

SPLITTING HEIRS

Dad said I could have that toaster! You can't have Mom's pearl earrings! That's my refrigerator! Sound familiar? Family grief doesn't have to lead to a family feud

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My mother told me that if there is a nickel left after a will is read, someone will fight about it. I thought her cynical and jaded. Turns out she was right. One such nickel in contention was glittery costume jewelry -- my childless, Great Aunt Josie's rhinestone and crystal clips, bracelets and necklaces. Several nieces, erstwhile cousins and assorted neighbors arrived at my aunt's house the day after her death (that's death, not funeral) to claim Josie's stash of faux.

Josie's baubles were nontitled property -- no deed, no title and not mentioned in her will. She had not specified beneficiaries, so they were up for grabs. Each hopeful spun a supporting narrative about what Josie had promised and when she had promised it. These sagas were delivered with certitude and a soupcon of emotion. The fight was on.

The winner? One of my second cousins who deftly and silently scooped up the baubles and walked out the kitchen door before the rest of the group could say, "Are those clip-ons?"

Dividing household contents during an emotionally charged time is a challenge. The division of property not specified in a will often results in domestic discord. In some families, downsizing to a smaller home for Mom and Dad reduces the items to be divided after death, but not all.

You cannot use the chocolate cake method (one child divides the cake and the other child gets first pick of the portions). Some items -- the family Bible, Dad's pocket knife -- cannot be divided. Others -- photographs, letters -- you can copy for all heirs. Some sets of china and crystal you can divide and then supplement with additional pieces.

Unfamiliar with the sounds of filial acrimony?

"Gimme that Steuben vase."

"Executor? You? You must be joking."

"Daddy promised me the Beretta."

"What happened to the Waterford?"

"That wedding photograph is mine. I know just where to hang it."

"I have polished that silver tea set for 27 years. You can't have it."

And of course the barely audible, heart-piercing "Momma always liked you best."

Want to avoid that? Both testators and heirs should develop a game plan for the distribution of items other than titled property. Once a will is written, a testator's work is not done. The will addresses the basics -- who gets the stocks, the bank accounts, the truck, the house -- and appoints an executor.

Often the executor is an adult child but may be an independent party such as a bank or trust officer.

Thinking about death and personal possessions seems maudlin and smacks of presumption. Plus it makes us all feel, well, very mortal. But planning for the inevitable may reduce familial conflict. So do it. Returning a call to your father's executor may be unpleasant to contemplate. But with a little forethought, you may never have to return a call to your sibling's lawyer.

Bonus: Your children are watching how you perform as an heir.

What was Dad thinking?

That might be your first reaction when you hear the details of a will or learn that many items have not been distributed. Forgotten about the \$1,000 Dad "loaned" you to buy the 1972 Datsun? Dad may not. Did you have any idea stepsister Jennifer footed the bill for the visiting nurses? Inheritances may be adjusted accordingly.

And what about the bedroom furniture, grandmother's secretary and the Wedgwood?

Before loading the U-Hauls, heirs need to agree on a set of rules for distribution. For example, whoever gave a gift to the deceased is entitled to have the gift returned. Should the value of these returned gifts be included in an heir's fair share? That is something an executor decides if the heirs cannot. Nothing should be removed from a deceased's house without the consent of the executor and all other heirs.

Why do they keep calling me Little Jimmy?

Maybe because you are acting like a child.

The division of household items with other heirs causes many folks to leave their maturity at home. Before you attend a meeting about household contents, recognize that others may feel entitled to something you are attached to, or that a parent may have promised the same thing to several people and never wrote it down. The memories and experience with the family will last longer than the things you obtain, advises William Race, local psychiatrist.

Consider this. You just lost major members of your family. You need the relationships more than you need the stuff. Make a short wish list (three things with personal meaning) you would like to have -- a vase, a quilt, a cake plate -- but remember that others also have such sentimental attachments to things.

What's really going on?

If you find yourself screaming about a 15-year-old toaster, get a grip. It is not about the toaster.

"The issues are centered on unfinished childhood and family experiences," says Race. Your big sister continues to think she is in charge of everyone and your little brother behaves like a hyperactive pest. Are you really surprised nothing has changed?

Think about it. Adult children have been living separate lives in separate houses for years. Emotional and physical distance may have muted disagreements.

Upon a parent's death, adult children are rounded up and put back in a small space, the old homestead. Sometimes they are joined by stepsiblings, second spouses, etc. Erstwhile patterns and arguments are ripe for revisiting. Pour a little grief on those adult children and their historic rivalries and the conflicts begin. Dad and Mom were great buffers and mediators in these fights; now they are gone. "The balance is no longer there," says Race.

His advice? "Beware of the dynamics and use your adult mind."

Honey, didn't you love the den sofa?

Honey may have coveted the sofa and come to think of it as her sofa. However, only the heirs have standing and only the heirs should be present when items are taken from the deceased's home. Bringing grandchildren, cousins, fiancées and spouses to the table is inappropriate and clouds the process.

Each heir should visit with his own family and learn what things are important to them. If your wife wants the sofa, select it as one of your choices without fanfare or attribution.

What? Mom, the list maker, didn't leave a list?

Heirs may find dividing personal property soon after the funeral difficult or unseemly but "it is not a good idea to leave valuables in a vacant house," advises Nancy Scherer, an Austin probate attorney. Have the contents valued before anything is removed. "If a parent has made a handwritten list of items, specifying who should receive it, or marked an item with the name of the child, respect those wishes, even if the list or marking is not legally enforceable," says Scherer.

