

Giving it away: Wills, trusts ensure heirs get what they deserve

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When there's a will, there is a way, but when no will exists a death can leave a family unsure of how to disperse belongings, or turtles, as the case may be.

For one family, a turtle is caught in a custody battle. No accommodations were made for the devoted 40-year companion of a now-deceased woman prior to her death.

A five and dime purchase, the pet grew to 3 feet in diameter and very heavy, according to Bill Wilson of Wilson and Wilson Law Offices in La Grange. Pampered, his owner kept him in a glass terrarium in the basement during the winter months and put him in a pond outside during the warmer months.

But now his digs aren't so permanent.

A next-door neighbor is caring for the turtle until a decision is made about the turtle's new home.

While the case may be unusual, it's not uncommon a missing will to cause issues.

According to Wilson, 60 to 75 percent of the population doesn't have a will.

"People deny and deny, and it gets to the point where it's too late and the heirs have to figure it out," Wilson said.

How to divvy the goods

Not every family divides the assets the same. Rather than the owner writing up a will, some get a little creative.

Some people, Wilson said, take masking tape or a sticker and put the intended recipient's name on the back of the item.

Or there's the "grab bag method," where items are written on a piece of paper and put in a box. Family members gather around and select a piece of paper from the box and that item is there's.

Still others just say, "Let them figure it out. I'm not going to be here anyway," he said.

Usually though, it's much simpler, Wilson said.

"It's more about asking, 'What do you want?'" he said.

Bernard Euwema, a lawyer and owner of Adelante Planning Services in Berwyn, advises clients to sit down with their children or other heirs once or twice a year to ask them their opinion and what they would like.

“Nobody does it,” he said, “because it’s such an awkward topic.”

No matter what unique way of determining where possessions will go, making it legal is important. Wilson said it’s as easy as writing a list containing the name of the items and who will receive them, and attaching it to the will.

“If you want others to figure it out, give them a mode of how to figure it out in your will,” Wilson said.

If there’s no mention of who gets what or a method of dividing the items, Wilson said an executor has the ability in Illinois to sell those pieces that can’t be agreed on after 30 days. The money is then distributed.

Considering other options

Doug Golter of A Step Beyond estate sales agrees that making a will is the best way to account for “all items of interest.”

The rest of the personal property can be taken care of by businesses like his that catalog and sell the remaining items for the heirs. The belongings can fetch quite a price, in some cases.

Golter once oversaw an estate sale in which a 1950s punchbowl sold for \$55,000.

“And that’s what I enjoy in this business,” he said.

More people are using irrevocable living trusts to divide property between heirs, said Wilson. He said people make an agreement with a trustee — usually themselves — to hold the property during their lifetime. At their death, it is distributed the way they determined by a person named the successor trustee.

A trust is private and is not subject to probate, which many people like, Wilson said.

When to start the process

The estate planning process doesn’t begin at a certain age, Wilson said, but “when a person starts to accumulate some type of assets that are valuable.”

Married couples with children should write a will if they haven’t done so, he said. It is especially important parents name a guardian for their children in the case they both die or are unable to take care of their children.

“Estate planning is important for everyone,” Euwema said. “Take care of things so you can avoid probate.”

Online sites are available that show individuals how to plan their estate or make a will, Wilson said, but he cautioned that those may be “cookie cutter” and advised people to at least let a lawyer review what they’ve written to make sure it’s legal.

"The main thing is to have a written document to determine who gets what and to make sure the document is a legal document that complies with Illinois law."

Euwema advises that the will contain a paragraph that lists all tangible, personal property and distributes it evenly. Another paragraph, he said, should take care of the "residue," or bulk of the estate.

Without prior plans, it's not always up to the family to distribute assets.

"If there's no will," Wilson said, "the state decides who gets what."

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Getting Internet help

In addition to local attorneys and estate planners, Web sites can help with estate planning.

- www.nolo.com: Around since 1971, Nolo calls itself, "your legal companion." It offers affordable, easily understandable books, forms and software on a variety of legal issues.

- www.familyestatetools.com: Its Family Estate Organizer offers the tools to plan an estate, including binders and a CD. The Family Estate Organizer was put together by Steven C. Nelson, certified financial planner.