim is to organize all my financial records and to provide detailed instructions to my important people.

________________________________ ___________________________
Signature Date

1.1 Purpose of the Direction Memo™. A Direction Memo™ is a letter of instruction used in the estate planning process. This letter is written as a supplement to my legally binding estate planning documents. Wills, trusts, and most other instruments are governed by official requirements and are not particularly well-suited to communicate simple or practical instructions or personal desires to my fiduciaries and family members. For these reasons, I have decided to write my family and fiduciaries this informal letter to explain my estate planning objectives. I hope that my ideas and instructions will be helpful in handling certain business and personal matters. However, the thoughts expressed in this letter should not be considered rigid or binding, and they should always be tempered by a careful consideration of the facts and circumstances at the time decisions are made in the future.

1.2 Sections. My Direction Memo™ is formally organized into 14 sections:

1. Defining how the Direction Memo™ provides additional clarity and intent to compliment traditional "legally binding" estate planning documents.
2. Defining how the Direction Memo™ provides a "Roadmap" to locate all my personal information.
3. Estate planning documents and checklists for my fiduciaries.
4. The titling of my assets.
5. Insurance and Risk Management.
6. Debts I owe and owed to me.
7. Real Estate.
8. Savings and Investments.
9. Retirement Assets and Benefits.
10. Personal Property, Business Interests, and other Miscellaneous Assets.
11. Charitable Planning and Planned Giving.
12. Legacy Planning.
13. Final Arrangements.
14. Personal Financial Statement and Glossary.

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<u>1.3 Immediate concerns at my incapacity</u>. In the event I am deemed incapacitated, section 3 provides assistance on which documents to use to make financial and medical decisions. This includes, but not limited to, Durable Powers of Attorney, Living Will, and any living trust documents naming a successor trustee. Sections 8 and 9 will familiarize you with my savings, investments, and retirement plan assets. During my potential incapacity, you should secure my tangible personal property that is recorded in section 10.

<u>1.4 Immediate concerns at my death.</u> The first section that must be reviewed at my death is section 13 related to my final arrangements, including my organ donor status. This includes assistance for my loved ones to guide them in making decisions with respect to final arrangements. Request at least 10 copies of a death certificate. Apply for any life insurance death benefits, located in Section 5. Section 2 addresses other people and pets for whom I am a caretaker, with immediate instructions on how to ensure their "well-being." Section 10 provides an inventory of my personal property to ensure my home and other possessions are protected. Section 3 defines the scope of my legal estate planning documents, the location of the original documents, and instructions for my executor and professional advisors involved. Contact our family attorney: ____ ___________ [Name and contact information]. My executor/trustee should schedule a meeting with my attorney and be prepared to provide death certificates, my birth certificate, and financial statements.

<u>1.5 Nonbinding document</u>. This Direction Memo™ is a personal letter of instruction that is flexible, informal, and not legally binding, although it serves multiple purposes. Since this letter carries no legal authority, the binding instruments I have drafted govern my estate. In any situation where the provisions of this letter are deemed to be inconsistent with or contrary to the terms of my Will, Living Trust, or other formal estate planning documents, the provisions of those legal instruments shall govern and be controlling. In other words, I do not intend for this letter to serve in any respect as a legal document nor shall the terms of this letter override the provisions of a legal document executed by me whether it was signed prior or subsequent to the date of this letter. This Direction Memo™ is not a contract.

<u>1.6 Direction Memo™ Review</u>. I will make every reasonable effort to keep this document current. My aim is to update my Direction Memo™ at least every two years to ensure that the information in my final letter is as accurate as possible. Investments, insurance, and personal property change often, and this document is dynamic and may be updated frequently. I understand that there can be no guarantee that every written request or instruction in this document will be fulfilled.

General & Biographical Information

2.1 Purpose of the Central Data Source. This section provides personal information that generally will not be found in the subsequent sections of the Direction Memo™. My goal is to eliminate anxiety that might arise from being unable to locate important information for my estate. Section 2 includes important biographical information my family and fiduciaries need to know about me.

2.2 My Biographical Information. The following is information about me which includes my legal name, residence, marriages and domestic partnerships, education, and military service.

Full Name (including middle and maiden names)
Date of Birth
Place of Birth
Social Security Number Location of SS Card(s)
Driver's License Number
Other Names Known By:
Spouse/Domestic Partner's Name (including middle and maiden names)
Previous Spouse (if applicable)
High School Name, City, County, State, Degree/Date College Name, City, County, State, Degree/Date Graduate School Name, City, County, State, Degree/Date
Military Service (Branch and serial #, location, rank, honors, discharge information)
Church Membership Affiliation

2.3 Information about my Immediate Family. This section names my living (and deceased) immediate family members including biological parents, step-parents, siblings, children, and grandchildren. It includes their date of birth and date of death (if applicable).

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Relationship Key: F (father), M (mother), C (child), GC (grandchild), GGC (great-grandchild), B (brother), S (sister), I (in-law)

NAME	RELATIONSHIP (see key)	DATE OF BIRTH	DATE OF DEATH

2.4 Family Tree Diagram. The following is a family tree diagram of my immediate family including the names of my parents, my siblings, my children, and my grandchildren (Use space under the sample diagram to draw your family tree diagram).

Mother
Father
You
Siblings
Children
Grandchildren

Figure 1- Sample Family Tree Diagram

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DRAW YOUR FAMILY TREE DIAGRAM BELOW

2.5 Information about my Pets (Livestock). This section identifies any pets I own and my wishes for their care and relocation if something happens to me. This includes the names of people with whom I have made arrangements for my pet's care, registered papers, and the veterinarian's contact information.

Pet Name	Species, and Coloring	Food Type	Prescriptions/ Other Care	Veterinarian's Contact Information

Pet Name	Desired Placement	Individual/Organization Contact Information

Livestock Notes: ____

____

____

____

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2.6 People for whom I am acting as fiduciary. I am aware of the following people who have named me as fiduciary in some capacity either as their agent under a power of attorney, executor, or successor trustee. If something should happen to me, the following people should be reminded that I may no longer be able to serve in this capacity.

Person's Name and Contact Information	Age of Person	Relationship	Position I was assigned (e.g., Power of Attorney, Executor, Trustee, Health Care Agent)

2.7 Personal Papers.

Location of Birth Certificate	
Location of Marriage Certificate/Divorce Papers	
Location of Adoption Documents	
Location of Social Security Card	
Location of passport	

2.8 My Personal Family Service Providers (Medical and Spiritual).

1. My general physician is ________________________ located at ___________________________________.
My dentist is ___________________________ located at ____.

2. My other health care providers include____
located at ____

3. My spiritual advisor or Clergyman (if applicable) is ____
located at____.

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2.9 My tax information. The following information will help you prepare any tax returns due while I am incapacitated or after my death. The following professional advisors helped me with my taxes in the past and are recommended to you for my future work. My current tax preparer is __________________________located at ______________________________. You may also need my previous tax preparer who is______________________ located at______________________________.

Location of Current-Year Income Tax Records	
Location of Prior-Year Income Tax Records	
Audit History (If applicable)	

You may find important tax information about my investments, real estate, and charitable planning in their respective sections of my Direction Memo™. I have anticipated any tax issues on which my fiduciaries may require clarification, and have appropriately documented this information in my Direction Memo™.

2.10 Safe Deposit Box.

If I am incapacitated and you co-own a safe deposit box with me, your access rights are unaffected so long as you have access to the keys. If you do not already have access, you will need to meet special requirements before the financial institution will open a safe deposit box for you.

If you are my agent for finances under a durable power of attorney, you will need to present a power of attorney document. With a "springing" power of attorney, you will also need to present doctors' statements to verify that I am incapacitated. If I don't have a valid durable power of attorney document, you may need to obtain a court order to access a safe deposit box.

Upon my death, you should know the about the typical issues with safe deposit boxes. If you are a co-owner on the box, your access will be allowed unless the box is temporarily sealed (see below). If you are my executor or successor trustee, you will need to present a certified copy of my death certificate and a copy of the will or trust that appoints you. If you do not meet these requirements because I do

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not have valid estate planning documents such as a will or trust, you will need to obtain a court order to access the safe deposit box.

In some states, safe deposit boxes are sealed for several weeks following the death of the owner so the state can review the contents. During this time, you will not be able to obtain access to the box without a court order. Because of my concern that my safe deposit box will be sealed immediately following my death, I will not place the following original documents in my safe deposit box:

1. My original current durable power of attorney and trust documents.
2. My original last will and testament naming your executor/personal representative.
3. My passport in case of an emergency trip.
4. My original living will and other health care directives.
5. My current Direction Memo™

The location of these original documents is disclosed in Section 3.

1. My safe deposit box #____________ is located at __________________ bank and the address for the bank is____. Secondary safe deposit boxes are located at__ ____.

2. The location of the key(s) ____.

3. The current people who have authorized access to my safe deposit box are: ______________________ ____.

4. The primary contents of my safe deposit box(es) are: ____ ____.

2.10 (a) The location of other safes and spaces where I store valuable items. ____________________ ____ ____

2.11 My Post Office Box Location. The location of my P.O. Box is ____________________________ and the key or the combination is located at ____.

2.12 Storage Facility Rental. I am currently renting a storage facility located at ______________________ _______________ with the key located ______________________________. You will need to use my estate account to continue to pay rent to this facility until all of the property is transferred to my beneficiaries. No one should make rental payments directly to the storage facility except for my estate.

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<u>2.13 Occasional Expenses.</u> I have acknowledged several of the larger occasional expenses that my household incurs. These are predictable expenses such as property tax, insurance premiums, and other expense. In the event of my death or incapacity, the best way to know what payments are due is to review my mail. List of notable expenses: ____
____
____
____

<u>2.14 Utilities, Subscriptions, and Memberships.</u> The utility expenses for my home must be paid and remain current in the event of my incapacity or death until my property is sold. Other subscriptions and memberships most likely can be cancelled at that time. Organizations may be willing to refund dues or subscriptions paid in advance if you ask. Below is a list of expenses that need to be reviewed if something happens to me.

1. Utilities (Name of Provider)
   A. Water ____
   B. Electricity ____
   C. Gas ____
   D. Telephone (land and cellular) _____________________________
   E. Cable Television______________________________________
   F. Other ____

2. Subscriptions
   A. Newspapers ____
   B. Magazines____
   C. Internet ____
   D. Website subscriptions _________________________________

3. Memberships (Including Frequent Flyer and other point programs)
   ____
   ____
   ____

<u>2.15 Miscellaneous Information</u>. This section covers anything that may have previously been overlooked in section 2, or that may not be referenced in the following sections of my Direction Memo™. This includes the location of other passwords and access codes that need to be located if something happens to me.

____
____
____

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Estate Planning Primer: Estate Documents

3.1 Purpose. The purpose of section 3 is to communicate the formal arrangements I've made with my estate planning. This includes:

1. General estate planning priorities.
2. Location of all current and original estate planning documents.
3. The name of all my fiduciaries (i.e., Executor, Agent under Power of Attorney, Trustee). I have included a checklist to simplify the process for their role when they are acting as my fiduciary.

3.2 General Estate Planning Priorities. I've identified the objectives below as important to me in my estate planning. My goal is to adequately communicate my priorities with my professional advisors and other important people so they fully understand my intent. (I've circled the numbers of all that apply.)

1. Title assets and properly transfer my property based on who should be the beneficiary.
2. Minimize taxes related to estate planning.
3. Minimize the estate's legal costs.
4. To provide liquidity at my death for legal fees, taxes, and final expenses.
5. To make my own future health care decisions so that no one else does this for me.
6. Identify charitable objectives with my estate.
7. Identify all my beneficiaries and protect their inheritance from creditors and predators.
8. Leave directions for my family and fiduciaries, and minimize the decisions you will have to make to reduce disagreements.
9. Maintain adequate records to make my appointed executor and trustee's tasks simpler.
10. Misc____
11. Misc____

3.3Will & Duties of Executor. In this section you will find important information about my current last will and testament as well as any codicils or other updates. You should contact the attorney listed below who drafted my will if you have any questions and need help carrying out its terms.

1. A. My original, current will (along with any codicils and other updates) is located______________________________. **OR**
   B. I haven't drafted a valid last will and testament and currently expect the laws of intestacy in my state to govern the disposition of probatable assets.

2. The attorney who drafted my will is ____located at___ ____.

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3. My executor is ____ and the alternate executor is ____. For my executor, I have provided below a general checklist of the administrative process. This may not be a comprehensive list of tasks, but it provides a blueprint for processing an estate. You should find that most (or all) of my information is at hand in my Direction Memo™.

Preliminary Administration

- ☐ Identify the beneficiaries and determine needs of survivors.
- ☐ Death certificates. Obtain 10 certified copies or photocopies that are required for transfer of assets and resolving creditor accounts. Call the county vital records office (courthouse) to order the death certificates which will likely cost $10-$15/each.
- ☐ Contact insurance agent(s) and obtain copies of life insurance policies.
- ☐ Contact the following organizations to determine if benefits may be available for beneficiaries:
  - a. Social Security Administration. Call Social Security immediately at 1-800-772-1213.
  - b. Current/Former Employers: Several immediate benefits may be available including group life, health plans, vested retirement plan assets, stock or savings plans, and final paycheck. In section 9.12, you'll find a form letter to send my former employers.
  - c. Pension Plan Administrators from my current or former employers
  - d. Veterans Administration: If decedent was a veteran, burial and other benefits may be available. (See Section 13.10 for Veterans Final Arrangement Benefits)
  - e. Have my mail forwarded to executor's residence and cancel subscriptions to newspapers and other publications. (See Section 2.14 for subscription and utilities information)

Court and Estate Administration

- ☐ File a petition with the probate court to obtain a formal appointment as the executor commonly referred to as a "Letter of Appointment" to legally act on behalf of my estate.
- ☐ Review other legal documents such as pre/post nuptial agreements. If applicable, information about these documents can be located in section 5.2.
- ☐ Open a separate "estate" bank account to deposit liquid assets, manage creditors, and maintain accounting of expenses.
- ☐ Obtain a Federal Identification Number for the estate using IRS form SS-4. Notify the IRS of your authority to act on behalf of the estate as the court-appointed executor.
- ☐ Send formal notices of the first hearing to beneficiaries named in the will and heirs under state law, as well as to creditors. Advise all creditors in writing of my death and the need to resolve all outstanding claims within the first several weeks and include my estate identification number. (See debts listed in Section 6)
- ☐ Upon consultation with my attorney, petition court to admit the will. Consider simplified administration for small estates.
- ☐ Obtain a bond if required by state law. Confer with my attorney whether a bond is recommended or required.

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Financial Management

- ☐ After consultation with my attorney and assuming my estate is solvent, assemble and pay all obligations including mortgages, credit cards, medical bills, funeral arrangements, and other bills pertaining to the continued maintenance of my home, businesses, properties etc. Determine the immediate and ongoing financial needs of my survivors. Prior to paying creditor and liability claims determine the validity of those claims.
- ☐ Identify, locate, and inventory all my assets including:
  - a. Real Estate (Section 7): Arrange for security, maintenance, and upkeep assuring that all payments are made, and that partners and tenants are notified of new ownership.
  - b. Life Insurance (Section 5): Identify all policies and determine beneficiaries. File appropriate claims. (See assets not subject to probate below).
  - c. Personal Property (Section 10): Arrange for protection and safety of my valuables and arrange appraisals requested by my attorney.
  - d. Safe Deposit Boxes (Section 2): Contact bank(s) and arrange for opening and inventory.
  - e. Bank Accounts (Section 8): Arrange for transfer of funds to new account titled in my estate.
  - f. Businesses (Section 10): Review my ownership or interest in any businesses and notify business partners of my death.

- ☐ Investment Accounts (Sections 8-9): Identify all investment accounts and arrange to transfer the title to my estate. Note that many of these accounts will transfer immediately to my beneficiaries and are <u>not</u> governed by my last will such as:
  - Property held in joint ownership with right of survivorship.
  - Pay-on-death bank accounts and transfer-on-death securities.
  - Trust account assets.
  - Life insurance with living beneficiaries other than the estate.
  - Retirement Plans such as 401(k)/403(b), IRA, Keogh, SEP, deferred compensation and other accounts not payable to the estate.

Depending on the complexity of the estate, determine, with advice from financial consultants, appropriate tax strategy and how to pay the remaining taxes (e.g., estate taxes, remaining income taxes).

a. File final federal, state, and local income tax returns

b. File federal, state, and local income tax returns for income earned during the administration of the estate from investments or businesses.