Need help? Joan Lowe, local appraiser at Arts and Antiques Appraisal Associates (478-7585), is certified in residential contents appraisals as well as fine art items. Lowe charges \$150 per hour. For each hour Lowe spends in a home, two to three hours of research may be required to appraise antiques and fine art. Be advised, says Lowe, the dining room table your parents purchased for \$5,000 will not fetch the same amount now.

Lou Warren, Warren Oden Estate Sales (472-6318), appraises and sells residential contents. Warren says, "Do not denigrate household contents." The average three-bedroom house contains about \$8,000-\$10,000 worth of furniture and household items. If you do not make arrangements to sell the items, "you might be leaving money on the table," says Warren. The average charge for an inventory and appraisal of such a home would be "in the \$500 neighborhood."

Is a first-edition Hemingway hidden in that pile of books?

Could be.

Local fine arts appraiser Lucky Attal, Attal Appraisal Service (472-6451), says he has seen attic treasures almost tossed by heirs who had no idea about the item's value. An innocuous-looking book turned out to be a journal written by a California gold miner that sold for \$12,000. Attal spied a painting, which looked like a paint-by-number oil, headed for the estate's garage sale with a \$5 tag. The painting's market value? \$65,000. Anyone can make mistakes -- even appraisers, says Attal -- so review the contents carefully.

OK, I have a list -- now what?

Distribute the list of household contents to the heirs.

Beneficiaries mark the items they would like to have and return the list to the executor. Usually if everyone has the same information and understands the process, the lists can be reconciled. "Remember the executor usually has the discretion to distribute the items or to sell them," advises David Redding, executive vice president of Austin Trust Co. Redding has witnessed folks arguing about freezers and ice makers.

Once the executor receives the what-I-want lists, items can be allocated and the values charged to each heir's share. "Sometimes people return the list with 'I want everything' scrawled across the top," notes Redding. Then the executor knows that person does not want any decisions made without his input. The things in contention (Dad's University of Texas cuff links, Mom's alligator purse) are set aside for further discussion. The items on the contention list can be distributed by drawing lots and taking turns for selection. Attorney Scherer says, "A tie can be broken by flipping a coin, with the winner taking the item and the loser being assured that he or she will receive the next item that is desired by more than one child."

Sue-Sue gets the Lalique; Joe Bob gets the golf clubs. Who gets the bluebonnet painting?

Once selections are made, the values are totaled. Household items no one wants are sold and the proceeds used to even out the shares for each heir. Some items may be donated, others sent to nonimmediate family members as mementos.

Consider putting invaluable items on rotation. Scherer suggests "the family Bible be kept by one child for a specific time period (e.g. one year) and then passed on to another child for a similar period of time."

No agreement? You can sell the items. The alternative? Time and money spent in lawyer's fees, advises Judge Guy Herman, Travis County probate court, who has heard heirs squabble over hairbrushes, scarves and photos.

"You do not want these issues to cause a breach in the family relationships," advises Herman, who has seen heirs spend "\$50,000 in attorney's fees over personal property worth less than \$5,000." So when it's your turn to write a will, what's a parent to do?

How do you prevent your children from going through the same ordeal? Phrases in a will like "my clothing and personal property should be divided equally among my children" are facile but not particularly helpful. Address inequalities. Has one child been attentive during an illness? Did another borrow funds and never repay them? Will your heirs be shocked by who has been appointed executor?

As you prepare to pass on personal property, take stock of things without deeds or titles or dollar signs, things not mentioned in your will -- photographs, the family Bible, pearls, military medals, musical instruments. Make decisions about who would appreciate them. Talk to your children and heirs. Inquire about items of special significance. Write down your decisions to avoid duplicating your gifts. Let your heirs know about special bequests. Consult with your estate attorney about the best way to make your decisions known.

Appraiser Lowe says many of her clients have marked items with names and a little family history. It's hard to argue with a parent's handwriting taped to the bottom of a Dresden figurine.

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Disarm your mouth: Language to limit conflict

- Make sure everyone shares a common goal.
- Use 'I feel' or 'I would like' or 'I'd prefer' to request an item.
- Resist the use of 'you' statements, as in 'you always' or 'you were' or 'here you go again.' 'You' statements put people on the defensive, resulting in people not listening.
- 'I' statements offer awareness and invite closeness.
- Thank everyone at every juncture of cooperation.

Source: William Race, psychiatrist

Parsing personal property: Rules of the road

- Use your adult mind when dividing property.
- Acknowledge that each heir has standing.
- Consider written, not oral, wishes of the deceased.
- Remove nothing from the house without the consent of the executor and all other heirs.
- Agree on the rules before dividing personal property.
- Whoever gave a gift to the deceased is entitled to have the gift returned.
- Limit participation to heirs with standing. No cousins, no nieces, no children should be present. No kidding.
- Don't drink and divide.
- Determine what is fair in your family, acknowledging past contributions of each heir.
- Fair distribution does not necessarily mean equitable distribution.

Online help

- www.yellowpieplate.umn.edu: a guide to personal property inheritance and distribution. The site includes quizzes for children and other recipients as well as property owners. Video and workbooks may be ordered.
- familyfight.com: Web site for a book 'The Family Fight: Planning to Avoid It,' written by two lawyers, Les Kotzer and Barry Fish, featuring anecdotes and how to order the book.

Will's will: Check it out

Leaving particular bequests puts you in good company. In his will, bard William Shakespeare specified his wife should receive his 'second best bed' and his daughter, a silver bowl. Composer George Frederick Handel left a favorite servant his 'clothes and his linen' while his other servants each received a year's wages. Princess Diana left her godchildren personal items. The British National Archives recently placed more than 1 million wills online (some for a fee but others, such as Shakespeare's will, may be accessed without charge). Visit www.documentsonline.pro.gov.uk and check out the will of Sir Winston Churchill, Jane Austen or Oliver Cromwell.

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