



FEATURE: ESTATE PLANNING & TAXATION

By **David MacMahan**

Overcoming the Great Divide

Include clear instructions for executors over the division of personal property

Loss of a parent is one of the most stressful and emotionally challenging experiences in life, and coupled with a family's dissension over "things," it can, unfortunately, create unwelcome conflict or even chaos and resentment that divides families. Consequently, dividing personal property can be a draining and overwhelming process for the executor or trustee.

Too many trusts and wills practically overlook drafting guidance for the executor charged with dividing the personal property of an estate. You know, the part typically described as, "divide the remaining assets equally between the heirs?" The time and effort put into this part of planning is often proportional to the net cash value of the personal property compared to more valuable assets like real property or stocks; so basically—not much.

However, more than any other part of estate settlement, splitting personal property creates discord and fractures family relationships. The tasks involved logistically to get this done have been described by many executors as the most taxing and overwhelming. It often evokes the strongest emotional reactions, grief and sibling rivalry flare-ups in the settlement process. Marlene Stum, a University of Minnesota professor and author of *Who Gets Grandma's Yellow Pie Plate?* is fond of sharing the quote a woman memorably shared with her: "My mother's funeral was a piece of cake compared to clearing out the house and closing the door."¹ Couple that responsibility with figuring out who gets what, and what can be sold or donated, and you have the trustee or executor's dilemma around personal property.²



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Stories of personal property division draining and overwhelming the executor or trustee are everywhere, as are stories of conflict among siblings during the process; I hear a new one nearly every day!

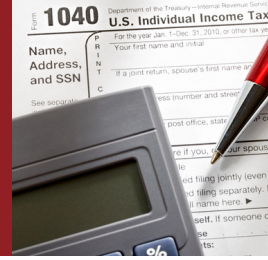
However, putting just a bit more instruction in the will, trust or letter of instruction about personal property makes a huge difference in preserving family relationships and, at the very least, will relieve the executor's stress around having no spelled out direction. (See "Sample Letter to Executor," p. x.) John A. Warnick of The Purposeful Planning Institute sums it up perfectly in the *New York Times* article, "In Estates, the Little Things Matter:"

'I ask parents to think just for a second what it would be like on Christmas morning if your children ran downstairs and there were all of these presents, bright and shining, big and small, but with no name tags on them,' he said. 'Can you imagine the free-for-all that would ensue?'

Survey Results

For this article, I decided to share our survey of over 5,000 heirs taken over a five year period, sharing heirs' mindset going into personal property divisions.⁴ The results provide insights into the roles that trust, emotional value and monetary values play in the process. The thousands of heirs surveyed represent all types and sizes of family estates, from multinational, multi-million dollar estates to the low value contents of a two-bedroom ranch house. The concerns, fears, resentments and practical challenges of the process are universal, regardless of the net worth of the heirs or value of the estates. Family dynamics around the grief over a lost parent, the loss of continuity of one's childhood home and even childhood rivalries surface in the vast majority of cases.

"Survey of Heirs," p. x, brings out a few common



truths:

- The vast majority indicate being either neutral or leaning toward having strong emotional value interest in things.
- Only around 11% indicate no interest and 54% indicate neutral feelings about getting their fair share of the monetary values of things.
- Less than 50% indicate that they'll definitely be fine to go along with the trustee or executor's chosen process to divide.

Six Issues to Address

Here are some questions to discuss and topics to provide instruction or guidance on in the estate plan or will. Remember, the executor or trustee is being asked to list, share transparently with all heirs and divide and distribute the personal property to the satisfaction of all. The issues arise when the executor has never done anything like this before, which is the norm for most families. So, the more guidance you can provide to him in the estate-planning documents for his reference, the better he can satisfy all parties involved. Lack of clear instructions opens the door to different heirs often emphatically insisting that this is, or definitely isn't, the way Mom or Dad would have wanted it, creating immediate tension and conflict. Included below are questions that come up often at the start of the division process:

1. Who's responsible for managing the process? Is there a single executor, co-executors or more? Naming more than one executor is similar to having two or more CEOs of a company; it isn't organized this way because it usually doesn't work well. I've seen multiple executors work, but only when instructions for division were clearly made and agreed on by all. One approach is to name a single executor and name and enlist another heir as a supportive assistant to the executor. While the logistics of multiple executors is daunting in itself, it can also be very time consuming and emotionally overwhelming to shoulder the division of an estate alone.

