

Family Heirlooms

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Lessons from the Broder Buck...Deal with Family Heirlooms

One of the goals of any well drafted Will is to ensure that the family will not fight and will get together for Christmas the next year. One of the main reasons that families fight after a person dies is because they cannot agree on who will get the sentimental personal possessions. That was never more evident than in Edmonton a few weeks ago when a son went to jail to protect a set of antlers once owned by his late father. The antlers known as the “Broder Buck” will now not only be infamous for their size, but also in estate case law.

The best approach is to try and deal with your personal assets in your Will. If you can give your family some direction, they will usually abide by your wishes and are less likely to fight over those sentimental family heirlooms.

Some of the options that exist to deal with personal, sentimental assets are as follows:

- Lottery - You might direct in your Will that your family is to come to an agreement about each item and if they do not reach an agreement, ownership of the item will be determined by lottery. Everyone interested in a particular item puts their name in a hat and the person whose name is drawn receives the item.
- Detailed List - You might want to maintain a detailed list of your personal assets and who should receive them. The list can be made part of your Will, which makes it legally binding on your executors and beneficiaries. However, if you make the list part of your Will, you are obligated to change your Will should you change your mind about the list.
- Informal List - You might want to maintain an informal list of your personal assets and who should receive them, for your executor to follow. An executor will usually feel morally bound to follow personal instructions. The list can then be prepared by you over time and amended as you see fit, without having to change your Will. You may also choose to give items away while you are alive or change your mind about who should receive the item.

- Games or Arbitration – Whether you have a formal list as part of your Will or an informal list, you still need to deal with the assets not included on your list. Your Will should advise your beneficiaries first to follow the list, then to reach an agreement on the items excluded from it. If your beneficiaries cannot reach an agreement, they should have a lottery as described above, or some other system to determine ownership of the items. They could play the best two out of three in the “Rock, Paper, Scissors” game, or roll dice, or play the best poker hand. Alternatively, you could have a third party outside the family act as an arbitrator to decide any disputes.
- Sale of Assets - Some families choose to avoid disputes by directing that everything in the estate be sold with the sale proceeds divided among them. This is a simple solution, but it necessitates your family attending a sale to buy family heirlooms and may force them to bid against people outside the family. In such a case, you risk having family heirlooms purchased by non-family members.

Whatever method you choose should only be governed by what you think is best for your family. The important thing to do is to have a system in place to provide the guidance necessary to avoid family disputes and to avoid legal costs spent fighting over sentimental items.

Your family will respect you and thank you for providing them with sufficient guidance to avoid disputes after you die.

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