

# Dividing **TANGIBLE PERSONAL PROPERTY** in Trust or Estate Administration

*Who Gets What and How to Decide Peacefully and Fairly*

I like to say, “A good division of personal property rarely feels perfect, but hopefully it feels perfectly fair to all.” Division of personal property typically occurs with an estate settlement, but increasingly it happens as part of downsizing. For more than ten years, I have helped thousands of heirs and their families through the process of dividing tangible personal

property. During that time, I have accumulated a number of general observations and specific tips for making this process easier.

Peacefully dividing possessions is possible, even when multiple heirs are interested in the same thing!

Downsizing is an emotional and physical adjustment, not only for the elderly person, but also for their entire family. It would be easier if it were simply a process focused on choosing

what to take, clearing the junk, and then selling or donating the rest, but families—and family dynamics—can make it much more challenging. Because each family member is often losing an important life anchor and symbol of stability when the family home is sold, feelings can easily be hurt and relationships damaged. In the absence of a defined process and transparency, things may casually be sold, donated, or randomly given to someone, creating resentments that are hard to overcome. This is also true when a parent dies; as Julie Hall, an author known as “the Estate Lady” says, “People become emotionally 8–10 years old again when faced with the loss of a parent.”

In many estate settlement cases, heirs truly want little of the personal property. This may be attributable to taste or perhaps already having a full house with no room for more furniture, paintings, rugs, etc. But do not assume that that is always the case. Often, several heirs may want the same items because of need, sentimental value, reluctance to let go, or perceived monetary value. Take all scenarios seriously and address them with care to avoid long-term damage to familial relationships. The division of property, whether it goes well or poorly, will also influence the family’s confidence in and appreciation of the professionals guiding them through the process.

Creating the list of assets to divide is the first step. During more than a decade of experience studying and providing estate settlement services at my company, FairSplit, I have learned a few important principles.



## CRITICAL STEPS FOR KEEPING THE PEACE IN FAMILIES BEFORE AWARDING ITEMS TO HEIRS

Following are a few suggestions for keeping the peace among heirs before beginning the division of assets:

- Allow each family member to feel both heard and included; transparency is key!
- Strive for a blind, demonstrably fair system of allocation that removes any favoritism or undue influence. (Recognize that dominant and passive sibling roles exist, and feelings of being slighted or concerns of favoritism are inherent to the process.)
- Only direct heirs should be involved in dividing tangible personal property. Avoid bringing heirs' spouses or children to any in-person decision gatherings.
- Items that have a high sentimental or emotional value are rarely monetarily worth what people think they should be. In addition, insurance appraisals reflect values not typically attainable in a liquidation or actual sale. You may need to reduce the value significantly to achieve a sale through an estate sale company, auction, or consignment service if you are seeking equalization among heirs. Often, reducing the appraisal value by 50 percent comes close to estimating the true net cash value to the estate. The estate may actually have to pay someone to take some items away, such as pianos, large wooden display cabinets or wardrobes, and old televisions.
- Provide transparency and get confirmation from all heirs that all the tangible personal property listed should be part of the division process. Be sure items are listed correctly before starting to award them based on any chosen system.
- Establish ahead of time who will pay for shipping and freight. This issue can be a big point of contention best addressed in estate planning, but in reality, it rarely is. If the will, trust, or letter of instruction does not specify the means of transporting large and heavy things, families must decide who will pay for the packing, shipping, and insurance for each heir's allocated items. This task can create a big challenge if some heirs are local and some live far away. Local heirs may not want to help pay significant shipping charges to send items to a coheir who lives in another city unless the planning documents say so.

Absent specific directions, each heir is typically responsible for either picking up their selections or paying the packing, shipping, and insurance costs for the items allocated to them. Be sure to clarify this before the selection process begins. Often, shipping costs dissuade an heir who lives several states away

from choosing furniture or other heavy items that may cost more to transport than they are actually worth.

## EMOTIONALLY HIGH-VALUED ITEMS, HIDDEN AND OBVIOUS

Hidden treasures are just that—hidden! So do not assume that the things of obvious monetary value will be what family members will care most about when compiling the list of items to divide. In estate divisions, the most-cherished things have related memories, for example,

- an old wooden rolling pin in a kitchen drawer may be wanted by sisters who had fond memories of their mom teaching them to bake pies and biscuits and who want to do the same for their grandchildren,
- the family cookie jar,
- the sugar bowl Mom used every day for her tea,
- the tree topper angel and Nativity scene, and
- the *Grimm's Fairy Tales* book from childhood.

These are all examples of items that may easily be donated, overlooked, or even thrown away as junk, despite being the most important mementos to one or more heirs.

