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Trusts & Estates

Avoiding Problems in the Disposition of Tangible Personal Property: Planning Makes a Difference

By Deborah Pechet Quinan on August 4, 2016

Distributing Tangible Personal Property At Death

In planning for the distribution of assets at death, most people give considerable thought to tailoring their estate plans to dispose of their financial assets. However, many, professionals included, often overlook the conflict, expense, and administrative difficulties that can result from a failure to formulate a thoughtful plan for the disposition of one's special tangible personal property (e.g., car collections, valuable household furnishings such as antiques, artwork, jewelry, collectibles, etc.). Addressing one's tangibles in the estate planning process can significantly reduce the estate's ultimate administrative expenses, as well as minimize emotional upheaval within the family for tangibles with sentimental value.

The Costs of Inadequate Planning

Without adequate planning for your tangibles during your lifetime, those special items will need to be valued, stored, or sold after your death, at potentially great expense to your estate. The administrative costs to the estate of disposing of tangibles can be significant, as accounting for numerous items can be very time-consuming. In addition, where emotions tend to run high after a loved one's death, probating tangible items can spark significant animosity among surviving family members.

Planning for the Disposition of Tangibles

One efficient way to provide for the ultimate disposition of your tangibles is to provide in your will and revocable trust (if you have established one) for a side letter or memorandum detailing your wishes with respect to those items. You can decide whether any such document will be binding or non-binding on the fiduciaries, and you can change the listing of items in that document at any time. This is more cost-effective than listing those items in the will or trust, as future changes to those documents require legal work (i.e., a codicil to your will or an amendment to your revocable trust). You might choose to review your tangibles with your loved ones, in compiling a list of items to pass to specific family members or friends.

You may also choose to incorporate lottery provisions into your estate planning documents for those tangibles you don't wish to pass to a specific person. For example, you may provide in your will and/or revocable trust that the tangibles should be distributed to your children by a lottery selection process, where the child who draws the first lot selects the first item, the child who draws the second lot selects the second item, and so on. This is one way to invoke a sense of fairness among family members.

Where the sentimental value of your tangibles is relatively insignificant, you might choose to provide in your estate plan that all of your tangibles should be sold upon your death (or upon the death of the surviving spouse), and the net proceeds distributed as otherwise provided under your estate plan.

Benefits of this approach include transparency and fairness, but detriments include the typically low sale value of the property and the costs to the estate of overseeing the sale.

If you have collectibles that you do not wish to leave to specific individuals, you might choose to sell

those items during your lifetime. Websites such as eBay have significantly eased the difficulty of finding a market for collectibles, and owners of collectibles often find joy in identifying buyers who appreciate their items.

Finally, your special collection may be of great interest to a museum or other charity, and any donated items can give rise to an estate tax charitable deduction. This donation can be planned during your lifetime with the charity's help, and incorporated into your will or trust.

The Importance of An Appraisal

One way to minimize administrative expense and conflict after your death is to have your tangibles appraised at the time of your estate planning. An appraisal affords you a clear understanding of the value of the items, so that you can assess the percentage of your estate those tangibles represent. You can also determine whether the inclusion of your tangibles in your taxable estate will likely result in federal and/or state estate taxes, and whether your estate will have adequate liquidity to satisfy payment of those taxes.

Understanding the value of your tangibles also allows you to tailor the provisions of your will or trust to incorporate charitable donations and/or equalize the value of the property passing to your intended beneficiaries at your death. For example, if you wish to leave your jewelry or art to your children, you may want to know the value of those items, so as not to unfairly benefit one child over another. If you do wish to leave valuable tangibles to a certain child, there are specific ways to tailor the provisions of your will or trust to ensure that all of your children ultimately receive equal shares of your assets.

Assigning Your Tangibles To Your Trust

Assigning your tangible personal property to your revocable trust during your lifetime avoids probate of those assets at your death, and may also provide estate tax minimization planning opportunities. Although in most cases a simple one-page document can be prepared to effect the assignment of your tangibles to your trust, there are some complexities that should be considered.

The amended federal firearms regulations adopted earlier this year present one example of such a planning complexity. Under prior law, if an individual owned firearms and assigned them to his or her revocable trust in conjunction with a general assignment, neither the trustees nor the trust's beneficiaries needed to undergo a background check. The amended regulations are intended to close that loophole and provide that any current trustee of a trust to which any firearms are assigned (including successor trustees when their trusteeship begins) will now be subject to the same background checks as an individual gun owner. Significantly however, the personal representative of an estate will not be subject to a background check. Therefore, it may be advisable to have the firearms pass under your will instead of assigning them to your trust. This approach will include them in your probate estate, but will be far less intrusive for your trustee. If you have already assigned all of your tangible property to your trust, we can advise you as to the most efficient way of transferring the firearms out of your trust, and amending your will by a simple codicil to include a specific devise of your firearms to your intended beneficiaries.

This article was co-authored by [Deborah Pechet Quinan](#) and [Deborah Qualia Howe](#).

To find out more about whether specific estate planning for your tangible personal property makes sense in your situation, please call your attorney at Ruberto, Israel & Weiner and she or he will arrange for a complimentary meeting with one of the attorneys in our [Trusts & Estates](#) Group.

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