

PERSONAL EFFECTS IN YOUR WILL

If it is your intention to leave particular items in your will to relatives and friends who have meant a lot to you, your thoughts are most likely to turn to particular items such as jewellery, antiques, paintings, furniture and collectible items. If you are going to leave specific personal effects of this nature in your will, here is something to think about. What if the gift you are leaving is not there when you pass away? For example, you may wish to leave your sister your china figurine. If that figurine is broken or missing when you die, what gift, if any, will she get? This is why you may wish to instruct your lawyer to draft your will so that a replacement gift will be provided to the person who would have received the original gift which was lost or destroyed.

In the above example, a replacement gift could be left for your sister, such as a crystal vase. Following this line of thought, what if the gift is there but your sister predeceases you? If you wish some other person to take the gift, you should speak to your lawyer about specifically

providing for another person to receive it. For example, if your sister is not alive when you die, you may want her daughter to receive the gift in her place.

If you have a list of personal effects which you wish to distribute under your will, you can speak to your lawyer about preparing a binding memorandum for the purpose of distributing such personal items among your beneficiaries. This binding memorandum would be incorporated by reference in your will. You should be aware that such a memorandum cannot be changed unless you prepare a proper legal amendment to your will known as a codicil, or unless you prepare a brand new will.

If you find that a binding memorandum is too restrictive for your requirements, there is another alternative available to you. It is sometimes referred to as a non-binding personal effects memorandum. It is not binding on your executor, but it does express your wishes as to who will get what after you die. This type of memorandum is not part of your will, but it is usually kept with your personal papers. Because of its non-binding nature, it would apply more to items of sentimental value than to items of monetary value. One word of advice: it would not be wise to utilize a non-binding memorandum to give items of significant value.

Here are a few practical points relating to personal effects in your will:

1. In your will or memorandum, avoid using general phrases such as "my antiques" because such phrases are hard to define and may create confusion and even arguments among your beneficiaries. For example, it is quite clear that an antique would be descriptive of an item which was from the era of the 19th century. However, it is not so clear that an item manufactured during the 1950's is an antique. The search for a definition may well lead your beneficiaries to the courthouse.

2. If you are leaving a gift to someone who lives far away, who will pay the cost of packing, storage and shipping? Your failure to specify the party who has the obligation to pay for such charges is likely to cause the recipient of the gift to argue with your estate over who will bear the costs if such costs are substantial.

3. Your will or memorandum must adequately identify the gift you are leaving. For example, if you have three diamond rings each of which has separate characteristics, and each of which has a different value, you may be sowing the seeds of a fight if, in your will or memorandum, you say "I give my diamond ring to my daughter, Mary Smith". An example of proper identification would be something to the following effect: "To give to my daughter Mary Smith, my 18kt diamond gold ring with the inscription of my initials on the inside of the ring".

4. It is often helpful to prepare a video to assist you in describing the gifts which you are leaving in your will or memorandum.

5. From a common sense point of view, if there are certain maintenance instructions which are necessary in order to preserve or maintain a gift which you are leaving to someone in your will, you should take some steps to pass along those instructions to your executor or beneficiary, as the case may be.

If you do not have a will and are not sure where to start, we offer a free will consultation. We can sit down together and talk about a will tailor made to your life situation.

If you have a will and are not sure if it is up to date or a recipe for a potential family fight, we offer a free will review.

Fish & Associates is located at 7951 Yonge Street in a turn of the century home with plenty of free parking. Michelle Kotzer can be reached by email at mkotzer@fishlaw.ca or telephone at (905) 881-1500 ext.22 and Les Kotzer can be reached by email at les@leskotzer.com or telephone at (905) 881-1500 ext. 19. Please visit our website at www.willappointment.com for more information.

We pride ourselves on speaking plain language.

The Wills Lawyers



Les & Michelle Kotzer