



Dividing Tangible Personal Property in an Estate



Most people are likely to leave behind “tangible personal property” when they die. Tangible personal property typically includes jewelry, clothes, vehicles, furniture, household furnishings, silver, books, art, photos, and anything else you can touch. Part of the problem with distributing this property is that you cannot do so exactly equally. In addition, many items may have little or no monetary value but significant sentimental value. It is often not easy to foresee conflicts your family members might face when dealing with your personal property after your death. Sorting through your life’s worth of personal items can be overwhelming, unpleasant, and time-consuming. Given the complexities, how can tangible personal property be divided fairly while minimizing conflicts?

Here are some suggestions:

1. Give away items during your lifetime

The first thing you can do to help your family members who will eventually be tasked with the overwhelming responsibility of sifting through your items is to start giving away your assets during your life. Declutter. Sell. Donate. Give away to friends or family. You can even give away items to your beneficiaries now.

2. Direct the sale in your will or trust

When the estate includes a few items of significant financial worth that can’t be equally distributed among heirs, the property might be sold, and the proceeds distributed equally as cash. Assuming items of sentimental value will be divided by some other method, other items can simply be liquidated.

3. Write down who you want to receive specific items of personal property

Another thing you can do is spell out who you want to receive what in your will or in a separate written Memorandum of Gifts of Tangible Personal Property, where you list specific items in one column and the recipients in the next column. An important benefit of a side memorandum is that it doesn't have to involve a lawyer, it does not need to be witnessed, and it can be changed and updated as you wish. It's best to start by asking your children or other beneficiaries what they may want. That way you can maximize the value of what each person receives, rather than making assumptions that could be inaccurate.

If a side memorandum is revised over time, it's important that you sign and date it. The most recent list will be followed if more than one list is discovered after your death. Note that for items of high value or other significance, identifying and distributing those items should be done in the will, because the memorandum is not binding.

4. Spell out a procedure for dividing personal property items in your will

In the absence of any specific direction in the Memorandum of Gifts of Tangible Personal Property, or to the extent this memorandum does not address certain items, the items will be divided among your beneficiaries. If you anticipate conflicts among your family and friends over your personal property, you can spell out a method for distribution in your will or trust. Here are just a few examples:

- To be divided in your representative/executor or trustee's absolute discretion
- To be divided equally among your beneficiaries in as equal shares as they agree. To the extent there is disagreement, the Personal Representative/Executor or Trustee shall sell or distribute any items over which there is disagreement.
- To be divided and distributed as an independent third party determines, after considering any preferences of the beneficiaries
- To be divided and distributed by a lottery system
- To be divided by taking turns by drawing lots to see who goes first, second, third, etc., and continuing to circle through the list, or people who went first go last in the second round, or a progression from round to round. It can help to facilitate the process if the personal representative makes a list of the items with their appraised or estimated monetary values.

5. Utilize a bidding system

Another approach is to give all the beneficiaries a certain number of points that they can apply toward various items on the list. This could be done blindly with each person making bids and the personal representative/executor simply awarding the items at the end. The problem with this approach is that some beneficiaries may be luckier or more astute in their bidding—one person getting most of what she wants and another getting virtually nothing. Another approach would be more like a silent auction, permitting beneficiaries to adjust their bids right up to a set deadline

6. Implement a financial adjustment after items are distributed

What happens if one person ends up getting items with a total market value of \$10,000 and someone else gets items worth \$14,000? You could say that it doesn't matter because everyone still was able to maximize what was of most value to him. Or you could equalize the valuations at the end with the first person receiving an extra \$4,000 from the estate. That way, no one keeps choosing items just to get the best market value. It may be that one person only wants a few items, and someone else is selecting items to give to his children. Should the first person, who may not have children, be compensated in some way? No wrong or right answer applies in all cases. It's worth polling the beneficiaries to see if anyone cares.

Whatever methodology is chosen, it's always a good idea to keep the beneficiaries informed. This can be done by the grantor during life, explicitly in the will, or in a memorandum, to minimize any chance of conflict among the beneficiaries.



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