- ☐ Use appraisals when necessary and inform beneficiaries of their “stepped up” basis in the property they inherit from me for their own tax records.

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Estate Tax Planning

- ☐ Value my gross estate for estate tax purposes.
- ☐ File federal estate tax return (form 706) if estate value exceeds exemption amount. **Form 706 must be filed within nine months after date of death.** There may be reasons to use the alternate valuation date for federal estate tax purposes, which is six months after the date of death. This determination should be made as to which is the most beneficial to my beneficiaries.
- ☐ File state inheritance or estate tax return if required.

Closing Estate and Distributing Assets

- ☐ Upon payment of all claimants for any debts, distribute all remaining assets to my beneficiaries as prescribed by will, and obtain receipts for all disbursements. Also ensure that my beneficiaries are successfully receiving the non-probate assets.
- ☐ Prepare final estate accounting including reports of all receipts and disbursements and distribute to beneficiaries, and to the court if required.
- ☐ Obtain court order discharging executor and closing estate.
- ☐ Mail notice to heirs and beneficiaries about the upcoming final hearing.

Testamentary Trusts and Pour Over Will- Review for trust provisions in my last will and testament. Or it's possible that I've created a will that "pours" assets into a trust for property that is not titled in the trust during my lifetime and will likely transfer through the probate process. These arrangements are described below:

- ☐ I have testamentary trust(s) written into my will that are to be funded at my death through the probate process. The trustee is___________________________ and the alternate trustee is______ ____.

- ☐ I have a "pour over will" to address any assets during my life that I haven't funded in my living trust.

3.4(a) Living Trust Documents. I have drafted an intervivos trust that is revocable and I have titled my assets to the trust (i.e.," funded" my trust). The trust assets should avoid probate and transfer directly to the appropriate trust beneficiaries.

1. My original, current living trust document and other updates are located_____________________.

2. The attorney who drafted my trust is _______________________________located at_______________ ____.

3. I am currently the trustee. My successor trustee is ____________________________ and the alternate successor trustees are ____.

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For my successor trustee, I have provided a general checklist of administrative duties both during my incapacity and death. This may not be a comprehensive list of tasks, but it will provide a critical beginning point.

Incapacity- At my incapacity you should call my attorney who drafted the trust and ask them for the necessary documentation to appoint you as trustee. Generally it's necessary to obtain the statement of two doctors verifying that I am incapacitated. Keep in mind that as successor trustee you will be responsible for assets in my living trust and other assets will be the responsibility of the agent of my Durable Power of Attorney.

Death- At my death, gather information on the value of all my assets and determine how each asset is titled, in order to prepare a complete inventory of all the assets of the trust and estate. If necessary, arrange for an appraisal of certain assets such as real estate, jewelry, artwork, business interests, etc. If my estate exceeds the exemption for the year of death, it will be necessary to prepare and file a Federal Estate Tax Return, (Form 706). Upon its completion, you will know if there is any tax due. If there is tax owed, payment must be enclosed when the Form 706 is filed**. This Return must be filed within nine months after the date of death**. There may be reasons to use the alternate valuation date for federal estate tax purposes, which is six months after the date of death. This determination should be made according to which is the most beneficial to the beneficiaries.

Your basic duties also include:

- ☐ Prepare an Affidavit of Assumption of Duties, if necessary, to show proof the trustee has authority. Often providing a copy of the trust document is evidence enough to gain authority as trustee.
- ☐ Provide notice to heirs and beneficiaries.
- ☐ Pay all unpaid bills, taxes, and other expenses. If there are no probate proceedings, there is no formal court-supervised process for my debts, and my trustee must make sure all debts are paid before distribution to beneficiaries.
- ☐ Create an inventory of assets and get valuable property appraised.
- ☐ Distribute the assets to the appropriate beneficiaries
- ☐ If the trust is to last for an extended period of years, create an investment strategy based on my estate planning documents, along with information from this letter.
- ☐ Prepare a final accounting for the benefit of the beneficiaries and terminate the trust in accordance with the provisions of the trust document.

As trustee you may communicate with the beneficiaries about the terms of my trust and overall estate plan. Explain to them that my estate plan has been accomplished through the use of a revocable living trust and other appropriate documents that I prepared. My fiduciaries should review my estate planning documents (including this letter) to interpret my intent for the overall investment strategy for the trust. If you have questions about managing my assets, you can refer to my attorney about the state laws regarding prudent investing. Some states require the trust be registered with the local court and

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other states have specific rules about how and when you must notify beneficiaries. Please consult my attorney about state trust laws.

3.4(b) Irrevocable Trust Documents.

1. The type of irrevocable trust and purpose. (Tax ID #)

Type of Irrevocable Trust	Tax ID#	Location of Original Document	Name of Trustee	Attorney who drafted document
A/B Trust (irrevocable if one of the grantors is already deceased)				
QTIP				
Special Needs Trust				
Grantor Deemed Owner Trust				
Irrevocable Life Insurance Trust				
Qualified Personal Residence Trust				
Grantor Retained Trust				
Charitable Remainder Trust				
Charitable Lead Trust				
Other				

3.4(c) I Am a Beneficiary of a Trust. A trust drafted by ___________________ the grantor, has named me as a beneficiary under the articles of the trust. To my knowledge, I am:

- ☐ Income Beneficiary
- ☐ Remainder Beneficiary
- ☐ Both

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3.5 Caring for My Dependents. This section names all minors—whether my own children or others—for whom I regularly provide care. For my own children, the "Guardians and Property Managers" section below lists the people who have agreed to be their primary caretakers following my incapacity or death. For adult children with special needs (and other adults) for whom I provide care, additional information is available in this section.

1. Minors. The people listed below rely on me for care and support. Please help to fill in for me until new caregivers assume their roles. For the type of care and support for each individual in this section, refer to #2.

Person's Name and Contact Information	Date of Birth	Person's Relationship to Me	Is this person a minor or adult with special needs?	Guardians and Property Managers

2. Children/Adults with special needs.
Name of person with special needs ________________________________. The following is information that might help you in the transition of this person's care. I've answered questions below that will provide insight into my thoughts regarding their care:

Residence
If something should happen to me tomorrow, I would like this person to live at/with: _______________
____
____

Education
Based on your lifelong perspective of this person's capabilities what level of education might be feasible, and what would you like to see provided? ____
____
____

Employment
What has this person enjoyed in the way of employment? Consider his or her goals, aspirations, limitations, etc. ____
____

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Medical Care
What has and has not worked with this person in the realm of medical care? What should future caregivers know? ____
____

Behavior Management
Describe one or more approaches that have worked best in your absence during difficult transition periods in this person's life. ____
____

Social
What social activities make life meaningful for this person? ______________________________
____
____

Religious
Is there a special church or synagogue this person prefers for fellowship? ____________________
____
____

Additional Considerations ____
____
____

3.6 Durable Power of Attorney for Finances. This section contains information about my durable power of attorney for finances. The document I drafted is durable, which means it remains effective after I am incapacitated and unable to manage my own affairs. It should be noted that if I die, all the powers granted in this document will be terminated. The information about who will then handle my affairs immediately following my death is found in sections 3.3 and 3.4, which addresses my last will and trust documents. You can consult my attorney if you have questions about my Durable Power of Attorney for Finances or need help carrying out its terms. If you have questions about managing my assets, you can refer to my attorney about the state laws regarding prudent investing.

1. Type of Power of Attorney (Durable or Springing?)______________________________.
2. My original, current Power of Attorney document (and other updates) is located________________.
3. The attorney who drafted my Power of Attorney is ________________________________ located at____. My agent under the power of attorney is _________________________ and the alternate agents are ______________________________. For my agent, I have provided a general checklist of administrative duties. This may not be a comprehensive list of tasks, but it provides a critical beginning point.

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Incapacity- At my incapacity you should call my attorney who drafted the power of attorney document and ask them for the necessary documentation to appoint you as agent. Generally it's necessary to obtain the statement of two doctors verifying I am incapacitated for a "springing" power of attorney. Keep in mind as my agent you will be responsible for managing my assets except those assets titled in a living trust, which will be the responsibility of the successor trustee to manage. Please review the following:

- ☐ Review the complete inventory of my assets, from the Direction Memo™, so you know what you are responsible for managing. Create an investment strategy based on the terms of my estate planning documents, along with information from this letter.
- ☐ Make sure that the assets are kept safe and keep property such as real estate and motor vehicles properly insured.
- ☐ Income (the money you receive for me) should be deposited in my existing accounts. Never commingle our funds in the same account. Expenses (the money you pay for my needs) should be paid from my accounts and funds. Do not use your own funds for my expenses.
- ☐ Consult with my attorney for additional advice about what is necessary to carry out your duties as agent under my power of attorney.

Death- At my death any power of attorney document is invalid. The appointed death fiduciaries are referenced in sections 3.3 and 3.4.

3.7 **Health Care Documents (Advance Directives).**

A. Living Will Document

1. My original, current living will document (and other updates) are located ________________________ ____________________.

2. The attorney who drafted my living will is ______________________________________located at_____ ____.

3. My surrogate is ________________________________ and the alternate surrogates are _______________ ____. To my surrogate, you are assigned to express my wishes regarding the withdrawal of life-sustaining measures for me by the terms of my living will document.

B. Durable Power of Attorney for Health Care (DPOAHC)

1. My original, current Durable Power of Attorney for Health Care (DPOAHC) document (and other updates) are located____.

2. The attorney who drafted my DPOAHC is ______________________________ located at ______________ ___________________________________

3. My surrogate is _________________________ and the alternate surrogates are __________________ ____. To my surrogate, the DPOAHC gives you the authority to make medical decisions for me if I'm unable to make informed decisions regarding my

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medical treatment and procedures and/or unable to communicate those decisions.

C. Other Health Care Directive Documents: ____

3.8 My Estate Planning Attorney.

A. Contact information ____

B. Fee arrangements (If I have a written fee agreement)_______________________________________

C. Specific instructions ____

____

____

3.9 Other Estate Plan Documents

A. Other letters of instruction (outside of the Direction Memo™) ________________________________

____

____

____

B. Other relevant information____

____

____

____

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Estate Planning: Ownership and Transfer of Property

4.1 Purpose of Section 4. This section is designed to educate and inform my fiduciaries regarding asset titling and how property will be transferred at my death. My executor and/or trustee, family, and professional advisors should collaborate and cooperate with each other to ensure my estate plan is properly completed.

4.2 Questions related to my property and holding title. As you begin to review my property and identify the beneficiaries, you should ask the following questions about all property owned at my death carrying a legal title:

1. Is this property included in my probate estate (governed by my will or the state laws of intestacy)?
2. Does this property have an automatic right of survivorship?
3. Did I name a beneficiary(s) for this asset such as with retirement plan, life insurance, or "Transfer on Death" designations?
4. Have I drafted a living trust and properly titled my assets in the name of the trust?

Once you've reviewed my property titles, you'll have a clear understanding of who my beneficiaries are. My professional advisors will be instrumental to assist you in answer questions relating to asset titling.

4.3 Definition of property title types. In this section I have described the property title types in which my property might be owned. If I have used any "will substitutes" for my property, this is recognized and further explained in section 4.5.

Sole Ownership- This is complete ownership and full control by one person who has the right to do whatever they wish with the property. Sole ownership assets commonly pass through the probate process at the owner's death. That means either the decedent's will or the state laws of intestacy determine the beneficiaries.

Joint Tenants With Right of Survivorship (JTWROS) - This is an interest in a property held by two or more people with each person holding an undivided equal interest. Although this is typically used for married couples or domestic partners, this type of ownership can be used for any relationship. At the death of the first owner, the property transfers to the remaining owner(s) without going through probate. Typically half of the property value is included in the estate of the first owner at death, depending on the surviving owner's contribution to the property.

Tenants in Common - This is most commonly used as a joint interest property between two or more non-spouses. Unlike JTWROS, a tenant in common doesn't always mean there is equal ownership between stakeholders. For example, three people could own a lake property

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separately as 60%, 30%, and 10% owners as tenants in common. Another difference between tenants in common and JTWROS is that creditors typically can't seize the property of the other tenants in common owners if one of the owners has creditor issues. Because the structure of tenants in common in some ways resembles sole ownership, the owners' interest will pass through probate at their death. That means the will or the state laws of intestacy determine the beneficiaries.

Tenants By the Entirety - This type of ownership can only be used by a husband and wife during marriage. This type of title is similar to JTWROS, but offers better protection if one spouse is sued or files for bankruptcy.

Community Property – This is used in several states that base their laws around property ownership originating from French and Spanish law and do not recognize the common law regime used by most other states from English law. Currently the nine states that have a form of community property ownership are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Community property suggests that upon marriage, the income and property acquired during marriage is considered community property. This means each spouse owns 50% of the property. There are exceptions for inheritances and gifts that occur during the marriage, which may be kept as separately owned property. Property acquired before a marriage can also be kept as separate property as long as it isn't commingled. Community property states have different rules governing probate, so it's important to understand my state's process when settling my estate, if applicable. For example, five states — Alaska, Arizona, California, Nevada and Wisconsin — allow couples to avoid probate by titling their property as "community property with right of survivorship."

☐ Do you live in a Community Property State or did you formerly reside in a Community Property state?

Custodian for a Minor. An adult can hold property for a minor under the Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA). Once the minor becomes an adult under state law, the minor assumes full control of the assets and the custodian has no authority. Note that section 529 plans and Section 530 (Coverdell Education IRAs) contain certain characteristics of holding accounts for minors, but do not transfer to the minor automatically when they reach the age of majority.

Life Estate. A life estate is the use of real property that generally terminates at the death of the tenant. A life estate also is utilized when someone donates their home to charity but wants to live in the home until their death, called a **life estate reserved.**

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4.4 Probate Acceptance vs. Probate Avoidance

1. The following are the reasons I prefer transferring most or all of my property through probate. (Check all that apply)

- ☐ Minor children that must have a guardian appointed to them.
- ☐ I want my creditors to have the time allowed by law to claim debts I owed them. I don't want any confusion with my debts not being paid prior to my beneficiaries inheriting property.
- ☐ Because I want my estate to have court supervision.
- ☐ Other____

2. The following are the reasons I wish for my estate to <u>avoid the probate process.</u>

- ☐ I am concerned about the privacy of my estate. I don't want anyone to have access to court records to know who my beneficiaries are.
- ☐ I object to the typical time that it takes to move through the probate process in court. I feel my estate would transfer more efficiently by avoiding probate.
- ☐ Probate costs are higher generally than avoiding probate. I feel confident enough in the organization of my estate that avoiding probate would be advantageous.
- ☐ I own real estate in more than one state and I am concerned with ancillary probate.
- ☐ I wish to avoid a will contest by avoiding probate. By communicating with my beneficiaries today, I intend to diffuse any potential disagreements immediately rather than when I am gone.
- ☐ Other____

4.5 Will Substitutes. This section describes my assets that are titled in a such a way that property passes directly to my beneficiaries and avoids the probate process. These are commonly referred to as "will substitutes." In sections 5-10, I've provided the title of most assets and identified whether a will substitute is being utilized.

A. **Contract Law**-This applies to property with designated beneficiaries that have been established prior to the owner's death. Beneficiaries do not have any rights or control of the property until the owner's death. The most common property that passes by state contract law is retirement plan assets such as IRA's, 401(k) and 403(b) assets. Life insurance and annuity contracts also allow the owner to directly name beneficiaries in order to avoid probate. Finally, Totten trusts, payable on death (POD) accounts, and transferable on death (TOD) accounts are also recognized by state contract law.

B. **Operation of Law in Jointly Owned Property**- Joint tenants with rights of survivorship (JTWROS) or tenants by the entirety property transfers outside the probate process by operation of law. That means for a married couple, the property titled in one of these ways will avoid probate at the death of the first spouse. If the surviving spouse re-titles the property in their own name as sole ownership upon the death of the first spouse, the property will transfer through probate following the second spouse's death.

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C. **Trust**. Typically, property titled in the name of a trust is the result of establishing a revocable living trust, and transferring title of existing assets to it. All trust property (e.g., stocks, vehicles, homes, etc.) avoids the probate process. Upon the death of the grantor, the property is managed and distributed by the trustee according to the provisions of the trust, and therefore has no need to be re-titled.

- ☐ I have not drafted a revocable living trust.