And then there are the easily identified treasures, such as

- an Olympic gold medal that three brothers each want,
- handwritten presidential letters to a grandparent or great-grandparent,
- Mom's wedding ring,
- Christmas ornaments collected over many years,
- the family menorah or other religious focal item,
- Dad's guitar,
- an autographed baseball,
- china used at family gatherings, or
- a valuable painting that has hung over the mantle for decades.





These items are often of high importance to multiple heirs, and this is why the clarity and fairness of the FairSplit process, which assists families with dividing estates through online division rounds and algorithms, can be a huge help.

## PROVEN TIPS AND METHODS FOR DIVIDING TANGIBLE PERSONAL PROPERTY

**Use an independent third party.** Having an independent third party manage the actual division of personal property can make a significantly positive difference in the outcome. Regardless of the process or how well the family gets along, using a third party eliminates any real or perceived advantage one heir may have over another. It also serves to automatically de-escalate tensions that can arise when one sibling tries to manage the others. A third party removes some of the pressure an executor or heir already feels about how to do things, along with judgments about how they are doing them. The third party can listen to the heirs' concerns and work with the executor or trustee to address flash points that may not be obvious and devise a plan that is more likely to feel fair to all.

**Confirm full asset list integrity and transparency.** All heirs must acknowledge that they have received, reviewed, and approved the full property list. This list might be a full appraisal of all assets in a PDF file, a comprehensive list in Excel, or papers in a binder. FairSplit organizes this process by rooms and categories, with items individually photographed so there is clarity about what is being chosen. Before items are awarded, the heirs indicate their interest with yes or no and state whether they see any issues with how things are listed. Even items bequeathed in the will or trust or recently given away should be

listed with a note about why they have been divided as they have.

**Put on an "heir hat."** When creating the asset list, the lister or photographer should always put on their "heir hat" and consider how they would want to choose things. Sometimes preparers either group things haphazardly or separate everything into single items when practical or small, well-defined groupings would be more helpful. At other times, they categorize items in large impractical groups that no one would choose.

Examples of items that should be grouped include matching art prints, a pair of lamps, a matching sofa and loveseat, or other similar property. These types of assets should be photographed together and listed as single items to be selected. We suggest grouping related kitchen items such as a frying pan, two boiling pots, and a measuring cup. Each group should be a practical, balanced assortment of items that could actually be used by someone adding to their own things instead of five measuring cups or eight frying pans as a single option that no one really wants or has room for. Avoid grouping or describing items to be chosen in ambiguous lists or photographs. Also avoid listing items in ways that may overlap with things shown in other photographs and cause conflict over the selection of that item.

## THINGS OFTEN FOUND AND RECTIFIED IN THE PROCESS OF AN ASSET REVIEW

Some things should be omitted from the list:

- Borrowed items, such as a vacuum cleaner, skill saw, or ladder should not be on the list.
- Gift items, such as a flat screen television given to aging parents, may stay with the gifting heir.
- Items belonging to an heir but left at the parent's house, for example, items in their childhood bedroom and boxes stored after a move from the area, should stay with that heir.
- A generic collection of items, such as a box of holiday ornaments could be divided into either individual items or small groups so that all heirs have a chance to receive some.

To expedite the overall process, some families with hundreds of items to divide have elected to immediately award any item

chosen by only a single heir to that heir. This approach puts tremendous pressure and thought on the yes or no decision and can cause people to say yes to things they would not otherwise choose. For this reason, it is usually better to follow a different process where items are chosen during each round but awarded only at the end. As you will see, at the end of all of our division processes below, if only one heir is interested in an item (or even hundreds of items), they will receive it because no one else has chosen it in the follow-up rounds.

See [video showing how this process works on FairSplit.com](#)

## DIVISION PROCESSES WITH EXAMPLES<sup>1</sup>

### Division Method 1: Emotional-Value Points System

The emotional-value points system awards the few most-wanted items. Typically, there are a handful of items that carry the strongest emotional value when heirs are making their selections. Sometimes, heirs may think, “If I just get this one thing to remember Mom by, I will be happy.” Or you can use this system for items that several heirs want, such as the Olympic gold medal mentioned above.

Using emotional-value points in a round, as FairSplit does, is similar to a silent auction. One of the important aspects is that the process is blind for all heirs, so they are not openly bidding against each other. Each heir feels like a real winner, getting some, or sometimes all, of their truly most-wanted items. It is extremely rare for all the heirs to have exactly the same weighted interest in the same items. We do not reveal the heirs’ bids, so even if an heir is the only one to bid on all their items, they are still elated when they receive all or most of their top choices. This emotional-points bidding process removes the tension associated with how the most-wanted items are awarded, such as who gets to go first, and reduces the overall emotional tension around the remaining processes. Most heirs know instantly what their top five to ten items are, making it easy to allocate points and weigh their interest.

