



Who Gets My Personal Stuff?

Transferring Personal Property

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In giving attention to the details and issues of developing an estate plan, there is one area that is often missed, even by attorneys and professional estate planners. This is an area that is not nearly as well defined by law, and often is not of the same financial value as land, real estate, vehicles or other titled property. However, the failure to properly plan and itemize succession of ownership of this class of property often causes as much or more stress, misunderstanding, and anger as lack of estate planning of other types of property.

We all have personal items that are important or precious to us or to those that are associated with us. In estate planning, personal items are often ignored, yet they may cause some of the most significant emotions and conflicts. This is because the collection of family photos or the heirloom that belonged to our great grandparents is often of more emotional significance than a piece of land, the barn, or tractor. We sometimes assume that our personal items are not worth planning their passing, even though they were important to us and they may be a significant source of memories or comfort to those we leave behind. We also tend to assume that everyone will cordially receive or pass out our personal goods with no stress or argument about who should

receive what or how these items should be divided.

Inheritance plays an important dynamic in whether and how families remain connected following our death. Making decisions and talking about inheritance issues, including non-titled property, is not easy for some family members. Such issues may be avoided in part because:

- Everyone has to face his or her own mortality and the mortality of family members
- Individuals fear how others may interpret their motives.
- Conflict or disagreement is expected – feelings can too easily be hurt due to the emotion attached to personal property
- Individuals may be grieving the loss of their own or another's independence, changes in health, or moving from one's house

What can we do to get property owners to talk about property transfer? Try asking some "what if" questions. An example might be, "Mom, what would you want us to do with the things in the house if you and Dad had to move out or were gone? What special things do you have and where would you want them to go? What if we had to make decisions by ourselves about what happens to your belongings, like Grandma's china set or the family albums?"

Or you might say, "What would happen if you were in an accident and couldn't handle your affairs? You've got a house full of antiques, a gun and a train collection and you've got eight grandchildren and eleven nieces and nephews that have used or played with them. Who would be responsible for distributing your things and how would you want it handled?"

Look for opportune moments when the person(s) involved might be more open to discussing the subject – when a neighbor passes or grandma goes into the rest home. Use the situation to introduce the subject and start the thought process.



If property owners refuse to face the issue and discuss solutions, you cannot force them; you can only voice your desire and opinion. Your only recourse may be to warn them of the consequences of not developing a plan and leave it in their hands.

Inheritance of Personal Items is Important

Inheritance is not simply an economic and legal issue and personal items are a major part of the process. These personal items create complex emotional and family relationships which impact decision making.

- Guns, sports equipment
- Tools
- Furniture
- Books, papers
- Dishes
- Collections
- Hobby or handmade items
- Linens, needlework, quilts
- Clothes
- Jewelry

Inheritance decisions concerning non-titled personal property involve economic and emotional consequences and can enhance family continuity or add to its destruction.

For these reasons, most families will face less stress and emotional issues if they develop a plan for personal property transfer before death and while the property holder is of clear mind and sound health.

What is personal or non-titled property? Versus things like land, cattle, vehicles, or stocks and bonds, personal property includes items that do not have a registered title and the owner is not identified with a written document. This would include property items like:

- Tack
- Photos, pictures
- Personal care items
- Antiques
- Gifts

- Toys
- Musical instruments
- Anything that has emotional and/or economic value

Unique Challenge

Passing on personal items adds some unique challenges over other types of estate planning.

The sentimental meanings of the items involved make the decisions more emotional. One person may attach a high degree of sentimental value to an item because of its importance to a parent or family member, its place of importance within the family culture, or their own use and/or relationship to the item at some point in their life. At the same time, the same item may be of little emotional significance to some other members of the family. Also the degree of emotional attachment accorded an item, or group of items, by a potential heir may be unknown to the present owner or administrator of an estate if they feel the item is of little value. It is also possible that the person to whom an item is important may not have voiced their attachment to it. The issue is further complicated if more than one potential heir sees great value in certain items, setting the stage for conflict, jealousy, and hurt feelings.

