

# THE “GOAL STANDARD” OF ESTATE PLANNING

The wealth transfer intent of a deceased person cannot be determined by a contemporaneous conversation. To uncover that intent, a previously written document appropriately labelled as their “will” is consulted. Curiously, the modern tax-based will and its cousin, the revocable trust, usually have very little, if any, actual language discussing your personal desires.

This lack of personalized intentions usually caused minimal concern for affluent individuals, lawyers and heirs from 1976-2009. In those years, a successful wealth transfer plan was more often measured by tax minimization than goals optimization. However, when the Tax Relief Act of 2010<sup>1</sup> effectively repealed the estate tax for one year and altered or eliminated certain tax-motivated bequests, unwritten donative intent became very important. For example, in response to the one-year “repeal,” Florida allowed its courts to look outside the deceased person’s will or trust to find evidence of gift intent, even if the evidence contradicted the “plain words” of the document.<sup>2</sup>

Wealth transfer intent has now become so important that what began as a one-year exception in one state has become a national trend in the law to interpret the intent of all wills and trusts.<sup>3</sup> Minimally, a clearly written statement of wealth transfer intent (SOWTI) within the will or trust document is a good idea. At its best, a SOWTI could serve as a “material purpose” that prevents the unintended alteration, termination or modification of a long-term trust by spendthrift beneficiaries.<sup>4</sup> The SOWTI, as a personalized declaration of your donative goals, also helps protect against misuse, mismanagement and misappropriation of your bequests. Individuals rarely articulate a personal goal for any portion of their wealth transfers within their estate-planning documents. A SOWTI changes all that. While a SOWTI will not eliminate the need for sound, legally-tested dispositive and administrative language, surely a document entitled “Last Will and Testament” should have some lasting personal testimony of your will/intention.

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### WHAT A SOWTI IS NOT

A “statement of wealth transfer intent” may be a new term for many, so it is critical to have a clear definition. Perhaps the easiest way to define a SOWTI is to state what it is *not*:

1. It is not an ethical (spiritual) will;
2. It is not a precatory statement for discretionary trust distributions; and
3. It is not a family mission statement or family constitution.

### Ethical Will

An ethical will expresses and transmits the personal values of the writer. It is not a legal document at all, despite its name. In many ways, it is simply a letter about life, to be applied after death. Commentators seem to agree that the first ethical (spiritual) wills were probably created in ancient Israel.<sup>5</sup> Some reference the Jewish patriarch Jacob as providing the first recorded instance of an ethical will.<sup>6</sup> Perhaps a more germane example of an ancient Israeli ethical will is King David’s “death bed” admonitions:

“These are the last words of David:

*‘...When one rules over people in Righteousness, when he rules in the fear of God, he is like the light of morning at sunrise on a cloudless morning, like the brightness after the rain that brings grass from the earth.’”<sup>7</sup>*

Note the elements of an ethical will found in this short statement. King David sums up his personal history as a ruling monarch in the form of an admonition to his descendants as to how to rule. He then adds the positive consequence of these ethics by stating that those who display these qualities will be as awesome as a cloudless sunrise and as productive as bright sunlight on rain-drenched grass. The “last words of David” also make it clear why ethical wills have been referred to as “spiritual wills.”

While the application of an ethical will to the thoughts and actions of descendants are compellingly important, it may be very difficult to apply these ethical statements to wealth transfer. Ethical wills are about transcendent goals and spiritual values; wealth transfer is about practical goals and material values.

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Excerpt from the statement of wealth transfer intent of “Larry Johnson”

*“This statement is being prepared by me...to share my thoughts and intentions regarding my estate plan, and also to tell the story of my financial success. My hope is that this statement builds understanding with my family and others about what I’ve achieved in life, and what I yet hope to achieve after my passing.”*

Another example of an ethical will comes from President Obama’s letter to his two daughters:

*“[Your Grandmother] helped me understand that America is great not because it is perfect but because it can always be made better – and that the unfinished work of perfecting our union falls to each of us. It’s a charge we pass on to our children, coming closer with each new generation to what we know America should be.*

*I hope both of you will take up that work, righting the wrongs that you see and working to give others the chances you’ve had.”<sup>9</sup>*

The Internet is full of other examples of ethical wills.<sup>9</sup> They are as interesting as the ancient epitaphs on gravestones, but they are not necessarily effective in explaining the author’s wealth transfer intentions. And even if they were, the executor, personal representative or trustee may not be able to consider them because they are intentionally separated from the dispositive testamentary documents.

### **Precatory Language**

Precatory language is the nonbinding words of instruction typically attached to trust provisions as a further explanation of your trust direction. Classic precatory language is found in provisions within a family bypass trust that state, for example, “the trustee may, but is not required to, consider the income of the beneficiary from sources outside the trust in making a discretionary payment.” The words “may, but is not required” make the statement precatory. Unfortunately, after reading this phrase the trustee really has no better understanding of your intent.<sup>10</sup> Should the trustee consider outside income to make the trust assets the funds of last resort, or ignore outside income to make the trust assets the funds of first resort? A SOWTI would give the “why” of the nonbinding instruction.

A trust document could have a very short SOWTI related to a specific trustee duty. For instance, the phrase, “it is my desire to support my wife with the luxuries and comforts that I would provide her if I were still living,” technically qualifies as a SOWTI. However, a much broader and more personalized declaration of purpose is advisable – one that will be a reference point for all precatory language and provide context for all other provisions of a wealth transfer document.

