

JOHNSON, GASINK & BAXTER, LLP

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## LETTERS OF INSTRUCTION IN ESTATE PLANNING:

### TELL YOUR FAMILY WHAT YOU REALLY MEAN

*By Daniel C. Gasink*

Too often, clients feel shoehorned into antiseptic legal jargon in their will or trust. As a lawyer, I use court-sanctioned terms like ‘maintenance and education’ because I want the Trust to be legally ironclad. I imagine my client might prefer to see ‘college room and board.’ In fact the client may well mean something specific along the lines of:

*‘college at a state school for no more than four years unless there is a really good reason and maybe graduate school but only if the degree will make money and also high school tuition if needed but not a boarding school unless, I guess, that is also really needed...’*

As your lawyer, I will stick to the accepted legalese, but your intent is extremely important. You can explain your intent to your Trustee by writing them a personal document called a **‘Letter of Instruction.’**

#### **What a Letter of Instruction Does**

A letter of instruction is a document you write to help your Trustee interpret a general provision in your Trust. To ensure that your documents are legally solid, we attorneys will use the legally accepted ‘ascertainable standards’ like ‘health, maintenance, support, and education.’ You will often want to give instructions that are more personal. Your letter of instruction supports your Trust Plan; one reason you chose to use a trust is to leave a personal set of instructions for your family. Practically, a Letter of Instruction guides your trustee on your intent: how you want your funds to be spent or invested after you are no longer able to be in control yourself. Estate law reveres the intent of the client as paramount- you should feel free to express your intent so your Trustee can follow your wishes.

### **Who Should Write a Letter of Instruction**

Anyone who feels their trustee would benefit from a personal supplement to the legalese in the trust. Parents of small children will often leave their guardian or trustee an instruction letter. Some Grandparents provide a 'legacy letter' or 'ethical will' which bequeaths the inheritance of their beliefs and values to their grandchildren. 'Special Needs Trusts,' set up for people with disabilities, are tightly written to protect inheritance from disqualifying a beneficiary from state benefits. These trusts are dense by nature and a Trustee would benefit greatly from a personal letter by the trust's maker explaining what he or she wants to see done with the trust funds. Finally a letter of instruction would help a Trustee know how to better handle funds set aside for pets or memorial markers.

### **Who Would Read My Letter Of Instruction?**

Your letter is a private, personal letter to your Trustee. If your trustee is a family member or friend, then you can write to them individually or write a message you wish them to share with some or all of your beneficiaries. Professional Trustees (e.g. trust companies or bank trust departments) want to follow your intent as your hired fiduciary. If you have named a Professional Trustee, tell them what you want and they will follow your wishes. Charities also want to honor your intentions, out of respect for your generosity and out to show future donors that they are good stewards.

### **How do I Write a Letter of Instruction**

Writing a Letter of Instruction is simple. You are simply writing a letter to a trusted friend. Use your own words to tell the Trustee you chose how you want him or her to take care of your named beneficiaries. Once complete, you will want to give your lawyer a copy for the file.



About the Author:

Dan Gasink is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Dan takes great pride in making sure that his work for clients is always reliable, correct, and on time.



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