A deceased person can’t comment on how his remaining personal property should be transferred. (Is it any wonder then that the pre-death writing of a person’s post-mortem wealth transfer desires is called a “will”?) Curiously, the modern tax-based will has very little, if any, language discussing your personal desires. However, when the Tax Relief Act of 20101 allowed for the elective avoidance of 2010 death taxes, the non-tax intentions of a deceased person became very important – important enough for at least one state to enact legislation to allow courts to look outside the deceased person’s will to find his real dispositive intent, even if it contradicted the plain words of the tax formula.2

The intent behind your wealth transfer seems now to have become much more important. Minimally, a statement of intent (SOI) is a good idea. At its best, an SOI could serve as a “material purpose” that prevents the intentional termination or modification of a long-term trust by spendthrift beneficiaries.3 The SOI, as a personalized declaration of your purpose, helps protect you – as well as drafting attorneys, beneficiaries and trustees – against unreasonable interpretations of your trust provisions.

The truth is, people rarely articulate an overall personal goal for any portion of their testamentary wealth transfers, and if they do, it usually doesn’t appear within the estate-planning documents. An SOI can’t eliminate the need for legally tested dispositive and administrative language. But it would surely seem that a document entitled “Last Will and Testament” is an appropriate place for a bit of personal testimony.

WHAT AN SOI ISN’T
A “statement of intent” may be a new term for many, so it’s critical to have a clear definition. Perhaps the easiest way to define an SOI is to state what it isn’t:

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’s not a legal document at all, despite its name. In many ways, it’s 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.4 Some reference Jewish patriarch Jacob as providing the first recorded instance of an ethical will.5 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.””6
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.

Another example of an ethical will comes from President Obama’s letter to his two daughters as he moved to the White House:

[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.

The Internet is full of other examples of ethical wills. They are as interesting as the ancient epitaphs on gravestones, but they’re not necessarily effective in explaining wealth transfer intentions. And even if they were, the executor, personal representative or trustee couldn’t consider them because they’re intentionally separated from the dispositive testamentary documents.

**Precatory Language**

Precatory language is the nonbinding words of instruction that are 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 as follows: “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. 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? An SOI would give the “why” of the nonbinding instruction.

A trust document could have a very short SOI 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 if I were still living” technically qualifies as an SOI. 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.
**Mission Statement**

A mission statement is a description of organizational purpose. When properly done, 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.

An SOI is also about purpose, but it’s not about the purpose of a group or organization. It’s about your purpose for the wealth transfer. A mission statement can be useful for the profit-making 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 profit-making activity. Mission statements can also be a helpful tool for family governance in the context of a business or family-owned assets. However, wealth transfer isn’t 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* implicitly assumes that 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. A grantor’s SOI is the better solution for purposing wealth transfer under this individual ownership view.

Finally, a family mission statement requires a family that agrees on a mission. An SOI simply requires you as a 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’s exponentially more difficult to assess the future intentions of a constantly changing family group. In reality, the SOI 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 the individual wealth owner should have the final say in transferring wealth, then you can use your current financial planning process as a roadmap for how to do effective wealth transfer. For example, when you give up current consumption to save or invest money, there’s 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.
Sometimes the reason for accumulating wealth is so ingrained in an individual’s value system that she thinks she has no independent reason for saving. However, at the core level, there’s usually a personal preference that reveals a personal value. Is the saving for unforeseeable personal emergencies, or is it to maintain control over something or someone? Is it for some personal aspirational desire? Or, is it to help educate family members? For a professional money manager to properly invest a client’s savings, he must have an answer to the question “Why are you saving this?” The same is true in wealth transfer, except the question is “Why are you transferring this?”

Once you discern the “why,” you can establish appropriate investment goals. These goals will then inform the portfolio management process. The answer to the question “Why are you transferring this?” is the SOI. With that in place, it’s possible to create a wealth transfer document that properly accounts for wealth-transfer timing and transfer tax minimization. Successful wealth transfer can be viewed as simply fulfilling your expectations with optimal tax efficiency.