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Excerpts from the statement  
of wealth transfer intent of  
“Maximus Doe”

*(My wife) and I accumulated financial wealth as a byproduct of diligent work efforts, frugal spending habits, eliminating unnecessary debt, and conservative investments. Historically we’ve placed a very high priority on family ‘values.’ Our ‘happiness’ is derived from our commitment to the welfare of those dependent on us – primarily our children and their descendants.”*

## Mission Statement

A mission statement is a description of organizational purpose. When properly crafted, the mission statement can be used to guide the decisions of the organization as it acts through its various constituent members. A generic example of a mission statement that applies to all of us is the preamble to the U.S. Constitution:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

Often family mission statements are used to form a family constitution that governs the workings of the family as a unit. A SOWTI is also about purpose, but it is not about the purpose of a group or organization. It is about your purpose for the wealth transfer. A mission statement can be useful for the profitable activity of a business because it differentiates the business from its competitors. In a family-operated business, a mission statement is frequently an important and useful guide to define the impact of family relationships on this profitable activity. Mission statements can also be helpful tools for family governance in the context of a business or family-owned assets. However, wealth transfer is not about governance.

For wealth transfer purposes, the mission statement will work only if the wealth in question is regarded as the family’s wealth. James E. Hughes Jr., in his comprehensive treatise on family wealth transfer, *Family: the Compact Among Generations*,<sup>11</sup> implicitly assumes the current wealth of the grantor-parents is implicitly the “family” wealth of their descendants. Hughes Jr. and many commentators like him assume a “family-owned model” for post-mortem wealth. The mission statement and family constitution (or the “compact among generations”) would be an ideal vehicle to codify the post-mortem goals of the family as a group of wealth beneficiaries.

A different opinion of wealth transfer views the current title holder rather than the family group as the wealth owner. Under this view, the primary determinant of wealth transfer isn’t the wealth owner’s family, but the individual wealth owner.<sup>12</sup> A grantor’s SOWTI is the better solution for purposing wealth transfer under this individual ownership view.

Finally, a family mission statement requires a family to agree on a mission. A SOWTI simply requires you, as the wealth owner, to have an explicit, unambiguous purpose for transferring your wealth. A professional advisor will have enough difficulty assessing and codifying your wealth transfer intentions. It is exponentially more difficult to assess the future intentions of a constantly

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changing family group. In reality, the SOWTI is much simpler and much more useful to you and to the drafting attorneys, trust administrators, personal representatives and courts.

### DEFINING EXPECTATIONS

Once you agree that an individual wealth owner should have the final say in transferring wealth, then use your current financial planning process as a roadmap for how to achieve goals-based wealth transfer. For example, when you give up current consumption to save or invest money, there is always an explicit or implicit reason for that decision. Values can often be nothing more than the priority of personal preferences. And the preference to save rather than consume (or gift) will often uncover very important values about you.

Sometimes wealth accumulation is such a strong habit there appears to be no underlying reason for it. However, beneath every good habit is a belief held as a value. For some risk adverse people their personal value might be financial prudence. For others their value might be community involvement. For a professional money manager to properly invest a client’s accumulated wealth, she must answer the question “Why did you accumulate this wealth?” For an advisor to properly transfer a client’s accumulated wealth they must answer the question, “Why are you transferring wealth to this beneficiary at this time?”

Once you discern the “why” of accumulation, you can establish appropriate investment goals. These goals will then inform the portfolio management process. Once you answer the question, “Why are you transferring this?” you can establish your SOWTI. With a SOWTI that reads and feels like you, it is possible to create a wealth transfer document that has optimal wealth planning and transfer tax minimization.

Defining wealth transfer purpose is not that easy. Just as investment management success can be hindered because of unrealistic return expectations, wealth transfer planning can be thwarted by unexpressed or miscommunicated personal values. Wealth transfers should have a purpose that is tied to genuinely held and previously expressed personal values. However, uncovering personal values can be a difficult task for many wealth owners. Dr. Guenther Weil, Harvard Ph.D. and founder of Value Mentors, says, “People don’t really know what their true values are. They talk about their aspired values, purported values, or what they may consider to be politically correct values, but they don’t really know what their actual values are.”<sup>12</sup> Wealth transfer values can be discovered from the underlying priority of preferences that determine daily financial decisions. A SOWTI is the summary of your “priority of preferences” for wealth transfers.

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### THREE MINIMUM REQUIREMENTS

With your values properly acknowledged, it is possible to draft a written statement of intent. The goal of the SOWTI should be to provide insight into your overarching wealth transfer philosophy. The SOWTI should use goals-based language that clearly establishes your material purpose for the will or trust. It should be intentionally designed to give the attorneys, accountants, beneficiaries, fiduciaries, money managers and courts guidance on your purpose for the wealth transfer. Remember death itself gives no independent meaning or purpose to your post-mortem wealth transfers – only a SOWTI can provide that meaning or purpose.

Here are three minimum requirements for an effective SOWTI. It should:

1. **Demonstrate a unique intention that is tied to your personal history, personal values or personal perspectives.** The test is whether the information expressed in the writing could be known without specifically asking you. Therefore, a generalized statement, “I want my descendants to be productive citizens,” would not be a very effective indicator of intention because the statement could probably be attributed to any parent. However, the statement: “As an immigrant to the United States my goal is that my descendants take advantage of the economic opportunities offered by this country’s freedoms that would not be available in the country of my birth” would be much more effective.
2. **Clearly articulate a direct tie between your unique personal intentions and the creation of the specific trust in question.** The words, “This trust is for the benefit of my descendants,” is far too general. However, a sentence that reads, “This trust is specifically designed to serve as a financial catalyst for the personal and professional achievements of my descendants,” would tie in much better to the intentions expressed in the preceding paragraph.
3. **Give some indication of your opinion on modification and/or early termination of the trust by the beneficiaries, trustees or courts.** A statement that the trust should be terminated “when it is no longer economically prudent to continue it” is boilerplate. A more useful sentence would be, “The drive for personal fulfillment and achievement never ends and, therefore, this trust should be maintained to augment and support such efforts of my beneficiaries over multiple generations and should not be modified to serve an alternative purpose unless and until there are compelling circumstances that make the material purpose of this trust untenable, and these ‘compelling circumstances’ for change could not have been imagined by me when I created this trust.”

