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EDITION

Estate Planning Memos

*The Secrets to
Using Letters and
Memos in Your Estate
& Legacy Planning*

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THE MEMO ON MEMOS
1st Edition

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THIS IS NOT LEGAL ADVICE.

These materials contain general suggestions intended for educational purposes only and to assist you in developing and achieving your true estate planning goals. These materials do not create an attorney/client relationship. The information contained herein **may or may not** apply in your own situation. You must consult your own counsel to review the particular facts and law applicable to your estate plan.

These materials also focus on information for residents of Pennsylvania. We provide each and every client who retains us with a copy of these materials as part of the estate planning process. However, these materials do not contain every estate planning option that you might discuss or explore.

For readers who are Pennsylvania residents, you can get additional information or assistance by calling our office at 610.933.8069.

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Frequently Asked Questions and Sample Documents Regarding Funeral Instructions and Non-Binding Memos to a Spouse, Children, Heirs and Executors/Trustees

I. Why Do A Memo or Memos For Your Heirs, Executors & Trustees?

There are many reasons to consider one or more memos as part of your estate plan.

First, there may be information about your family values, personal legacy & business knowledge that you might want to perpetuate as part of your legacy to your surviving spouse and heirs.

In addition, you might want to give non-binding advice or guidance to your executors and/or trustees about how to use their discretion in selling or preserving items, investments and even when and how to make distributions.

You might want to give guidance about the division of personal property, how to avoid disputes, and instruction about funeral arrangements.

These are all good reasons to do one or more memos. And, memos written in your own hand or created by you in plain language (though usually non-binding) carry great moral weight and often help to avoid or to end disputes without the need to resort to expensive “probate court” proceedings.

II. FAQs on Funeral Instruction Memos

Why should I write down instructions about my funeral plans? My family already knows what I want and Pennsylvania law leaves these decisions to the surviving heirs!

It is true that Pennsylvania (and most states' laws) leave the issue of funeral arrangements to the surviving spouse or heirs.

However, you may be surprised at what your family actually knows, or more likely, doesn't know, about your funeral wishes.

Furthermore, it can be a very emotional decision to make if you leave it to your family, which can cause tremendous stress and even problems between family members with different views. Save your family the grief of having to make these decisions for you, and put your wishes and guidance in writing. Your careful instructions can alleviate a great deal of grief, pain and uncertainty for your surviving spouse and/or heirs.

A second major reason for setting your wishes in writing is controlling cost and having your funeral proceed according to your own thoughts and personal wishes. Planning ahead of time to secure funeral services is often far less expensive than arrangements made after a person's death when emotions run high. And, you may have strongly held views on issues such as cremation,

burial, grave marker or matters such as the type of service, location of events, etc.

What happens if I don't leave written instructions for my funeral?

If you don't write down your funeral wishes, state law will determine who gets to make the decision for you. This alone can cause unnecessary grief, but here is the typical order that most states will follow as to who gets to make the decisions:

- Surviving Spouse
- Children of the Decedent
- Parents of the Decedent
- Next of kin of the Decedent
- Public administrator designated by a court

To many, this may already seem like the right order, so why bother to write it down?

Consider what happens if you have more than one child, your spouse predeceases you, and the children don't agree. Or, consider what happens if your spouse and children disagree. This is often made more complicated by remarriage.

The dispute could even go to court for resolution and would undoubtedly cause serious discord within the family as well as publicity surrounding the proceedings.

Never rely on the state designating the right people.

Instead, state your wishes in writing and take the burden off of your family.

Shouldn't I put my funeral wishes in my will?

No.

Your will often won't be read or accessible until several days, sometimes weeks, after your death.

Wills should never be used to express desires and decisions that need to be dealt with soon after your death. Wills are more properly used for things like property distribution, establishing trusts, and appointing executors and trustees. Those actions can wait and are less time sensitive.

Directions concerning the funeral need to be made immediately and should therefore be contained in a memo already provided to the appropriate people.

If not my will, where should I leave my written funeral instructions?

The most common place to leave your funeral instructions is with the executor of your estate. Some clients also provide our office with a copy.

Often, a copy is sent to loved ones but sometimes the instructions are sealed with an attorney and only instructions about how to obtain them are provided to heirs.

In any case, it is crucial that, even if you leave the official copies with an executor or attorney, you inform your loved ones to reduce the chances of a dispute arising if a

loved one is sure you wanted something different.