Whatever system you use to divide assets and settle an estate, heirs should blindly submit their points and items to an independent third party or the trustee (as long as the trustee is not also an heir) and then allow the trustee to award items based on who bid the most. If there is a tie, we first make sure everyone has received at least one item. If not,

the tie is resolved in favor of the heir with no items. Otherwise, we use the equivalent of an old-fashioned coin flip.

See [video showing how this round works on FairSplit.com](#)

### Division Method 2: Selection Order Rounds

The selection order rounds process is similar to drawing straws, taking turns, or a fantasy sports draft. In each round, heirs rank items from top to bottom. FairSplit tries to create a round that includes a variety of items wanted by at least one heir and perhaps all heirs across all categories. Not every asset in the round will be wanted by all heirs, so they move the items they want from the available list to their want list and then rank them top to bottom.

The algorithm awards the top item remaining on each person’s list.

The recommended order is a snake award system, as in fantasy sports drafts, where

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<sup>1</sup> Please note that, although these examples are from the FairSplit online software process, they can also be used in any offline approach that a family may choose.



items are awarded 1, 2, 3, . . . , 3, 2, 1, . . . , 1, 2, 3, . . . so that, over the course of the round, order becomes irrelevant after the first or second pass.

For example, a family had thirty-six collectible egg Christmas ornaments that they wanted fourteen grandchildren to choose from. Each grandchild ranked all thirty-six ornaments and then all the ornaments were awarded until every grandchild had received two ornaments, and eight grandchildren had received three. The entire family was happy with the blind system of ranking and awarding.

A blind, fair system is really all that any heir is looking for to feel that the process was a good choice.

### **Division Method 3: Be Creative but Very Conscious of Gaming or Collusion Possibilities**

The methods above are sufficient in 90 percent or more of divisions. However, occasionally a family executor or trustee will speak of a situation where it is just easier to go offline to make it work best. A Zoom call with the heirs can be effective, where heirs text the presenter (me) their choices for the round, with an agreed time limit (under thirty seconds) for submitting their choices. A family that successfully used this process had many treasures, art, and collectibles their parents had accumulated from around the world: there were about fifty items and five heirs. Some items were emotionally associated with family trips. The heirs were convinced that their next choices would be influenced greatly by what they had previously been awarded because, if they had gotten two items from China, they might want to expand that collection, or if they had not gotten their preferred first piece, they might want to choose items from India. At least two heirs were committed to the idea that they truly needed to know what they had already won before they could choose the next item, so they were sure that their list ranking their items from top to bottom would change based on what was still available after each round.

Having a facilitator for the selection of those items via Zoom allowed the heirs to see which items were no longer available to the group without revealing who had gotten them. Each heir was assigned a random number drawn from a bowl, so I could use the 1, 2, 3, 4, 5, . . . , 5, 4, 3, 2, 1, . . . “snake” method. The items could be marked off each person’s list before they made their next choice, but only the person who got the item would know to whom it had gone because no one knew the others’ numbers.

Going into the round, each heir was to print an Excel report of the list of items for the round. We added a column so they could either rank their choices in pencil or move things around on the list according to their preferences. With this method,

thirty seconds is more than enough time for most to make their choices.

Although it may not immediately be obvious why this process was important, there were two reasons: (1) I wanted the process to remain blind, removing the possibility of some heirs choosing items to spite another, i.e., to keep someone from getting the piece they wanted, and (2) it would be harder for two or more siblings to collude to get things they could swap back and forth afterwards or to plot together for some other real or perceived shared advantage.

## **CONCLUSION**

Dividing tangible personal property among heirs often turns out to be the most time-consuming task for the executor or trustee and almost always represents the most real time spent by any of the heirs. Most other parts of the estate are specifically addressed in planning documents, leaving little wiggle room. Often, a no-contest clause precludes any squabbling over the items clearly awarded. Tangible personal property, on the other hand, is rarely addressed with enough specificity to avoid conflict or challenges because, too often, no process has been specified at all.

Providing a process that is blindly fair to all takes away many of the pitfalls of dividing personal property, because such a process makes it hard for siblings to doubt, question, or take things too personally. The FairSplit process, or a similar solution using the steps outlined above, will enable the family to peacefully divide any uniquely challenging estate items. Putting more thought and structure into the estate planning documents will certainly prove invaluable to families, but short of that, be aware of the challenges and provide guidance accordingly. Property division often occurs for challenging reasons, whether death or downsizing, but we can provide a smoother process for all involved. 🌀

