NORTHERN TRUST

THE EFFECTIVENESS AND ETHICS OF GOALS-DRIVEN WEALTH TRANSFER

Traditional estate planning is a death-driven process, and that's a problem. Clients are naturally reluctant to talk about two things they don't want to do — die and "leave" or "give away" all their assets. Consequently, estate planning attorneys and advisors would be wise to pivot their focus from "leaving" assets to "succeeding" with assets – directing assets to the right destination, at the right time, for the right purpose.

Focusing on death as the primary catalyst for wealth transfer is counterintuitive and counterproductive since it means estate planners can completely miss what their clients want to achieve with their wealth. It is these goals-driven intentions that advisors should attempt to uncover, explore, shape and then implement.[1]

RAYMOND C. ODOM
Director of Wealth Transfer Services
Northern Trust

Over the last 70 years or so transfer taxes imposed at death were a principal focus of estate planning. The natural unpopularity of the "death tax" often created urgency for doing unwanted and expensive planning. With the increased possibility of federal estate tax repeal with a new administration and Congress, it is more important than ever to come up with a new catalyst for estate planning. This is a practical problem and a significant ethical opportunity.

INHERENT PROBLEMS WITH DEATH-DRIVEN ESTATE PLANNING

Death-driven wealth planning was and is driven by the federal taxes imposed at death rather than the natural intentions of the clients. For example, most happily married couples like the idea of jointly owned marital assets. This predisposition is reflected in the law of community property states. However, in common law states (without a community property statute) separate spousal ownership was often favored to assure full utilization of each spouse's unified credit amount. In these states the simple two trust plan that created a marital and family trust for each spouse was not based on typical marital or family intentions at all. The marital trust was designed to protect the marital deduction, not necessarily the marital wishes of the spouse who may have preferred simple outright bequests. The "family trust" was not designed around intentions and goals for the family. It was designed to protect the

unified credit (applicable exclusion amount) of the first-to-die spouse. This was probably why such trusts eventually were referred to as "by-pass" or "credit shelter" trusts rather than "family" trusts.

In reality, the traditional estate plan has had very little to do with properly vetted dispositive client intent. There was very little thought given to "how much is enough" or the timing of distributions to children (see sidebar). Many traditional estate plans ultimately divided and distributed assets to the next generation in the same equal proportion that would have occurred if the parents had died intestate (i.e. without a will or trust). Often the only real reflection of any client intent was the "discretionary standards" for distributions to minor children in the marital and family trusts. However, instead of a beneficiary specific distribution standard, most trusts opted for the default "health, education, maintenance and support" (HEMS) standard dictated by the tax law. This HEMS standard often was boilerplate language that provided no real insight into client intent.

But what happens as the tax rules and so-called "traditional family" change? How does an advisor efficiently and ethically determine genuine, non-tax client intentions? And as litigation by disgruntled heirs increases, how do attorneys and advisors best protect themselves?

Estate-planning practices have been traditionally based on a transactional model focused on producing a legal document. This model does not necessarily lend itself to building the necessary consultative relationship to discover and implement a client's non-tax wealth transfer objectives. The American Bar Association's Model Rules of Professional Conduct rules would seem to suggest a different approach.[2]

The primary ethical concern of every attorney representing a client is "to determine the client's objective" and advise on how to best carry it out pursuant to the law and circumstances presented. With a tax-centric transactional approach, a real gap developed between what clients really wanted and what 20TH century estate planning attorneys actually provided.

An age-old question that has plagued wealth transfer planning is "how much is enough?" That question has often been answered by the Warren Buffet quote, "Enough to do anything but not enough to do nothing." But too much or not enough has no context without a visualized purpose.

WHAT CLIENTS REALLY WANT VERSUS WHAT THE TRADITIONAL ESTATE-PLANNING PROCESS PROVIDES...