Defining someone’s expectations isn’t that easy. Many investment managers will probably opine that a key problem in investment management is unrealistic client expectations. The same can be true in wealth transfer planning. Wealth transfer should usually be in furtherance of previously expressed values. However, contemplating and defining personal values is 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.”11 We believe that wealth transfer values can be discovered from the underlying priority of preferences that determine daily financial decisions. An SOI is the summary of your “priority of preferences” for wealth transfers.

THREE MINIMUM REQUIREMENTS

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

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

1. Demonstrate a unique intention that’s tied to your personal history, personal values or personal perspectives. The test is whether the information expressed in the writing couldn’t be known without specifically asking you. Therefore a generalized statement – “I want my descendants to be productive citizens” – wouldn’t be a very effective indicator of intention because the statement could probably be attributed to any parent. However, the statement that “as an immigrant to the United States it is essential that my descendants demonstrate a continuing commitment to taking advantage of the myriad of opportunities for personal and professional achievement offered by this country’s freedoms” would be 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” wouldn’t be optimal. However a sentence that says “This trust is specifically designed to serve as a financial catalyst for the personal and professional achievement 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 the 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 circumstances could not have been imagined by me when I created this trust.”

**SAMPLE SOI**

*Here’s a statement of 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 achievement. 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.

**SOI EXAMPLES**

Although traditional estate planning has been built around form clauses and sample language, an SOI, by definition, has no boilerplate. Each wealth owner’s life story and wealth transfer goals are by definition slightly different. However, it’s still helpful to see actual examples of SOIs. For instance, one accomplished estate planning attorney used an SOI to communicate why wealth transfers weren’t to be distributed to generations beyond grandchildren.

*I have with full knowledge and intent not provided for the generation of my great-grandchildren and future remote descendants. I have not provided for them not out of a lack of affection or concern for their welfare but because I have certain charitable objectives that I wish to fulfill and because I feel a deeper responsibility and obligation to provide for my children and grandchildren as reflected in this trust document.*

A sample trust created by Jon J. Gallo, Eileen Gallo and James Grubman includes another example of an SOI.

*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.

This sample SOI is the first paragraph of a trust that provides discretionary trust provisions for travel and education. There’s also precatory language that encourages generosity to beneficiaries and to charity. Overall, including such an SOI within a dispositive document should make it significantly easier for the trustee and the beneficiaries to manage expectations, as well as distributions.

CONTINUING THE CONVERSATION
The conversation about wealth transfer isn’t only about death or tax minimization. It’s essentially about the extension of the benefits and burdens of wealth to someone other than its current owner. Intuitively, every human being probably knows that the lasting joy of personal fulfillment isn’t directly related to acquiring someone else’s wealth. Equally apparent to each of us is the notion that giving wealth can actually be more fulfilling than receiving wealth – even if the gift is delayed until after our death. Avoiding death and taxes isn’t your primary reason for making a gift. The real goal of your gift (the goal of your wealth transfer) could be found in your SOI. If this is true, then an accurate and articulate SOI may be one of the most important provisions that will ever appear in your legal documents.

FOR MORE INFORMATION
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 to maintain your current lifestyle while providing for your loved ones and giving to the community. To learn more, contact your Northern Trust relationship manager or visit northerntrust.com.
1. **Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312), enacted Dec. 17, 2010.**

Note also, the American Taxpayer Relief Act of 2012 (HR 4) signed into law on January 4, 2013 has permanently increased and unified the applicable exclusion amount at $5,250,000 (indexed) potentially allowing more than 98% of U.S. wealth owners to avoid payment of transfer taxes.

2. **Florida Statutes 736.04114 (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.” See leg.state.fl.us Title XLI Chapter 736 (2011) [emphasis added].

3. **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. 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.


8. See ethicalwill.com created by Dr. Barry K. Baines, MD.


12. Used by permission. Although this statement of intent [SOI] is useful for showing that the trust isn’t designed for remote descendants, it may not establish a material purpose that would prohibit the children from terminating or modifying the trust in Uniform Trust Code jurisdictions that permit trust modification or termination by beneficiary consent.

13. 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 an SOI by its author, however, the use of an over-arching purpose for the trust is the reason it’s such an excellent example of a statement of wealth transfer intent. Note the authors are advocating for a “financial skills trust” that’s 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 behavior.
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