

Statements of Grantor Intent and Wishes for Beneficiaries and Trustees

Introduction

These materials have been developed with a goal of enhancing the design and administration of trusts so beneficiaries and other members of their families view trusts established for their benefit as a blessing that contributes to their wellbeing and abilities to accomplish the contributions they want to make in the world.

Background information is provided to explain what a healthy Trustscape involves and how it can help accomplish this goal. This information includes some suggested questions for Grantors to stimulate their consideration of key issues that sometimes get overlooked during the design of a Trustscape.

A Sample Statement of Grantor Intent and Wishes for Beneficiaries in the form of a letter to a Beneficiary is provided for use by Grantors and their advisors. Some suggestions for personalizing the letter are included.

A Sample Statement of Grantor Intent and Wishes for Trustees in the form of a letter to a Trustee follows the letter to a Beneficiary and uses the same format, with some additional commentary included. The Trustee letter is expected to be developed after the Beneficiary letter is drafted and be based on input from the Grantor, Trustee and other members of the Trustscape.

Background

Trusts are funded with financial capital – often in the form of interests in family businesses – and they usually produce meaningful tax and other financial benefits. However, properly administered, trusts can produce many other benefits that are even more valuable to the wellbeing of the family.

A typical trust has many parties whose interactions can profoundly shape the culture of the trust and influence how the trust is implemented. The term "Trustscape" describes the relationships among these parties, which always include a Grantor (the creator of the trust), a Trustee (or Trustees), and a Beneficiary (or Beneficiaries). Other parties involved in the Trustscape often include distribution directors, investment directors, trust protectors, family office staff, legal and financial advisors, and beneficiaries' parents even if they are not serving in some of these other roles.

It is important for Beneficiaries to understand these roles and know with whom they should communicate, what they should communicate, and when they should communicate. Individuals serving as a trustee or a distribution director, investment director, or trust protector (collectively referred to here as a "Trustee") need to have the same understanding. It is also important to recognize that how a Trustscape operates can significantly impact relationships among individuals involved with it and other members of a Beneficiary's family, and the extent to which a trust Beneficiary actually benefits from the trust.

The experience of living “well” with wealth is challenging for everyone and being a Beneficiary presents additional challenges that are important to acknowledge. Sometimes these challenges are emotional. Beneficiaries may experience a range of emotions including intrigue, excitement, feeling “lucky,” and having a healthy sense of responsibility for good outcomes, as well as difficult feelings such as entitlement, anxiety, guilt, shame, and hyper-responsibility for outcomes. Other times, the challenges may be practical, such as how trusts can impact prenuptial agreements or decisions regarding appropriate levels and types of spending. Trustees need to be aware of these challenges and actively work to help Beneficiaries address them.

A healthy Trustscape takes all such challenges into account by supporting the Beneficiary to advance his or her understanding of the Trustscape and to develop certain learnable skills that can help the Beneficiary successfully maneuver within it. A healthy Trustscape fosters appropriate relationships among the actors in it and leverages the trust’s financial capital to enhance the Beneficiary’s human, intellectual and social capital. A healthy Trustscape also improves the likelihood the Beneficiary will use the trust’s financial resources in ways that contribute to his or her personal wellbeing and ability to accomplish the contributions he or she wants to make in the world. The ultimate hope is for the Beneficiary to experience the trust as a blessing notwithstanding its unique challenges.

A well drafted letter from the Grantor to the Beneficiary that describes the purpose of the trust and the Grantor’s intent and desires regarding the Trustscape can significantly improve the likelihood current and future Beneficiaries will have a positive experience within the Trustscape. The letter should be directed to the current Beneficiary (or Beneficiaries) of a trust, or potentially to Beneficiaries of multiple trusts that have identical provisions and are expected to be administered consistently, recognizing that the letter also will be applicable to future Beneficiaries.

Similarly, a well drafted letter from the Grantor to the Trustee – and maybe letters to others who are involved with administration of the Trust, such as distribution directors, investment directors and trust protectors – can significantly improve the experience current and future Beneficiaries have within the Trustscape. This letter needs to be consistent with the letter to the Beneficiary, but it generally will contain additional information regarding the Grantor’s intent and desires. The letter to the Beneficiary typically should be shared with the Trustee, but the letter to the Trustee may contain information that makes it inappropriate for it to be shared with the Beneficiary.

The sample Statements of Grantor Intent and Wishes (referred to here as “Statements” and presented in the form of letters) that follow are intended to serve as a basis for Grantors and their advisors to draft Statements that reflect provisions of the trust agreement, applicable trust law, the Grantor’s intent and wishes, assets of the trust, and the family’s circumstances. This goal can best be accomplished with input from legal counsel and maybe additional advisors who understand all of these key ingredients.

It also may be helpful for a Beneficiary of a multigenerational trust who has experienced the Trustscape to provide well drafted letters to future Beneficiaries, Trustees and other involved parties that reflect his or her experience with the Trust and within the Trustscape. These letters will

necessarily be based on that Beneficiary's biases, personal situation and unique experience, so they should be drafted carefully to avoid unintended consequences.

These sample Statements are intentionally direct and somewhat formal, with sample questions and language included in *italics* to illustrate some aspects. The Statements focus on the provisions of the trust document that are most likely to impact interactions among the Beneficiary and other members of the Trustscape, and they do not suggest the Grantor describe his or her wishes in significant detail.

This approach has been taken for two reasons: First, shorter documents communicate more effectively than longer ones to most people; and second, while a letter like this is not binding, it is instructive and can be used by a Beneficiary to challenge decisions made by a Trustee.

Importantly, other media can be used advantageously to supplement a Grantor's Statements. Videos, podcasts, and written narratives all provide the Grantor an opportunity to elaborate on the values and ideals that informed his or her intent and they communicate to most Beneficiaries and Trustees more effectively than a formal Statement.

Suggested Questions for the Grantor to consider:

- *Why and how do I (or we, as parents) want to communicate the wishes, values and experiences that led me (or us) to create this Trust?*
- *Why and how do I (or we) want to communicate my (or our) expectations for how the Beneficiary and the Trustee view their roles and how they interact with each other?*

While the Grantor is alive and competent, he or she should periodically revisit Statements to the Beneficiary and the Trustee, and consider revising them to reflect changes in family, financial or other circumstances, taking care to do so in a positive manner that reinforces the goals described above. Later, after the Statements can't be changed, the Beneficiary, Trustee and other members of the Trustscape should discuss how their contents should be interpreted and applied as these circumstances evolve.

Suggested Questions for the Grantor to consider:

- *What changes to family, financial or other circumstances should prompt me (or us) to consider revising Statements to the Beneficiary and Trustee?*
- *Who should be relied on to help me (or us) decide whether or how to revise Statements to the Beneficiary and Trustee?*