- ☐ I have drafted the ______________________________ trust dated ____________. You can refer to section 3.4(a) of this Memo, and the trust document for further details regarding this arrangement.

4.6 Gifting during and after my life. My legal estate documents may provide the authority for my fiduciaries to continue making gifts on my behalf, in the event of my incapacitation. (Check all that apply)

- ☐ I have made gifts during my lifetime to individuals, other than my spouse, of less than the annual exclusion (currently $13,000/$26,000 for a married couple) in any given year and have never had to file a federal gift tax form 709.
- ☐ I have gifted individuals, other than my spouse, more than the annual exclusion and therefore owed gift tax. I paid the taxes that year or used part of my allowable gift tax exemption filing federal form 709.

I've made historical gifts to the following people per my recollection or documentation:

Name/Relationship to Me	Tax Year(s)	Amount

1. With an unlimited marital deduction for my spouse, my fiduciaries should review and determine if property should be gifted to my spouse in order to "equalize" our estate thereby utilizing both of our exemptions for federal estate taxes. Note that Congress may extend "portability" with federal estate taxes beyond 2012, and make estate equalization less relevant.
2. There are no gift taxes owed on gifts to qualified charities.
3. Gifts made directly to a qualified educational or medical institution for an individual's tuition or medical expenses allows for an unlimited exclusion from gift tax. Therefore an annual gift followed under the exclusion could be greater than $13,000($26,000 for a married couple) for the benefit of another, if paid directly to the educational or medical institution.

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4.7 Current Federal Estate Taxes. $5,000,000 per individual for the 2011-2012 tax years, the credit is unified with federal gift taxes.

4.8 Current Federal Gift Tax Laws. $5,000,000 per individual for the 2011-2012 tax years, the credit is unified with federal estate taxes.

4.9 Unlimited Marital Deduction. Note the "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" has introduced "portability" allowing the surviving spouse to utilize their late spouse's remaining federal estate exemption. If portability prevails beyond 2012, estate equalization could be less relevant in the future.

4.9(a) Disclaimers. Are disclaimers part of your current estate planning documents? (Yes/No)
Note:____
____

4.9(b) Estate Equalization. I have drafted estate planning documents or re-titled assets to ensure that both spouses are able to utilize their estate tax exemption. (Yes/No)

4.10 Calculating Gross Estate. If my gross estate is valued higher than the federal exemption for estate taxes, my fiduciaries must file federal form 706. My fiduciaries should ask my estate attorney to assist in completing and filing federal form 706, to determine if there are transfer taxes owed from my estate. It's important the form is completed accurately and within **nine months** of death. Also it may be useful to educate my beneficiaries on assets they inherit from me with a tax basis that will "step-up" to the fair market value at the date of my death. Other assets my beneficiaries will inherit from me may be subject to ordinary income. This is well outlined in sections 7-10 with regard to my assets.

4.11 Generation Skipping Transfer Concerns. A skip person is defined as a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or a trust that has one or more skip persons. Any individual other than a spouse or ex-spouse is considered a skip person if they are 37.5 years or younger than the transferor.

- ☐ I will not have any beneficiaries in my estate who are considered a "skip person" for purposes for the Generation Skipping Tax.
- ☐ I will have beneficiaries of my estate who are considered a "skip person" for purposes of the Generation Skipping Transfer Tax.

4.12 Death Taxes by State.

My state of domicile is____.

Note any relevant information regarding estate/inheritance taxes in your state of domicile. ________
____
____

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4.13 Miscellaneous Asset Titling Information. ______________________________________

____

____

____

____

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Insurance and Risk Management Plan

5.1 Purpose. This section lists all of my insurance policies, risk management plans, or legal arrangements drafted to limit a variety of risks. My fiduciary should review insurance paperwork and modify policies if necessary, cancel policies that are no longer needed, or claim benefits that are due. Keep in mind you may need to review property and casualty insurance, keeping it in force until my property is distributed at my incapacity or death. In this section you will find the location of my policies and/or the contact information for the insurance carriers.

5.2 Risk Management Plan & Legal Protection. Please locate any legal documents that pertain to mitigating risks (e.g., marital agreements, hold harmless agreements, etc.).

Type of Legal Document	Location of Original	Attorney who drafted document

You may also find information about various legal documents and arrangements throughout the Direction Memo™ related to loans, real estate, charitable giving, and business interests.

5.3 Life Insurance. In this section you will find life insurance policies owned by myself or owned by others on my life. You may also find policies that I own on someone else's life. All of this information may be necessary to calculate my gross estate. It will be important to review the life insurance policies I own in the event of my incapacity to ensure that my policies don't lapse prior to my death. My fiduciaries will need to contact the insurance company(s) at my death to complete required forms, and to provide a copy of the death certificate. In this section, I have also considered who the beneficiaries are of my life insurance and included recommended priorities for utilizing the proceeds in the event of my death.

Name of Insurance Co.	Contract #	Face Value	Cash Value	Loan Info

I've also included additional arrangements regarding life insurance, if applicable.

1. Life insurance policies owned on my life by someone other than myself:

____

____

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2. Policies that I own on someone else's life: ____
____
____.

3. Irrevocable Life Insurance Trust (ILIT):
____.
Also see section 3.4(b) for additional information regarding ILIT.

4. Accidental death life insurance benefits: ____
____
____

5. Credit life insurance with mortgage (also review section 6.3):
____
____

5.3 (a) Guidance on how my primary beneficiaries should use life insurance benefits. I have added this section to my Direction Memo™ to provide guidance to beneficiaries who receive a life insurance settlement at my death. This may be one of the biggest payments you receive during life, and I'd request that you pause and review your financial situation in order to make a rational decision on how to use these resources. Since I am not there to discuss these decisions, I have provided you some suggestions based on relevant facts I had at the time I drafted my Direction Memo™. I am fully aware that financial and household dynamics may change, and my beneficiaries are free to use their own discretion with the death benefits of my life insurance.

Prioritizations of Life Insurance Settlement (either rank or use percentage)

Use	Rank	Percentage
Kids /Grandkids Education		
Pay Mortgage Principal		
Pay Consumer Debt(Car Loans, Credit Cards)		
Provide cash flow for the Household		
Create a Household Emergency Fund		
Invest for Spouse/Partner's Future Retirement		
Charitable Giving (See section 11)		
Financial Support to Minor Children		
My final arrangement expenses		
Probate Fees and Estate Taxes		
Other______________________________		
		Total 100%

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5.4 Homeowners Insurance. My homeowner's or renter's insurance policies are located at ___________________________. The insurance companies are____________________________ and my agent is___________________________. Note that if you are searching for information on insurance policies for rental units you might also locate this information in section 7, if not provided here.

Additional Homeowner Policies: ____

5.5 (a) Auto Insurance. I have included the insurance information for all my vehicles with current auto policies:

Vehicle	Insurance Company	Location of Policy	Insurance Agent

5.5 (b) Recreational Vehicle /Watercraft Insurance.

Vehicle	Insurance Company	Location of Policy	Insurance Agent

5.6 Umbrella (Liability) Insurance. My "umbrella" liability policy is designed to mitigate the risks of damaging events whose liability exceeds the limits of my homeowner's and auto policies. My umbrella policy is located at ______________________________ . The insurance company(s) are____________________________ and my agent is___________________________. Note that if you are looking for additional information on my liability protection, you may find this with my homeowner's and auto policies.

5.7 Long Term Care Insurance (LTCI).

I do not own a long-term care insurance policy. If I meet certain criteria, Medicare can cover as much as 100 days of nursing home care during a "benefit period." Medicare may cover everything for the first 20 days, but I may be responsible for large co-payments for each covered day after the 20th.

- ☐ I own long term care insurance and my policy is located at __________________________. The insurance company(s) is______________________ and my agent is_________________________.
- ☐ I have made a financial commitment for entrance endowment fees at a skilled nursing home facility____.
- ☐ I am a war-time Veteran with 90 days of active duty, 1 day beginning or ending during a period of any War. Such a Veteran is eligible to apply for disability and long-term care aid from the

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Veterans Administration. Benefits for a surviving spouse of a War-Time Veteran may also be available. (The marriage must have ended due to the death of the veteran.) War-Time Veterans qualify for three tiers of care:

1. Basic
2. Housebound
3. The Aid and Attendance Benefit

For addition questions go to http://www.va.gov and review the "Veterans Pension Program" or call the VA at 1-800-827-1000.

5.8 Disability Insurance. I have coverage to protect my income should an event occur that would prevent me from working for an extended period of time. In the event I have an injury where I can't communicate, I am adding my disability insurance information to my Direction Memo™.

- ☐ I do not own a short-term disability policy.
- ☐ I own short-term disability insurance and my policy is located at ________________________. The insurance company is___________________ and my agent is_____________________.
- ☐ I do not own a long-term disability policy.
- ☐ I own long-term disability insurance and my policy is located at ________________________. The insurance company is____________________ and my agent is____________________.

5.9 Health Insurance. In this section I have identified my major medical insurance provider and contact information in the event I am injured and can't communicate. I have also listed my other health insurance policies such as dental, vision, and critical illness insurance. If I have a Health Savings Account (HSA) I have included that information in this section as well.

1. Major Medical Provider (Medical Supplement if already on Medicare) I own medical insurance and my policy is located at ___________________________. The insurance company is ______________ and my agent is_______________________________________.

2. Other health related insurance policies. I own _________________________insurance and my policy is located at _____________________. The insurance company(s) is ___________________________ and my agent is_____________________________________.

3. Health Savings Account (HSA) information:

   ☐ I don't own a Health Savings Account

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Plan Administrator Contact Information and Account Number	**Primary Designated Beneficiaries**	**Location of paperwork**

5.10 Business Related Insurance.

Type	Insurance Co.	Contract #	Agent
Employment practices liability insurance			
Malpractice and Errors and Omissions Insurance			
"Key Employee" life insurance on my life (and the other owners of my business)			
Group life and long-term care insurance policies subsidized by my employer			
Other business insurance			

5.11 Miscellaneous Insurance & Risk Management Issues: ____________________

____

____

____

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Debts I Owe and People Who Owe Me

6.1 Purpose. This section includes information about my personal and commercial debts (e.g., mortgages, consumer loans, credit cards, etc.) or information about people who owe me a debt. I will also identify my significant debt-related history which may provide you perspective in the future. You will find directions to review my credit in the event of my incapacity to monitor for accurate reporting. In the event of my death, this section will be a convenient reference to send a formal notice to creditors, along with a death certificate, so a financial institution can change the ownership titling to my estate.

6.2 Consumer Debt and Revolvers. My current consumer debt information contains the necessary contact information for the institutions where I have outstanding debts.

1. Credit Cards (even if no balance):

____

____

____

2. Auto:

____

____

____

3. Home Equity:

____

____

____

4. Other:

____

____

____

6.3 Mortgage. The following information regarding my mortgage(s) contains the necessary contact information at the institutions where I have outstanding mortgage(s).

Mortgage for ______________________(property address) has a balance of $_______________ with ____________________________ (lender). My mortgage interest rate is _______ and is:

- ☐ Fixed
- ☐ ARM

☐ I do carry Credit Life Insurance with the mortgage company.

Additional Mortgages: ____

____

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6.4 Reverse Mortgage. A reverse mortgage is an arrangement where homeowners over the age of 62 enter into an agreement with a financial institution to make payments to the homeowner. The homeowner typically makes this arrangement in order to provide an income stream during retirement.

- ☐ I do not have a reverse mortgage arrangement.
- ☐ I have a reverse mortgage for ___________________(property address), which carries a balance of $_______________with ______________(lender). When my reverse mortgage terminates, the proceeds of the sale of my home will be used to pay off the reverse mortgage debt.

If my fiduciaries must execute a reverse mortgage on my behalf, you may consider contacting: _____
____
____.

6.5 Business Debt Financing Arrangements. Any information regarding debts related to my business interests coupled with my personal credit are included in this section (or section 10 on business ownership information). Debt can be a loan, line of credit, bond, or even an IOU -- any promise to repay borrowed amounts over a certain time with a specific interest rate and other terms. Relevant notes: __
____
____

6.6 Credit Issues and Bankruptcy

- ☐ I don't have any credit problems of significant relevance.
- ☐ Issues related to my credit history occurred________________and _____________________is the attorney who assisted me with those credit-related issues.
- ☐ In the event of my incapacity I request that my fiduciaries periodically review my credit report. My executor should also order one copy of my credit report from each of the credit reporting agencies when finalizing my estate, to ensure all my creditors are notified and to review any suspicious activity. I am entitled to one free credit report each year by taking one of the following steps:

- www.annualcreditreport.com. AnnualCreditReport.com provides consumers with the secure means to request and obtain a free credit report once every 12 months from each of the three nationwide consumer credit reporting companies in accordance with the Fair and Accurate Credit Transactions Act.
- You may also make the credit inquiry by calling 877-322-8228.

Note that my executor and power of attorney agent must submit evidence they are authorized to request my credit report including letters of appointment and a death certificate.

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6.7 People Who Owe Outstanding Debts to Me.

1. Formal loans with written legal agreements:

____
____
____

2. Informal loans that I want to acknowledge:

____
____
____

3. Property sold on contract:

____
____
____

4. Debts owed to me that I wish to have forgiven on my death (should be formalized):

____
____
____

6.8 Other Bills and Miscellaneous Debt Information. Here I have documented notes regarding automatic payments, bills that I pay online, online statements I no longer have mailed to my home, and any additional debt information that hasn't been addressed in previous sections.

____
____
____
____

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Real Estate

<u>7.1 Purpose</u> In this section you will find information about my real estate. My real estate may be the most challenging type of asset for my fiduciaries to manage, should something happen to me. This may include maintenance, buying and selling, and the management of my real estate. My fiduciaries can learn the location of deeds, contracts, tax information, and other relevant real estate information in this section. This includes real estate professionals who are qualified to help you in managing, selling, or buying my real estate. In 7.3 you'll find a list of all the real estate I own personally.

7.2 Legal Arrangements & Paperwork

1. Real estate attorneys I have hired for previous transactions (Name and Contact Info): ________
____
____
____

2. The location of title abstract, deeds, property management records, and other real estate paperwork: ____
____
____

3. Title insurance policy information: ____
____
____

<u>7.3 My real estate.</u> In this section you'll find a list of all the real estate in which I have some type of personal ownership:

Parcel No. / or Address	**Type**: land, residential, commercial, industrial	Assessed Value	Title description (e.g., sole ownership, joint tenancy, trust, etc.)

<u>7.4 Real Estate I own in a group investment or business entity.</u> This section includes real estate arrangements where I possess ownership with a pool of other investors. (Include ownership interest, title description, and estimated value):

1. General Limited partnership: ____
____

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____

2. Corporation, LLC, or other business entity: ________________________________
   ____
   ____

3. Privately held Real Estate Investment Trusts (REITs): ________________________
   ____
   ____

4. Life Estate: ____
   ____
   ____

5. Timeshares: ____
   ____
   ____

7.5 Real Estate Professionals. My fiduciaries may need to seek the assistance of real estate professionals who are experts in the markets where I own property. It's possible that some of these professionals may also be named in my legal documents requiring that you hire them; however it's my intention in this letter to suggest contacting the following professionals for various needs.

1. Real estate agent(s): ____
   ____
   ____

2. Property Manager(s): ____
   ____
   ____

3. Other professionals: ____
   ____
   ____

7.6(a) **Tax Information.** My fiduciaries may need to be aware of important tax information regarding my real estate both during my life and after death. This includes being aware of the tax "basis" in my property, potential exemptions from selling my primary residence, depreciation, or any exchanges "swaps" of real estate I have previously engaged in.

1. The sale of a primary residence. You may need to sell my home in the event of my incapacity. If I have a gain from the sale of my principal residence, you may be able to exclude up to $250,000 of the gain from my income ($500,000 on a joint return). If you can exclude all of the gain, you do not need to report the sale on the tax return. If you sell my home after my death, the above rules may be different. You should seek guidance from my tax or legal professional before agreeing to sell my home.

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2. Depreciation. I have been depreciating ________________________________(property address(es)) and you can find further information on my previous tax returns and through my tax professional. If you are selling real estate I own in the event of my incapacity, you should be aware of any potential tax liabilities. There is no way to avoid depreciation recapture taxes, except through death; thus my beneficiaries should receive a "step-up" in cost basis upon my death.