WHAT CLIENTS REALLY WANT	WHAT 20TH CENTURY ESTATE-PLANNING PROCESS PROVIDED
Professional Wisdom Clients want their attorney to have a profound understanding of their unique life experiences that support and explain their wealth transfer decisions. Most importantly, clients want their attorneys to use their insight and expertise to guide them away from inappropriate, inefficient or unwise wealth transfers.	**Engagement Efficiency** Time-sensitive limited engagements designed to limit the need to give ongoing advice. A brief meeting that outlines transactional choices accompanied by even briefer information about how to make them.
Understanding of Their Goals Clients want to believe every word of their estate plan flows from a deep commitment to their long-term well-being and their historical, aspirational, relational and social goals. They want to feel their attorneys are carefully implementing their intentions in light of what is possible, best and tax-efficient.	**Tax Minimization** Information directly related to the clients' wealth measured in terms of money and money's worth. The concepts of priceless worth and lifetime legacy lessons are often completely ignored. **Techniques** The alphabet soup of tax-limiting strategies: QTIPs, LLCs/FLPs, ILITs, GRATs, QPRTs, SLATs, IDGTs, SCINs, CLTs, CRTs, QSSTs/ESBITs, etc. **Transactional Advice** Like Henry Ford who said you can choose any color car as long as it's black, the 20th century estate-planning attorney effectively said to the client you can choose any option as long as it's in "the form."

...AND HOW TO BRIDGE THE GAP WITH A DIFFERENT APPROACH

Wealth transfer is the core of estate planning. Yet it turns out the death focus of wealth transfer is completely misplaced because everyone transfers wealth every day, in three ways.

- **Consumption** — Lifestyle expenses
- **Confiscation** — "Involuntary" transfers of wealth — including fraud, third-party mismanagement, waste and taxes
- **Contribution** — Voluntary wealth transfers to beneficiaries

A required prerequisite for measuring *consumption* is financial planning that determines lifestyle cash flow based on rational predictions of investment returns using Monte Carlo (Stochastic) models. Fortunately, almost all financial service firms have the capability to illustrate cash flow outcomes for "asset sufficiency."

A client attaining "asset sufficiency" will need a lifetime of careful tax planning to make sure income generated by investments, employment and ingenuity are not *confiscated* by taxes, waste or involuntary costs. Effective retirement planning requires nimble income tax planning and asset protection.

Goals-driven estate planning starts after consumption has been quantified and confiscation has been minimized. With everyone confident significant wealth exists for transfer, the wealth owner has a new challenge. Potentially harder than measuring consumption or minimizing confiscation is *contribution*. The difficulty of determining what to do with excess asset sufficiency can be illustrated by most people's general reluctance to make lifetime gifts even with significant transfer tax savings.

We believe a primary reason why many affluent clients fail to take advantage of the lower effective rate for lifetime vs post-mortem gifts is that they have no rationalized purpose for the gifts. If forced to give an explanation for wealth transfers to children, relatives or friends many would say that it is out of "love." Advisors and attorneys often refer to potential beneficiaries as the client's "loved ones." Interestingly one classic definition of love actually requires a definitive purpose (see sidebar). Getting clients to visualize the good will, or the benefit, of the wealth transferred is the key concept for goals-driven estate planning. With proper vision of wealth's potential impact it will be much easier to formulate the correct timing and amount of any gift.

However, the idea of client "values" becoming the new catalyst for estate planning has floundered because most commentators have not understood that client values really are facades for their preferred virtues. In order to advise and properly motivate clients to make "planned gifts" to family or charity, the planner must get them to understand the priority they place on those virtues and determine if any can be extrapolated to others. Most clients fear transferred wealth will be detrimental to the individual or wasted by an organization. It is this kind of thinking that often leads to "incentive" provisions within a trust. Incentive provisions rarely accomplish the intended purpose because non-economic behavior is rarely motivated by money. Incentive provisions add detrimental complexity to the relationship between the trustee and beneficiaries. And in some cases creates resentment for the restrictions instead of gratitude for the gift.

Truth is, very few attorneys and advisors have a good working definition of personal values. We believe that values are simply the qualities of action and interaction demonstrated by the daily priority of personal preferences. Values become "virtues" to the extent there is universal agreement that the value is a "good" thing for all human beings to have. Many entrepreneurial clients

In old English the words "charity" and "benevolence" were often used interchangeably with the word "love," especially to distinguish love of family, friends and community from romantic love. The English word benevolence is derived from either French or Latin. In both languages the word combines *bene* or meaning "good" and "well" and *volentia, volens, volo* meaning "voluntary," "volitional," "to will." Literally benevolence meant to "will the good."

Within that idea of love as the act of "willing the good" is the right question to ask about wealth transfers. Simply: How can I bring what is good to my beneficiaries? Or to use Aristotle's definition of human goodness as virtue — how will the wealth transfer add "virtue" to the life of the recipient.

have multiple values/virtues that relate to themselves, their business successes and the way they see the world and others. They will often talk of personal hard work, creativity, risk-taking, customer loyalty and product excellence. The goals-driven planner will get the entrepreneurial "his-stories or "her- stories" that describe past success. The advisor will then distill out the relevant values and then virtues that characterize the client's core goals and intentions. These intentions will form the baseline for creating and shaping the clients' wealth transfer decisions.

