

ESTATE PLANNING NEWS



Tangible Personal Property:

A Legal and Practical Guide to Giving Away Your Stuff

CONTENTS

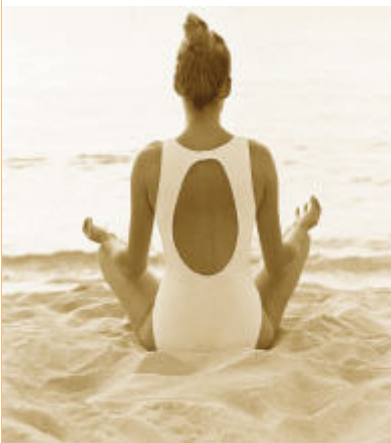
Feature Article
Announcements
Tip of the Month
Entertainment

The world is full of used stuff. Every household is filled with rooms, closets, attics, and garages bursting with tangible personal property. The sheer magnitude of the volume of items is demonstrated by the number of outlets available for its sale or transfer - garage sales, estate sales, second-hand stores, thrift shops, flea markets, on-line auctions, auction houses, and antique shops.

Who decides the final resting place for a person's stuff? The purpose of this article is to provide both legal and common-sense advice and guidance for the disposition of a person's tangible personal property on death.

(continued on page 3)

Law Office of Nicole A. Davidson
1092 Gardenia Ln., Concord, CA 94520-4485
Tel/Fax: 925-689-6890 • Cell: 510-919-8389
E-mail: nicoledavidsonlaw@gmail.com
Website: nicoledavidsonlaw.com



Estate Planning News

Announcements

Is estate tax relief on the horizon?

On June 22, 2006, by a vote of 269-156, the United States House of Representatives approved a \$283 billion tax relief bill. This bill would boost the estate tax exemption amount to \$5 million. Estates between \$5 million and \$25 million would pay capital gains tax rates (currently 15%) whereas estates greater than \$25 million would pay twice the capital gains rate (30%).

The Senate's showdown vote could occur as early as this week.



Tip of the Month

International Divorce: Protecting Your Prenup

Prenups are as common as confetti in the United States. Hardly anyone with money walks down the aisle without one.

Interestingly enough, though, if either member of the couple files for divorce in England or Wales (where prenups are typically ignored as contrary to public policy), the prenup may be of little value unless it requires that proceedings be initiated in a U.S. state.



Entertainment

Cookie's Fortune (1999)

Cookie Orcutt (Patricia Neal), salt of the earth and cornerstone of her small Southern town, leaves a terrible void as well as a huge fortune when she dies. As her two estranged, greedy nieces (Glenn Close and Julianne Moore) angle for the estate, Cookie's man Friday (Charles Dutton) and grandniece (Liv Tyler) attempt to unravel the intrigue surrounding Cookie's fortune.



Estate Planning News



The power of fortune is confessed only by the miserable;
for the happy impute all their success to prudence and merit.

-- JONATHAN SWIFT
Thoughts on Various Subjects

Tangible Personal Property

(Continued from page 1)

Testamentary Distribution Methods

Tangible personal property can be distributed in kind or liquidated and distributed in cash. Yet if only it were that simple.

Things have histories, stories, mythical values, family connections, and emotional attachments. These must be addressed and addressed correctly. If not, feelings become hurt, siblings become rivals, and families become divided. Like the Hatfields and the McCoys, the resulting divisiveness - over an antique clock, a tattered dress, or a family photograph - can last a lifetime.

All families are different, and there are multiple options for disposing of tangible personal property. These options include: (1) specific bequests, (2) class bequests, and (3) directed sales.

Specific Bequests

One option is to bequeath specific items to specific persons. This option requires preparing a list of items and matching those items to deserving recipients.

There are two primary methods for making specific bequests.

First, specific bequests may be spelled out in a testamentary document (*i.e.*, living trust or will). The primary advantage of including a bequest in the testamentary document is avoiding reference to a separate document which may be lost, destroyed, or otherwise brought into question. The main disadvantages though, are that specific bequests must be determined before the testamentary document is finalized, and changes will require a new testamentary document.

A second and more flexible method for making specific bequests is to prepare an instruction letter or specific gifts form and incorporate it by reference in the testamentary document. The main disadvantage with this approach is that California law currently requires that the incorporated document exist when the testamentary document is executed. However, the California Senate is currently amending a bill - AB 2568 - which will modify the California Probate Code to allow creation or modification of an instruction letter or specific gifts form after execution of the testamentary document.) A second disadvantage - the danger of impulsive decisionmaking - remains.

(cont. on page 4)

Estate Planning News

Tangible Personal Property

(Continued from page 3)

Class Bequests

A second option is to bequeath tangible personal property to a group or class.

Oftentimes, tangible personal property is bequeathed to a class in defined shares (*e.g.*, all children receive equal shares). This method seems simple but can be deceiving. For example, do children include adopted and step-children?

In addition, how should class members go about dividing the property? Should the class members be trusted to agree among themselves? If this approach is used, a method should be provided for breaking possible deadlocks.

You may provide that the trustee or executor will have discretion to decide how divisions are made. While the trustee or executor has authority, that may not avoid dissension among the beneficiaries.

Another alternative is to provide that division will be made by a “round robin” selection process. Allowing beneficiaries an opportunity to select items they need or appreciate may result in an equitable allocation and greater level of satisfaction. Of course, the “round robin” has its disadvantages, too. Someone will be required to supervise the process, the procedural aspects may become complicated, and some persons may find the process undignified.

Directed Sales

A third option is to require the sale of tangible personal property and direct the trustee or executor to distribute those sale proceeds to the beneficiaries.

One method is the private auction. This sale is limited to a small group of persons, usually family members and close friends. To make the sale fair, it is conducted as an auction. Bidders can pay for items from their personal funds or on credit with the bidder’s expected inheritance as collateral.

A second method is the public auction. A public auction may be absolute (*i.e.*, items are sold to the highest bidder with no minimum sale price) or reserved (*i.e.*, items are sold to the highest bidder if the bid is greater than a minimum or reserve price).

A third method is the estate sale. Estate sales are often conducted by professional estate sale companies, who offer such benefits as: established clientele and qualified buyers, targeted advertising and marketing, organized display and grouping of items, and greater security and management of sale proceeds.

Conclusion

One man’s trash is another man’s treasure. Inventory your tangible personal property, identify appreciative recipients, and verify that your trust or will is structured accordingly.

Law Office of Nicole A. Davidson
1092 Gardenia Ln., Concord, CA 94520-4485
Tel/Fax: 925-689-6890 • Cell: 510-919-8389
E-mail: nicole davidsonlaw@gmail.com
Website: nicole davidsonlaw.com