3. 1031 Exchanges. A 1031 exchange means that I've employed a tax strategy of deferring the payment of capital gain and depreciation recapture taxes throughout my lifetime completing a 1031 exchange by "swapping" investment real estate. Internal Revenue Code 1031 defines the terms for what is deemed an acceptable exchange for "like-kind" investment real estate.

☐ I have engaged in a 1031 exchange for________________________________ (property address).

7.6(b) Cost Basis. The following is my account of the current tax basis of all of my real estate from sections 7.3 & 7.4:

Property Description	Original Tax Basis	Additional investments for improvements (if applicable)	1031 and/or depreciation implications? Y or N

This information should be verified with my tax professional prior to making any buying or selling decisions.

7.7 Property Taxes. You may locate information regarding my property taxes in section 2.13 under "occasional expenses." This section can serve to remind my fiduciaries to review my property tax assessments in the event of my incapacity or death. If you believe the assessed values are too high, you should get some proof in the form of an appraisal in order to dispute the property tax.

7.8 Miscellaneous Real Estate Information:

____

____

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Nonqualified (After Tax) Savings and Investments

8.1 Purpose. The following is a summary of my nonqualified (or "after tax") bank and publically traded investments. My "pretax" accounts such as IRA's, 401(k) and 403(b) assets are listed in Section 9. You should refer to my estate planning documents such as my durable power of attorney for finances and/or living trust (Section 3) for complete information about managing or distributing the funds in these accounts. Section 8.9 also provides the location of any current Investment Policy Statements (IPS) that I have drafted along with my Advance Investment Philosophy™ (AIP) in 8.10. This information should provide additional guidance to my fiduciaries to make decisions regarding management of assets. Contact each financial institution to arrange account access according to the powers granted in my planning documents. If I have named a Pay On Death or Transfer On Death beneficiary for an account, I have included the beneficiary's name with the account information in sections 8.2 & 8.3. Upon my death, the beneficiary can go to the financial institution with a certified copy of the death certificate and collect the assets, without probate proceedings. My fiduciaries will also find important tax information in 8.8 regarding any investments where the tax "basis" is crucial to future trading decisions with both gains and losses.

8.2 Checking, Savings, CD's. My banking relationships are outlined in this section identifying my savings considered short-term cash equivalents.

Financial Institution	Account #	Account Balance Estimate	Title on Acct	POD or TOD beneficiary? Yes or No	Are you currently using any income or assets from this account? Yes or No

Additional Notes: ____
____
____

8.3 Nonqualified Investment Accounts. My fiduciaries will find important tax information for my nonqualified investments in section 8.8 including capital gains and losses. Certain bonds or structured notes may offer "death puts" that ensure the full value of the bond will be paid to my beneficiaries at my death. If I own such bonds this estate feature should be reviewed for the advantage of my beneficiaries.

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Financial Institution	Account #	Account Balance Estimate	Title on Acct	POD or TOD Beneficiary? Yes or No	Are you currently using any income or assets from this account? Yes or No

Additional Notes: ____
____
____

8.4 After Tax (Nonqualified) Commercial Annuities. This section lists any commercial annuity contracts I have entered into with an insurance company. The importance of this section is to inform my fiduciaries of any "riders" that I've purchased such as guaranteed living or death benefits that may pay more to my beneficiaries than the current market value. In addition, the growth in a commercial annuity is taxed as ordinary income rather than capital gain income and my fiduciaries should be aware of the tax difference between commercial annuities vs. other nonqualified investments. There is not a "step up" basis allowed for commercial annuities at the death of the owner compared to nonqualified stocks, bonds, and other investments. Any beneficiary, other than a qualified charity, must report income and pay taxes.

Insurance Company	Contract #	Account Balance Estimate	Title on Acct	Primary Designated Beneficiaries	Are you currently using any income or assets from this account? Yes or No

Additional Notes: ____
____
____

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8.5 Private Equity, Hedge Funds, Real Estate, Oil and Gas Partnerships. Limited partnerships I own are described in this section. A Limited Partnership (LP) is a formal arrangement where an investor can own virtually any type of asset. Accordingly, investment parameters vary significantly from partnership to partnership. LPs offer limited pass-through of tax losses, which may then be used by investors to offset income of the partnership. Any LPs listed in this section are investments where I earn "passive income" because I don't materially participate in the partnership. Partnerships where I am actively involved are included in Section 10.8 with my business interests. My fiduciaries should carefully study the liquidity and income tax obligations from LPs.

Financial Intermediary	Account #	Account Balance Estimate	Title on Acct	Investment a result of 1031 exchange? Yes or No	Are you currently using any income or assets from this account? Yes or No

Additional Notes: ____

____

8.6 Future Anticipated Inheritance, Gifts, or Lawsuit Judgments. This section is for various circumstances where I am the future beneficiary of an estate, gift, or other settlement of which my fiduciaries should be aware. While I may not be aware of every case where I have been named as beneficiary, I will list notable ones. I also understand that in very few circumstances should one expect or depend upon inheritance for my financial needs.

Individuals name who I anticipate to receive an inheritance/gift/settlement	Type of investments expected to inherit and/or income from those assets	Estimated Value

Additional Notes: ____

____

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8.7 Minor's Accounts and College Savings Plans. This section includes accounts where I am either the custodian or account owner for the benefit of a minor. These accounts may have different purposes and I will summarize my objectives for these accounts in this section. My fiduciaries should review the accounts listed in this section and review my instructions. For any section 529 or 530 plans that I own, the successor account owner will make future decisions in the event of my death and my agent under a power of attorney shall do so during a time of incapacity.

Section 529 Plan of which I am current owner.

Primary Beneficiary (Individual who will use the funds for post-secondary education)	Financial Institution	Account #	Contingent Account Owner (In the event of my death)

Coverdell ESA or Education IRA (IRC Section 530) of which I am current owner.

Primary Beneficiary (Individual who will use the funds for post-secondary education)	Financial Institution	Account #	Contingent Account Owner (In the event of my death)

Uniform Gifts to Minors Act (UGMA) account or in some states, in a Uniform Transfers to Minors Act (UTMA) account

Name of Minor	Financial Institution	Account #	Successor Custodian (In the event of my death or incapacity)

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A minor's trust, established under the provisions of Internal Revenue Code (IRC) Section 2503(c)

Name of Minor	Financial Institution	Account #	Successor Trustee (In the event of my death or incapacity)

For section 529 and 530 plans that I own, should the beneficiaries decide not to attend a post-secondary institution, or do not need funding because of scholarships, I'd recommend the contingent account owner:

☐ Allow the current beneficiary to keep the assets despite not needing the funds specifically for post-secondary education. If "yes" when should the current beneficiary receive assets?
Note:____
____

☐ Transfer the assets to another beneficiary if the current beneficiary doesn't need the funds for education. (Name other potential contingent beneficiaries).
Note:____
____

☐ Other option(s): ____
____
____

8.8 Taxation Issues with Nonqualified Investments. This section includes any relevant tax information my fiduciaries should understand before buying or selling any of my nonqualified investments. In the event of my incapacity, my fiduciaries should be aware of the embedded capital gains and consequences of selling my investments. At my death, it's likely most of the embedded capital gains and other income tax issues will be eliminated because of the tax basis "step up" of those investments to the fair market value. If I am married, keep in mind that common law states and community property states have different rules for a partial or full "step up" in tax basis for my spouse. Review these issues with my professional advisors before making any irrevocable decisions.

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8.8(a) Notable investments with embedded capital gains or losses:

Investment	Original Cost Basis	Current estimated value	Owned Investment for more than 12 months? Yes or No

8.8(b) Losses. If I sold an investment for a loss, my fiduciaries should use those remaining losses to offset any gains I have with other investments on IRS Form 1040, Schedule D. If my total capital losses exceed the total capital gains for the whole year, then I have a net capital loss. Net capital losses are deductible up to a limit of $3,000 per year. Net capital losses in excess of the $3,000 limit are carried forward to next year's taxes. Net capital losses expire in the year that a taxpayer dies. Neither the taxpayer's estate nor the taxpayer's spouse can claim a capital loss carryover for investment assets held only in the name of the taxpayer. For jointly held assets, my surviving spouse may be able to continue to carryover the losses after my death. I have carry-forward losses of ________________ for the current tax year and beyond. This information may also be verified with my Accountant. Be sure to check with my professional advisors to determine the current carry-forward allowances as tax laws may have changed since I wrote this.

8.8(c) I own investments that may trigger Alternative Minimum Tax (AMT) and my fiduciaries should be aware of any issues that may occur from exercising stock options and buying or selling these investments. I will provide relevant information, however you should visit with a qualified professional prior to exercising Incentive Stock Options listed in Section 8.3.

- ☐ I DO NOT own Incentive Stock Options
- ☐ I own Incentive Stock Options:

1. What is the earliest date you can exercise the option? ____________________________________
2. Are they exercisable in phases? ____
3. What do you need to do when you exercise the option? ___________________________________
4. Is cashless exercise available or does the company want to you own the options for an extended period? ____
5. When will the option terminate? Can you exercise after your employment terminates? What if you die while holding the option? ____

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8.8 (d)

- ☐ I own a limited partnership (LP) listed in section 8.3 where I receive "passive" income and do not participate in the management of the partnership. The LP may also depreciate assets within the partnership causing additional tax complexities if this asset is sold during my life.

8.9 Investment Policy Statement (IPS).

- ☐ I have a current IPS dated ______________________ which is located ______________________.
- ☐ My financial professional who helped prepare this document is __________________________.

An Investment Policy Statement is a document created for a specific investor to outline their investment philosophy and investment goals, and serves as a guidepost for the investment decision-makers, creating a disciplined system for future investment decisions. It can help my family and my fiduciaries stay on track during volatile times. This is because the Investment Policy Statement is a clear intention of my household's investment goals. Goals and risk tolerance change over time, and so I've made an effort to update the IPS regularly. Furthermore, you can get a better understanding of my perspective from reviewing my Advance Investment Philosophy™ (AIP). The goal of the AIP is to allow me to have influence on my investments if I can't physically convey my feelings on various investment topics.

8.10 Advance Investment Philosophy™ (AIP). The goal of the AIP is to assist my family and fiduciaries and allow me to continue to have influence over investment decisions, should I die or become incapacitated. Review my AIP accordingly when drafting future Investment Policy Statements and making general investment decisions. The AIP explains why I own the investments in my portfolio. The AIP is communicated through four key areas including: my financial situation, goals, feelings, and family dynamics.

8.10 (a) Financial Situation

I ______ that my fiduciaries should be aware of over-concentration with any investment(s) in my investment portfolio.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

If A or B:
The reason for my over-concentration in these investments is because_______.

A. The investment has outperformed many of my other investments.
B. The investment is a family owned business.
C. I was an employee at this business and accrued significant ownership over a long period of time.

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D. There will be significant tax consequences in selling this investment prior to my death.
E. Other reasons: ____

I ________________________ that it's important to invest in securities designed to be income-producing (with a stability in principal) as a priority rather than capital appreciation as the primary goal.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

If A or B:
My family and/or fiduciaries should frequently review my portfolio to ensure that the investments I own are generating appropriate income. I have a preference to the following asset types in order to achieve my income goals:

- ☐ Certificates of Deposit
- ☐ Bonds
- ☐ Fixed Annuities
- ☐ Preferred Stocks
- ☐ Common Stocks with higher than average dividend yield
- ☐ Other: ____

I ______________ that a significant amount of my household's investable assets should be placed in cash and "cash equivalents." This is defined as assets that are readily convertible into cash, such as money market holdings, short-term government bonds or Treasury bills, marketable securities, and commercial paper.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

If A or B:
I am interested in building my cash reserves because______________________________.

- ☐ The amount of cash equivalents in my portfolio should increase over time based on how rapidly the need for more capital occurs.
- ☐ I am not as interested in "tying up" more assets in long-term investments such as stocks, bonds, or real estate.
- ☐ I want to protect my long-term portfolio by having enough cash to take care of any short-term

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emergencies and other expenditures.

- ☐ Because my household is in the investor life cycle of either the "spending" (age 65-80) or "gifting" (age 80 and older), and it's become important to have more assets available for the short-term.

8.10 (b) Goals

I have a desire to maintain constraints on my portfolio. Constraints are based on deeply personal feelings including attitudes towards socially-conscious issues, and a wish to avoid investing against those constraints.

- ☐ I have no constraints related to socially-conscious issues.
- ☐ Investing in the standard KLD index satisfies my constraints to invest in "socially-conscious" businesses.
- ☐ There are certain companies, as a matter of principle, I would not invest in: ___________________
  ____
- ☐ There are certain countries, as a matter of principle, I would not invest in: _____________________
  ____
- ☐ I'd like to avoid investing in companies that are harmful to the environment: __________________
  ____
- ☐ I have other constraints: ____

I ____________________ that I prefer to use mutual funds to invest in a particular asset class rather than individual stocks, bonds, and other investments.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

Stocks are normally classified as either "growth" or "value," and most people investing in stocks own both types. Growth stocks pay few dividends and reinvest their earnings to maximize their price. Value stocks have hidden assets that aren't reflected in the price of the stock, and typically pay higher dividends and have lower Profit to Earnings ratios than value stocks.

I am most attracted to:

A. Growth stocks.
B. Value stocks.
C. A blend of the two.
D. I am indifferent
E. My fiduciaries can make those decisions.

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8.10 (c) Feelings

There is a direct relationship between risk and reward and therefore it's important for my family and fiduciaries to understand my feelings regarding how much risk is acceptable for how much reward. Too much risk may be dangerous due to investment losses, while an ultra-conservative portfolio may not match inflation, and result in losses over time as well.

On a scale of one to ten (with ten as the most conservative) I believe that my resources must be invested to match my aversion to risk as:

(Most Aggressive) 1 2 3 4 5 6 7 8 9 10 (Most Conservative)

In general, I ____________ that I am "average" compared to my peers, based on age and time horizon, knowledge, liquidity needs, and my aversions to investment risk.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

If D or E:

A. I feel my tolerance is below average regarding investment risk, meaning I have a high aversion to investment risk.

B. I feel my tolerance is above average regarding investment risk, meaning I will accept higher than average risk.

I ____________ that it's important to continually reduce the volatility in my portfolio as I age and become more dependent on my investments as income resources.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

There are generally four life cycles as investors' needs evolve. I am currently in the ______________ life cycle. (Select based on your current age)

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Life Cycle	Age Range
Accumulation Phase	25-45
Consolidation Phase	45-65
Spending Phase	65-80
Gifting Phase	80 and older

Included in this section is guidance on how I feel the asset allocation my family/fiduciaries should maintain as my beneficiaries move through the life cycle stages. This guidance below may be at a macro level as far as identifying each asset class, or could be as detailed as what asset allocation to use within the asset class.

Standard Asset Allocation Model

Equities= Stocks (including publically traded REITs)
Fixed=Bonds, Fixed Annuities, Long-Term CD's
Cash= Money Market, CD's

Life Cycle	Aggressive	Moderate	Conservative
Accumulation Ages 25-45	Equities-88% Fixed-9% Cash-3%	Equities-75% Fixed-22% Cash-3%	Equities-63% Fixed-34% Cash-3%
Consolidation Ages 45-65	Equities-70% Fixed-25% Cash-5%	Equities-57% Fixed-37% Cash-5%	Equities-45% Fixed-50% Cash-5%
Spending Ages 65-80	Equities-52% Fixed-33% Cash-15%	Equities-39% Fixed-46% Cash-15%	Equities-27% Fixed-58% Cash-15%
Gifting Ages 80 and older	Equities-40% Fixed-40% Cash-20%	Equities-27% Fixed-53% Cash-20%	Equities-15% Fixed-65% Cash-20%

I choose not to use the Standard Asset Allocation above and have proposed my own target asset allocation for current and future lifecycles.

My Proposed Asset Allocation Model

Life Cycle	My Portfolio %	Additional Info
Accumulation Ages 25-45	Equities- Fixed- Cash- Other-	

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Consolidation Ages 45-65	Equities- Fixed- Cash- Other-	
Spending Ages 65-80	Equities- Fixed- Cash- Other-	
Gifting Ages 80 and older	Equities- Fixed- Cash- Other-	

8.10 (d) Family Dynamics

I _________________ that my spouse (family/fiduciaries) should modify our investment portfolio immediately in the event of my death or incapacity. This could be for many reasons, including that I am currently using complex investment strategies that are beyond the comprehension of my beneficiaries.