Without goals-based estate planning, clients may have very weak motivations to plan for wealth transfers. The unintended consequence of an unmotivated client is the attorney or advisor who will be tempted to substitute default thinking for genuine client intentions. This substitution can leave both the client and the attorney/advisor unsatisfied with the resulting plan. Clients need to know their raison d'etre and the role of their values in that. And attorneys must become long-term counselors in the discovery and implementation of this raison d'etre.

Goals-driven estate planning starts after consumption has been quantified and confiscation has been minimized.

VIM AND VIGOR: HOW TO MAKE GOALS-DRIVEN ESTATE PLANNING WORK FOR YOU

Becoming a wealth transfer "values" counselor means a shift from traditional death and tax-based advice to helping a client discern and articulate their intentions. This value system will better reflect your client's desires and dreams for the use of the wealth by the recipient.

A potential solution is to more robustly discover, discern, discuss, design and then document a client's wealth transfer intentions. These intentions can be documented in a **statement of wealth transfer intent (SOWTI).** This document should be crafted to qualify as the material purpose for any trust or deferred gift vehicle and integrated into all relevant dispositive documents. Creating a SOWTI requires a profiling process that greatly exceeds what many attorneys currently do. We call this heightened client interviewing process "VIM (Vision, Intention and Metrics) and Vigor."

Vision: Discovering Where the Client Assigns Virtue

In general, a client must visualize four types of values to help them determine the virtue (good will) behind their wealth transfer goals.

- Internal values: How the recipient will build the internal competencies necessary to help others in a meaningful way (i.e. job, work, career).
- Relational values: How the recipient will be able to enhance and improve their closest human relationships through closeness, caring and companionship.
- Social values: How the recipient will be able to enhance and improve their community, society and world.
- Spiritual values: How the recipients will increase their spiritual awareness, faith, religion, cultivated commitment and/or personal passion for the long-term transcendent good of all.

Intention: Actuating Values through Wealth Decisions

A client who can visualize their wealth's impact to accomplish an objectively valuable result now has motivation vastly superior to simply minimizing taxes. This stage finalizes the decision to transfer wealth for the envisioned purpose. The conversations necessary to uncover values-based dispositive intent are unfamiliar to most clients and many attorneys. A starting point for someone completely unfamiliar with this process would be the basic wealth transfer values questionnaire (see Exhibit One) designed to begin eliciting the goal-driven intentions of the client.

Metrics: Creating Funding For Gift Decisions

The idea of probing client intentions to create a dollar value around each gift intention is a relatively new idea in family gift planning. The idea is taken from the "planned giving" arena of philanthropy. In the context of planned giving the donor often has a very specific idea of what the gift will be used for and how much is needed to accomplish that purpose.

In goals-driven wealth transfer planning, extrapolating alternative expected outcomes with actual dollar amounts is an effective way to determine the approximate amount and timing of all wealth transfers designed to do "good." The approximate dollar amounts then are referenced in a flexible way within the SOWTI. Success, however, is not measured by accuracy of the dollar amount itself but by the probability that the amount will be sufficient to produce the outcomes visualized by the client without producing aberrant results because of overfunding. An attorney who stress-tests the client's gift intent by suggesting a significantly larger or smaller gift can uncover unexpressed hope and fear that will increase the probability of a good outcome.

Most important in developing metrics for the gift is to quantify generalized notions of "support." In addition to the typical reference to current lifestyles, the attorney should have examples and illustrations demonstrating the underlying virtue being funded by the gift.

Vigor = VIM Planning Discipline

The VIM process requires vigorous professional, personal and practical discipline in interviewing and profiling the prospective client. There's inherent tension in getting relevant stories from a client on an hourly billing clock. To facilitate these conversations, consider fixed pricing methods and including fee-based investment professionals, fiduciaries and consultants as well as planned giving officers in your initial conversations.

PREPARING FOR CONVERSATIONS

To shift from information-gathering to story-collecting, attorneys will need to reformulate opening dialogue with current and prospective clients. Use this shift from traditional to goals-based planning to help clients prepare for a process that is different from the past. This initial dialogue will demonstrate you envision a long-term consulting relationship, not a short-term "customer" transaction. You can then move from being a transactional advisor to a truly trusted advisor. With the cloak of attorney-client privilege as a powerful cover, clients are more likely to tell the truth, the whole truth, the "so-help-me-God" truth.