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The statement of wealth transfer intent should use goals-based language that clearly establishes your material purpose for the will or trust. It should be intentionally designed to give the attorneys, accountants, beneficiaries, fiduciaries, money managers and courts guidance on your purpose for the wealth transfer.

### SAMPLE SOWTI PARAGRAPH

Here’s a statement of wealth transfer intent that includes the three minimum requirements:

I acquired the wealth transferred into this trust at age 60 through starting a business that grew out of a personal passion. As an immigrant to this country it is essential to me that my descendants also demonstrate a lifelong commitment to economic achievement that is not available in my birth country. Therefore, this trust was created by me to serve as a financial catalyst for the personal, cultural and professional achievement of my descendants. The human need for productive personal fulfillment never retires or ends. I intend that the funds in this trust be strategically distributed throughout the entire lifetime of the designated beneficiaries. Since I have transferred substantial funds to my children outside of this trust, I intend that this trust should not be terminated prematurely to serve any alternative material purpose.

### OTHER SOWTI EXAMPLE PARAGRAPHS

A sample trust created by Jon J. Gallo, Eileen Gallo and James Grubman includes another short but helpful introductory paragraph for a SOWTI.<sup>13</sup>

*To my descendants and their Trustees, both living and those to be conceived and born in the future: On the most basic level, the purpose of this trust is to further the pursuit of happiness by my descendants. I use the phrase the pursuit of happiness in the same way as our Founding Fathers used it in the Declaration of Independence. Neither they nor I were or are talking about acquiring more material goods or taking longer vacations, but rather the sense of self-sufficiency that is derived from becoming self-reliant and financially sound, having a sense of emotional, social, and mental competence and giving back to the community.*

*The money in this trust will help make things more convenient for my descendants but it cannot make them happy. I believe that the family’s money, including the money in this trust, should be viewed as a tool to support the growth of the family’s real capital, which consists of the family members and their knowledge achieved through life experience and education. This is why I believe that travel, involvement in philanthropy and education to one’s maximum potential are so important.*

The Gallo sample SOWTI is the first paragraph of a trust that provides discretionary trust provisions for travel and education. There is also precatory language in the Gallo example that encourages generous distributions to beneficiaries and to charity. A well-crafted SOWTI should make it significantly easier for the trustee and the beneficiaries to manage expectations, as well as discretionary distributions.

Although traditional estate planning documents are built around legally tested clauses and “boilerplate” language, a SOWTI, by definition, has no boilerplate. Each wealth owner’s life story and wealth transfer goals are, by definition, unique. The drafting tendency will be to imitate well-written phrases like the Gallo example. However, that will simply not work as an effective SOWTI.

**To demonstrate the detail and specificity that will be most helpful in a SOWTI, two complete examples have been included as addenda.** Note the differences in tone, style and facts within these examples. The goal is that heirs, beneficiaries, executors, trustees, attorneys, judges as well as disgruntled relatives will all recognize the tone and words of the SOWTI as consistent with how the decedent communicated important matters.

### CONTINUING THE CONVERSATION

The conversation about wealth transfer was never really about the inevitability of death or the propriety of tax minimization. It was and is about extending defined benefits of wealth to someone other than the current wealth owner. Most of us probably have nagging, counterintuitive, suspicion that giving away wealth might actually be more fulfilling than accumulating wealth. And that “suspicion” is why successful estate planning is defined by the accomplishment of the wealth transfer goals set out in your SOWTI. Therefore, an accurate and articulate SOWTI may be the most important provision in your estate planning documents. And, funding the defined benefits of the SOWTI may be one your greatest lifetime successes.

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### LEARN MORE

As a leader in trust and estate services, Northern Trust can help you meet your unique goals for today and tomorrow. With your values as our guide, we may be able to create sophisticated wealth transfer strategies that help you maintain your current lifestyle while providing for your loved ones and giving to the community. For more information, contact your Northern Trust relationship manager or visit [northerntrust.com](http://northerntrust.com).

The two examples that follow are actual wealth transfer statements of intent, but they have been edited to protect identities. Most of the similarities in tone and language are a result of this editing. The actual statements were significantly longer and more detailed.

**ADDENDUM ONE: STATEMENT OF WEALTH TRANSFER INTENT OF “LARRY JOHNSON,” A BUSINESS OWNER**

The language below is taken from an individual’s document but has been changed, with his permission, to conceal the identities of all relevant persons. The words and phrases in whole or in part should not be regarded as suitable or appropriate for other trusts or wills. Please consult with your individual attorney or client for appropriate SOWTI language.

This statement is being prepared by me, Larry Johnson, in 2020 to share my thoughts and intentions regarding my estate plan, and also to tell the story of my financial success. My hope is that this statement builds understanding with my family and others about what I’ve achieved in life, and what I yet hope to achieve after my passing.

I am the eldest son of Bill and Linda Johnson of Cleveland who were married June 6, 1938. My father, the eldest of three sons and no daughters, was the first in his family to attend college, and then go on to successfully complete law school. My Mom was also the eldest of her family, and one of two daughters of a very successful owner and operator of beauty salons. She graduated from Oberlin College in 1936 with a degree in art history.

Dad was originally a criminal defense attorney who realized that he could practice law, and invest in real estate. My father’s parents were Irish-Catholic immigrants who left Ireland under religious persecution and faced heavy discrimination when my grandfather applied for work. My father said that he went into law as a response to the injustices he heard and saw towards his parents. He and a partner began acquiring land and buildings in downtown Cleveland for development into residential and commercial properties. His real estate business proved successful – so successful that my parents began collecting art with the acquisition of a Picasso in 1949.

I was fortunate enough to be able to attend the University School, a private school in the Cleveland suburbs. My neighborhood was very economically diverse growing up so I learned to appreciate the struggles of the “less fortunate.” I received good grades in school and, therefore, was accepted to Boston College, where I studied business and excelled at athletics, particularly basketball.