A. Strongly Agree
B. Somewhat Agree
C. Neutral
D. Somewhat Disagree
E. Strongly Disagree

If A or B please add guidance: ____
____
____

It's important for my family/fiduciaries to understand my priority regarding protecting my investment risk during the lives of me (and my spouse) vs. maximizing the future wealth I/we can pass on to beneficiaries. On a scale of one to ten (with ten as the most investment risk) identifies my priority on this subject.

(Reduced Volatility) 1 2 3 4 5 6 7 8 9 10 (Increased Volatility)

My family/fiduciaries should communicate with Money Managers for the following purposes: (Select all that apply)

☐ To monitor the money managers to ensure they are following investment policies and have factored in our investment philosophies, as well as instructions found in governing legal documents.

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- ☐ So that the money managers can communicate recommendations.
- ☐ To continue to update and amend the Investment Policy Statement on annual basis

- ☐ Other: ____

The frequency of contact with money managers should be______________________.

A. Monthly
B. Quarterly
C. Semi-Annually
D. Annually
E. Other: ______________________________

Face-to-Face meetings should be_____________________________.

A. Monthly
B. Quarterly
C. Semi-Annually
D. Annually
E. Other: ________________________

Additional Statement Regarding my Advance Investment Philosophy™:

____
____
____
____
____
____

<u>8.11 Primary Financial Planner.</u> I recommend that my family and/or fiduciaries use the services of ___________________ as my primary financial planner in the event of my incapacity or death. I make this request for the following reasons: ____
____
____

<u>8.12 Self-Directed Investing</u>. I consider many of the investment selections I make to be my own decisions in the absence of a financial planner. In the event I can no longer make financial decisions for my household, I recommend that my family and/or fiduciaries use the services of _______________________ as my primary financial planner. I make this request for the following reasons: _____________________
____
____

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Retirement Plan Assets

9.1 Purpose. In this section, you'll locate my current (and former) employers in order to contact and notify them of my death and request any additional benefits. My fiduciaries can contact my former employers with the sample letter in section 9.12(a). You will find important information about various retirement income sources, such as pensions or social security, that might be available to my heirs. This section also outlines a complete list of my qualified ("pre- tax") investment accounts. My pre-tax accounts such as IRAs, 401(k), and 403(b) assets are listed in Sections 9.3-9.4. You should reference my estate planning documents, such as my durable power of attorney for finances and/or living trust (Section 3), to identify the fiduciary who will manage my retirement plan assets in the event of my incapacity. Also note that retirement plan assets have designated beneficiaries who will directly inherit these assets bypassing probate, unless my estate is the designated beneficiary. At my death, my beneficiaries should carefully review their options prior to taking their distribution of my retirement plan assets. Helpful guidance can be found throughout this section.

9.2 My Employment History. In this section, you'll find information about my current and former employment, whether full-time or part-time. For every position listed, I've indicated whether or not benefits are available if I become incapacitated or die. These benefits could be in the form of life insurance, retirement plans, and other less common benefits. You may also find insurance information in Section 5 of the Direction Memo™.

9.2 (a) Current Employment. Please contact my current employer if I become incapacitated and at my death. In addition to collecting any wages due, my fiduciaries should ask my employer for any unpaid commissions, expense reimbursements, or bonuses that are due to me or to my estate. You may use the prewritten letter in Section 9.12(a) to mail to my former employers to inquire about benefits information.

Employer's Contact Information	Current Benefits and Location of Documents	
	Position	
	Start Date	
	Ownership Interest	[ ]Yes (%) [ ]No

Additional notes: ____
____
____

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9.2 (b) Previous Employment. I may not be fully aware of existing benefits from my previous employers; therefore I recommend my fiduciaries mail each employer a copy of the letter in section 9.12(a) asking them to verify that all benefits have been received.

Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	
	Ownership Interest	[ ]Yes (%) [ ]No
Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	
	Ownership Interest	[ ]Yes (%) [ ]No
Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	
	Ownership Interest	[ ]Yes (%) [ ]No
Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	

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	Ownership Interest	[ ]Yes (%) [ ]No
Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	
	Ownership Interest	[ ]Yes (%) [ ]No
Employer's Contact Information	Current Benefits and Location of Documents	
	Last Position	
	Start & End Dates	
	Ownership Interest	[ ]Yes (%) [ ]No

Additional notes: ____
____
____

9.3 Qualified Retirement Plan Assets. This section describes my retirement plans and pension income benefits. Notify the managing company or custodian of my death and evaluate each plan for amounts due to my designated beneficiaries.

9.3 (a) Defined Benefit Plans. Defined Benefit (DB) plans are generally designed to provide a lifetime income stream to me, and potentially other beneficiaries. You may find additional information by referencing my statements, reviewing a copy of the summary plan description, or contacting the plan administrator.

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Plan Administrator Contact Information and Account Number	Already receiving income? Yes or No	100% vested in this retirement plan? Yes or No	Additional Income Beneficiaries	Location of Paperwork

Additional Notes: ____
____
____

Note that most Defined Benefits plans are protected by employers by the Pension Benefit Guaranty Corporation (PGBC). PBGC is a federal corporation created by the Employee Retirement Income Security Act of 1974 (ERISA). Therefore if my former employer files for bankruptcy protection, the PBGC may cover a reasonable portion of my lost pension.

9.3(b) Defined Contributions Plans. Defined Contribution (DC) plans are designed to give the participant an accumulation in lieu of lifetime income payment. DC plans may be classified in several categories including: 401(k), Profit Sharing, and ESOP/Stock Bonus Plans. 403(b) and most 457 plans can also be included in this section. DC plans are generally allowed to be rolled over to a traditional IRA when the employee separates from service. You may find additional information by referencing my statements, reviewing a copy of the summary plan description, or contacting the plan administrator.

Plan Administrator Contact Information and Account Number	100% vested in this retirement plan? Yes or No	Already receiving benefits? Yes or No	Primary Designated Beneficiaries	Location of paperwork

Additional Notes: ____
____
____

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9.3 (c) Individual Retirement Arrangements (IRAs). IRAs are private retirement accounts, sometimes affiliated with an employer. IRAs are identified by different names such as: Traditional, Roth, SEP, SIMPLE, and Decedent.

Financial Institution (Custodian) Contact Information and Account Number.	Type of IRA: Traditional, Roth, Decedent, SEP or SIMPLE	Designated Beneficiaries	Location of Paperwork

Additional Notes: ____

____

9.4 Non-Qualified Retirement Plans. This section includes non-qualified retirement plan accounts I own because of being a "highly compensated employee." These plans are generally classified as Non-qualified Deferred Compensation Plans (NQDC) or as Supplemental Executive Retirement Plans (SERP). My family/fiduciaries must understand two important issues regarding these types of plans:

My assets in these plans are subject to the claims of the creditors of my employer. In order to avoid the economic benefit doctrine, my assets in these plans must be at a substantial risk of forfeiture in order to defer the income.

When the assets are no longer at a substantial risk of forfeiture or you withdraw from a non-qualified retirement plan, it will be taxed as ordinary income in the same tax year and there will also be FICA/FUTA withheld.

Additional Notes: ____

____

____

Plan Administrator (Custodian) Contact Information and Account Number	Type of NQRP:	100% vested in this retirement plan? Yes or No	Designated Beneficiaries	Location of Paperwork

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9.5 Issues Related to Social Security. My family may have questions regarding Social Security benefits in the event of my death. It's common to have questions about spousal benefits and when is an optimal time to begin receiving social security benefits. My social security paperwork is located ____.

9.5 (a) If I haven't begun receiving SS Benefits. In the event of my incapacity, I may qualify for disability income prior to reaching age 62, typically the earliest age to begin receiving Social Security income. In the event of my death, my spouse (or ex-spouse) at age 60, and children (up to 12th grade or age 19) may be entitled to survivor benefits. Widows and widowers can begin receiving Social Security benefits at age 60 (or age 50 if disabled) from my account. If you are receiving widows/widowers (including divorced widows/widowers) benefits, you can switch to your own retirement benefits (assuming you are eligible and your retirement rate is higher than your widow/widower's rate) as early as age 62. In many cases, a widow or widower can begin receiving one benefit at a reduced rate and then switch to their own benefit at an unreduced rate at normal retirement age. Since the rules vary depending on the situation, talk to a Social Security representative about the options available to you. For the nearest Social Security Office or to ask questions, call **1-800-772-1213.**

9.5 (b) If I am already receiving SS Benefits. In the event of my death, my spouse should review whether he/she can benefit from using his/her own Social Security benefits as compared to 100% of my own benefits.

9.5 (c) If My Spouse Remarries. If you remarry before you reach age 60 (or age 50 if disabled), you cannot receive widow's benefits from my Social Security as long as that marriage remains in effect. If you remarry after you reach age 60 (or age 50 if disabled), you will continue to receive benefits on my Social Security record.

9.5 (d) Additional Notes: ____
____
____
____
____

9.6 Rebalancing, Target Asset Allocation, and Other Investment Strategies. This section provides guidance on how to manage the investments in my retirement plan assets if I am no longer able. I will identify any current approaches to managing these assets as well as provide ideas for the future. These are ideas my family and fiduciaries should take under consideration upon managing my retirement plan assets.

Rebalancing is defined as an automatic system of maintaining a "target asset allocation" for my retirement plan assets. Essentially, rebalancing is selling a portion of the winning positions and then

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simultaneously buying your portfolio's "losing" positions. While this may seem counterintuitive, there are two reasons for doing this:

1. A rebalancing strategy enforces adherence to the "buy low and sell high" objective of investing, which research indicates, can improve your portfolios return over time.

2. Rebalancing helps reduce the risk of future losses associated with a portfolio over-weighted with a particular asset type, sector, or individual investment. This is because rebalancing provides a discipline of sticking to the target asset allocation.

☐ I don't have a current rebalancing strategy

☐ I currently have a rebalancing strategy in force :____________________________________.

☐ I don't have a current rebalancing strategy but my family/fiduciaries may consider a system. This strategy can be arranged with money managers to rebalance the portfolio by a set frequency (e.g., quarterly) or when your target asset allocation undergoes significant changes (i.e., the market is up or down 10%).

☐ Refer to my current Investment Policy Statement or Advance Investment Philosophy™ to guide your decisions with my retirement plan assets.

9.7 Taxation Issues. Distributions from retirement plan assets such as 401(k) plans and traditional IRAs are taxed as ordinary income at my beneficiary's highest marginal tax rate. Income on retirement plan assets taxable to my designated beneficiaries is known as "Income in Respect of a Decedent." Normally the only retirement plans that allow tax-free withdrawal are Roth retirement accounts and occasionally retirement plans that accepted "after tax" contributions. Generally speaking, retirement assets are different from nonqualified assets which have the opportunity to "step up" to the value at the owner's death so that my heirs do not owe capital gains taxes. One of the optimal ways my beneficiaries can avoid immediate tax issues from inheriting my retirement plan assets is to withdraw the minimum each year required by law (further explained in 9.9). An IRD deduction is offered to beneficiaries of estates with significant double taxation of both estate taxes and income taxes to the beneficiaries due to income in respect of a decedent (IRD). My beneficiaries may qualify for an IRD deduction, and the assistance of an accountant to make that determination is likely required.

9.8 Net Unrealized Appreciation (NUA).

☐ I Do NOT own my employer's stock in my retirement plan.

☐ I own stock in my employer's company in my retirement plan.

A qualifying distribution of my employer's stock may provide an option where I (or my beneficiaries) can avoid paying ordinary income tax on the entire distribution. Rather you would

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pay ordinary income tax, at that time, only on the "plan's basis" in the stock. That is what the stock was worth when the employer first placed that stock in my retirement account. The additional growth beyond the basis is the net unrealized appreciation (NUA). The NUA is not taxed until the employee later sells the stock, and then it is taxed as long-term capital gain instead of ordinary income. If I die prior to taking the distribution, my beneficiaries are entitled to take the NUA distribution with the same preferential tax treatment.

___________________________ is a Professional Advisor who can answer NUA questions and is knowledgeable of the law under Internal Revenue Code Section 402(e).
In section 9.12(c) my fiduciaries/family will find a sample letter that can be mailed to my employer's plan sponsor requesting they provide information regarding Net Unrealized Appreciation.

9.9 Estate Planning with My Retirement Assets. There is important estate planning information regarding my retirement assets that my family/fiduciaries must understand.

9.9(a) Designated Beneficiaries. Information regarding my designated beneficiaries is provided in Sections 9.3 & 9.4.

9.9(b) Desire for my designated beneficiaries to "stretch" their inheritance from my retirement assets.

- ☐ I'd like my beneficiaries to withdrawal only the minimum to maximize tax deferral
- ☐ I don't have any preference how my beneficiaries utilize the retirement assets inherited from me.

Note that a non-spousal beneficiary of my retirement plan assets will be required to make a withdrawal from my retirement accounts by December 31st of the year following my death.
Additional notes: ____
____

9.9(c) Decedent IRAs I have inherited from a non-spouse.

- ☐ I DO NOT currently own a decedent IRA/retirement plan from a non-spouse.

I was the beneficiary of a decedent IRA from __________________________ and my primary beneficiary is __________________________ of this decedent IRA. My beneficiary will be required to withdraw the minimum distribution based upon my life expectancy table rather than their own. This differs from when someone inherits a retirement plan from the original owner. The retirement plan custodian should reorganize this account accordingly for my primary beneficiary(s).

Additional notes:
____
____

9.9(d) Roth Retirement plans. Note that withdrawals from Roth IRAs after age 59 ½ are free of federal income tax if the type of Roth Account has existed for more than five years. Roth accounts are available

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in IRAs, and 401(k) and 403(b) accounts. Instructions and notes for my Roth accounts: ________________
____
____

9.10 Withdrawal Rate This section reflects my beliefs regarding how much of my retirement plan assets should be withdrawn on an annual basis. This recommendation is not rigid and my household should withdraw what they feel is prudent in the future. A careful withdrawal rate is:

- ☐ Minimum distributions allowed under law under the current Required Minimum Distribution (RMD) rules if my beneficiary is over age 70 ½
- ☐ 4%
- ☐ 5%
- ☐ Other ____

9.11 Primary Financial Planner. I recommend that my family and/or fiduciaries use the services of ______________________ as my primary financial planner for my retirement plan assets. I make this request for the following reasons: ____
____
____

9.12 Retirement Plan Form Letters. In this section I have provided letters that my family/fiduciaries may use for four different events.

A. Letter of inquiry to my current and former employers.
B. Letter of notification to retirement plan custodians notifying them of death.
C. Letter of inquiry about Net Unrealized Appreciation (NUA) for employer's stock in my retirement plan.
D. Letter of inquiry to confirm current beneficiaries for my retirement accounts.

Additional Notes: ____
____
____
____
____

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Your Executor, Trustee, Power of Attorney's (Name)
Their Address
Their Phone
Their Email

I am writing to let you know that one of your current/former employees, <u>Your name</u>, has passed away (become incapacitated) on <u>date</u>. <u>Your name</u> was an employee with your organization from <u>date</u> to <u>date</u>. As a representative the process of settling ________________'s estate, I am writing to provide you my contact information and request information about any benefits ________________'s family or estate is entitled to. Please provide any information that is relevant to this request including, but not limited to:

- Remaining pension or other retirement benefits.
- Health insurance coverage for a surviving spouse or other family members.
- Life insurance death benefits and/or group long term care insurance.
- Any resources remaining in flexible savings accounts, or paid sick time.

It's very helpful to understand what benefits ceased at _____________'s death and any benefits that remain for the family or estate.

This is a courtesy letter to inform you of ___________'s death. I can provide you a copy of the death certificate or any papers appointing me as representative for ____________'s affairs. Please mail me at the address above or call me at ________________ to let me know what you need from me.

Thank you for your immediate attention to this matter.

Sincerely,

Executor, Trustee or Power of Attorney's Signature
Enclosure

[**Your Name**]
[**Street Address**]
[**City, ST ZIP Code**]
Date

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[**Your Name**]
[**Street Address**]
[City, ST ZIP Code]
Date

Retirement Plan Custodian's Information
[**Title**]
[**Company Name**]
[**Street Address**]
[**City, ST ZIP Code**]

Your account #_______________
To whom it may concern:
I am writing to inform you that ______________________ passed away on _______________. I am appointed as the representative of the estate and would like to transfer these assets in a timely and expeditious manner to the designated beneficiaries. Please respond to this letter at your earliest convenience with the following information:

1. A list of the designated beneficiaries that you have on record.
2. The paperwork transferring the property to the designated beneficiaries (both for keeping the assets with your firm and transferring to another firm).
3. If the beneficiaries keep their inheritance with your organization, disclosure of any fees or commissions that will be imposed as a result of the transfer.