Passing on the ownership of property involves the process of grieving and saying goodbye, even more so if the property is of an intensely personal nature. Even if the planning is carried out before the death of the present owner, the process itself forces the present owner to face the fact of their own death, and the potential heirs with the passing of a loved one. This heightens the level of emotion that is already present in the estate planning process. If owner has already passed, then heirs and/or administrators are left dealing with the issue of how to pass on personal items at a time when loss, hurt, and heightened emotions may cloud clear and rational thinking.

Personal family objects often help preserve memories, family culture and history, and family rituals for us. The hat and boots Dad always



wore or the favorite china that Mom used on special occasions take us back in time and give us a handle to hold on to family traditions and memories.

Due to all of these issues, the concept of being “fair” is often much more complex with personal items than with titled property. Titled property can often be appraised and valued and some sort of economic division can be developed. How do you “fairly” divide up family heirlooms, photos, knick knacks, or antiques? As already explained, many of these personal belongings have different meanings to different family members and it is difficult to measure their worth or value. What is “fair” to one family member may seem entirely “unfair” to another. When the “rules” as we perceive them are not followed or they are broken, we deem the process unfair and often take offense. To further complicate the process, these “rules” often remain unwritten, are not the same from family member to family member, and are seldom discussed or agreed upon. Family discussions should be designed to bring to the forefront members’ expectations and understanding of the “rules.” Where and how these differ should lead further discussion to help the family come to a level of agreement on how to proceed.

Often family history and past relationships have created unresolved conflicts that interfere with clear and objective discussions and decisions are not made until there is a family crisis, which may be the debilitation or death of someone.

Consequently, it is often impossible to divide things “equally” and distribution methods and consequences become clouded.

In determining how to be fair there are several questions to answer. We must determine:

- Who is involved (in-laws? grandchildren?)
- How we proceed (informing everyone, determining values)

- When to proceed
- What methods and standards to use to be consistent

Family members will consider the process unfair if they feel moral and ethical standards are not followed and if they have not had a voice in the decisions made. This is especially true if a few persons with dominate personalities walk off with everything they want and everyone else gets what is left over.

Some Factors to Consider

Realize that these are sensitive issues and even in the best of situations their discussion will create internal stress for family members and may strain some relationships. For that very reason it is usually much better to face the truths of the situation and develop a workable plan before the death of the family member involved.

Just as other parts of estate planning should include discussion and input of all family members, developing a distribution plan for personal non-titled property should include discussions and family conferences about values and goals, what family members view as “fair” versus “equal,” and what is important to the family as a whole and to those passing on the property.

Carefully select a meeting location and time. Designate a person to record decisions made by the group. Unrecorded decisions will be a fertile field for disagreements later on. A decision needs to be made here by those responsible concerning whom to include in the process. Is it parents and siblings only, with the siblings acting as representatives for their spouses and children? What about including spouses? Grandchildren? Other family members? Consider friends, significant others and ex-spouses, as well as caregivers, attorneys, and mediators. Remember that the final decision for disposition belongs to the property owner(s), and potential heirs, once having the opportunity to voice their wishes and feelings, should respect the decision



of those passing on their “important stuff.” It is also important to remember that family relationships, and their continuity, are vastly more important than the possession of an inanimate object.

There are a number of topics that family members need to discuss and on which to seek reaching consensus before proceeding to the next steps in the process. Please review the guide sheet titled *Transfer of Personal Property: Rules for Deciding Who Receives Which Items* at the end of this section to become familiar with these topics. As your family prepares to discuss the estate planning process, they will find themselves faced with these issues and it will be greatly helpful if you have had some time to think them through first. Prepare a copy for each family member involved and ask them to rate each topic according to its importance to them. After everyone has had a chance to complete the worksheet, schedule a time everyone or most everyone can be present to compare views and reach an agreement. If a consensus cannot be reached easily, don't give up. If necessary, go on to inventory the items that should be passed on and then come back to this document to attempt to reach agreement.

