

Dividing personal possessions after the death of a parent

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Date: Monday September 28, 2020

There is no doubt that when a parent dies, it's often hard for the children to deal with the contents of the home including things like furniture, artwork, antiques, memorabilia and so on. A lot of those things may have little commercial value but often have a very high sentimental value. But you still need to know how to go about division of these items and when you can do it.

Our scenario

- Mum has died, leaving a Will but no clear instructions on division of personal items like jewellery, furniture etc.
- The surviving children are equal beneficiaries to the estate.

What options are there to divide the personal property?

There is no simple "one size fits all" answer. Some options may be:

- If the relationship between the surviving children is amicable, they could simply go ahead and, by consensus, divide up all the bits and pieces.
- If there is any concern about each child getting a fair share or there is a potential dispute where more than one child wants a particular item then you might set up a system by which the eldest child selects an item for themselves, followed by the second eldest child, and so on. This would continue down to the youngest child and then the system and order of selection continues until everything has been distributed.
- Alternatively, you might have a system as outlined above but when the next round comes about, selection starts with the youngest child and builds up to the eldest and so on.

- You may make a list of the items available and everyone chooses which items they would like. Then, for any item where there is more than one person selecting it, either draw a straw to see who gets it (and maybe that person then sits out of the next selection process?) or there is a "Dutch auction" to determine who is prepared to pay the most for that item with the proceeds then divided in accordance with the Will.

As you can see, it can be a somewhat rudimentary process.

There are probably other systems that may work but the imperative is that the children resolve the division of those items without getting into arguments or fights. This could lead to a contested estate which might get costly!

When can we deal with distribution of the personal items after death?

If all the things in the home are of no commercial value, (for example no valuable antiques or original artwork) and if all the beneficiaries of the personal items are in agreement, then generally these can be distributed before obtaining a Grant of Probate.

If there is a distribution made, the Executors should get a receipt from each person for what they have taken. But, like most things, that really depends on the family dynamics and whether the Executor has any concern that an argument may later arise as to whether the distribution of the items was "fair".

The main issue is to ensure that each of the people who are entitled to items in the home have had a reasonable opportunity to select them and that all the children are in agreement with the items being distributed amongst them.

If there is any dispute as to how to distribute particular items, then it may be that a distribution should not take place until that dispute has been resolved.

When can we deal with motor vehicles after death?

Service NSW is usually fairly comfortable with the Executors dealing with any registered motor vehicles even before a Grant of Probate is obtained.

This may be by way of selling the car or transferring the car to one of the beneficiaries. The Executors will need to take a certified copy of the Will and a copy of the Death Certificate to Service NSW and they will need to sign the transfer papers on behalf the deceased.

Get help from a Wills and Estates lawyer

Although generally, distribution of personal items after the death of a loved one goes relatively smoothly, there can be disputes that you simply cannot resolve without assistance.

If you require clarification about your role as Executor or assistance in relation to the management of a deceased estate, we can help.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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