

YOUR WILL SHOULD INCLUDE 'BITS AND PIECES'

by Michael Mello

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Clients frequently spend a lot of time considering their estate plans – and that is particularly the case when it comes to their Wills. They plan meticulously, and their Will is clear about who gets the house and the major assets.

However, they give far less thought, if at all, to their personal effects, says Paul Sullivan in the 15 April 2016 edition of The New York Times.

Paul is absolutely correct. Highly paid legal and financial advisors construct most complex estate plans and have little difficulty administering the deceased's estate after death. However, when asked how to divide up the deceased's personal effects, they "pass the buck" to the family to decide or work out.

It is strongly recommended when making Wills, that clients make a special provision for personal effects to be distributed by way of a separate memorandum of wishes that lists the items individually along with the intended beneficiaries of such personal effects.

This memorandum can be changed at any time after the Will is signed without having to change the Will or revisit the lawyer who drafted it. When preparing such a memorandum it is important to try and be fair in the distribution to members of the family. It is also important to take into account that different personal items have different meanings to different beneficiaries.

Such a memorandum can create a process governing the distribution of your personal effects not particularised or you can specify that certain items be given to specified beneficiaries – or a combination of both, especially where only the major personal items are listed and the minor items are not mentioned at all.

In most families it is a mistake to think that you can leave the distribution of your personal effects to your children to decide on who gets what, as this abdication of responsibility seldom works. Usually this method ends up in a “free for all”. In other words who gets into the house first gets the best pickings.

Parents seldom know what items are important to their children and grandchildren. When I advise clients to discuss the distribution of their personal effects with their family, they frequently express surprise to me about the answers they get back and it is often the case that more than one beneficiary wants the same item.

Another option is to start distributing your personal effects while alive. Those pieces of jewellery that you no longer wear or the silverware that you no longer use or the tools and such sitting unused in the garage, can be given away during your lifetime. This approach allows you the pleasure of seeing the happiness that the items give to members of your family.

If you wish the distribution to take place after death and are not prepared to list all your personal effects in a separate written memorandum, then set out a process addressing how the division should work and appoint referee(s), which are usually your executors, to carry out the plan.

Your children can be asked to divide the personal effects into lots of similar value or, as a safety precaution where there is any disagreement, the executors or a valuer – if there are valuable items – can do so.

For example, ask your children to pick playing cards from a deck to determine who goes first in the selection process. Another method is to use pieces of paper with items marked on them and placed in a hat or bowl; then, starting with the eldest child, each has a turn or turns in sequence to pick out a paper with the item marked on it.

There are numerous other methods for such a division and it is important to select one of them where it is necessary to do so in order to decide on any items not specified in your memorandum.

The worst thing you can do is nothing, leaving it to chance as to who gets what. After all, our island’s motto is “Quo Fata Ferunt” -- “where the fates carry us”. In Sir George Somers’ case he ended up on the rocks.

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