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# Is Your (Ethical) Will in Order?

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## I. Introduction

The young doctor, father of two little girls, knew he was dying. The good news was that before he became ill he had purchased several million dollars of term life insurance. With the help of his estate planning attorney, the doctor set up a trust with insurance equal to his exemption equivalent amount for his daughters. The rest went to his wife. The trust was designed to make distributions to them at key points in their lives as well as at stipulated ages. Each daughter would receive a small amount when she turned 16 and again when she turned 21. The trust had normal provisions for education and maintenance and also allowed the trustee to pay for a wedding, purchase a car, or travel. As each daughter turned 25, she received one-half of the balance of her trust share; as each daughter turned 30, she received the remainder.

What was unusual about this trust is that the estate planning attorney, who also served as trustee, was given letters by the doctor to give to each daughter along with each planned distribution from the trust. As each daughter turned 16, she received a small distribution and a letter from her father:

“This is your sixteenth birthday. Happy Birthday. I know you are beautiful and I wish I could be there in person. Here are some of my favorite memories from my teenage years...”

And when she turned 21: “You are all grown up now. How proud I am of all that you have become. I know you are well on your way to a productive and fulfilling life, and will find many ways to give back to your community.”

And on her marriage: “This is your wedding day and I know you are the most beautiful bride in the entire world. I am so happy for you and just wish I could be there in person. Tell your husband I love him as if he were my own son...”

The attorney who prepared this trust reports that the daughters, who are now receiving distributions and their letters, look forward to the letters their father wrote them more than the money they receive.<sup>1</sup>

The letters this thoughtful man wrote to his two young daughters while he was still alive are collectively one example of what is known as an ethical will.

## II. What Is An Ethical Will?

One author puts it succinctly: “Traditional wills involve what you want your loved ones to have; ethical wills involve what you want them to know.”<sup>2</sup> Other counselors have referred to ethical wills as legacies of intangibles<sup>3</sup> and love letters from the beyond.<sup>4</sup>

Ethical wills can include many things, such as the wisdom, values, and beliefs of a parent or grandparent, their purposes for certain actions taken, expressions of love and affection, hopes and blessings for the family, exhortations to carry on charitable work, or to care for certain relatives. They can include reminders of heritage, expressions of gratitude, and statements of spiritual belief.

Ethical wills can take many forms: one letter to the entire family, separate letters to each member of the family, video tape, verbal, posthumous (obviously a posthumous ethical will would have to be created by one other than the decedent, such as Mitch Albom’s best selling book *Tuesdays With Morrie* passing on the wisdom of a beloved professor). Ethical wills can also be incorporated into a traditional will. The various forms of ethical wills are discussed in Part IV of this article.

Ethical wills date back thousands of years and seem to have roots in the Bible itself. Old Testament patriarchs conveyed the ideals closest to their hearts, motivating values, and events in their life’s experiences before they passed away. Jacob on his death bed, for example, gathered his children around his bedside and told them the way in which they should live after he was gone.<sup>5</sup> Before their deaths, Moses and Joshua both made farewell addresses exhorting and instructing the people.<sup>6</sup> David prepared Solomon before he passed on by warning him of whom to be wary when he became king and encouraging him to be strong and keep the Commandments and charge of the Lord.<sup>7</sup>

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<sup>1</sup> This real example was in response to the question “What is the best ethical will story in your experience?” on a questionnaire sent out by the author to 80 practitioners who were listed as using ethical wills in their practices on the web site [www.ethicalwill.com](http://www.ethicalwill.com).

<sup>2</sup> Susan Turnbull, *The Wealth of Your Life*, 2 (rev. ed 2007).

<sup>3</sup> JACK REIMER & NATHANIAL STAMPFER, *ETHICAL WILLS*, A MODERN JEWISH TREASURY 131 (1983).

<sup>4</sup> *Id.* at 209.

<sup>5</sup> *Genesis* 49:1 – 28.

<sup>6</sup> *Deuteronomy* 31:1 – 33:29; *Joshua* 24:1-28.

<sup>7</sup> *1 Kings* 2:2-9.