I've enclosed a death certificate and court certified letter of appointment. If you have any questions, please contact me at ______________________. Thank you for your immediate attention to this matter.
Sincerely,
Your/Representative Signature
Enclosure

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[**Your Name**]
[**Street Address**]
[**City, ST ZIP Code**]
Date

My Retirement Plan Administrator
[**Title**]
[**Company Name**]
[**Street Address**]
[**City, ST ZIP Code**]
Dear [**Recipient Name**]:

The intent of this letter is to inquire about my account with ____________. I have purchased stock in my employer's retirement plan with my tax-deferred and matching contributions to the plan. I have some specific tax questions that will help me (or my beneficiaries with financial planning.

1. Please respond to me (or my beneficiaries) regarding the following questions:
2. Does the plan allow for distributions at retirement of the _______common stock?
3. Can you provide me the cost basis of the shares of stock that I have accumulated in my retirement plan?
4. Upon distribution will the company properly complete the 1099R for me, or my beneficiaries and complete the appropriate box for net unrealized appreciation (NUA) for employer securities?

Can you provide the contact information for the individual in your department who can answer these questions and is knowledgeable of the NUA rules under Internal Revenue Code, Section 402(e)?

In the event of my incapacity or death, please respond to this same inquiry directly from the beneficiaries of my retirement plan.
Thank you for your attention to this matter.

Sincerely,
Your/Representative Signature

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[**Your Name**]
[**Street Address**]
[**City, ST ZIP Code**]
Date

Retirement Plan Custodian's Information
[**Title**]
[**Company Name**]
[**Street Address**]
[**City, ST ZIP Code**]

Your account #______________
To whom it may concern:

I am researching my current designated beneficiaries for the retirement plan I have with your organization, and I hope you can help me locate this information. This letter may also be sent to you from the court appointed representative of my estate. At your earliest convenience, please send me, or the representative of my estate, the following:

1. Confirmation of who I have on record as my primary and contingent beneficiaries.
2. The required paperwork at your organization so that I may update my beneficiaries, if necessary. Please enclose a Self-Addressed and Stamped Envelope(SASE) so that I return the form to the correct department. (Not applicable at my death)
3. In the event I return the paperwork to update my beneficiaries, please send me confirmation upon the completion of the update. (Not applicable at my death)

Note that if I have more than one account with your organization; please follow the above directions for all my accounts. If this letter is from the representative of my estate, they've enclosed a death certificate and court certified letter of appointment. Thank you for your immediate attention to this matter.

Sincerely,
Your/Representative Signature

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Personal Property, Business, and Miscellaneous

10.1 Purpose. In this section, you'll locate information regarding my personal property, including the instructions for the disposition of personal property in my estate. I will include information related to ownership in business interests, intellectual property, and other miscellaneous financial information not covered in specific sections of the Direction Memo™.

10.1(a) Personal property. Estate planning disposition with personal property depends on whether the property has a registered title or possesses no title. Personal property with a registered titled is transferred similarly to real estate, bank accounts, and other assets. Personal property with no title is usually transferred to beneficiaries randomly with interfamily discussions and at the discretion of the executor or trustee unless other plans have been arranged. Those plans might include a specific bequest in an estate document or a separate letter with a list of personal property.

10.1(b) Business. This section encompasses information regarding any business ownership and/or intellectual property interests.

10.1(c) Miscellaneous Information. This section closes by including financial information pertaining to me that hasn't been previously communicated in the financial sections (5-10) of my Direction Memo™.

10.2 Definition of "Personal Property." Personal property is normally classified as either tangible or intangible and may (or may not) have a legal title of ownership. Tangible personal property is "moveable" property and intangible personal property generally refers to "paper" items. Section 10.5 addresses personal property I own with a registered title. Section 10.6 addresses personal property I own that doesn't possess a registered title.

10.3 Videos, Photos, Receipts, Warranties. In addition to providing suggested beneficiaries for my personal property, this section of the Direction Memo™ may provide as inventory for an insurance adjustor in the event a claim must be made. It may be necessary due to a catastrophic event to provide the insurance company evidence of property ownership. In addition to the Direction Memo™, you may use any of the following sources necessary to assist the insurance adjustor for any claims that are made on my behalf. (List all that apply)

A. Videos ____
B. Photos ____
C. Receipts____
D. Warranties____

10.4 Personal Property-Guidance for Family and Fiduciaries. An important goal in organizing my financial and estate planning is to avoid disagreements between family, fiduciaries, and beneficiaries. Personal property is sometimes a cause of dissension because it may be difficult to divide and carries

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sentimental value. I request that my family and beneficiaries respect the process in the settlement of my personal effects and act diplomatically. Everyone should refrain from claiming any of my personal effects until my fiduciaries have the opportunity to review my directions and outline a plan for suitable distribution.

10.5 Personal Property Inventory-With Registered Title. Below is a summary of all my personal property registered with a title. This includes vehicles (e.g., cars, motorcycles, trains, ships, boats, and aircrafts) in which I hold an ownership or lease interest. This information will help my fiduciaries to locate and distribute this property in accordance with my estate plan. My titled personal property will need to be updated and registered to the new owners. If I have named a transfer-on-death beneficiary for a vehicle I own, I have included the beneficiary's name with the vehicle information, below. Upon my death, the beneficiary can go to the state motor vehicles department with a certified copy of the death certificate and transfer the vehicle title, without probate proceedings. The current states with a T.O.D. option for registered vehicles are:

- California
- Connecticut
- Kansas
- Missouri
- Ohio

Vehicles I Own

Vehicle Type (Make, Model, Year, and Vehicle ID Number)	Estimated Value	Garage or Storage Location	Transfer-on-Death Beneficiary? Yes or No	Location of Paperwork

Additional Notes: ____
____
____

Vehicles I Lease

Vehicle Type (Make, Model, Year, and Vehicle ID Number)	Estimated Value	Garage or Storage Location	Location of Paperwork

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Additional Notes: ____
____
____

Other Personal Property

Other personal property that possess a registered title:

Item and Description	Location and Access Information	Special Instructions	Estimated Value	Location of Paperwork

<u>10.6 Personal Property Inventory-Without Registered Title.</u> Here is a summary of all my personal property that does not possess a registered title. This generally includes items such as jewelry, collections, etc. It's possible that I have made specific bequests in my will for certain unregistered personal property that should be transferred in accordance with my estate documents. It's also possible that I have made a separate memorandum listing my personal property with beneficiaries and my attorney has acknowledged these formalities in my estate documents in order to enforce the memorandum as binding. My personal property list below is a supplement to any formal arrangements I have made and is nonbinding. If I have made no specific bequests or separate memorandums for my personal property, this is the logical resource to effectively distribute my unregistered personal property. (Includes individual items with value estimated over $100, or with high sentimental value.)

Item, Description & Location	Estimated Value	Beneficiary and Special Instructions	Transfer to beneficiary ONLY if my spouse predeceases me? Yes or No

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Additional personal property inventory lists are located at the end of section 10

10.6 (a) My Personal Property Currently in Possession of another Person.

Contact Information of person holding my property	Description of property

10.7 Tax Issues and personal property. This section addresses tax issues my family/fiduciaries need to be aware of, prior to disposing of personal property. This includes decisions of selling or gifting my personal property.

10.7(a) Income Tax Issues and Personal Property. Collectibles and other personal property that has appreciated in value carries higher long-term capital gains rate (currently 28%) than for other investments regularly taxed at the 15% rate. Therefore selling my appreciated personal property may generate significant capital gains, and should be taken into consideration prior to any sales. It may be better to distribute personal property directly to beneficiaries on my death, rather than selling that property. If I still own appreciated personal property at my death, the capital gains should be avoided because of the allowable "step up" in cost basis. The new cost basis for the beneficiary would be the estate appraisal with my personal property. Transferring my property to a beneficiary prior to my death will result in the beneficiary "carrying over" my original cost basis rather than receiving the stepped up basis at my death. Note that precious metals are included in this group of collectibles that carries the 28% capital gains rate.

10.7(b) Estate Taxes and Personal Property. All items must be listed separately on the estate tax form 706 unless they have a value less than $100. Items with less than a $100 value can be grouped together if they are contained in the same room. My fiduciaries will need appraisals for the following items, according to IRS Form 706:

If the decedent at the time of death owns any works of art or items with collectible value in excess of $3,000 or any collections whose artistic or collectible value combined at date of death exceeds $10,000.

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Further guidance for estate tax appraisals is referenced in Revenue Procedure 66-49 suggesting the appraisal report should contain at least the following:

1. A summary of the appraiser's qualifications.
2. A statement of value and the appraiser's definition of the value obtained.
3. The basis upon which the appraisal was made.
4. The signature of the appraiser and the date appraisal was conducted.

Please take care to ensure my property is professionally valued, protected, stored, packed, shipped, and distributed to my beneficiaries.

10.8 Business Ownership. Following is an overview of my current and former business interests. It contains information to help my family/fiduciaries work with the right people (i.e., co-owners, employees, etc.) in the event of my incapacity or death. You'll locate paperwork and guidance that may help you manage or sell my business interests, or liquidate business assets.

Business Name	Business Entity Type	Location of Documents	Ownership Percentage	Valuation

10.8 (a) Business Disposition. These instructions will help you manage or wind up my business affairs if I become incapacitated, or upon my death.

Legal Name of Business Entity: ____

Disposition of Entire Business	[ ] Continue[ ] Transfer[ ] Sell[ ] Liquidate		
Disposition of My Interest	[ ] Transfer[ ] Sell[ ] Liquidate		
Contact Information for Key Individuals			
Attorney	*Accountant*	*Other Owners & Agreements*	*Key Employees & Agreements*

I have a formal business succession plan drafted and has been provided to the people important to the succession planning process. The documents are located at ______________________.

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Additionally I have created legal arrangements within my estate plan in order to transfer my business interests to internal or external family members.

Business Name	Legal Arrangement (e.g., FLP's, GRAT's, Private Annuities	Location of Documents	Professional Advisor

<u>10.8(b) Business Taxes Returns</u>. You can locate the tax returns for my business interest at___________ _____________________________. My tax/legal advisors are: ________________________

<u>10.8 (c) Prior Business Interests</u>. My prior business interests are outlined below. My investments, rights, and responsibilities in these businesses have been fully resolved and terminated; no additional expenses will be incurred and no income realized. I have described these business interests for your reference, in case you have questions or receive any future claims.

Business Name & Type	Main Office Address and Phone	Dissolution Documents and other paperwork

<u>10.9 Intellectual Property</u>. My intellectual property (IP) arrangements are provided for you to locate the necessary paperwork for the transfer of my IP ownership within my estate plan. My intellectual property may also include ownership where I wasn't the creator, but have inherited ownership. This section should also include additional intangible property items such as franchise rights and royalty income information.

Description of IP (e.g., patent, copyright, royalties)	Current title of ownership	Specific Bequest in Estate Documents for IP? Yes or No	IP Attorney or other Professional Advisor	Location of Paperwork

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10.10 Miscellaneous. Section 10.10 provides a space for additional financial information not otherwise specified in the financial sections (5-10) of my Direction Memo™:

____

____

____

____

Continued from Section 10.6-Personal Property Inventory Without a Registered Title.

Item, Description & Location	Estimated Value	Beneficiary and Special Instructions	Transfer to beneficiary ONLY if my spouse predeceases me? Yes or No

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Philanthropy-Planned Giving

<u>11.1 Purpose</u>. In this section I have outlined my charitable intentions during my life and beyond. My directions will serve as a guidepost for my family/fiduciaries to ensure that my charitable plans are properly executed. This may involve communication with my professional advisors and nonprofit staff for an extended period of time. This section also should assist in calculating any necessary charitable deductions from my estate at the time of my death, and utilize any income tax deductions from gifts I may use in future tax years during life.

<u>11.2 Charitable Tax Incentives</u>. The tax incentives of charitable giving can be divided into three categories: estate, gift, and income tax deductions. Giving to qualified charities, either during life or at death removes property from my taxable gross estate. Outright gifts and specific irrevocable deferred gifts may qualify for income tax deductions if I itemize in lieu of using the standard deduction for filing income taxes.

<u>11.2 (a) Income Tax Deductions.</u> I currently have charitable income tax deductions that I can carry forward into future tax years. This information may be needed by my family/fiduciaries in the event of my incapacity or death. I currently have a carry forward of ___________________ from previous charitable contributions I have made as of the _________________ tax year. My tax return information is located in section 2.9.

<u>11.3 Revocable Charitable Bequests.</u> This section identifies current revocable deferred gifts I have made with the flexibility to rescind those commitments.

<u>11.3 (a) Charitable Bequest through a last will and testament document.</u>

Name of Nonprofit Beneficiary	Plans Communicated with Nonprofit? Yes or No	Formal Gift Agreement with Nonprofit for use of funds	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

<u>11.3. (b) Charitable Bequest through a living or testamentary trust</u>

Name of Nonprofit Beneficiary	Plans Communicated with Nonprofit? Yes or No	Formal Gift Agreement with Nonprofit for use of funds	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

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11.3 (c) Charitable gift through beneficiary designation with retirement plan assets

Name of Nonprofit Beneficiary	Plans Communicated with Nonprofit? Yes or No	Formal Gift Agreement with Nonprofit for use of funds	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

11.3 (d) Revocable beneficiary designations with life insurance

Name of Nonprofit Beneficiary	Plans Communicated with Nonprofit? Yes or No	Formal Gift Agreement with Nonprofit for use of funds	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

11.3 (e) Pledges. An income tax deduction for an outright gift of cash or other property can only be taken at the time the gift is fulfilled, not based on a pledge agreement.

☐ I have made a pledge of $_______________ with ______________________________ charity(s).

☐ I request my family/fiduciaries complete the pledge in the event of my incapacity or death.

Additional notes: ____
____
____

11.4 Irrevocable Deferred Gifts. This section identifies any irrevocable commitments I have made to give property to charity at a future date. While life income plans such as Charitable Remainder Trusts (CRT) are irrevocable, most of the time the donor can alter the charities who are beneficiaries. For Charitable Gift Annuities (CGA), Pooled Income Funds (PIF) and Life Estate Reserved, the donor typically does not have the flexibility to change the charitable beneficiaries.

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11.4 (a) Life Income Charitable Plans.

Type of Life Income Plan (e.g., Gift Annuity, CRT, PIF	Current estimated value of remainder	Plans Commun-icated with Nonprofit	Formal Agreement with Nonprofit for use of remainder funds	Nonprofit Contact Information	Location of the documents and contracts

11.4 (b) Charitable Lead Trust. I have made arrangements for a Charitable Lead Trust, where the trust will transfer a segment of property each year to charitable organizations for a predetermined period of time. At the completion of the trust terms, the corpus will be transferred to my non-charitable beneficiaries.

Type of Lead Trust (e.g., CLAT, CLUT, TCLAT)	Current estimated value	Plans Communicated with Nonprofit for TCLAT? Yes or No	Nonprofit Contact Information	Location of paperwork

Additional Notes: ____
____
____

11.4 (c) Life Estate Reserved.

☐ I have created a life estate reserved.

A donor may receive a charitable deduction for the transfer of a remainder interest in a personal residence, farm, or ranch under IRC 170(f)(3)(B)(i). The donor deeds the personal residence or farm to a qualified exempt charity and reserves a life estate. The parcel of property in which I have created a life estate reserved is located at ______________________.

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11.5 Donor Advised Funds (DAF).

☐ I own a Donor Advised Fund (DAF) defined under IRC Section 4966(d)(2)(a).

A DAF is a public charity referred to as a "sponsoring organization." Typically after the DAF is created, a donor will make future decisions regarding which charities will receive a donation. The sponsoring organization has an obligation to govern what types of charitable organizations are deemed "qualified" to receive a gift. The sponsoring organization also provides investment options for the assets to be managed until they are gifted. For funds remaining in my DAF at the time of my passing, there are three methods of conveying:

1 Naming successor(s) to continue managing the assets in the DAF and make charitable grants.
2. Naming charitable beneficiaries who'll receive gifts and terminate the DAF.
3. Creating a permanent endowment that will award a percentage each year to charities I've selected.

In this section, I'll identify which of the aforementioned methods of conveyance that will be utilized.

11.5 (a) DAF-Investment Policies.

