



AVOIDING FAMILY DISPUTES OVER PERSONAL PROPERTY

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It is quite often the personal property that causes the most heartache and disruption in families after a death. Although, money doesn't usually have any sentimental attachment, it can cause issues of its own on an entirely different level. But personal property can have a perceived value far beyond its actual monetary worth.

For example, there may be souvenirs from family vacations, various collectibles, or other items of sentimental value to you that are impossible to divide or duplicate. It's helpful to discuss these things ahead of time, so you have a clear understanding of who wants what, and can anticipate and avoid problems after you're gone. You may find that what is sentimental to you doesn't hold the same sentimental value to your children and family.

Generally speaking, personal property is distributed under the laws of the state in which the decedent was a resident on their date of death. Real property (real estate), on the other hand, is subject to the laws of the state in which it is located. If you have significant personal property located outside of your official state of residence, distribution can be confusing. For example, if you own a Steinway piano that is located in your vacation home, the vacation home and the Steinway piano will fall under the statutes of the state where the vacation home is located.

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Personal property such as clothing, jewelry, antiques, artwork, family heirlooms, and household effects can be passed on to your beneficiaries in several ways.

1. Specific Bequest
2. General Distribution of All Personal Property
3. Personal Property Memorandum.

You should always include a General Distribution clause in your Will or Trust. The Specific Bequest and Personal Property Memorandum can be incorporated as the next layer of distribution.

Specific Bequest: If you were to leave a specific bequest to your sister, it may read: “I leave my Ming Vase to my sister Betty.” If you change your mind, you will need to update your Will or your Trust to remove or replace this language. Never cross out anything in your Will or Trust!

General Distribution: For most people, it would be overwhelming to try to inventory and choose a beneficiary for every last item you own. As an alternate method, personal property can be distributed all to one or a group of beneficiaries. It can all be divided equally and the collective beneficiaries can decide what they want or don’t want. Most Wills or Trusts will have language that allows the Executor or Trustee to make the final decision on what happens to the personal property if the beneficiaries cannot agree. It could state that the Executor or Trustee can sell the items and split the proceeds of the sale according to the Will or Trust distribution plan.

Personal Property Memorandum: It is common to use a separate “Personal Property Memorandum” that is attached to, and incorporated by reference into your Will or Trust. The memo is generally a handwritten or typed list of your bequests to family or charities, which is signed and dated by you. They could cover each personal item that you own, but typically include only those items of financial value or of strong sentimental value – the types of things that could lead to disagreements among the heirs.

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The benefit of a Memorandum is that it can be easily changed if you sell something, give it away during life, or change your mind about who should receive it after you're gone. You simply throw the old memo away and replace it with a new one. Each personal property memorandum should be dated, and the Will or Trust should contain instructions that if more than one memo is discovered after your death, the one with the most recent date is binding.

Over the years, Clients have come up with interesting ways to distribute personal property items that aren't the subject of specific bequests. They might instruct the executor or trustee to divide Monopoly money among the children, and let them "bid" on the remaining items. Or they might say that each child can choose one object, starting with the oldest and moving to the youngest (or vice versa), until all items are accounted for. Anything that is not selected can (for example) be given to Goodwill or the Salvation Army, or be included in an estate sale.

Regardless of the manner in which you wish to divide your personal property, you should always consult with an experienced estate planning attorney first. If you would like to discuss the options available to you, please call our Charlotte North Carolina Estate Planning firm at 704-843-1446.