

## **SEPARATE WRITING OUTSIDE A WILL**

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When a Last Will and Testament is prepared for someone, there usually comes a moment when that person gets home and suddenly remembers that they forgot to include a specific heirloom they wanted to devise to a family member or other individual outside the family. Fortunately, Florida's Probate statutes provide a mechanism to allow persons to devise tangible personal property to others outside their Last Will and Testament.

Florida's probate statute, Section 732.515, gives you the ability to convey those special heirlooms or other tangible personal property items (e.g. antique automobile) to anyone the decedent desires without having to prepare a new Last Will and Testament by following a few simple requirements.

To understand how you can gift tangible personal property to another outside of your Last Will and Testament, it's important to recognize what is considered tangible personal property. In general, tangible personal property is everything other than real estate, cash, stocks, or bonds or other financial instruments. Cars, boats, pictures and even jewelry is generally considered tangible personal property.

The minimum requirements to devise tangible personal property outside of a person's Last Will and Testament are that a written list or statement showing the testator's intent to devise their tangible personal property to another must be found. If such written statement is found, it must be signed by the testator. Florida law does not require that it be dated, witnessed or notarized. However, to be effective, the devisor's Last Will and Testament must contain a statement referring to a list or separate statement disposing of tangible personal property. The tangible personal property being devised by a separate statement cannot consist of property used in a trade or business that is specifically devised in a person's Last Will and Testament.

For tangible personal property to be given away outside of a person's Last Will and Testament, the writing must evidence the testator's intended disposition and the person to whom it is to be given with reasonable certainty. Intended disposition with reasonable certainty is easily expressed by using the following sample phrase or similar type language: "I give my diamond wedding ring containing three stones to John Doe." The key to a successful separate writing is to describe the item being devised and the person to whom it is being gifted with reasonable certainty such that it is quite clear what is being devised and the person it is going to.

Florida law provides that the writing disposing of your tangible personal property may be prepared before or after the execution of your Last Will and Testament. Even after preparing a list disposing of tangible personal property, it may be altered after its preparation. Altering the list can be as simple as crossing a line through a statement

devising such tangible personal property to someone or changing the item being devised or the name of the individual on the same line. However, to assure the intent of the testator to withdraw a devise or changing someone's name, it is recommended that such testator place their initials and date next to the line or alteration that is made. The easy way to fully terminate a devise of tangible personal property is to tear up or destroy the paper containing the devise.

It is also possible to give away the same tangible personal property to multiple individuals. When this occurs, Florida law provides that the most recent devise contained in a separate writing will prevail over all previous writings. This situation seems to be in conflict with the lack of statutory requirement of a date. As a result, the author strongly suggests that you date and initial each devise contained in your separate writing such that the most recent disposition of your tangible personal property can be ascertained.

The author is occasionally asked if a separate writing must be on some form of special paper. The answer is that the type of paper used is unimportant. You could be sitting at the restaurant of your choice and while contemplating what to order suddenly decide to give away a particular tangible piece of personal property to a specific individual. If the only paper you have at that moment is a paper napkin on the table, it can serve as a separate writing provided you describe with reasonable certainty the tangible property, the person receiving the gift and sign it. The last thing you must do is make certain that the separate writing (the paper napkin) is found following your death and your Last Will and Testament mentions a separate writing. The Last Will and Testament does not have to specify the type of paper containing your separate writing.

If you have questions regarding tangible personal property or whether your separate writing meets the requirements of Florida law, contact an attorney and have a discussion regarding your Last Will and Testament and any separate writing you have prepared or may be thinking of preparing. He or she will give you the reassurance that what you have prepared or are thinking of preparing meets the requirements of Florida law.

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