Upon graduation from college, I was quite fortunate to join the Boston Celtics, an unexpected but welcome

event. My basketball career was short-lived, however, with an injury and a child, Brian, who I had with a woman I met in college, Lisa. It was a tumultuous time for both me and Lisa, who was applying to graduate school to study physics, and we decided to go our separate ways. Brian was mostly raised by Lisa’s parents, as my own parents strongly disapproved of our relationship, and I’m sad to say that I have not had any contact with Brian or Lisa since my child support payments ended.

Shortly after my breakup with Lisa, with the Vietnam War in full swing, I applied to Army Officer Candidate School and was commissioned in June, 1968. My three years of active duty took me to the Philippines, Taiwan, Hong Kong, Singapore, Guam and Midway Islands, the Arctic Circle and Tunisia, among other destinations, I returned to Cleveland to pursue an M.B.A. at Case Western Reserve University where I met my first wife, Carolyn James. We were married on December 31, 1971.

Upon my graduation from Case Western I began working for a real estate development company in downtown Cleveland. After a few years of learning the business, I decided to establish my own company, engaging in commercial real estate development. While the business was successful, it was not without risk. The volatility of the commercial real estate markets put me in serious danger of declaring bankruptcy. With help from my family, however, I was able to work out arrangements with my lenders to help keep the company afloat.

During this time, Carolyn and I had three children, David, Ann and Gloria. We moved to Shaker Heights, Ohio, for its proximity to the city, and for its peace and quiet. Unfortunately, my marriage to Carolyn was unstable and in 1996 we divorced. It’s clear to me that the failure of my marriage caused great harm to our children. David is a law professor at NYU, single, and seems to be wounded in his search for a lasting relationship, while Gloria, a

former nun, is now married with two children and does not communicate with me at all. My relationship with Ann, who has also remained single, has been stable, however, we went for long periods with no contact.

Sadly, Carolyn died of cervical cancer within a year of our divorce. Shortly after her death I met my second wife, Suzanne, and we formed Titan Partners as a real estate management firm. The company landed several lucrative apartment and office building management contracts and flourished. Also, the real estate investments I had made in the 1980s and 1990s recovered and began generating solid cash flow. By the start of the new millennium our life was good.

In 2005 my Dad passed away. Losing him was difficult for me, since I had become accustomed to talking to him about my business ideas and the deals I was working on or thinking about. His knowledge and experience benefitted me greatly. His death, though, helped me financially. My mother, brother and I dismantled the Johnson Family Limited Partnership, my parents’ estate planning vehicle, which added to my direct real estate holdings, marketable securities and cash.

In 2012, two things happened that changed the professional direction of my life. One, together with a partner, I acquired a farm in Kentucky to breed racehorses. Second, I made an investment in an antiques gallery in New Orleans specializing in early 20<sup>TH</sup> century art, jewelry and furniture. Although the antiques business failed, I was introduced to the art world and found my one true passion. I was able to help my daughter, Ann, launch her own gallery in New Orleans with the contacts I made running my antiques business.

My financial success has led me to my other major activity, philanthropy. Saint Ignatius of Loyola said, “Teach us to give and not count the cost.” Suzanne and I take the time to use our financial resources to support the causes that grew out of our life story. We used the seed money from my mother’s estate to establish our family foundation, which focuses on organ transplantation. I’m alive today because of a kidney transplant I needed 20 years ago. I have funded specific research projects for organ transplantation at Case Medical Center, UC Davis Medical Center and the Mayo Clinic. Suzanne and I also make significant annual personal contributions to the foundation.

The second major focus of the foundation is the Catholic Charities. Suzanne and I both come from Irish Catholic ancestry with a strong commitment to supporting the

Catholic institutions that help those less fortunate. We’ve also established several college scholarship funds to Catholic colleges. And, the foundation serves as a vehicle to make donations to projects that care for elderly Irish Catholic priests and nuns who have faithfully and honorably served others.

The third focus of my philanthropy is education. I believe that all lives are improved by education. My grandfather was a janitor, but my father completed law school, changing the lives of everyone in the family. Through the Larry Johnson Foundation Scholarship fund, Suzanne and I have endowed two four-year scholarships at Boston College, and the foundation is partially funding a third four-year scholarship at Case Western Reserve University. My estate plan directs the foundation to also endow a full seven-year scholarship for economically disadvantaged kids to the University School outside of Cleveland. A student with excellent academic achievement and good behavior will receive full tuition, fee and expense payments for sixth grade through high school graduation. I believe that graduation from the University School with a full scholarship will make a college scholarship a relatively easy achievement, thereby paving the way for a major shift in the future for that young person and future generations.

The fourth and final area I’m interested in is post-impressionist art. My parents were art collectors and I used to joke that I grew up in an art museum. The fact is that I certainly have developed an interest in art, and Suzanne and I enjoy our collecting activities. Therefore, the foundation provides financial assistance to numerous art museums. Also, my parents’ art collection was donated to the Bill and Linda Johnson Arts Foundation, which has sold the artwork and is now focused on supporting emerging artists.

With this background, I have made suggestions and directions for the future, after my passing. My estate plan is simple. If I die before Suzanne, then two GST trusts established by my parents are directed to my son David, along with additional cash or marketable securities from me, all to a trust to be established for his benefit with The Northern Trust Company as Trustee. My current estimate of the corpus of this Trust, as of today, is \$10 million. With an estimated 4% withdrawal rate, this will generate \$400,000 annually. This is an enormous sum for my son and I think it would be disruptive to his lifestyle if it were automatically distributed to him. While he’s enjoyed a successful career as a law professor, his true passion is music,

and he would like to enjoy a second career creating, performing and recording his own work. I envision that any distribution to David will be used to fund his music passion in a way that will enhance his joy and the enjoyment of others.