2. Are any of the items significantly more valuable

than others? Many estates have artwork, jewelry, a classic auto or even rare antiques that hold significantly more value than others, though it's usually a dozen or so items at most. There may be a difference in value of millions of dollars, and the inequities can be glaring if one sibling gets several of the higher end items. Should there be appraisals done for items over some dollar amount? With a baseline value level provided, the executor can arrange a walk-through by a certified appraiser to identify those items likely to exceed the amount and to provide an appraisal. You may ask, should all items have an estimated fair market value (FMV) determined by an independent third party or be fully appraised? Typically no, unless the estate will exceed tax levels that may require it. We get less than a dozen items appraised

If items are given in advance, make note of those in the estate-planning documents so there's no doubt to others the items were given or promised.

in half of the estates we handle; for all other remaining items, the estate agrees on \$1 value per item or has us or another third party assign estate sale or garage sale expected values on them.

Should each heir take turns choosing among the most valuable items first for more natural equalization? What if an heir isn't interested in any of the items or prefers cash value? Is there an equalization of net cash value to be used? If not, state why in the estate-planning documents. The executor may sell the highest value items if none of the heirs want them, especially when equalization is expected.

If equalization payments are to be made, appraised



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Sample Letter to Executor

Provide instructions on personal property division

Here's some sample wording that you can use as a guide to provide to a layperson serving as the family executor or trustee. Tax and state laws may dictate more legal-speak, but try to word the general letter of instruction in a practical manner. If you touch on these issues mentioned in the letter, you'll address the main challenges I've seen when dividing personal property among thousands of heirs. The key, as with most planning documents, is to anticipate and direct the future process in ways the client and the client's heirs aren't experienced or equipped to do without your guidance. This will help assure that "The Great Divide" goes well for all involved.

Sign the letter of instruction and keep it with the estate documents. It isn't legally binding but serves as valuable instruction to the executor, trustee and heirs.

Dear Executor (name):

Create a comprehensive list of personal property to be divided, which includes items such as art, furniture, memorabilia, household contents, automobiles, RVs and boats; basically, any unnamed assets of the estate. Have appraisals done on things likely to be worth [insert amount] or more, and either have mutual agreement from all heirs that no value is needed to be put on other items before dividing, or have an independent third party put estimated market values (appraisal level not needed) on the other items. Divide the personal property using a system of taking turns choosing or other selection process you may elect to use that gives good equal opportunity to designated heirs, with any items left over sold or donated with proceeds going to the estate, or being offered to grandkids (or nephews, nieces, housekeepers, caregivers, etc. as desired). Another possibility is to use a points system and assign points to emotionally charged items that an heir can bid on. If more than one heir is interested in items like photos, movies and albums, have the estate duplicate and digitize these for anyone who wants them, and give the originals to whomever chooses them in their selection turns. The responsibility and cost of packing and shipping any items or collecting from the property shall be borne by the recipients and coordinated with you.

(If there's to be equalization)—After all items have been valued and awarded to the heirs as equally as possible or as selected, determine the total value each received and equalize the values using other assets of the estate. The value basis should be a discounted value to reflect the anticipated net cash value items would bring in an estate sale, consignment or other liquidation event. A guide for this would be discounting fair market value by 50%, unless clearly it would yield more or less, like automobiles or jewelry that may vary and that you'll determine. Best efforts to make the division process available to all will be made, but unreasonably withholding participation from you in a timely and cooperative way to complete the process will result in an assumption of non-interest by that party, as may be determined by the executor, who may then exclude the uncooperative party from the selection process, and his presumptive share of this part of the estate.