If your plans change over time, be sure to update those same people and your attorney immediately.

For the same reason, your funeral plan instructions (as with all memos) should be dated to avoid confusion about what constitutes your most recent thoughts.

What should I write in my funeral plan memorandum?

Most people's funeral plans are guided by their ethnic, religious, personal desires, and cultural affiliations, but here are some ideas to consider when writing your funeral plan memorandum:

- Whether you wish to be cremated, and/or buried
- The facility where you wish to be buried or cremated
- The type of container in which you wish to be buried or in which your cremated remains will be stored
- How your remains will be transported to the facility you select
- Whether you wish to have any ceremony accompany your funeral
- The details of any such ceremony such as who should attend and what events, if any should follow the formal ceremony
- Whether you wish any pallbearers and who they will

be

- Whether you wish any sort of marker, such as a tombstone and the budget for such a marker as well as any images or information to be noted on the marker
- Whether or not you want your heirs or estate to provide a social event or luncheon to allow survivors to grieve and to remember you and your life in such a setting

What services are available from a mortuary?

Mortuaries and funeral homes typically handle almost all the details involving the disposal of a person's remains, such as:

- Retrieving and transporting the body from the place of death to the facility
- Storing the body until burial
- Preparing the body for the funeral and transporting it to a grave site ceremony
- Preparation and publication of an obituary.

However, these services vary from place to place so give your family instructions

III. FAQs on Binding Memos and Non-Binding Memos

Should My Memo Be Binding Or Non-Binding?

Generally speaking your memorandum should be non-binding.

It should specifically state that it is for guidance only and that it expresses your wishes but not binding directives.

This can be important for a variety of reasons.

If your memo is very formal and is intended to be binding then it must then be probated with your will and will also become a matter of public information. That may, or may not be what you desire, especially if your memo contains very personal advice or information for heirs related to your values, business knowledge and wisdom.

A Binding Memorandum could also cause the assets transferred under your memorandum to be taxed when they might otherwise legally avoid taxation.

For example, if you pass away and your personal property (things such as books, papers, photographs etc.) pass to your spouse then he or she is taxed at 0% for Pennsylvania Inheritance Tax purposes.

These items of “personal property” are presumptively joint and therefore he or she does not have to probate the will merely to transfer them, and he or she would not have to pay a 4.5%, 12%, or 15% tax, depending on the relationship of the recipient to the deceased person.

In the event that you have a specific item or items that **must** be transferred to a particular person, it might be best to include these in your will or a separate and binding memorandum referenced in your will.

Remember, however, that tax will then be imposed based on the relationship of the recipient to the deceased party.

What else do such memos contain?

Here are a few of the additional issues that personal and non-binding memos often address:

1) Instructions to executors and trustees about:

- keeping and maintaining properties such as shore/vacation homes,
- advice to younger heirs who you feel may benefit from your experiences.

(NOTE: Be sure that the formal powers required to carry out these instructions are also included in your will or revocable living trust as they are optional and must be included when desired.)

2) Instructions to trustees about how they should use their discretionary powers and specific instructions to trustees on matters of importance to you for heirs at various ages.

For example:

- Do you want them to try to encourage hard work by conditioning distributions on work and independent earnings?
 - Should they make distributions based, in part, on an heir establishing financial knowledge and competence?
 - Should they try to prevent a dependence on the trust?
 - Do you have a preference for religious schools or secular private schools or are they to consider public schools as an option?
- 3) It is often good to create a list of service providers to be used in the event of your death (such as appraisers, business valuation experts, lawyers, accountants, and insurance advisers).
 - 4) Providing a list of your current advisers and important contacts (security companies, lawyers, accountants, insurance agents, accountants and others) as well as their phone numbers and email contact information.
 - 5) The informational and non-binding memo also offers you a unique opportunity to protect your legacy, to give advice and to provide comfort to your heirs following your death. You may even want to make

recommendations of books, resources or other matters that were important to you and may be helpful to your heirs.

- 6) Noting a way to get or to recover passwords and account numbers/access codes to bank accounts, social media, etc. can also save enormous time, fear, and frustration for survivors.

Do you have samples that we can see to model for our own?

Yes. I've attached a sample of both a binding and non-binding memo in Appendix A and Appendix B.