Living in Manhattan is expensive. Even with his legal salary, his lifestyle remains fairly modest. The Trust has been established to provide him with latitude to pursue his interests, including supporting other performing artists. The Trustee of his trust is to have great leeway to assist him with utilizing the income from his trust, or to invade the principal if needed. For example, as of today, David has no car but is thinking of buying one and renting a parking space in his building. He paid about \$800,000 for his apartment in Manhattan and has a \$500,000 mortgage. David does not spend his entire salary, and his income is supplemented by investments.

Although David is to have “principal invasion rights,” this right is to be limited to funds that are either for David’s direct benefit (which could include additional funding for his musical work) or for donations to recognized 501(c) (3) charities in which he has an interest. Although he may utilize income from the Trust solely as he sees fit, it is my intention that NO principal be utilized for the benefit of his siblings or descendants.

As I mentioned earlier, my daughter Gloria and I do not communicate. We’ve had a bad relationship for years, especially after her mother’s passing. In 2005 we had a major disagreement while on a Mediterranean cruise with David and Suzanne. Real communication between us was never restored after that. In 2006, just before Gloria moved to Seattle with her then-fiancé, we consulted with a therapist in Chicago to attempt to repair the relationship. It was during these sessions that Gloria told me how damaging the events leading up to my divorce from her mother had been to her. She was so terrified by the yelling between her mother and me that she had hidden in her bedroom as a young girl when we were fighting. At the end of the fourth session, she told me that she was in such a fragile state that she wanted no contact from me, and to wait for her to call when she was ready.

A year later I tried to engage her in conversation about some of the issues that had been raised during our therapy, but she was unwilling to do so. She was busy planning her wedding without input from us. The wedding, on July 22, 2007, was at the Washington Park Arboretum in Seattle. My

mother Ellen, who was 92 at the time and very frail, could not attend the wedding due to the travel and outdoor setting, which required a lot of walking. Even so, Suzanne and I flew to Seattle to host the reception.

On Sunday, the wedding day, the weather was terrible. Instead of warm and dry, it was cold with intermittent rain. After the wedding ceremony, which was performed by a non-denominational minister because Gloria’s husband is not Catholic, I learned that my mother had become very ill, so we did not go to the reception and instead Suzanne and I went back to Cleveland the same evening. My mother died a week later.

The final rift with Gloria came with the birth of her second child in May, 2011. I flew to Seattle for the baby’s baptism, but I had not been feeling well for several days leading up to this trip. As a result, I was unable to stay the entire day. Gloria never forgave me for leaving right after the ceremony, and later attempts at reconciliation were unsuccessful.

My wealth transfer intentions toward Gloria can be expressed very simply – since Gloria wants nothing to do with me while I am still alive, then she will get nothing from me after my death. For purposes of my estate plan, she has been treated as if she and her entire family had predeceased me. The only material things she will receive are from a life insurance policy and an investment vehicle she shares with David, and from which I cannot excise her interest.

I have improved my relationship with my daughter Ann, but I have always felt that she wishes to remain loyal to her mother and sister while being courteously cordial but aloof with me. I am, however, very proud that she has taken up our art passion and has fully immersed herself in the gallery and in the culture of New Orleans. Ann is a fiercely independent woman and would never take money from me if it appeared that I had any expectation attached to it. Therefore, I have created a trust funded with \$1,000,000 to make discretionary distributions to artists, artwork, the gallery or general cultural endeavors in New Orleans or any other activity suggested by Ann. I recognize that this trust will not qualify as a charitable trust and that distributions may carry out taxable income to anyone receiving a distribution. However, I envision that once Ann warms up to the reality that she has unfettered control over the trustee distributions without any strings attached, she will use up the funds fairly rapidly.

After all bequests, the balance of my estate is to remain in a trust in which Suzanne is to have a life estate and access to all of the income generated by the trust. Currently, this approximates \$3 million annually. Our lifestyle is modest relative to our income. We own only one home with a required mortgage payment of \$4,000 each month, we each have a car with lease payments of about \$600 per vehicle, and, although we typically travel first class, we do so by upgrading from coach with the miles we collect. We do little traveling for pleasure, and do not book suites when we do. Our clothing purchases are modest for our means, and Suzanne has repeatedly stated that she would prefer to just stay home rather than travel or go out. Her income from two existing trusts I've established for her benefit is about \$200,000, with the taxes paid by the trust. I cannot imagine how she could spend all of the income that will be available to her. However, since my intent is to take care of her, she is to have the right to invade principal if needed, and is to be her own trustee.

The art will belong to Suzanne to dispose of as she, and she alone, deems appropriate. Upon her death the trust is to be passed on to the Larry Johnson Foundation ("LJF"), as described below.

If Suzanne predeceases me, then I continue as trustee of the trust until my death or incapacity. At the present time, Suzanne has my healthcare power of attorney which will need to be modified if she goes first.

At my death, under this second scenario, David is entitled to the same GST trusts and cash or marketable securities, but also one-third of the artwork. Ann will also receive one third

of the art, and the balance of, along with the monetary assets including cash, marketable securities, commercial real estate and investments in privately held companies, are to be left to the LJF, which The Northern Trust Company is to administer. The art held by the foundation is to be sold within five years. I have specified five years to avoid a short window to sell that occurs during unfavorable economic events, such as the 2008 recession. My strong preference is for a faster sale as long as the relevant markets are healthy.

As stated in my estate planning documents, the art that is desired by the museums with which Suzanne and I have had a relationship should be donated to those museums and not simply sold for cash. These museums include: The Museum of Modern Art (MoMA) New York; The Allen Memorial Art Museum at Oberlin College; and the Cleveland Museum of Art. In the event that two or more institutions wish to have the same work(s), then Northern Trust shall give preference to the institution that will commit to the longer or greater display schedule in writing for the work(s) in question.

As for the cash that will be generated in the LJF, my estate plan sets forth the disposition of the proceeds very clearly. There are specific grants such as those described above, and any remainder is to be donated, by percentages, to the charities I have specified in the LJF documents.