As illustrated by *Potential Transfer Goals*, members of the family need to consider the various options for distribution of personal property and what the consequences are of each. Some questions that should be answered are:

- Are there other goals beyond those that were listed that you feel are important?
- Which goals are the *most* important to you and which *least* important?
- Do any of your own goals conflict? Do any of the goals of family member's conflict?
- Are there others (other owners, other family members) that need to have input into these goals?
- As you transfer this property, what do you really want to accomplish? Family

continuity and relationships? Conflict avoidance? Preserving a heritage? Maintaining privacy? Contributing to society?

Remember that there is no perfect method of transfer – each method has its own advantages and disadvantages. Be creative and stay focused on your goals, but be sure to follow all applicable state or federal laws. It is also important to remember that there are more transfer options available when planning is done *before* death of the owner than after.

Inventory

Once the family has reached some degree of consensus or agreement on their values and goals in disbursing personal items, it is time to take inventory of the items that need to be distributed. This is not a simple task if a distribution plan is being considered for an entire household. As indicated previously, the owner of the property may feel like they don't have much to give away. “What?! These old things?”

However, when it comes to listing everything that may be of interest to potential recipients, don't overlook the many small and personal items that may hold memories or significance to them. In fact it is best for the owners and potential recipients to go through the items together to develop the list. If there are too many grandchildren, nieces, and nephews to include, then consider including all the children at least, or another representative of each household or branch of the family.

Make several copies of the *Personal Property Inventory* form at the end of this section. Start in one location, such as the house or garage, barn, etc. Be sure to list the owner's name, the location (house, storage shed, garage, etc.) and the date. List the room where each item is found and a description. Leave the last two columns titled “Requested By” and “Agreed Receiver” until later. At this point you are just developing as complete a list as possible.



Request of Items

Once a listing of personal items has been developed it is time to allow potential recipients to request those items they might prefer, and for the present owners and/or

administrators to determine who will actually be designated to receive various objects.

A variety of methods may be used at this point. One possibility is for participating family members to decide who gets the list for review and requests. It may be the siblings only, or siblings, spouses, and grandchildren, or whatever combination makes sense to the family. As in all these proceedings, if the parents or person who owns the personal property is of sound mind, they have the right to make the final decisions. However, the input of other family members should be encouraged. After copies of the inventory list have been distributed to those agreed upon, they should mark which items they are interested in receiving by listing their name in the "Requested By" column and returning it to the family member(s) or administrator that will be compiling the requests. Transfer all the requests to one master list. Some items will have no interested parties or very few. These items will provide easy decisions for those distributing the property. On the other hand, some items may be requested by several persons. These decisions will be more difficult and may take some time to settle.

Another possibility is for the property owner(s) to make all the decisions about who receives what without distributing the list for requests. This method is usually less desirable because it does not allow family members to share what is important to them and why. The person(s) distributing the property is/are only guessing, based on their suppositions of what their heirs would like.

There are several methods which can be used to allow potential recipients to participate in the process of determination of how items are distributed, especially for those items that

are desired by more than one. In using these methods, distribution may take place item by item, or items can be placed in groups of approximately equal value.

Shake dice: Family members shake dice and the high roller receives first choice, next highest gets second choice, etc. After making a complete round, reverse the order of choice. After the first two rounds are complete, shake the dice again to determine a new order.

Draw: Each draws a number, straw, card, etc., which then determines choice order as with dice.

Private auction: Family members buy items in open auction, using real money or equal amounts of "funny money" such as play money, marbles, or chips. If real money is used, the proceeds go to the owner or their estate. Using real money allows wealthier family members to outbid others, which may make for hurt feelings.

Silent auction: Written bids are placed on items and the highest bidder gets the item. The money generated goes to the owner or estate. Again, using real money allows wealthier family members to outbid others, which may make for hurt feelings.