But how do you get them talking about things they've never shared before? In addition to sharing your changed view of estate planning you might also share how other clients have benefitted from the goals-driven approach. Successful examples of how the specificity of visualized benefits resulted in the discovery of unexpressed passions and virtues will be especially effective. Keep in mind that the goal of the initial engagement is to uncover what has made them overcome the natural reluctance to talk about death or losing control of their assets. Do not end the first meeting without specifically commenting on their reason for setting up the appointment.

You may want to remind them estate planning is not about "losing" or "leaving" money. It's about investing in something that will create or add to a defined "good." Assign your clients homework they will enjoy: Making notes of the successes and challenges in their life that created their desire to benefit others. Critical to this process is to have a detailed visualization of the intended good. Have them simply jot down notes rather than attempt to write a story. Allow clients to talk or write about themselves without impediments of time or writing competence. Most of all, give them examples of what other clients have written about their "intended good will" to their beneficiaries.

In a successful initial meeting, the client should be doing 80% of the talking — about themselves. To do transformational listening you must have genuine curiosity to learn from your client. You must believe you can understand them so well that you can use your planning experiences to advance their thought processes. Here are some examples of what to ask:

- How did they relate to their family and wealth growing up?
- If married, how did they meet their spouse? How have they stayed together?
- What are the virtues and weaknesses of each potential beneficiary?
- How has their attitude toward wealth and success changed?
- What do they believe you can accomplish for them on their behalf?

The proof of a goals-driven approach to estate planning is in a SOWTI.

A statement of wealth transfer intent may not be what you think it is. It's different from an ethical will, and is not an introductory paragraph of the trust or will. It's different from a personal or family mission statement, or boilerplate recitals that could apply to anyone.

A SOWTI should be a purpose statement for every dollar of transferred wealth. It is the message behind the money. A SOWTI should sound and feel so much like the client's voice that it self-authenticates the document. The SOWTI should help determine the expected good that will come from all dispositions made in the instrument, and be specific enough to effectively guide trustees, investment managers, trust protectors, attorneys and tax preparers in exercising any discretion they have. A SOWTI should be helpful in preventing premature distributions and terminations.

APPLYING VIM AND VIGOR PROCESS TO CLASSIC CONFLICTS

Three situations give estate planners ethical difficulty:

- Representing both spouses
- Representing multiple generations within a family
- Representing a client with diminished capacity

Representing Both Spouses

Unfortunately, the age-old problem of representing both spouses doesn't go away with goals-based planning. However, inquiring about *each spouse's* vision of beneficiary impact should uncover different opinions regarding asset disposition during life and at death. Discovering these differences with indirect questions that invite stories rather than conflict is key.

When representing spouses under a dual representation agreement, best practice has been to obtain both clients' informed consent in a written engagement letter. This letter states the attorney cannot keep secret any information disclosed by either spouse from the other. In dual representations, spousal clients are giving up their right to individual loyalty, advocacy and confidentiality that may be critical to carrying out their wealth transfer intentions. Spouses can agree to joint representation and waive a conflict of interest. But if that conflict is "substantial" or "significant" the lawyer may be precluded from joint representation in spite of the waiver, or may be violating ethical mandates.

How does an attorney determine what is a "substantial" or "significant" conflict of interest? When spouses first meet with the attorney they may not be fully aware of all their legal rights to spousal property, especially rights to elective shares or to each other's estates. So a "substantial" or "significant" conflict may not be uncovered until after meeting with the spouses. The Restatement Third of the Law Governing Lawyers §130 uses the words "substantial risk" of conflict and gives an example of this risk in Illustration 2 of its comments.

> *The same facts in Illustration 1 [competent husband and wife coming in for estate planning advice] except that Lawyer has not previously met the spouses. Spouse A does most of the talking in the initial discussions with Lawyer. Spouse B, who owns significantly more property than Spouse A, appears to disagree with important positions of Spouse A, but is uncomfortable in expressing that disagreement and does not pursue them when Spouse A appears impatient and preemptory. Representation of both spouses would involve a conflict of interest. Lawyer may proceed to provide the requested legal assistance only with consent given under the limitation and conditions provided in §122.*[3]

The VIM and Vigor approach could eliminate the ambiguity of a silent spouse because both spouses would be telling their stories. Additionally, a key question a VIM attorney could ask a couple is to describe how their upbringing, career and philosophy about wealth transfer differ from one another and how they feel about that difference. Therefore, the goals-driven planner should be in a better position to know whether there is a "substantial" risk of conflict in the joint representation of spouses.