Please note, that there is strong anecdotal evidence that handwritten memos are more personal and can have more moral compulsion to them so that the suggestions are more likely to be followed.

IV. Where Do You Store These Memos and Who Gets Copies?

There's no single right answer to these questions.

Many clients keep the original memos (for executors and trustees, spouse, children and others) with their original wills or trusts. There is no distribution of the memos until after death.

Other clients want to make sure that their executors and trustees understand the instructions and accordingly share drafts of the documents while they are alive and can discuss and expand upon them if needed.

In any case, it's a good idea to make sure that your estate planning lawyers have copies of these documents along with instructions of how and when to share them.

It's also a great idea to review and to update these memos from time to time and to make sure that your counsel has the most recent versions and an accurate list of the names and addresses of people on the distribution list for each memo.

If the memos contain very personal information, the copies left with the lawyers can be sealed for privacy.

V. Conclusion

Memos can be a very effective tool in preserving your legacy, giving guidance and information to your heirs, loved ones and to your executors and trustees.

And, when regularly reviewed, updated and coordinated with your estate planning they can ensure that your wishes are carried out and that your knowledge, values, and wisdom can be transmitted to others.

If you have any questions about how to use memos and how to coordinate them with your estate planning, please feel free to call our offices at 610-933-8069.

Appendix A
Sample Non-Binding Memorandum to Spouse
and/or Heirs and Fiduciaries

Dear Spouse, Children, Others, Executor/Trustee (of course, you may have separate memos for some of these possible recipients as the information you intend to share with one or more may or may not be appropriate to share with the others):

I have prepared this note/memorandum to share some important information with you. These instructions, while not binding, are my directions and suggestions to you about a variety of topics and I hope that you will follow them to the greatest extent possible under all of the circumstances.

Please know that I have prepared these instructions and this information to help you to know and to understand my wishes, and, to the greatest extent, to make your life and your tasks resulting from my death to be as simple as they possibly can be.

My Funeral:

Here you can add your own language as to what type of service, who should be in attendance, where it should be held and where you would like to be buried, or whether or not you would select to be cremated.

Sample: Please know that I would like the service to be very private, simple and short. I would like only my immediate family to be in attendance and I would like the

service to last no longer than one hour. It should be held at: _____ . _____ should be the officiate if available.

Whether you select cremation or burial, most families benefit from further instructions about who should attend, music and liturgy, who should offer remarks etc.

Some clients go so far as to suggest the clothes that they would wear, where a post funeral event should be held, and details of such events.

Some clients also give directions concerning a grave marker when appropriate.

My Personal Possessions:

I have a number of possessions that I would like to go to specific people. However, in the event you do not wish to receive the item, please make sure that another heir for whom it would be appropriate does receive the item.

I give the following items to the following heirs:

- | 1. Item | Description | Recipient |
|---------|-------------|-----------|
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |

It is important to me that there be no disputes regarding my gifts of personal effects and ultimately my will shall control. However, it is my suggestion, that to avoid

disputes, that you treat one another fairly and use a lottery or other mechanism of your choosing to resolve disputes or to allow for a fair selection of items. Under no circumstances should anyone seek court intervention as this can be unduly costly and public.

Important Contact and Related Information:

I am providing you with a list of contact numbers for my current list of trusted advisers.

Attorney:

CPA:

Property Casualty Insurance Agent:

Life Insurance Agent:

Business Insurance Agent:

Business Partners and Contact:

I am attaching a list of assets and account numbers to this list as a starting point and to help you to make my estate or trust administration less complicated.

List of Account Numbers:

List of Passwords and Access Codes:

Instructions for Guardians of Children:

Instructions for Trustees as to the Use of Discretion:

Instructions for my Executor(s):

Advice and Resources for my Heirs:

Appendix B
Sample Binding Memorandum to Spouse
and/or Heirs and Fiduciaries

MEMORANDUM
FOR DISPOSITION OF TANGIBLE PERSONAL PROPERTY
IN LAST WILL AND TESTAMENT OF
YOUR NAME

To my Executor:

This memorandum is declared to be attached to a copy of my Last Will and Testament, as provided for therein and provides for the particular disposition of my tangible personal property. I direct my Executor to take possession of such property as nominee only and to deliver such property to the following designated person(s) as soon after the opening of the administration of my Estate as possible.

Dated: _____

Witness

Your signature

Witness