Grouping preference: Selection begins with oldest and proceeds to youngest or vice versa; males go first, then females or vice versa; or the two may be integrated.

Generation preference: Priority is given to parents, siblings, children, grandchildren, blood relatives, etc.

Other methods of distribution which may be used are public auction, yard sale, or estate sale, with the proceeds going to the owner and estate or being divided according to an agreed on formula between the owner and heirs.

Legal Transfer

Once a determination has been made by the property owner or administrator concerning



who will receive which item, a couple of methods may be used to actually assure transfer of items to the proper recipient. One method is to actually gift the items at the time of decision, so that they

no longer belong to the original owner, but are taken by the person to whom they were given.

If the original owner is still living, he/she usually does not want to give away all personal belongings at this point. Therefore, the owner needs to complete a legal document called *Personal Property Memorandum* to make his/her distribution decisions binding. This document must be referred to in the owner's will and should be on file either with the will or other important documents. Each item that is to be distributed to a specific individual should be listed, along with the name, address and relationship of the person receiving the item. Each page must be dated and signed for the document to be legally binding.

Once the personal property inventory has been completed and the owner and/or administrator has made a determination of who is to receive each item, complete and file the *Personal Property Memorandum* with other estate documents to complete the process. If items are subsequently added or removed from the property owned, those changes will need to be made on the *Memorandum* and a new page signed and dated. A generic copy of this memorandum can be found at the end of the section. However, it is best to have one prepared by the attorney preparing the will for the property owner.

Agree to Manage Conflict

As indicated at the beginning of this section, conflicts and disagreements can arise during this process, even under the best of situations and with families having healthy relationships. Be committed not to let stress and conflict destroy your family and your relationships. No object, no matter how precious, is worth that.

When conflicts do arise, have a plan for dealing with them. The possibility of conflicts and how to handle them should be discussed at the beginning of the process, before they arise, not when emotions have gotten heated.

It is important to realize that conflict is a normal part of life and is not necessarily "good" or "bad," but merely reflects lack of communication, miscommunication, or differences in values, beliefs, or expectations. Often these conflicts are heightened by prior conflicts that have been unresolved, with each additional difference tending to escalate the intensity of the issue.

Most conflicts can be resolved by proper listening skills, and making statements about how we feel, rather than making statements about the motives of others. Work at listening skills like eliminating distractions, keeping eye contact, facing the speaker, keeping a comfortable distance, and listening for feelings and facts rather than using their speaking time to frame your reply or counter-attack. Practice reframing what you thought you heard back to the speaker to see if they really meant what you think you heard. When you express your side of the issue, try to stick to statements that reflect *your* understanding of the problem, how it makes you feel, and what effect the behavior of others has on you. Try to continue the discussion without assigning blame until each side has had an opportunity to express their views and feelings. Then see if you can come up with suggestions and/or solutions that might address the issue in such a way that all can receive some satisfaction.

If the conflict cannot be resolved, then consider bringing in a facilitator or mediator that may help to bring objectivity to the process. Friends or acquaintances or other non-family members may work, but sometimes they are often too involved with family members, or inexperienced in negotiating conflict, to appear or be impartial. Consider using a professional mediator or other person that has been trained in reconciling conflicts to help you through to consensus.



Completion Steps

As you bring the process of determining distribution of “my important stuff” to a close, there are some final steps that should be considered.

Be sure that all the legal documents, including your will and personal property memorandum are in order and properly filed with an attorney, administrator, or in a safe deposit box, etc. Be sure someone else knows where these documents are filed and has access to them. This is usually the person(s) named in your will as executors of the estate.

Share the outcome of the process with family and other concerned persons, unless it would cause more family turmoil. Sharing your wishes before your death can help to reduce tensions and reduce misunderstandings. Remember that one of the purposes of estate planning is to reduce the pain, stress, and suffering of heirs after you are gone.