Goals-driven wealth transfer can allow the attorney a better opportunity to assess whether there is a genuine conflict of interest and whether there is a need for separate representation.

Representing Multiple Generations

Conflicts of interest can be found in joint representation of spouses but also can exist when representing multiple generations. For example, if the older generation wealth owner unduly influences the hiring of the lawyer to represent a lower generation beneficiary, then the joint representation might create an impermissible conflict of interest. But in the Florida case of Chase v. Bowen, 711 So.2d 1181 (Fla. Ct. App. 2000), the court held that no conflict of interest exists when a lawyer revises a will of a senior generation wealth owner to disinherit a beneficiary whom the lawyer represents in an unrelated matter.[4]

The goals-driven method for determining intent should produce stories that more readily expose the efforts of an older generation wealth owner/business owner attempting to control a descendant through a "mandated" estate plan. This will allow the attorney a better opportunity to assess whether there is a genuine conflict of interest and whether there is a need for separate representation.

Representing Clients with Diminishing Capacity[5]

In a country where an increasingly larger percentage of estate-planning clients will suffer diminished mental capacity prior to death, the ethical issues surrounding dementia are important to consider. The ethical obligation is to maintain a "normal" client-lawyer relationship with an existing or prospective client. It is possible a client's changed mental capacity may result in a change to an existing estate plan, such as a client with diminished capacity deciding to disinherit a child.

The use of a goals-driven process for estate planning could have produced a statement of wealth transfer intent that could be used to show significant information about the client and purposes for each beneficiary. A subsequent change to those intentions that is irrational and contrary to every aspect of a carefully expressed intention without any explanation could more clearly signal a loss of capacity than if those prior intentions had not been recorded.

An egregious example of how not to deal with an unwise client directive from someone that may be possibly suffering from diminishing capacity occurred in Florida. In The Florida Bar v. Betts, 530 So. 2d 928 (Fla. 1988) a Florida attorney was publicly reprimanded for his actions in preparing two codicils to the will of his client at a time when the client was in a rapidly deteriorating physical and mental state. In the first codicil the testator removed his daughter and son-in-law as beneficiaries. The lawyer spoke with his client several times in an effort to persuade him to reinstate his daughter as a beneficiary.

Subsequently, the lawyer prepared a second codicil to reinstate the daughter into the estate plan. However, when the codicil was presented to the client, he was in a comatose state. The lawyer did not read the second codicil to the client, the client made no verbal response when the lawyer presented the codicil to him and the lawyer had the client "sign" the codicil by placing a pen into his hand guiding it to mark an "X" in place of a signature. The court specifically observed:

> Improperly coercing an apparently incompetent client into executing a codicil raises serious questions of both ethical and legal impropriety, and could potentially result in damage to the client or third-parties. It is undisputed that [Lawyer] did not benefit by his action and was merely acting out of his belief that the client's family should not be disinherited. ***Nevertheless, a lawyer's responsibility is to execute his client's wishes, not his own.*** 530 So. 2d at 929 (emphasis added).[6]

Goals-driven methods of recording client intent will make a client's wishes clearer and may make it safer for attorneys to act or not act when there is diminished capacity.

THE VIM AND VIGOR OF GOALS-DRIVEN WEALTH TRANSFER

Attorneys and professional advisors can become more purposeful, principled and profitable by changing death-focused estate planning into goals-driven wealth transfer. They can do this through the VIM and Vigor process.

By first helping clients visualize the values and then the virtues behind their goals, advisors can help their clients determine better intentions for wealth transfer beyond simply minimizing taxes. Applying metrics to those intentions can provide clients with a very specific idea of what a gift will be used for and how much is needed to accomplish each goal. This process requires vigorous professional, personal and practical discipline in interviewing and profiling.

Advisors should then be able to design wealth structures and wealth transfers during and after life that fulfill the client's objectives. All strategies and structures should be extrapolations of these goals. In effect, the estate plan must look like the final chapters of a well-crafted client story. Hopefully the story ends "happily ever after" for all involved.

LEARN MORE

Northern Trust specializes in goals-driven wealth management for affluent families and individuals. Our wealth planning advisory services team leverages their collective experience to provide financial planning, family education and governance, philanthropic advisory services, business owner services, tax strategy and wealth transfer services.

For more information, visit northerntrust.com.

