

Sweating the Small Stuff

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Clients sometimes get confused about the way lawyers use the word “property.” In the legal community, the word “property” has a very broad meaning. It means anything a person or entity could own. Different types of property are then classified with different labels. For example, the term “real property” is used to mean land and things affixed to the land. “Intellectual property” refers to things like trademarks and patents. Bank accounts and investments are referred to as “intangible personal property.”

Lawyers use the term “tangible personal property” to refer to what you might call your “stuff.” This would include things like: clothing, jewelry, furniture, collections, guns, and art. When people die, a disproportionate number of disputes arise in relation to items of tangible personal property. There are several reasons that this is true, and several things people should think about when they do their estate planning that may help avoid some of these conflicts.

Lack of formal title

Most types of property have some form of official registered ownership — or “title.”

Real estate titles are expressed in the form of deeds and are usually recorded at the county Register of Deeds office.

Bank accounts and retirement accounts have ownership forms on file with the institutions that hold those assets. And the name of the owner of these types of assets will appear on the statements issued by those institutions.

But most types of tangible personal property have no form of title. Rather, for tangible personal property, ownership is often simply a matter of possession. When someone dies, unless the item is found among their possessions, proving that they owned this chair or those golf clubs is not always easy. And when someone claims an item of tangible personal property is missing from the deceased person’s belongings, it is often difficult or impossible to prove whether it was taken, by whom, and when.

In addition, even when items of tangible personal property are found among the belongings of the deceased individual, arguments about ownership can arise where another person claims that a particular item was not really owned by the

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decedent, but was merely being loaned to them or being stored in their home or garage. Or they may claim that the deceased person “gifted” it to them while they were alive.

Lack of inventory

Most people do not keep track of the tangible personal property they own at any given time. A baseball card collector, for instance, may buy and sell cards on a regular basis. In fact, buying, selling, and swapping cards is what they enjoy about the hobby. So, while family members may all remember the decedent having proudly shown off a Ty Cobb baseball card on many occasions, if that card is missing when that person dies, unless the deceased person kept a record of their transactions, there is no way to prove the card was taken, as opposed to swapped with someone at an intervening baseball card convention.

The same is true with other types of tangible personal property. Maybe the decedent simply sold or gave away the antique clock, his war medals, or the fancy glassware his grandparents brought over from the Czech Republic. Without a record of the deceased person’s activities, who can prove he didn’t? All of these things can become fodder for speculation and suspicion, but there is often little that can be done when these items cannot be located among the deceased person’s belongings.

Lack of valuation

When people die, and things are missing, family members often have disagreements regarding the true value to those missing items. It is common for some family members to remember a box of costume jewelry, while others recall diamonds and gold. If these items were not appraised during

life, these issues may give rise to suspicions and hard feelings, but there is often little that can be done about it.

And it is not always the marketable value of an item that matters. The “family bible” or another family heirloom may turn up missing, and these items of so-called “sentimental value” are as likely to give rise to disputes as items that could have been sold for significant sums of money.

Informal statements of intent

It is also common in estate administration for some family members to recall statements of intent made by the person while they were alive about certain items of tangible personal property. A person might say, for example: “When I am gone, I want each of my grandchildren to have one of these guns.” But if that intent is not formalized in their estate plan, arguments are likely to arise if those expressions are not respected after death. And, even where such expressions are acknowledged, disputes can arise as to the details of their implementation. Using the gun example, arguments about which grandchild gets which gun could become equally contentious.

Solutions

The solutions are obvious, although not always practical.

It would be best if people kept records of all valuable items they own (both things of financial and sentimental value), and maintained an updated inventory of those items in a place that is known, and would be accessible, to family members when they die. Ideally people would regularly indicate changes to, or the continued completeness of, that list with a dated signature.

It is also a good idea to have items of significant financial value appraised, and to list those items on one’s homeowners insurance policy. Further, with the use of our smartphones, it is easy to photograph particularly important items and to keep those photographs stored on a computer where family members would know to look.

It is also possible to use forms provided to you by your estate planning attorney to make detailed lists of who you want to receive specific items of tangible personal property when you die. Michigan law allows such lists, if properly completed, to serve as an enforceable supplement to your will or trust.

Also in the process of preparing your estate plan, you should discuss with your lawyer the way you want the person in charge of your estate to settle disagreements regarding the division of tangible personal property. Do you want each child to select an item in rotation? If so, how do you decide who goes first? Do you want grandchildren to participate? Or do you simply want the person you put in charge to have discretion to divide these items as they see fit?

Finally, there is the issue of who has access to your home when you die. In many of the cases where there are issues regarding allegedly missing tangible personal property, the suggestion is made that someone came into the home and removed items shortly after the person died. Limiting access to your home (and outbuildings) only to those people you trust, and who you have appointed to handle the settlement of the estate, can avoid a lot of mischief.

Conclusion

Everyone likes to believe that their family is not the type of family that will argue about the settlement of their estate. Turns out, in most cases, they are wrong. And even if your will and trust are crystal clear about most issues, issues relating to tangible personal property can and often do arise. Taking the steps suggested above, while not preventing all possible conflicts, will eliminate many issues and reduce the potential that the event of your death will give rise to long-harbored ill feelings between the family members who survive you.

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Mr. Chalgian previously served on the Commission on Services to the Aging. He was one of about a dozen attorneys on the Michigan Trust Code Drafting Committee, and has been selected three times as one of the top 100 lawyers in Michigan by Super Lawyers Magazine. Mr. Chalgian writes and speaks regularly on the topics of estate planning, elder law, and probate court litigation.

