

## Distribution of Tangible Personal Property

### Leaving Tangible Property to Heirs

Since May 3, 1996 in Wisconsin, you may specify in a list referenced in a will what you would like done with your tangible personal property at your death. Tangible personal property includes such items as jewelry, clothing, household furniture and furnishings, dishes, silver, books, vehicles, and pets. It does not include intangibles such as certificates of deposit, money annuities, stocks, accounts in financial institutions. Intangible property is disbursed through your will or by rules of intestate succession.

This addition to the Wisconsin State Statutes is commonly known as Wisconsin's Personal Property Memorandum Law. This change in the statutes enables you to specify where family heirlooms go without constantly redrafting your will with an attorney. If the document (also referred to as a memorandum or list) describes the property and who is to receive that property and you sign and date the document, it should ensure that the people who you want to receive the family heirlooms, will receive them.

Recently there has been modification of the statutes to specify that if the document is not located by the personal representative, or delivered to the personal representative or circuit court with jurisdiction over the matter, within 30 days after the appointment of the personal representative, the personal representative may dispose of tangible personal property according to the provisions of the will as if no such document exists. If a valid document is located after some or all of the tangible personal property has been disposed of, the document controls the distribution of the property described in it, but the personal representative incurs no liability for the prior distribution or sale of the property, as long as the time specified in this paragraph has elapsed.

### How may I dispose of my tangible personal property?

The number of garage/yard sales which dot the Wisconsin landscape each spring, summer, and fall are one method. When someone suspects that death is approaching, he or she may sell or gift items before death to ease the responsibility of the personal representative after death. Even if death is not expected, persons sometimes give property away before death and share in pleasure of the person who receives the gift. Family heirlooms may be passed down to the next generation as wedding, baptismal, graduation or other milestone event gifts.

For the majority of individuals, death is not predictable and they leave personal effects and household goods behind. Frequently, following death, tangible personal property is given to specific individuals or charity, sold through estate sales or auction, discarded or burned. Cultural traditions may dictate what happens to personal effects and other tangible personal property.

## How do I assure the distribution of my property after death?

Once you have decided on the method or methods of distribution such as gifting, selling or discarding, you need to specify this in a written document. You need to specify what property is to be gifted (and to whom) or sold or discarded. Written instructions may be given in a will or in a memorandum (described in statute) or in both. However, do not contradict yourself in giving these instructions.

### The following documents may be used to distribute tangible personal property:

#### a) by will

Specific property may be listed in the will and distributed according to the provisions of the will. For example, a family diamond ring may be bequeathed to a family member in the will. This may be an item that you will keep until your death and you want to assure that a specific person receives the ring upon your death.

Although wills are changed when circumstances change, you probably don't want to change your will when the only change in circumstances is that you sell the boat which you had left to your eldest grandson in your will. There would be attorney fees and paperwork which could have been avoided if such property had been listed in a memorandum which is another document used to distribute tangible personal property.

#### b) by memorandum (list)

The statute enables you to prepare a list which is referenced in the will and eliminates revising your will every time you want to change who receives tangible personal property. The memorandum may be developed after the will is signed. The items listed will be part of your probate estate as is all property listed in your will. This memorandum (list) needs to include:

- a) a description of the property (clearly identified to avoid confusion with a similar item);
- b) who is to receive the property including name and address;
- c) your signature;
- d) the date;
- e) signature of a witness who is not a relative or recipient (not required by the law, but highly recommended).

## What other issues do I need to consider?

Issues which need to be considered and resolved by giving clear instructions in your memorandum include:

- \* What happens if you make multiple copies of the memorandum? Usually the memorandum with the most recent date would be followed. If this is your desire, indicate such in the will or on the memorandum.
- \* What happens to property which I do not specify in the memorandum? Clear directions need to be given in the memorandum as to where remaining property (“left-overs”) is to go.
- \* If you want to make changes in your memorandum, what do you do? Make changes by starting over—do not strike out items or alter the memorandum once it has been compiled and signed. You may begin again without consulting your attorney.
- \* What happens if the recipient is no longer alive or the item is no longer in my possession? The possibility of these situations needs to be recognized. Clear directions need to be given in the memorandum or will.

A sample document is included. Note in the document how you want the above issues resolved. You may use multiple pages which are to be numbered (for example, Page 1 of 6), signed, witnessed and dated. Additional bequests may be made in another memorandum at a later date. Be sure your personal representative knows where the document is located.

The memorandum law as it appears in the Wisconsin Statutes:

### **853.32 Effect of reference to another document. (1)**

**INCORPORATION.** *A will may incorporate by reference another writing or document if all of the following apply:*

- (a) The will, either expressly or as construed from extrinsic evidence, manifests an intent to incorporate the other writing or document.*
- (b) The other writing or document was in existence when the will was executed.*
- (c) The other writing or document is sufficiently described in the will to permit identification with reasonable certainty.*
- (d) The will was executed in compliance with s. 853.03 or 853.05.*

**(2) DISPOSITION OF TANGIBLE PERSONAL PROPERTY.** *(a) A reference in a will executed on or after May 3, 1996, to another document that lists tangible personal property not otherwise specifically disposed of in the will disposes of that property if the other document describes the property and the distributees with reasonable certainty and is signed and dated by the decedent.*

- (b) Another document under par. (a) is valid even if it does not exist when the will is executed, even if it is changed after the will is executed and even if it has no significance except for its effect on the disposition of property by the will.*
- (c) If the document described in par. (a) is not located by the personal representative, or delivered to the personal representative or circuit court with jurisdiction over the matter, within 30 days after the appointment of the personal representative, the personal*

*representative may dispose of tangible personal property according to the provisions of the will as if no such document exists. If a valid document is located after some or all of the tangible personal property has been disposed of, the document controls the distribution of the property described in it, but the personal representative incurs no liability for the prior distribution or sale of the property, as long as the time specified in this paragraph has elapsed.*

*(d) The duties and liability of a person who has custody of a document described in par. (a), or information about such a document, are governed by s. 856.05.*

*(e) Beneficiaries under a document that is described in par. (a) are not interested parties for purposes of s. 879.03.*

*(3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a will provision that purports to transfer or appoint property to a living trust are governed by s. 701.08.*

**History:** 1995 a. 234; 1997 a. 188 ss. 144, 145, 153.

*Wisconsin's New Personal Property Memorandum Law. Slate. Wis. Law. Oct. 1996.*

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# Memorandum for Distribution of Tangible Personal Property

(According to WI Statutes 835.32)

Page \_\_\_\_\_ of \_\_\_\_\_

TO: My Personal Representative or person named in Will to distribute property.

This is the list (memorandum) referred to in my Will. Please distribute the items listed below to the persons or organizations I have named:

| Item (Describe) | To Be Distributed To |
|-----------------|----------------------|
| _____           | Name<br>_____        |
| _____           | Address<br>_____     |
| _____           | Name<br>_____        |
| _____           | Address<br>_____     |
| _____           | Name<br>_____        |
| _____           | Address<br>_____     |
| _____           | Name<br>_____        |
| _____           | Address<br>_____     |
| _____           | Name<br>_____        |
| _____           | Address<br>_____     |

Unless otherwise indicated, if the person or organization named to receive a particular item does not survive me or does not exist at the time of my death, such bequest shall lapse and the item shall pass in accordance with the other provisions of my Will. Items will pass to the above named persons or organizations only to the extent such items are owned by me at my death, and will not be substituted for or replaced. Additional bequests may be made by me on another copy of this form.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Witness)