EXHIBIT ONE: WEALTH TRANSFER VALUES QUESTIONNAIRE

These questions are designed to change traditional death and tax planning which may involuntarily "leave money to heirs" into "wealth transfer success." Your wealth transfer success is measured by optimizing the intent of your wealth transfers to benefit carefully chosen beneficiaries.

How do you define your wealth transfer values and intent? By answering goals-driven questions that help create a written blueprint to measure wealth transfer success. Here are seven questions to help start the process.

1) What actual role did financial wealth play in the following areas: (Note: This is not an "ought to" question, but simply a description of the way things really are.)
   a) Your childhood and early adult years
   b) Your daily routine
   c) Your professional life
   d) Your family life
   e) Your friendships
   f) Your image of yourself, your family and others
   g) Your feelings of control and significance
   h) Your plans for the future

2) It's not uncommon for wealth owners to avoid the subject of wealth transfer planning by just "leaving" their remaining estate to be divided equally among their statutory heirs without further comment or direction. Often the principal philosophy of these wealth owners is "When I'm gone I'm gone" and "I really don't care what happens after that." Do you agree or disagree with this approach?

3) Describe what you believe would happen to the recipients of your wealth once funds have been transferred to them.
   a) How confident are you that your envisioned result will become a reality? Why are you confident or not very confident about this result?
   b) Will all the wealth transferred to your intended beneficiary(ies) be necessary to accomplish your envisioned result? If not, what will happen to the "excess" wealth transferred?
   c) How will you feel if the envisioned result of your wealth transfer does not occur?
   d) Is there any circumstance that could cause you to regret making the wealth transfer?

4) For the next two questions imagine your wealth transfers to each beneficiary are designed to obtain an optimal "total return" similar to the total return of marketable investment assets.
   a) How would you describe the "optimal return" on your wealth transfer to each of your intended beneficiaries?
   b) What must be done now to assure that this optimal return is realized?

5) Imagine that every transfer of wealth is a "donation" to the cause or purposes of the individual that receives it — similar to the way a charitable donation is a donation to a cause or purpose of the charity.
   a) What is the overall cause or purpose that's advanced in the life of each individual that receives your donation of wealth?
   b) A good charity is able to account back to donors their use of the donation, in support of the donor's intent. How would the non-charitable beneficiaries of your wealth account back to you for your transfer to them? (Remember this accounting could be as simple as confirming that they enjoyed spending the money you gave them.)

6) Some professionals believe that there is always a "message of the money" in every wealth transfer. For the next two questions assume that this is true.
   a) What message does your wealth transfer send to each of your beneficiaries?
   b) Would you like to change that message?
7) Creating the right "message of the money" for every wealth transfer requires at least two things — understanding your "wealth his-story" or "wealth her-story" and recognizing how that story impacts your wealth transfer decisions. For the next three questions think about the parts of your his-story or her-story that should be repeated across generations.
   a) What has happened in your life that explains and gives context to your decisions about wealth transfer?
   b) What do your beneficiaries need to understand about you to become comfortable receiving your gift of money or property?
   c) How would you want future generations to remember you as they determine how to use or steward wealth that you give to them?

The example that follows is an actual wealth transfer statement of intent that has been edited to protect identities.

EXHIBIT TWO: 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 2016 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 20TH 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.

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.

END NOTES

1. ABA Model Rule 1.4 *A Lawyer shall . . . (2) reasonably consult with the client about the means by which the client's objectives [intentions] are to be accomplished.* Implicit in this rule of conduct is an obligation by the attorney to discover the client's estate planning objectives and how to best achieve them.
2. ABA Model Rule 1.4 (b) *Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.*
3. Restatement (Third) of The Law Governing Lawyers §130 (2000) citing to §122 "Unless all affected clients and other necessary persons consent to the representation under the limitations and conditions provided in §122, [Client Consent to a Conflict of Interest] a lawyer may not represent a client if the representations would involve a conflict of interest. A conflict of interest is involved if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interest or by the lawyer's duties to another current client, a former client or a third person. (emphasis added)
5. Diana S.C. Zedel "Effective Estate Planning for Diminished Capacity — Can You Really Avoid Guardianship?" 2016 The 50th Heckerling Institute of Estate Planning Chapter 8 pages 8-2 and 8-13 (Presented January 12, 2016).
6. ABA Model Rule 1.14 CLIENT UNDER A DISABILITY
   a) *Maintenance of Normal Relationship. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.*
7. The Florida Bar v. Betts