☐ Maintain the current asset allocation
☐ Consult with ____________________ as my Professional Advisor about my Donor Advised Funds.
☐ I have drafted an Investment Policy Statement exclusively for my donor advised fund. The location is ____.

Sponsoring Organization for my DAF	Account Number	Formal Agreement with Nonprofit for use of funds? Yes or No	Nonprofits I've Historically Supported with my DAF

Additional Notes: ____
____
____

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11.5 (b) Successors to my DAF. In the event I named a successor for my donor advised fund it is because my plan is to allow the successor to make grants from the fund to qualified charities after my death. I have named the following successor(s) to the sponsoring organization ______________________.

- ☐ I'd like my successor to select appropriate charitable organizations for future grants.
- ☐ I request that you make future grants to________________________________ organization(s).
- ☐ Make future grants to charitable organizations where I've historically made gifts.

11.5 (c) Nonprofit Beneficiaries of my DAF. If I have named charitable beneficiaries of my DAF, it is because I choose to leave a direct bequest to those nonprofits for 100% immediate use of donor advised funds upon my death. If I selected this option, my donor advised fund should be terminated when settling my estate.

11.5(d) Endowment. If I have directed that my donor advised fund be transferred to a permanent endowment for the charities, you'll locate that information in this section. The policy of the endowment is to spend___% each year for the benefit of the charities with the purpose that my endowment will last in perpetuity.

Additional Notes: ____
____
____

11.6 Community Foundations.

☐ I've established a charitable giving arrangement with ______________ Community Foundation.

Use of funds (e.g., DAF, Endowment)	Formal Agreement with Nonprofit for use of funds? Yes or No	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

11.7 Private Foundation.

☐ I have established a private foundation defined under Internal Revenue Code 509.

A private foundation is a legal entity set up by an individual, a family, or a group of individuals, for a purpose such as philanthropy.

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Name of the Foundation	Officers of the Organization	Location the documents	Location of Foundations Assets & Current Estimated Value	Suggested Charitable Organizations to receive future grants

- ☐ This private foundation will be created and funded through my estate
- ☐ This private foundation is already an established entity operating under the federal requirements of a private foundation.

11.7 (a) Private Foundation-Investment Policies.

- ☐ Maintain the current asset allocation
- ☐ Consult with ___________________ as my Professional Advisor regarding my Private Foundation.
- ☐ I have drafted an Investment Policy Statement exclusively for my Private Foundation.

Additional Notes: ____
____
____

11.8 Irrevocable Gift of Life Insurance.

Name of Nonprofit Owner/ Beneficiary	Plans Communicated with Nonprofit? Yes or No	Formal Agreement with Nonprofit for use of funds	Nonprofit Contact Information	Location of Gift Agreement Document (if applicable)

11.9 Miscellaneous Charitable Information. ____
____
____
____
____
____

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Legacy Planning

<u>12.1 Purpose</u>. In this section I have included information regarding the location of future personal communication to my loved ones at my death (or other impending date). This communication could be in written, audio, or video form and could be specific for certain individuals or intended for a group. Legacy planning is designing a way to communicate after I'm gone to pass on memories, values and advice for my loved ones.

<u>12.2 My Financial History.</u> My financial history is a way of communicating what has shaped me with regard to money so my descendants can better understand my values and ideas about money. I have chosen to communicate my thoughts by answering the questions below.

1. Childhood Influence
    1. What do you remember your parents teaching you about money? ________________________
       ____
       ____
    2. When you were growing up, who made the financial decisions in your household? _________
       ____
       ____
    3. What lessons in saving and spending did you receive from your parents? _________________
       ____
       ____
2. Current Attitudes about Money
    1. What is your definition of "wealthy"? ____
       ____
       ____
    2. What are the dangers of having money? ____
       ____
       ____
    3. What is the greatest value of money? ____
       ____
       ____
3. My Beliefs on Using Money
    1. What types of satisfaction have you received without money? ___________________________
       ____
       ____
    2. Do you live on a budget? ____
    3. Do you feel as though you are a prudent spender? _________________________________

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4. Was/is your family philanthropic? ____
   ____
   ____

4. Family Communication
   1. What are the attitudes about money that you would like to teach the future generations of your family? ____
      ____
      ____
   2. Describe the story behind your wealth accumulation? ______________________________
      ____
      ____
   3. Is there anything you would do differently in communicating with your family about money?
      ____
      ____
      ____

<u>12.3 Letters to Loved Ones.</u>

☐ I have written personal letters to special people in my life for them to read at my passing. You can locate these letters at ____________________________________.

<u>12.4 Ethical Will.</u>

☐ I have written an ethical will or other document that should be shared with a group rather than a specific individual. This document is for my family and I'd like it to be preserved for future generations to gain written perspective about their ancestors. I'd like to request _________________ maintain this document and make arrangements for future generations to maintain this document (and others) for sharing with posterity. This document is located ___________________________.

☐ I have completed the Ethical Will Worksheet at the end of section 12.

<u>12.5 Family Memorabilia & Genealogy.</u> My personal effects include items that carry mostly sentimental value rather than monetary value, and I have identified specific items and have requested individuals to care for these items in order to maintain the significance of these effects.

<u>12.5 (a) Photos, Memoirs, Letters</u>. These items are located at ______________________________. I'd like to request the following person/people maintain this information_________________________. Please make arrangements to transfer the duty of maintaining these items (and others) for sharing with future generations.

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Additional Notes: ____
____
____

12.5 (b) Genealogical Records. I'd like to request ________________________ maintain this information and make plans to transfer the duty of maintaining this document (and others) for sharing with future generations. This information is located ____.

12.6 Audio & Video Communication.

- ☐ I/We have made arrangements for audio, video or other form of communication to our family that can be located at ____.

12.7 Miscellaneous Legacy Issues. Any additional personal effects or other legacy items not mentioned in this section of my Direction Memo™ are listed here. ____
____
____
____
____

Ethical Will Worksheet

The following questions may assist you in drafting your own ethical will or legacy statement. The purpose of these questions is to help you identify what is important in your life and what might be worth sharing with your family and friends.

Who are you writing this to? (Check all that apply)

- ☐ Spouse
- ☐ Children
- ☐ Your Friends & Extended Family
- ☐ Community

What would you like this letter to accomplish? (Check all that apply)

- ☐ To emphasize what's been most important to you in life.
- ☐ To recall memories for your family to provide as a source of context where they came from.
- ☐ To introduce yourself to future generations you will never have the joy of meeting in person.
- ☐ To impart advice for family that follows you, and what you'd do differently if you could live your life one more time.

1. What are the three virtues in people that you most value?

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a.

b.

c.

2. What is your favorite place in the world and why?

____
____
____

3. Who are your favorite famous people (from history, presidents, athletes, celebrities)? Why?

a.

b.

c.

d.

e.

4. Why did you choose your profession/career?

____
____
____
____
____
____

5. You have $3,000,000 and are told that you must divide it equally among three charities, which ones do you choose? Why?

a.

b.

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c.

6. What is the most important thing you learned from your parents or grandparents?

____
____
____
____

7. If you had all the money in the world, what would you do?

____
____
____
____

8. If you found out that you were going to die today, what would be your biggest regret in life?

____
____
____
____

9. If you were to die today, but had two minutes to leave a note for your family, what would you write?

____
____
____
____

10. What do you want your family to know about your religious faith?

____
____
____
____

Additional notes: ____
____
____
____

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Final Arrangements

13.1 Purpose. In this section I have made decisions and have outlined instructions for my final arrangements. This section comprehensively addresses post-mortem issues including how to manage the expenses of final arrangements.

13.2 Final Arrangement Information. All my estate documents should be reviewed prior to final arrangement decisions, although most of the information my family/fiduciaries require is located in this section of my Direction Memo™. Since final arrangements are personal, and some of them could be preplanned, my Direction Memo™ is more of an appropriate place to leave these instructions than in my last will and testament.

13.3 Organ Donation. In this section, I have outlined my wishes and any arrangements I have made for organ donation. Please review this section along with Section 3.7 (health care directives) prior to making organ donation decisions.

I wish to donate my organs, or tissues: [ ] Yes [ ] No

If Yes, the Wishes for Donation

I would like to donate:	[ ] Any Needed Organs or Tissues
	[ ] Only the Following Organs or Tissues:

Arrangements for Donation

I currently have organ donation accepted on my driver's license and/or donor card: [ ] Yes [ ] No

I have a specific local organization that I'd like to donate to: [ ] Yes [ ] No
Receiving organizations Name, Address and Phone Number: ______________________________
____
____
____

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13.4 Disposition of Remains. In this section, I have outlined my wishes and any arrangements I have made for disposition. Below I have selected one of three traditional options: burial, cremation, or donating my body, and have provided details about my wishes.

<table>
<tr><td colspan="4">[ ] Burial</td></tr>
<tr><td></td><td>Check One:
[ ] Immediate
[ ] After Services</td><td>Check One:
[ ] Embalm
[ ] Do Not Embalm</td><td>Check One:
[ ] In Ground
[ ] Above Ground</td></tr>
<tr><td>Burial Organization Contact Information</td><td colspan="3"></td></tr>
<tr><td>Burial Location and Contact Information</td><td colspan="3"></td></tr>
<tr><td>Location of Documents</td><td colspan="3"></td></tr>
<tr><td>Additional Notes</td><td colspan="3"></td></tr>
</table>

<table>
<tr><td colspan="3">[ ] Cremation</td></tr>
<tr><td>Check One:
[ ] Immediate
[ ] After Services</td><td>Check One:
[ ] Embalm
[ ] Do Not Embalm</td><td>Check One or All That Apply:
[ ] Niche in Columbarium
[ ] Buried
[ ] Scattered
[ ] To Individual</td></tr>
<tr><td>Cremation Organization Contact Information</td><td colspan="2"></td></tr>
<tr><td>Final Location and Contact Information</td><td colspan="2"></td></tr>
<tr><td>Location of Documents</td><td colspan="2"></td></tr>
<tr><td>Additional Notes</td><td colspan="2"></td></tr>
</table>

<table>
<tr><td>[ ] Donating Body for Science</td></tr>
</table>

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Will Medical School handle burial or cremation arrangements?	
Burial Location and Contact Information	
Location of Documents	
Additional Notes	

Casket or Urn

I would like a casket, urn, or other container to hold my remains: [ ] Yes [ ] No

Item	[ ] Casket	[ ] Urn	[ ] Other
Material	[ ] Wood	[ ] Metal	[ ] Other
Cost Range	[ ] Economical	[ ] Moderate	[ ] Luxury
Additional Notes			

13.5 Obituary. An obituary needs to be written immediately along with the other final arrangements because that is how most of the public finds out about the death along with the wake and funeral service information.

Please publish my obituary. [ ] Yes [ ] No

I have already drafted an obituary. [ ] Yes (Location: ________________________) [ ] No

If "no" please use my obituary outline below.

13.5 (a) Obituary Outline. If I have not drafted an obituary, please prepare one using the following template below. You can locate most biographical information from sections 1 and 2 of this Direction Memo™.

Obituary Length	[ ] Brief[ ] Moderate[ ] Article Length
Photograph	[ ] Yes (Location: ______________________________) [ ] No
News Organizations for Publishing	

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Paragraph #	Information
1	Name Age Address Date of Death Place of Death Cause or suspected cause of death
2	Date of birth Birthplace Parents names Educational accomplishments Military service if applicable Which war or conflict served in Where stationed if overseas Marriages Residential history
3	Post High School Education Degrees Earned Licenses Held
4	Work history and work affiliations
5	Church membership and organizations within the church. Civic memberships Fraternal Memberships Club Memberships With all the above include any positions or offices the person may have held Hobbies Other interests

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6	Survivors, include spouse in parenthesis and city & state of residence Spouse Children Grandchildren Great-Grandchildren Great-Great-Grandchildren Parents Grandparents Brothers Sisters Nephews Nieces Cousins Friends List family that preceded him/her in death, usually spouse, parents, children, grandchildren, great-grandchildren, brothers and sisters
7	Service Include day, date, time and place of service Name of officiant and their title Place of burial or entombment Visitation information including day, time and place of visitation(s) Memorial Services held by others (include day, time and place) Vigil or Prayer Services being held (include day, time and place)
8	Listing of any memorial funds that may have been established and for what cause(s) or organization(s).
9	Mention of any people or groups you wish to publicly thank for care given to the deceased.

Additional Notes: ____

____

____

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13.6 Memorial Events. In this section, I have outlined my wishes and decisions I have made for services or ceremonies after my death.

13.6 (a) Viewing, Visitation, or Wake.

I would like a viewing, visitation, or wake: [ ] Yes [ ] No

<table>
<tr><td>Type of Service</td><td colspan="2"></td></tr>
<tr><td>Location and Contact Information of Funeral Home</td><td colspan="2"></td></tr>
<tr><td>Existing Arrangements and Location of Documents</td><td colspan="2"></td></tr>
<tr><td>Body Present
[ ] Yes
[ ] No</td><td>Casket
[ ] Yes
[ ] No</td><td>Casket
[ ] Open
[ ] Closed</td></tr>
<tr><td>Invitees
[ ] Public
[ ] Private</td><td colspan="2">Timing and Days/Hours</td></tr>
<tr><td>Special Requests</td><td colspan="2"></td></tr>
<tr><td>Additional Notes</td><td colspan="2"></td></tr>
</table>

13.6 (b) Funeral or Memorial Service.

I would like a funeral or memorial: [ ] Yes [ ] No

Location and Contact Information	
Existing Arrangements and Location of Documents	

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Body and Casket Present [ ] Yes [ ] No	Casket [ ] Open [ ] Closed	Other Items [ ] Photo -- Location: ________________________ [ ] Other: ________________
Flowers	Invitees [ ] Public [ ] Private	Timing and Days/Hours

Type of Service	Service Contact	Facilitator
[ ] Religious [ ] Military (See 13.10) [ ] Other	Name	Name
	Contact Information	Contact Information

Eulogy		
Name	Name	Name
Contact Information	Contact Information	Contact Information

Music Selections and Musicians
Readings

Pallbearers		
Name #1	Name #2	Name #3
Name #4	Name #5	Name #6

Graveside Ceremony [ ] Graveside only [ ] Following funeral [ ] None	**Additional Notes:**

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13.6 (c) Burial or Cremation Apparel.

I wish to specify burial or cremation apparel: [ ] Yes [ ] No

For items marked "Yes," please ensure that the clothing or article is removed and given to my family/fiduciaries prior to burial or cremation.

Clothing, Accessory, or Other Item	Location	Remove Before Interment or Cremation
		[ ] Yes[ ] No
		[ ] Yes[ ] No
		[ ] Yes[ ] No

13.7 Headstone, Monument, or Burial Marker.

I would like a: [ ] Headstone [ ] Burial Marker [ ] Monument [ ] Other: ________________

Material	
Design	
Finish	
Additional Notes	

Epitaph: I would like an epitaph or inscription: [ ] Yes [ ] No

Inscribe by epitaph on: [ ] Headstone [ ] Burial Marker [ ] Monument [ ] Urn Vault

Inscription	
Additional Notes	

13.8 Burial Plot.

- ☐ I haven't purchased a burial plot.
- ☐ Not applicable. I do not wish to be buried.
- ☐ I have purchased a burial plot. The deed is located __________________________. Location of the plot is at the ______________________ cemetery and plot/block #______________________.

13.9 Financial Issues/Final Arrangements.

- ☐ I have already invested in preplanned funeral arrangements, the paperwork is located _______ ____.
- ☐ I have outlined in either my estate documents or verbally communicated with my family/ fiduciaries that I have a specific asset (e.g., life insurance) that should be used to cover my final

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arrangement expenses. Additional notes: ____
____
____

- ☐ I request the sum of all my final arrangement expenses do not exceed _____________ dollars as of the date of this document with reasonable inflation factored into the increased future value of the stated amount.

13.10 Military Veterans Funeral Benefits.

- ☐ Not applicable.
- ☐ I am a veteran, but have made other arrangements or choose not to use any military funeral benefits.
- ☐ I am veteran of the military and may be entitled to a free burial in a national cemetery, grave marker, and a flag. I have made arrangements with the Veteran's Affairs office or you may, contact the regional Veterans Affairs office by calling 800-827-1000, or go online to: www.cem.va.gov or www.militaryfuneralhonors.osd.mil.

