

Knickknack Knockouts: Avoiding Family Fights Over Grandma's Tchotchkes

The most prolonged and venomous arguments I've witnessed in my Estate Planning practice have not been over money. This level of emotional warfare is reserved for tangible, personal property, or the "stuff" that mom and dad, or grandma and grandpa, leave behind in the house. The seven-dollar porcelain ballerina that sat on the mantel for fifty years, the carbon steel chef's knife in the kitchen, the washing machine—if you can believe it, costume jewelry, a crocheted Kleenex holder, photo albums. These are the objects that can send otherwise well-behaved, loving, and gentle family members off to opposite corners of the boxing ring to steel themselves for a fight. And fight they do.

"Not me, and not my family," you all say. Even if the arguments don't rise to the level of bloodletting, the frequency of petty behavior, and of outright lying, is so common as to make it trite. These smaller wounds, these nicks over knickknacks (sorry—I couldn't help myself) can still do serious damage to a family already grieving the loss of a family member. Siblings revert to traits and behaviors they exhibited at ages six through twelve. Beloved in-laws who were once an integral part of the family are now interlopers who deserve nothing. And suddenly mom promised all four of her children that they could each have the cuckoo clock (pro tip: none of you should take the cuckoo clock. Your own families will thank you for letting that one go.)

How do we prevent such consternation at a time when we should be coming together in our shared sadness? A list. A simple, old-fashioned list. I call such a list a Will Memorandum, and Massachusetts law recognizes such a "separate writing identifying [the] devise of certain types of tangible property." (Mass. Gen. Laws ch. 190B, sec. 2-513) The Will itself provides that the author (the testator or testatrix) may leave such a memo that lists specific items for specific people. This list can be updated, changed, thrown out, and begun anew at any time, without having to change the Will. For any object of significant monetary value, I recommend providing for distribution in the Will, or a Trust, as opposed to a separate Memorandum. And a Will Memorandum is not an appropriate place to include gifts of money or real estate. But for all those personal belongings that have more of an emotional value, such a list is perfect. Some of my clients have also placed notes on the backs or bottoms of objects around the house, noting who is to receive it upon the client's death. This works, too, but I prefer a list that is dated and signed and kept with the client's copy of his or her Will. It is helpful, too, if I, as the client's Estate Planning attorney, have a copy in my file.

How does one start writing a Will Memorandum? Ask your family members what they want! Many people do not want to have these conversations, but it is a gift to those you leave behind to prepare for your passing, and a gift to prevent discord in the family. Want to achieve the next level of preparedness? Start giving possessions away before you die. If you know that your niece would enjoy your bamboo fishing pole, give it to her now so you can see her smile, hear her thank you, and forestall any arguments about it later. Further, giving away some of your knickknacks now will reduce the burden on those you leave behind to clean out your residence. Take a look around your home. Is there decluttering that could be done now? (The answer is assuredly yes). Start making a list of items that you can part with now, and ask your family and friends if they're interested in any of them. By starting the process during your life, you are lessening the burden you might otherwise leave your loved ones.

“But I’m only forty/fifty/sixty,” you say. You’re not too young to start. Do yourself and your family members a favor and start making that list. Every one of us has at least a few things that would be meaningful to another. If you don’t have children, consider your friends, siblings, nieces, and nephews.

One last thing: making a Will Memorandum (or having a Will prepared, for that matter) will not cause your death. It will not court the agents of your demise. It will be an exercise of control over the uncontrollable and will actually make you feel better, and will make things markedly easier for those you leave behind.

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