— David MacMahan

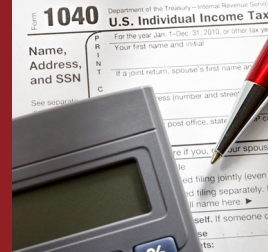
values or estimated FMVs should typically be discounted 50% percent or more to better reflect the equivalent cash values if all had been sold in an estate sale, consignment or auction. The fees of an estate sale, the last two days' discounts (as items start to be marked down) and eventually donating unsold items mean that net proceeds to the estate are far below appraised market values. When equalization of values among heirs is calculated, the executor should use the discounted net cash value estimate to be fair with all parties.

Who's responsible for the costs of packing and shipping the items awarded to each heir? Does it come out of the estate proceeds? What about furniture whose packing and shipping exceeds its value? There's no right or wrong here, but it makes a big difference. Most often, we see the costs of packing and shipping borne by the receiving heir, but sometimes the instructions will say the estate will pay for shipping to each heir with available cash. Having the receiving heir understand that he'll pay these associated costs helps avoid the undue burden and eventual

Be sensitive to heirs' feelings
on how long the process
should take.

resentment from local heirs. Shifting the burden to the out-of-state heir helps quell complaints from family members who live closer by the estate home. It's less of an issue if there are large amounts of cash value coming to all so that the cost is relatively nominal.

3. Can your client give or promise to give certain items to heirs now? Giving things of emotional importance to heirs now allows them immediately to enjoy the gifts. It also provides the chance for the giver to say why it's important for an heir to have it and to appreciate it. If items are given in advance, make note of those in the



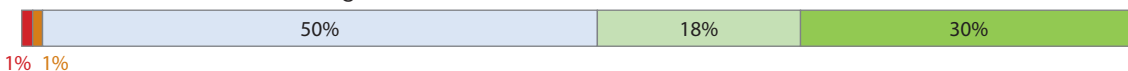
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Survey of Heirs

Some items elicit a strong emotional response

Strongly disagree Disagree Neutral Agree Strongly agree

There are items that hold strong emotional value to me.



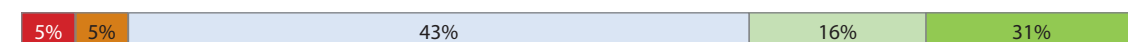
I trust the other parties in this process to want what's fair for all of us.



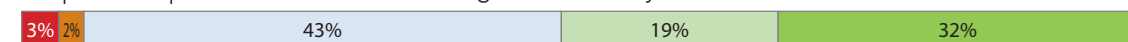
It's important for me to get my share of fair market value of the assets.



I'm fine with however the administrator chooses to run the division.



FairSplit is the process chosen to divide. I agree to abide by the results.



— FairSplit.com

estate-planning documents so there's no doubt to others that the items were given or promised.

4. What process or system should be used to divide the personal property? This can be tricky, in that complicated instructions about who starts first, what changes in the next round and how it reverts to something else in the next, may sound helpful, but when hundreds or thousands of items are on the table, the details can be more problematic than helpful. Something more general that provides guidance but that isn't terribly specific is preferred.

5. Emotionally charged items can represent a minefield in dividing personal property. Things like the cookie jar, dad's ukulele, a wooden rolling pin used to bake pies, a sugar bowl and the family Bible are examples of items I've seen create the most tension. Using points to bid on who wants an item most can be useful for these items. Limit the number of items one can use the points on. The heirs can bid their points, maybe 500 to each, all on one item, or across several, but limit the number to no more than five to 10 so single points can't be put on hundreds of items. The goal is to determine who wants the item most and not leave it to the chance order of drawing straws and taking turns.