I have been extremely fortunate to have done so well in life and I hope that I have also done some good. It is my wish to do even more good after my death and I am counting on The Northern Trust Company to make that happen after Suzanne and I are both gone.

## ADDENDUM TWO: STATEMENT OF WEALTH TRANSFER INTENTION OF “MAXIMUS D. DOE,” A CONSERVATIVE INVESTOR

The language below is taken from an individual’s document but has been changed, with his permission, to conceal the identities of all relevant persons. The words and phrases in whole or in part should not be regarded as suitable or appropriate for other trusts or wills. Please consult with your individual attorney or client for appropriate SOWTI language.

This Statement of Wealth Transfer Intent was finalized in 2019. It should serve as a guide to my spouse Naomi, my daughter Betsy L. Lincoln, my two sons, John R. Doe and Tyler P. Doe, all my future descendants, trustees, fiduciaries, money managers, my attorney and the courts in understanding my intentions with respect to my wealth during my lifetime and beyond. It should also become a key and integral part of the amended Estate Planning documents as revised by Mr. Andrew Levine of the law firm of Post, Mortem and Dunn of Rock Falls, Florida.

### SUMMARY OF OUR INTENT AND WEALTH PHILOSOPHY

Our intent is to provide up to \$100,000 per year (in 2019 dollars) of trust annuity distributions for all years that the children’s trusts are in existence, with distributions inflation-adjusted to 2019 dollars to maintain purchasing power in future years. These trusts have been established to serve as a financial catalyst for the personal and professional development of our children and their descendants.

### HOW I DEVELOPED WEALTH AND MY WEALTH TRANSFER PHILOSOPHY

Naomi and I accumulated financial wealth as a byproduct of diligent work efforts, frugal spending habits, eliminating unnecessary debt, and conservative investments. Historically, we’ve placed a very high priority on our family “values.” Our “happiness” is derived from our commitment to the welfare of those dependent on us – primarily our children and their descendants.

Our family’s wealth was achieved by a combination of: (a) the application of an excellent education at the University of Michigan (B.S. in Finance) and an M.B.A from Carnegie Mellon, (b) hard work, good fortune and a very successful thirty-five year career with Pittsburgh National Corporation (PNC), (c) the work ethic and child-rearing responsibilities of my wife, and (d) our combined efforts to be aggressive savers and frugal spenders while making conservative investment decisions.

The value of a higher education, hard work and prudent saving habits were instilled in me by my parents. My father worked for the U.S. Postal Service in Lancaster, Pennsylvania, and thus my brother and I grew up in a lower middle-income

household. My father used the “envelope system” for savings and for allocating a variety of household expenditures, and taught me at a very young age the value of hard work and savings. By the time I was nine I had two morning paper routes. At the age of ten I helped cut lawns with my father for elderly friends, and worked a five acre “garden” on the outskirts of town owned by a local doctor, which grew vegetables that were sold door to door. When I was thirteen I started to caddy at the local country club.

Through the encouragement of the Head Golf Professional and several prominent members of the club, I applied for and was awarded the Evans Scholarship through the Western Golf Association. This four-year “full ride” academic scholarship is awarded to qualified individuals who have caddied for at least three years, maintained a B+ average in high school with an emphasis on extra-curricular activities, and are in need of financial aid to attend college. Since the inception of this Foundation in 1930, over 11,000 scholarships have been awarded. I held various officership positions within my Evans Scholar Fraternity at the University of Michigan, and these leadership roles were invaluable to me as I began my career with Pittsburgh National.

### MY PERSONAL VALUES RELATED TO MARRIAGE, FAMILY, AND INVESTING

Meeting and marrying Naomi has given me a greater appreciation of the benefits of committed parenting. As of this date we have been married for nearly 48 years. Just as in raising our children, the accumulation of wealth has been a joint effort and my wife is one of the best examples of someone who has a keen appreciation of balancing love of spouse with raising a family. Likewise, we want our descendants to grow up in a household where their parents are attentive, loving and caring.

We’ve been aggressive “savers,” frugal “spenders” and conservative investors throughout our lives and have surrounded ourselves with trusted legal, accounting and financial advisors. We hope that our children strive to maintain these same virtues and align themselves with similar advisors and money managers that will allow them to conservatively manage their investments and preserve their own wealth.

I suggest but do not require that the investment selections

for all trusts that we create be managed by a seasoned portfolio manager, ideally at The Northern Trust Company, and follow these principles: (a) the bulk of the portfolio should be invested in high income/low risk/solid growth/dividend stocks, and/or a highly diversified portfolio of low “beta” investments), b) specific investments that will likely vary depending on the beneficiary’s age (a mix of equity and fixed income), occupation and each beneficiary’s “stage of life,” and (c) any other “alternative investments” as deemed appropriate by the Portfolio Manager.

### BACKGROUND ON MY TRUST BENEFICIARIES

The following will give both the current and future trustees some background information as of this date on my children and grandchildren. John (age 44), Betsy (age 41) and Tyler (age 39) each have different desires and interests, and wealth distributions should recognize those differences. I encourage the trustee of our wealth to disburse the “income” portion to our beneficiaries on no less than an annual basis. In addition, I would like the trustee to honor reasonable requests by our descendants (especially my two sons if they remain unmarried) to withdraw up to 5% of the principal amount of the investment management account if income is not sufficient in any given year to handle basic necessities and/or opportunistic lifestyle changes.

My two sons are single with no descendants at this time. My daughter, Betsy, has four children. Our primary goals are to provide support for our children; however, we have provided that my sons can appoint up to 10% of their trust (up to a maximum of \$150,000) to non-descendants but the remaining 90% of the trust has to be given to our grandchildren. We’ve provided for our grandchildren’s education through the establishment of “Smart Investment” 529 College Savings plans with the State of Pennsylvania. However, we also want to provide positive incentives and rewards for our descendants after they complete college and at the time of significant events in their lives. These “events” are outlined in Article 8.4 of our Revocable Trust Agreements and I expect that the Trustee give strong weight to my desire for the distribution of principal as summarized in this section of my statement of intent and the precatory language in Article 8.4 of the Agreement.

