

# WHO GETS GRANDDADDY'S GUN?

## AND GRANDMAMA'S ROLLING PIN?

By Robert Prior



*It sits above the mantle on a couple rusty nails  
And it's worth a bunch of money, but it damn sure ain't for sale  
The good Lord only knows all the stories it could tell  
Granddaddy's gun*

*"Granddaddy's Gun," Blake Shelton*

When it comes to estate planning, most of us focus on the big stuff. Who gets the real estate and investment accounts at our death? Are the IRA and life insurance beneficiary designations properly set up? Have we thought through proper planning for our children? If estate taxes are involved, have trusts been properly established to shelter the estate from taxes as much as possible?

Often what gets short shrift is the smaller "stuff" we have accumulated during our lives -- personal property that we might hang above the mantle or put in a drawer. These items often have a lot of sentimental value and, if not properly planned for, can lead to major disputes among our descendants.

The typical will or trust for a married person with children will say something like: "At my death I leave everything to my spouse if my spouse survives me and if my spouse does not survive me to my children, in equal shares, per stirpes." "Per stirpes" is a fancy Latin

term that means if one of the children is dead, then their children will inherit their share. Pretty simple.

Now imagine the scenario where the couple with this will has three children, and one of them dies before the parents, leaving behind three children of his or her own. For cash accounts and real estate, the executor's or trustee's job is relatively simple. Divide the estate up into thirds, divide the deceased child's one-third into thirds for the grandchildren, and distribute the cash and real-estate interests accordingly.

But what do you do with a house full of furniture, artwork, guns, jewelry, china and collectibles? How does the executor decide who gets what? The problem is only exacerbated if the children and grandchildren don't get along. Often, no one can be satisfied, and the trustee or executor winds up alienating everyone.

The first line of defense in avoiding this outcome is proper planning. Rather than leaving everything "to my children, per stirpes," you can specify who is to receive exactly what items, at least for those items that have monetary or sentimental value. And instead of creating an exhaustive list in your will or trust document you can leave instructions outside of the document to your executor or trustee on how to dispose of particular items. This way, if you acquire new items, or change your mind, you can update the instructions without having to revise your will or trust.

A typical example of such instructions to your executor or trustee would look like this:

I may dispose of items of tangible personal property by a signed written memorandum executed after I sign this instrument. The memorandum must refer to my will or trust and must reasonably identify the items and the beneficiary designated to receive each item. If I execute a memorandum, my trustee or executor shall incorporate the memorandum by reference into this instrument to the extent permitted by law.

Such a well-drafted memorandum can be a meaningful and appreciated disposition of your personal property. I have had clients include stories about the item and the beneficiary (the first hunting trip with the gun or cooking with the rolling pin) and those gifts and the stories behind them become treasured keepsakes for the recipient.

If you have not done such planning, all is not lost for the executor or trustee left with the task of divvying up personal property. One effective method that we have often used is the lottery method. Each beneficiary draws a number. Everyone gets to pick one item in the order of the number drawn. If properly supervised, this too can be an effective method of keeping the peace.

When it comes to your estate plan, don't overlook the small stuff. Consult with your estate planning attorney about a well drafted personal property memorandum.



*Bob Prior is a partner in the Athens law firm of Prior, Daniel & Wiltshire, LLC. His practice is focused on estate planning and elder law. Mr. Prior is a former Marine infantry officer and JAG and has been in private practice for 20 years.*

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Robert T. Prior, Sr., J.D., LL.M.

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706.342.0606

[bprior@pdwlawfirm.com](mailto:bprior@pdwlawfirm.com)