6. What about family photos, movies, family portrait, etc.? Fortunately, in today's world, there are affordable ways to duplicate videos, reproduce or scan photos and even produce quality prints for important family paintings. When funds allow, one good way to approach this is to allow the estate to pay for duplicating the framed photos, key photo albums, etc. at the expense of the estate, giving copies to any heir who would like them. The actual items get listed and awarded like the others but with the understanding that they'll first be scanned and duplicated for all who want them.

Practical Pointers

Here are some common sense pointers to keep in mind when you're helping your clients with the division of personal property or to provide to the executor:

1. Remember, everyone processes grief differently. Individuals' attachments to the emotional value of things aren't always a reflection of caring more or less about the lost loved one. Some want or must have things they can touch, see, smell that help them remember the decedent. Others may find those reminders hurt or interfere with how they want to or can imagine moving forward.




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2. Be sensitive to heirs' feelings on how long the process should take. Some heirs want to get through things quickly to get to the other side, and some want to take their time and feel that rushing somehow dishonors the lost loved one. Both feelings can be very legitimate. Not becoming frustrated with either is key, and acknowledging those feelings and empathizing with them will go a long way toward creating compromise.

3. Limit who's involved in the selection process. Some heirs may want to have their spouses or their children help them choose what they select. It makes sense for heirs to seek input into what's wanted, but for nearly all families, I highly recommend that only the heirs/siblings be present for any division process or in-person selections. This isn't just my experience but is found in nearly any book or guide on dividing. Sibling rivalries or tensions are hard enough to deal with in the face of loss; adding personalities and individuals perceived as "outside the direct family" participating in choices can

visits the sibling who got the item and sees it gathering dust in the garage.

5. Base value determinations on what the item is worth now. Things usually aren't worth what you think, dollar value wise. The market during the past 10 to 20 years has greatly devalued items such as antiques, furniture, china, silver and collectibles. This devaluation is in part due to the vast accumulations of the 80s and the changing tastes of next generations toward more simple or functional furniture and even smaller houses. Most "antiques" sell now as just old, brown furniture. What an item was bought for also has little to do with what it can sell for now. Appraisals for insurance purposes reflect values typically received only if there's a fire or the items are stolen. Trying to actually sell things for those values may easily yield half or less. That net expected value is the fairer way for the family to reconcile any value differences between who got what. 

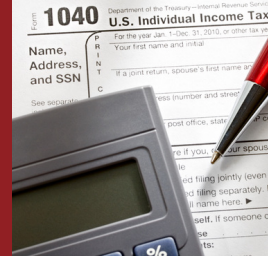
Any altering of a truly preferred choice, based on perceived desires of another sibling, is a recipe for conflict.

create tensions and conflict easily avoided by keeping it as only the heirs.

4. Discourage changes in what's selected. When face to face, some heirs may alter their own selections based on whether they think another heir is interested in the item. I suggest that any altering of a truly preferred choice, based on perceived desires of another sibling, is a recipe for conflict. Of course, siblings with any rivalry may select an item as a "take away" from the other, causing the other to miss choosing something he truly wanted (so a double loss) and fanning the fires of conflict between those two. You may also encounter a "pleaser sibling," who always wants to keep everyone else happy. It may seem okay if he passes on taking an item he wants so that another sibling can take it. But, complications may later arise, for example, if the pleaser sibling

Endnotes

1. Marlene S. Stum, "Who Gets Grandma's Yellow Pie Plate?" Families and Inheritance (Power Point presentation, slide #11) (University of Minnesota, 2016).
2. Stum's <https://extension.umn.edu/transferring-property/transferring-non-titled-property> is a valuable resource where one can find other information about heirs and dividing estates.
3. www.nytimes.com/2016/04/16/your-money/when-dividing-assets-the-little-things-matter.html.
4. www.fairsplit.com/survey-insights-from-thousands-of-heirs-dividing-estates/.



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