My oldest son John and his younger brother Tyler co-own two Ace Hardware franchise stores, one of which is located in Robinson, Pennsylvania and the other in Kent, Pennsylvania. John attended the University of Pennsylvania and possesses both “book smarts” and “street smarts.” He’s a real extrovert and some of his friends say he could “sell ice to an eskimo.” He and his brother hope to expand their ownership of other

Ace franchises and any lifetime gifts or future wealth transfers will assist them in these efforts. John has a passion for golf - another potential goal of my wealth transfer is to assist him in possibly buying a vacation condo in a warmer climate so that he can eventually retire to a golf community. Like his brother, John is highly engaged in the lives of his niece and nephews, and may himself get married at some future date to a woman he’s been dating for the past eight years.

Tyler, our youngest son, as mentioned earlier, co-owns two Ace Hardware stores with his brother, John. Tyler is a very talented baseball player who attended Pennsylvania Wesleyan University and started on the baseball team in his freshman year. He’s our “deep thinker,” very reserved, extremely independent, and, like his sister, a devout Christian. He’s very generous to a number of charitable and church programs; future wealth transfers should be monitored to ensure that Tyler’s charitable endeavors are judicious and appropriately focused. In the past, Tyler has rented apartments and houses and recently moved back into our home. His “Mr. Fix-it” mentality is good for my wife and I, and he serves as “home-watch” for our residence in Pennsylvania while we live six months of the year in Florida. We encourage Tyler to use a lifetime gift or any monies received from a wealth transfer provision to purchase a home here in Pennsylvania or possibly invest in a vacation condo in a warm weather climate. Tyler also has a passion for golf and “working out” and is very actively involved in his niece and nephew’s outdoor activities.

Our daughter, Betsy, has three natural born children of her own and recently adopted a three-year- old orphan boy from Somalia. Betsy graduated from Penn State in three years with a degree in Psychology. Betsy’s husband, Eugene, is an electrician for Nittany Electric, where he serves as a foreman on a variety of public and developer “high-rise” building projects. Betsy and her husband are devout Christians and their strong religious beliefs are reflected in how they raise their children. Like her brothers, Betsy is not only very intellectual but also very creative.

Betsy was diagnosed with a rare form of liver cancer when she was only 26 years old. After a liver transplant and other follow-up surgeries and treatments to address her cancer, a severe immune disorder and Lyme disease, she now appears (15 years later) to be on the road to recovery. Betsy and her husband have participated in various missionary trips to Somalia; she’s very inclined to “give back” (both money and time) as a way to thank God for sparing her life from the bout of cancer. Any wealth transfer could assist her in these future efforts.

Betsy has a full plate in that she’s not only the primary caregiver to her children, but also homeschools all of the kids. She’s still undergoing treatments for her immune disorder; some of these treatments are not covered by her medical plan. My wife and I are especially sensitive to ensuring that all non-covered treatments that Betsy may undergo in the future are paid through one or more forms of our wealth transfer. Like her siblings, Betsy feels much better in a warm-weather climate and we hope that any future wealth transfer can support and benefit future lifestyle choices including moving to or buying a vacation condo in the southern part of the country.

#### **RATIONALES, SUGGESTIONS AND ILLUSTRATIONS FOR DISTRIBUTIONS TO MY TRUST BENEFICIARIES**

If Naomi survives me, my highest priority is to make sure that she has ample funds in the trust to support her ongoing lifestyle, medical expenses and standard-of-living needs that she was accustomed to before my death. She should have full access to the income from the trust on an annual basis and her ability to “invade” the principal of the trust should be granted with limited intervention on the part of the Trustee. Since it’s important to her to stay active, and she’ll have more time to be involved with our descendants and more time for leisure, it’s reasonable to assume that her expenditures may increase.

I recognize that each of my children should feel autonomous, competent, and in control of their lifestyle, career, family and investment decisions. I also believe that distributions from trusts should recognize these needs. At times it may be difficult to determine the necessity and size of various wealth transfer distributions, therefore, I have enumerated

some specific examples that **could warrant** significant distributions from the trusts, and other examples that would not. These are:

1. Extraordinary healthcare needs – the need for expensive medical treatments not covered by insurance would be the best example of a circumstance that would warrant distributions from the trust, even to the point of exhaustion of trust principal.
2. Initiating or maintaining the involvement of children and grandchildren in activities and private clubs that would otherwise not be possible or would become an extreme financial hardship. If our sons felt that it’s a prudent business decision or an opportunistic lifestyle change to join a golf club, we would suggest a distribution for that purpose.
3. Business investments that are supported by a prudent business plan that need additional capital or loans not otherwise available to our children is an example of a situation warranting distributions from the trusts.
4. Funds for the maintenance of household expenditures caused by prior waste, current financial imprudence, unwillingness to work or substance abuse are examples of situations I specifically would **not want** to fund from any trusts.

The intentions reflected in this document may be revised and amended from time to time as the dynamics of my family change and my philosophy of wealth evolves in future years.

END NOTES

1. Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (PL. 111-312), enacted Dec. 17, 2010. As a result of the American Taxpayer Relief Act of 2012 (ATRA), signed into law on January 4, 2013, the basic exclusion amount for estate and gift taxes was set at \$5,000,000, indexed for inflation from 2011. This yields a 2016 basic exclusion amount for estate and gift taxes of \$5,450,000, allowing more than 98% of U.S. wealth owners to avoid payment of transfer taxes.
2. See, Florida Statutes 736.041 14 (3) “In construing the trust, the court shall consider the terms and purposes of the trust, the facts and circumstances surrounding the creation of the trust, and the settlor’s probable intent. In determining the settlor’s probable intent, the court may consider evidence relevant to the settlor’s intent even though the evidence contradicts an apparent plain meaning of the trust instrument.” leg.state.fl.us Title XLII Chapter 736 (2011) (emphasis added).  
  
