

FROM THE PROFESSIONALS

Letter of Final Instructions: Why You Need One (Part II)

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In the last issue of this newsletter, I talked about the importance of a letter of final instructions, and began to identify what it contains. In this segment, I have provided additional, helpful tips to assist you with preparing your letter.

STRATEGY. Writing the letter should not to be a daunting chore. Still, it is tedious to organize the needed records that clutter up your desk drawers, closets and other storage spaces. What I advise clients is to break up the work of sorting through financial papers into segments of no more than a couple of hours at a time—insurance one evening, investments another, and so on. There is a side benefit to this do-it-yourself project: your desk will be less cluttered, and you wind up tossing out lots of stuff as you organize your records.

RESOLVE TO KEEP YOUR LETTER UP-TO-DATE AND ACCESSIBLE. To make the letter most useful to your family, update it as needed. Look over the information and make any necessary amendments whenever there are major changes in your affairs—for instance, a marriage, divorce, birth of a child or job change. In essence, you want to make sure that some seemingly small changes do not add up to a fairly big one, which is why it is a good idea to review the letter on a regular basis—say, at year-end or when tax time rolls around.

Unlike a will, your letter is not a legal document. That is why you remain free to revise it as frequently as you wish to without the formalities (or legal fees) required for a will to be legally effective (i.e., signing and dating by you in the presence of witnesses, and signing by witnesses who are

not beneficiaries under the will). Make several copies of your letter. Attach one to your copy of your will, send one to your lawyer or executor, and perhaps keep one in the desk drawer or wherever your family will first look upon your death. On a personal note, my wife and I do our review every December and e-mail copies to our children.

AVOIDING A NIGHTMARE. Unless the heirs have a letter of final instructions, they will have to reconstruct the assets without guidelines, which can result in a nightmarish situation that causes family disputes and significantly increases legal (and other) expenses.

Like other lawyers, I have often been called in to help heirs search for property. My most memorable case was that of a much-married widow with children from each of her marriages. After her death, the half brothers and half sisters found themselves scavenging for such documents as a will, insurance policies, stock certificates, and bank statements. It was not until years afterwards that the squabbling siblings stumbled upon stock certificates secreted in the mother's armoire. Worse still, missing jewelry had them eyeing one another distrustfully, until they finally discovered the gems behind a loose board in the closet of a summer home that, fortunately, had remained in the family.

FINAL TIPS. To speed things up and lessen the children's expenses, I advised them, as I do all heirs, of several long-standing techniques for reconstructing assets that they could employ without my assistance. For starters, all they had to do was monitor mom's mail during the filing sea-

son from banks, brokerage outfits and other financial institutions, and for 1099 forms. Those forms would show interest, dividends and other income sources. As anticipated, the 1099s eventually enabled them to track down much of her property.

The children might have been able to reconstruct other assets from her tax returns. The possibilities included the existence of retirement plans and the ownership of real estate for which she had claimed deductions for property taxes. Unfortunately, that approach was unavailable, as they found that she had not filed 1040s for years.

What if the mother had filed, but the copies were unlocatable? Then the fastest way to obtain them is from the preparer of her returns, assuming she used one. The law, in most cases, requires preparers to keep copies for at least three years after the filing deadline. Failing this, the children can get copies from the IRS by submitting Form 4506 (Request for Copy of Tax Form), which is generally received at least 60 days after submission.

Meanwhile, the needlessly protracted search continued. As a consequence, so did my fee—though based on an hourly rate that I deemed moderate—which continued to swell, a circumstance that discomforted the children and comforted my creditors.

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