

Lynne N. Clark, P.C.

A Virginia Professional Corporation
Attorney and Counselor at Law

7003 Backlick Court, #100
Springfield, VA 22151
Admitted in Virginia and D.C.

Tel 703-256-7900
FAX 703-256-7902
email: lynne@lynnenc Clark.com

REPORT FROM COUNSEL JULY 2015

DRAFTING AN EFFECTIVE PROPERTY MEMORANDUM

We all have personal property — and lots of it! In this newsletter, we discuss a legally enforceable, modern way to give away some of your personal property to a specific person or persons outside of your Will or Trust.

Real Property and Personal Property Distinguished

All property is divided into “real property” or “personal property.” Real property refers to land specifically anything growing on, attached to or erected on the land. It also refers to whatever is below the surface of the land like minerals and the area of above the surface, the sky.

Personal property is everything else.

Personal property is further subdivided into tangible and intangible personal property. Tangible personal property is corporeal personal property of any kind that can be seen, weighed, measured, felt or touched or is in any way perceptible to the senses. Tangible personal property has physical form and characteristics. Examples of tangible personal property commonly listed on a personal property include jewelry, family heirlooms, books, photos, family mementoes, silverware, china, furniture, artwork, collectibles, and stamps.

Intangible personal property does not have value in and of itself but represents value. Examples of intangible personal property include but are not

limited to cash, bank accounts, stock certificates, bonds, mutual funds shares, promissory notes, partnership interests, limited liability company interests and patents.

Personal Property Not Suitable for Distribution by a Personal Property Memorandum

If you possess items that are extremely valuable or unique, for instance, a Van Gogh painting, you should consult with your attorney and accountant regarding the advisability of distributing such an article by a personal property memorandum.

If the items that you wish to distribute by a personal property memorandum comprise a large percentage of your probate estate or trust assets please consult your attorney or accountant regarding the advisability of distributing these articles by a personal property memorandum.

Additionally, property that you specifically gave to another in your will or trust should not listed in your personal property memorandum.

Untitled Personal Property Which You Own

A personal property memorandum lists some, but not all, of the testator or grantor’s tangible personal property and distributes it to another person or persons. With the exception of motor vehicles, usually property distributed by a

personal property memorandum does not have a title.

Perhaps it should go without saying, but you must own the property that you wish to give away via a personal property memorandum. If the property is titled jointly with the right of survivorship, the property will go to the surviving joint owner and cannot be distributed via a personal property memorandum to a non-joint owner.

The distribution of personal property via a personal property memorandum takes precedence over the personal property distribution clause in a will or trust. This may result in the unequal distribution of personal property.

Requirements of Virginia Law - Will or Trust

Virginia Code § 64.2-400 permits a distribution of personal property by a separate written statement or list. The will of the decedent must refer to the personal property memorandum, must describe the tangible personal property and their intended recipients with reasonable certainty, and it must be signed by the testator. Dating the memorandum is not a statutory requirement, but it is a very good idea, as your will may state that the document that is signed and dated last will control.

When distribution of personal property is made pursuant to such a written statement or list, a copy of the statement or list shall be furnished to the commissioner of accounts along with the legatee's receipt.

Virginia adopted the Uniform Trust Code in 2006. While there is no specific enabling statute that permits a personal property memorandum to be attached to a revocable trust, neither it is prohibited. Typically, all of a grantor's untitled personal property is transferred to their revocable trust by an assignment of personal property. A grantor may mention the personal property memorandum in the trust, and it will be given effect by the trustee.

How to Draft a Personal Property Memorandum

The memorandum can be drafted long-hand or on a computer. Clearly describe the items so that they are easily identified and not confused with other similar items. If the item has a model number or serial number note it on the memorandum. You may wish to attach photos or appraisals of some or all of the items in the memorandum.

Name the beneficiary for each item, as well as their relationship to you. You may wish to attach a list to the memorandum with the contact information for each person who is to receive property from you via the personal property memorandum.

If your will or trust provides that your spouse will receive all your tangible personal property, both spouses should execute similar personal property memoranda so that the personal property will be received by the intended beneficiary following the death of the last spouse.

If you revise a personal property memorandum to add additional property or to gift the property to another person, destroy the older memorandum to avoid confusion later.

My website, www.lynnenclark.com, has a sample personal property memorandum with instructions for your use. This sample memorandum and instructions are also in your estate planning notebook.