 “The Florida legislature has amended § 733.1051 of the Florida Probate Code and § 736.041 14 of the Florida Trust Code to grant Florida courts broad authority to determine and effect the Testator/Settlor’s probable intent in employing a formula bequest, in the event such bequest does not function correctly due to the lack of a federal estate or generation-skipping transfer (“GST”) tax in 2010. The statutes allow the court to consider “the terms and purposes” of the document, the “facts and circumstances” surrounding its creation and the Testator/Settlor’s probable intent. In the course of this analysis, the court is allowed to consider evidence relevant to intent, “even though the evidence contradicts an apparent plain meaning of the trust instrument.” Nathaniel Birdsall, “Florida Legislature grants courts the Broad Power to Construe Wills and Trusts in the Absence of a Federal Estate Tax”, Proskauer Rose LLP August 1 2010.
3. See, Fred Franke and Anna Katherine Moody “The Terms of the Trust: Extrinsic Evidence of Settlor Intent” 40 ACTEC L.J. 1 (2014). And See also, “The Fate of Trust Settlor Intent in the World of Flexibility.” <https://actecfoundation.org/podcasts/fate-of-trust-settlor-intent-irrevocable-trust/> February 2019. In this comprehensive article about the use of extrinsic evidence the authors discuss the common law evolution and provide a summary of each state’s law in an appendix. The notable conclusion of the article is that even though the UTC and THE RESTATEMENT (THIRD) OF TRUSTS show a strong trend to allow extrinsic evidence for almost any purpose, “For the attorney charged with drafting trusts, the goal ought to be to capture settlor intent within the four corners of the document regardless of the extrinsic evidence rules.” Id at page 12.  
  
 “The general principle is well settled that extrinsic evidence is not admissible to vary, contradict, or add to the terms of a will, or to show a different intention on the part of the testator from that disclosed by the language of the will.” 94 A.L.R. 26 II. c. General Rule.  
  
 However the Restatement (Third) of Property (Wills and Donative Transfers) §10.2 (2003 Updated June 2016) states that “In seeking to determine the donor’s intention, all relevant evidence, whether direct or circumstantial, may be considered, including the text of the donative document and relevant extrinsic evidence.” It states fully adopting §415 of The Uniform Trust Code settlor intent is so important that extrinsic evidence of intent can be consulted even if the language of the trust is unambiguous.
4. See, Uniform Trust Code Section 411. Comment “Subsection (b), similar to Restatement Third but not Restatement Second, allows modification by beneficiary action. The beneficiaries may modify any term of the trust if the modification is not inconsistent with a material purpose of the trust.”
5. Dr. Eric L. Weiner MSW, PhD, Words From The Heart – A Practical Guide to Writing An Ethical Will, Workbook First Edition, ©2010, pp. 2-3.
6. Robert G. Alexander, “Ethical Will: Gifts of the Heart” CCH Financial and Estate Planning Articles par. 32,901. The concept of ethical wills isn’t a new one. In fact, this concept is said to date back almost 3,000 years to the Old Testament book of Genesis in the Bible. In Genesis, Chapter 49, when the Patriarch Jacob was dying, he brought his 12 sons together, and on his deathbed he told them stories, predicted their futures and imparted to each one of them the lessons he had learned during his lifetime. In the Jewish religion, ethical wills were an oral tradition; written ethical wills are said to date back to the 20th century, when it was a custom to give written directions for the religious and secular guidance of their children.
7. Quoting from II Samuel 23:1a, 3b and 4 New International Version 1973, 1978, 1984, 2011 by Biblica.
8. President Barack Obama, excerpt from a letter written to his two daughters on Jan. 18, 2009, life-legacy.com/ethical-wills/samples.html created by Rachel Freed.
9. See ethicalwill.com created by Dr. Barry K. Baines, MD.
10. See, Jacob L. Geiermann “Discretionary Dilema: Trustee Consideration of Beneficiary Financial Resources” ABA Probate & Property January/February 2020 page 40.
11. James E. Hughes Jr, Family: The Compact among Generations, 2007, Bloomberg Press New York.
12. The tension between the wealth owner’s right to limit the future uses of their property and the right of family beneficiaries to be free from “dead hand” control is at the core of a centuries-old legal debate. See Professor Allan Newman, “The Intention of The Settlor Under The Uniform Trust Code: Whose Property Is It Anyway?” 38 Akron Law 649, 2004-2005. See also Shelly Kreiczler-Levy, “Inheritance Legal Systems And The Intergenerational Bond” 46-3 Real Property, Trust and Estate Law Journal 495, Winter 2012.
13. David Bergman and Eric Sanderson, “Creating an Estate Plan: Managing the Paradox of Conflicting Values,” Journal of Practical Estate Planning, October-November 2010, pp. 24-25, quoting Dr. Guenther Weil psychologist and founder of Value Mentors LLC. See, Values In Action Signature Strengths VIA-SS referred to in “Estate Planning in the 21 st Century: Using Positive Strategies to Foster Client Happiness and Well-Being” ACTEC Fall 2019 by Raymond C. Odum.
14. Jon J. Gallo, Eileen Gallo, Ph.D. and James Grubman, Ph.D., “The Use and Abuse of Incentive Trusts: Improvements and Alternatives,” The University of Miami 45th Annual Heckerling Institute of Estate Planning, par. 1107 p. 11-43, January 2011. The sample wasn’t labeled as a SOWTI by its author, however, the use of an over-arching purpose for the trust is the reason it is such an excellent example of a statement of wealth transfer intent. Note the authors are advocating for a “financial skills trust” that is innovative and worthy of additional study. The inherent limitation of the trust may be that it implicitly focuses the beneficiaries on personal financial behavior instead of personal achievement.

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