

PROTECTING TANGIBLE PERSONAL PROPERTY

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Your estate will consist of your real, intangible and tangible personal property. Real property is fairly obvious, it's the dirt that you own. Your intangible personal property consists of cash, stocks and bonds. The tangible personal property of your estate is defined as that which can be felt or has physical form and substance. At the death of a person, their tangible personal property is easily removed and lost to beneficiaries who get to the house or storage location first where this material is kept. The question is what can be done to protect its removal and get it returned to be properly evaluated and distributed those named in your Will or Trust instrument.

The major problem is keeping a record of what consists of your tangible property. Ideally, the owner would take stock in keeping an inventory of the major items of value. This can be accomplished by taking photographs of those relevant items. This is especially true of jewelry. Those photographs should be turned over to the nominated personal representative for safe keeping. In addition, the nominated personal representative should immediately secure those assets by locking the residential and storage facility up from any outside intrusion.

However, immediate securing of the premises or storage location is not always possible. In those situations, the nominated personal representative should get an agreement with the other beneficiaries not to dispose of any of the tangible personal property until an evaluation of such property can be completed. Unfortunately this is not always possible which begs the question of what remedies are available to the personal representative should one of the beneficiaries drive off into the sunset with all of the tangible personal property of an estate.

The personal representative can freeze the removal and return of the tangible personal property through the probate court. The effect of such freeze is to enjoin any beneficiary who has removed a decedent's personal property by either returning the property or prevent further movement of it until it can be inventoried and valued. Failure to follow the court's order places the wrongly removing of property beneficiary in contempt of court subject to incarceration or monetary sanctions. Why is the freezing of the tangible personal property important? Because it may be needed to pay creditor claims imposed on the estate with the potential to cause the personal representative to be personally liable.

In many cases, the beneficiary who has removed the tangible personal property will claim that the decedent gifted the property to them prior to death. While the decedent may have expressed this desire, the burden of proof is determined by meeting the elements of gifting. In essence, the beneficiary claiming the gift, must prove: 1) intent; 2) delivery; 3) surrender; and, 4) acceptance. Intent is proven by conduct – the handing of a key to the desk drawer where the tangible personal property is located. Delivery is proven by the actual placement of the tangible personal property into the hands of the beneficiary. Surrender is proven by the decedent releasing the property to the beneficiary with no conditions to have it returned. Acceptance is

proven by the beneficiary taking possession and agreeing to keep the property. If any one of these elements is missing, then the transfer of property is incomplete and remains an estate asset.

What about joint property such as jewelry as part of a marriage. Is jewelry when purchased by one of the owners with funds from a joint account make it joint property? That question was answered in a Florida case that determined that such jewelry was not jointly owned and became an estate asset. The reasoning was that once the money from the joint account was withdrawn to pay for the jewelry, such money withdrawn became the owner of the person who withdrew it. In essence it lost its joint ownership. When those funds were used to buy the jewelry, the jewelry became the sole property of the purchaser.

What about those assets that are in a safety deposit box. Does the mere fact that a second person is on the signature card for the box have ownership rights to the items contained in the box? That answer is: not necessarily. Once again this becomes a race to the bank by the personal representative to inventory the box before the secondary person gets there and empties it to determine those items jointly owned.

As you can see, keeping track of your personal property so that it does not walk away following the death of an individual is important. Take photographs and make certain that the nominated personal representative of your estate has them available or at least knows where they are located to prevent inappropriate removal. Lastly, be sure to discuss with the attorney of choice for direction on what to inventory.

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