13.11 Miscellaneous Final Arrangement Issues. In the event I haven't addressed final arrangement issues in the previous sections, you'll find additional miscellaneous information in this section.
____
____
____
____
____
____

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14.1 Purpose. This section completes my letter of instruction referred to as my "Direction Memo™." If you happen to find more than one Direction Memo™, the most recently dated Direction Memo™ should be considered the current and valid document. Section 14 concludes with my personal financial statement, signature and glossary of terms.

14.2 Personal Financial Statement.

Assets	**Amount in Dollars**
Section 5- Life insurance *(cash surrender value)*	$ -
Section 6-Notes Receivable to Me	-
Section 7-Total Real Estate	-
Section 8 - Securities - stocks / bonds / mutual funds	-
Section 9-Retirement Funds *(eg. IRAs, 401k)*	-
Section 10-Personal property *(autos, jewelry, etc.)*	-
Section 10- Business interests and/or intellectual property (e.g., patents)	-
Misc. assets *(specify)*	-
Total Assets	**$ -**

Liabilities (Section 6)	**Amount in Dollars**
Real estate mortgages *(describe)*	
Consumer Debt *(Credit cards, Accounts)*	$ -
Notes payable	-
Taxes payable	-
All Other liabilities *(specify)*	-
Total Liabilities	**$ -**
Net Worth	**$ -**

14.2 Signature

____

[Signature] Date
Author of Direction Memo™ Letter of Instructions

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14.3 Glossary of Terms. Should my fiduciaries find terms in my letter that are unfamiliar, I have enclosed a glossary of financial, retirement, and estate planning terms, including definitions.

Adjustable Rate Mortgage (ARM): Mortgage where the interest rate paid on the outstanding balance varies according to a specific benchmark. The initial interest rate is normally fixed for a period of time after which it is reset periodically, often every month.

Advance Investment Philosophy ™: The "why" behind each investment decision you make, and clarify your outlook for your situation, goals, feelings, and family dynamics. Communicates the investors over-arching beliefs as if this was the last time they had the opportunity for the rest of your life to convey these ideals.

Adverse selection: a situation where an individual's demand for insurance (either the propensity to buy insurance, or the quantity purchased, or both) is positively correlated with the individual's risk of loss (e.g. higher risks buy more insurance), and the insurer is unable to allow for this correlation in the price of insurance. This may be because of private information known only to the individual or because of regulations or social norms which prevent the insurer from using certain categories of known information to set prices (e.g. the insurer may be forbidden from using information such as gender or ethnic origin or genetic test results).

Alternative Valuation Date: Valuation date six months (not 180 days) after the date of a person's death. For estate tax purposes, the executor may place a value on the estate as of the date of death or on the alternate valuation date. To use the alternative valuation date, the estate value and tax must be less than on the date of death.

Ancillary Probate: A probate proceeding conducted in a state other than the state where the decedent lived and the primary probate occurs.

Annual exclusion: The amount of property the IRS allows a person to gift to another person during a calendar year before a gift tax is assessed and/ or a gift tax return must be filed. The amount is increased periodically. There is no limit to the number of people you can give gifts to which qualify for the annual exclusion. To qualify for the annual exclusion, the gift must be one that a recipient can enjoy immediately and have full control over.

Assignment of Tangible Personal Property: A legal document that covers the funding of all of a Trustmaker's personal effects such as jewelry, clothing, art work, collectibles, furniture, antiques, and the like, into the Grantor's Revocable Living Trust.

Balloon Payment: A loan made where the repayment of the principal, which is the amount of the loan, plus the interest that is owed on it, is divided into installments due at regular intervals—for example, every month. The earlier installments are usually payment of interest and a minimal amount of principal, while the later installments are primarily principal. When a balloon payment is provided in a loan agreement there are a number of installments for the same small amount prior to the balloon payment.

Binding: To bind, binding contracts. These words are applied to a contract entered into between parties.

Carry-over basis: The retention of an earlier basis in property even though the property has

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changed hands. This occurs most often in two instances: (1) someone acquires property by gift. The basis is the same as it was in the hands of the donor, adjusted upward for any gift taxes paid by the donor. (2) In a 1031 exchange, in which like-kind property is exchanged for other like-kind property in a sort of perfectly legal accounting sleight of hand, the basis in property acquired is the same as the basis in the property given up, even though both might currently have substantially different fair market values.

Cash equivalents: Ultra short-term investments such as savings accounts, money markets, and CD's.

COBRA: A health insurance plan which allows an employee who leaves a company to continue to be covered under the company's health plan, for a certain time period and under certain conditions. The name results from the fact that the program was created under the Consolidated Omnibus Reconciliation Act. The system is intended to prevent employees who are between jobs from facing a lapse in coverage.

Community Property: A system of property law determining the interests of spouses in property acquired during marriage. Includes everything acquired by a married couple during the marriage, except property acquired by gift or inheritance. Each spouse owns an equal, undivided one half interest of the Community Property. Community Property concepts come from continental civil law, as opposed to English common law. Only a few western states use the Community Property system.

Credit life insurance: form of life insurance that will pay off the balance of a mortgage upon the death of the mortgagor.

Custodian for a Minor: A method for an adult to hold property for a minor under the Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA). Once the minor becomes an adult under state law, the minor assumes full control of the assets and the custodian has no authority.

Defined Benefit Plan: This type of plan, also known as the traditional pension plan, promises the participant a specified monthly benefit at retirement. Often, the benefit is based on factors such as your salary, your age, and the number of years you worked for the employer.

Defined Contribution Plan: In a defined contribution plan, the employee and/or the employer contribute to the employee's individual account under the plan. The employee often decides how his or her account is invested. The amount in the account at distribution includes the contributions and investment gains or losses, minus any investment and administrative fees. The contributions and earnings are not taxed until distribution. The value of the account will change based on the value and performance of the investments.

Depreciation: A tax deduction without a cash payment, normally providing an important benefit to real estate investors. A tax depreciation deduction may be claimed even when the property's market value increases. The annual tax depreciation deduction allowed for improvements (land is not depreciable) is 3.64% for rental housing (27½-year life) and 2.56% for commercial and industrial property (39-year life).

Direction Memo™: Document created by Paul Caspersen, CFP® designed as a template for writing

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instructions for an estate plan. The Direction Memo™ is in the same category as other non-binding documents referred to as a "side letter of instruction," "letter of intent," or a "model side agreement."

Disability insurance: Insurance policy that pays benefits in the event that the policyholder becomes incapable of working.

Domicile: Domicile is the place where a person has a permanent principal home. Domicile is important because it is used in determining in what state a probate of a dead person's estate is filed, what state can assess income or inheritance taxes.

Durable Power of Attorney: A document established by an individual (the principal) granting another person (the agent) the right and authority to handle the financial and other affairs of the principal. The Durable Power of Attorney survives through the period of incompetency of the principal.

Ethical will: A form of communication, usually written, in which a person expresses the beliefs and experiences that have mattered most in his or her life. An ethical will has no legal significance; it is intended to convey the writer's core values to loved ones.

Fiduciary: A person or institution legally responsible for the management, investment, and distribution of funds. The law places various responsibilities on fiduciaries to act in the interests of the beneficiaries.

Funding the trust: Part of the planning process to ensure the property you want handled by the terms of the trust is titled appropriately.

Granted life estate: An individual granted a life estate to a property is responsible for taxes and maintaining the property at the level it was granted, however, the individual does not solely own the property and therefore cannot sell or in any manner encumber the property.

Guaranteed death benefits: A benefit guaranteeing the beneficiary, as named in the contract, will receive a death benefit if the annuitant dies before the annuity begins paying benefits. The benefit received differs among insurance contracts, but the beneficiary is guaranteed an amount equal to what was invested or the value of the contract on the most recent policy anniversary statement, whichever is higher.

Guaranteed living benefits: A benefit in an insurance contract intended to guarantee the benefit provided to the annuitant and toward that end, usually offers guaranteed protection of the principal investment, the annuity payments, and/or guarantees a minimum income over a specific period to the annuitant and/or beneficiary.

Guardian: A person designated by court appointment and given the responsibility of managing the personal affairs of a minor child or a person that is legally incompetent to manage his or her own affairs.

Health Savings Accounts: replaced the Archer Medical Savings accounts to allow people to deposit pretax savings into an account which can be used to pay insurance deductibles, or other medical expenses. The withdrawals are not taxed as income to the HSA owner. In order to qualify for a HSA, you must only be covered by a high-deductible health plan.

High-deductible health plan: a health insurance plan with lower premiums and higher deductibles

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than a traditional health plan.

Imputed interest: The minimum interest rate that the U.S. Treasury assumes is paid on a loan, even if the actual interest rate is lower. The U.S. government places an imputed interest rate on some loans to reduce tax avoidance by some organizations that make loans well below market interest rates.

Incapacity: description of a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

Incentive Stock Options (ISOs): A type of employee stock option with a tax benefit, when you exercise, of not having to pay ordinary income tax. Rather, the options are taxed at a capital gains rate.

Income in respect of a decedent (IRD): Income that was due to a decedent and will pass through to the recipient or estate as income during that tax year. The recipient (beneficiary) must declare the money as income in respect of a decedent (IRD) for any year in which income is received.

IRD deduction: The IRD deduction comes into play when someone dies who has a pension plan or IRA and the estate is subject to the federal estate tax. The beneficiary of the estate must pay the income tax as he withdraws funds from the inherited account. The IRD is a deduction which will help offset the amount that has to be paid on the beneficiary's income tax.

Irrevocable trust: A trust that cannot be changed, canceled, or "revoked" once it is set up. A "living trust" is not an example of an irrevocable trust. Insurance trusts and "Children's Trusts," or "2503 Trusts," are examples of irrevocable trusts. Irrevocable trusts are treated by the IRS very differently than revocable trusts.

Joint Tenants with Right of Survivorship (JTWROS) - A form for holding undivided title to property among more than one person. When of the co-owners dies, the other becomes the sole owner of the property.

Laws of intestacy: a circumstance of intestacy which is dying without a legally valid will.

Life Estate: The right to have all of the benefit from a property during one's lifetime. The person with the right doesn't own the property, and when he or she dies, the property is not included in his or her estate.

Life estate reserved: An individual may gift a property, such as a personal residence or farm, to a qualified exempt charity and retain the right to live on or use the property for life. Giving property to a charity and retaining a life estate provides a donor with several tax benefits. The donor receives a charitable income tax deduction for the present value of the remainder interest given to charity.

Living trust: A type of revocable trust used in estate planning to avoid probate, help in situations of incompetency, and allow "smooth" management of assets after the death of the grantor or person who established the trust. The trust can be effective in eliminating or reducing estate taxes for married couples. Revocable Living trusts are established during the life of the grantor, who retains the right to the income and principal and the right to amend or revoke the trust.

When the grantor dies, the trust becomes irrevocable and acts as a substitute for a traditional will.

Living will: A document defining your "right to die." It usually states that you do not want to have your life artificially prolonged by modern medical technologies. You can specifically define the means which you do not want used or do want used.

Medicaid: A program, funded by the federal and state governments, which pays for medical care for those who can't afford it. The program usually helps low-income individuals or families, as well as elderly or disabled individuals. To receive Medicaid, an individual must meet certain criteria (such as income level), and also must go through an application process. Although all states participate in the Medicaid program, each state manages their own program, and is able to set different requirements and other procedures.

Memorandum of Tangible Personal Property: Tangible personal property memorandum (TPPM) is a legal document that lists items of tangible personal property like jewelry, paintings, or furniture and the persons who should receive the property upon the owner's death. It is used to direct the distribution of tangible personal property. This document can be handwritten or signed and is a separate document from the property owner's will. When this is referred in a last will and testament, it is a valid testamentary disposition under state law.

Net capital loss: The excess of allowable capital losses over taxable capital gains for that year. Allowable capital losses can only be deducted against taxable capital gains and additionally net capital losses deductible up to a limit of $3,000 per year. Net capital losses in excess of the $3,000 limit are carried forward to future year's taxes.

Non-binding: communication in written form that does not hold a party to an obligation, duty, promises, etc.

Nonqualified investments: taxes are paid prior to the investment being made. In most circumstances the post-tax money invested is considered the cost basis of the investment.

Nonqualified Stock options (NQSOs): Any employee stock option that does not meet with IRS requirements for favored tax treatment.

Non-qualified Retirement Plans: A tax-deferred, employer-sponsored retirement plan that falls outside of employee retirement income security act (ERISA) guidelines. Non-qualified plans are designed to meet specialized retirement needs for key executives and other select employees. These plans also are exempt from the discriminatory and top-heavy testing that ERISA governed qualified plans are subject to.

Permanent insurance: life insurance policies that are meant to be held for the duration of the insured's life.

Probate: The legal process which facilitates the transfer of a deceased person's property whether they leave a will or don't leave any will. The court establishes the authenticity of the will (if any), appoints a personal representative or administrator, identifies heirs and creditors, directs payment of debts and taxes, and oversees distributions of the assets according to the will or state law in the absence of a will.

Qualified Charities: An organization that has applied for and received tax-exempt status.

Qualified domestic trust (QDOT): is to preserve the marital deduction when the surviving spouse is not a United States citizen and the trust assets are likely to be subject to the federal estate tax if the marital deduction is not available**.**

Qualified Personal Residence Trust (QPRT): A trust created and controlled by the homeowner-grantor but the title to the residence is transferred to the trust. The grantor/trustee may retain the right to dwell in the residence for a specified term of years. During the grantor's stay they are not required to pay rent but are responsible for related expenses like maintenance and taxes.

Reverse mortgage: A loan available to seniors aged 62 or older, per HUD, is used to release the home equity in the property as one lump sum or multiple payments. The homeowner's obligation to repay the loan is deferred until the owner dies, the home is sold, or the owner leaves, they can be out of the home for up to 364 consecutive days.

Revocable living trust: A trust which can be amended or revoked by the person(s) who established the trust.

Skip person: a natural person assigned to a generation which is 2 or more generations below the generation of the transferor, or a trust that has one or more skip persons.

Sole Ownership: Only owner of particular property.

Special Needs Trust: A trust that must meet certain legal criteria to protect the special needs beneficiary and preserve any type of governmental aid they might be receiving.

Springing power of attorney: A power to act on the occurrence of some certain criteria, such as an illness or incompetency. The power is said to spring into existence upon the occurrence of the event. The agent's power to act for the principal under a durable power of attorney is usually a springing power.

Stepped Up Basis: The readjustment of the value of an appreciated asset for tax purposes upon inheritance. With a step-up in basis, the value of the asset is determined to be the higher market value of the asset at the time of inheritance, not the value at which the original party purchased the asset.

Target asset allocation: A portfolio an investor strives to maintain overtime and it's based upon the goals, time horizon, and risk tolerance, evolving over an investor's life.

Tenants in Common: A way of owning property in which two or more owners all "share" ownership of the property. The owners can own various percentages of the whole property, unlike joint tenants which each own an equal share. When one owner dies, his or her share does not "automatically" go to the other owner(s), because tenancies in common do not have a survivorship provision like joint tenancies.

Tenants By the Entirety: A way of owning property which, for almost all practical purposes, is the same as joint tenants. Tenancies by the entirety are creations of state law and are used only between husbands and wives, whereas joint tenancies can be used by anyone, not just by husbands and wives, who want to own property jointly.

Term Life Insurance: Term life insurance provides a death benefit if the insured dies. Term insurance does not accumulate cash value and ends after a certain number of years or at a certain age.

Testamentary trusts: A trust created by the terms of a will.

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T.O.D. (Transfer on Death): Transfer on death (TOD) registration allows you to pass the securities you own directly to another person or entity (your "TOD beneficiary") upon your death without having to go through probate.

Trust: A legal document in which property is held and managed by a trustee for the benefit of another known as a beneficiary. A trust is a relationship in which property is held by one person for the benefit of another. The trust can be created verbally, but will most often be in writing.

Uniform Probate Code: A standardized code designed by the American Law Institute to streamline the probate process. Many states have not adopted the code as part of their laws.

Will Contest: A formal objection raised against the validity of a will, based on the contention that the will does not reflect the actual intent of the testator (the party who made the will). Will contests generally focus on the allegation that the testator lacked testamentary capacity, was operating under an insane delusion, or was subject to undue influence or fraud. A will may be challenged in its entirety, or only in part.

Will Substitute: A will substitute is a technique that allows you to transfer property at your death to a beneficiary outside the probate process.

THIS LETTER OF INSTRUCTION IS NON-BINDING AND CARRIES NO LEGAL AUTHORITY.