

## I Wish I May, I Wish I Might: Estate Planning's Gentle Nudge

Contrary to what you might expect, using precatory language such as 'I wish' or 'I hope' can play an important part in three estate planning objectives.



(Image credit: Getty Images)

When it comes to providing what should happen to your property upon your passing, estate planners agree that language in an estate plan should be clear, direct and unambiguous. Using unclear or “wishy-washy” language can lead to confusion, long-standing arguments between beneficiaries and a longer and more expensive probate process — especially if court intervention is needed to help resolve disputes and ascertain your intent.

Therefore, it would seem that using phrases such as “I wish,” “I hope” or “I desire” — known as precatory language — would never ever belong in a will or trust.

But there are actually three important cases where it can be helpful to include non-binding guidance for your loved ones and estate representatives. Read on to learn when precatory language can further certain important estate planning objectives.

### **1. You want to encourage your beneficiaries to work with a financial adviser.**

According to a recent FreeWill survey a meaningful number of people expect to consult a financial adviser upon inheriting as part of the “great wealth transfer,” when Baby Boomers will pass on more than \$70 trillion in wealth to younger generations. That’s great news, since working with an adviser can help preserve and protect assets and set beneficiaries up for a positive working relationship with a trusted professional. According to the same study, many would consider working with the current family adviser, especially if they are competent when it comes to estate planning.

If you have a great relationship with your financial adviser and want to encourage your beneficiaries to consider working with them, your last will and testament could be a great vehicle to communicate this message. Consider the following wording:

*“I desire that my children consult with our family adviser, Sally Brown, or another competent professional adviser of their choosing, in the management of their inheritance.”*

The period of time after the death of a loved one can be incredibly busy and stressful. Putting language in your will that encourages your loved ones to take action and meet with an adviser to help manage their inheritance could be just the reminder they need to go ahead and set an appointment after your death.

## **2. You want to encourage your co-trustees to collaboratively make decisions, even if decision-making is ultimately not unanimous.**

If you have named three or more co-trustees, you may have instructed that they act by majority consent in order to streamline the decision-making process. You can express a desire to see your trustees work through decisions in a constructive and collaborative manner — even if their final decisions are not made by unanimous agreement.

For example, say you name your children as co-trustees in your plan. By giving them each an equal platform to have their voice heard, a child who is ultimately overruled by their siblings is less likely to feel brushed aside in the decision-making. Your gentle recommendation can be essential to preserving the bond between siblings and keeping the co-trustee relationship healthy and productive, despite inevitable disagreements that can arise in the course of settling your affairs.

## **3. You want to encourage your trustee to consider certain guideposts when making decisions about trust distributions.**

A common trust arrangement is to give an independent trustee the authority to make distribution decisions to beneficiaries at their sole discretion. Unlike the once common, albeit limiting, HEMS (health, education, maintenance and support) standard, this design gives the trustee the most flexibility to ensure that the beneficiaries’ needs are met to the extent deemed appropriate.

However, you may have certain factors you’d prefer the trustee consider in exercising their discretion, such as if the beneficiary has ample funds apart from the trust funds or if the particular need at stake is one that would likely have been supported were you still alive. This could be a need related to the purchase of a first residence versus embarking on a risky business venture.

Giving your trustee some guidance (“I encourage my trustee in the exercise of their discretion to consider requests related to educational pursuits”) can help them make decisions, while simultaneously not tying their hands if they ultimately decide a different route is in the beneficiaries’ best interest.

### **Takeaway**

At the end of the day, your estate planning documents should be clear and direct as to where your property should go on your death and who should manage it.

However, when used properly, precatory language can play an important role in communicating essential guidance to your loved ones. This can cement personal and professional relationships, as well as support your nominated estate representatives in performing their important roles.

**NYSUT NOTE: When it comes to estate planning documents every word matters so it's important to get them right. That's why NYSUT members have help through the NYSUT Member Benefits Trust-endorsed Legal Service Plan. Provided by the law firm of Feldman, Kramer & Monaco, P.C., this plan offers NYSUT members access to a national network of attorneys that deal with personal legal matters, including crucial estate planning documents. [Visit the website](#) for more information or to get started today.**

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