If you have chosen gifting of important items before your death as one of your distribution methods, start the process. Decide whether you want to use special occasions like birthdays or Christmas as a vehicle to make the gifts, or whether you would like to develop your own schedule.

Since family heritage, culture, and continuity are important, and one of the basic reasons for distributing personal property, tell stories as you give away items that are important to you. Explain why these things are important, what they mean in family history, and what you feel you are passing on to recipients when you give them away. Story telling might become a family tradition as various items are passed down to those who will own them next.

As situations and family member’s change, as items are gifted and/or acquired, be ready to revisit and update your decisions. If you do make changes, be sure those are reflected in your personal property memorandum.

Resources:

Who Gets Grandma’s Yellow Pie Plate? A Guide to Passing on Personal Possessions (1999) University of Minnesota. MI-6686-WG. 800-876-8636. www.yellowpieplate.umn.edu/



TRANSFER OF PERSONAL PROPERTY

Rules for Deciding Who
Receives Which Items

Both the person(s) who presently own the personal items and the person(s) who would potentially receive the items should review these rules and discuss which would be most appropriate in their situation. The final decision for the rules used and the disposition of the property rests with the owner of the property as long as they are alive and of sound mind.

Below are various rules which could be used and which place emphasis on different values. It is up to the family to decide which rules will be used.

Should Family Members Be Recognized For Their Differences?

1. Will specific items go to persons in certain birth order (oldest, youngest)?
2. Will the designation of specific items be influenced by current age of recipients?
3. Will gender influence what they receive?
4. Will marriage status (married, widowed, divorced, or never married) influence what they receive?
5. Will birth status (children by birth, adoption, or remarriage) influence what they receive?
6. Will distance from home influence what family members receive?
7. Does having a personal interest in the item influence what members receive?

Should Everyone Be Treated Equally?

1. Should family members be treated the same regardless of what they may have contributed to the family over the years?
2. Regardless of differences in needs, should family members be treated the same?
3. Regardless of differences (such as birth order, gender, or marital status), should family members be treated the same?
4. Regardless of sentimental meaning, should

family members receive equal numbers of items?

5. Regardless of the sentimental meaning to them, should family members receive equal numbers of items?
6. Should family members receive equal dollar value of appraised items?
7. When more than one might want an item should all have an equal chance of getting items regardless of financial resources (drawing names, lottery system, taking turns at selecting, using chips or pretend money)?

Is It Important That Recognition Be Made For Different Needs?

1. Does financial need dictate that family members will receive more?
2. Does physical or disability needs dictate that family members will receive more?
3. Does greater emotional need dictate that family members will receive more?

Should Different Contributions Be Recognized?

1. Should items received as gifts from family members be given back to the same giver?
2. Should rewarded be provided for family members who have helped do work around the home or business?
3. Will rewards be provided to family members who have helped financially?
4. Will those who have helped provide care and support over the years be rewarded?
5. Should family members who have shown the most love be rewarded?
6. Should organizations or individuals outside the family be rewarded?

DETERMINING HOW TO DECIDE

Once agreement has been reached concerning which values are important in deciding who receives which items of personal property, the family needs to discuss when decisions will be made and who will be involved in making them. Review the various choices below to make those determinations.



Who is Involved in the Decisions?

1. Are children asked what they would like to receive?
2. Are spouses of children asked what they would like to

receive?

3. Are grandchildren asked what they would like to receive?
4. Should an appraisal be obtained for items of financial value?
5. Which family members will be informed of decisions the owners have made?
6. Do we wait for all to be present to make decisions?

When Will Decisions be Made?

1. While owners are able to make decisions should they make determinations of who get what now?
2. Should owners give selected items away before they die?
3. Should owners mention their wishes in their wills?
4. Should the executor decide what happens to belongings at death?
5. Should surviving family members decide what happens to belongings at death?
6. Do family members need to be prevented from taking items without others knowing?
7. Should family members be allowed to make requests for items from the owners now?

