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## Elder Law Guys: What's mine (ours) is not necessarily yours

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Well, we're now a year into COVID-19 with most of us hunkering down in place, avoiding contact with other human beings, trying to buy pets, failing at healthy eating and drinking, and taking in — and perhaps seeing — our self-imposed surroundings with new eyes.

One of the few advantages of this isolation is that it allows us an opportunity to assess what we have and/or need in the way of personal items — and more importantly, what we want to do with that “stuff” now (declutter?) and after we're gone.

It's the “after we're gone” scenario that can lead to heartburn and even heartbreak. We're talking about those personal items (intangible personal property) that you've accumulated over your life. For now, we're not talking about personal property such as cash, stocks, bonds etc. We should point out however, it's certainly a good idea to keep track of these items. For example, the old-time comedian W.C. Fields (1880-1946) stashed his cash in myriad banks across the country. Apparently, he was the only one who knew which banks and where they were located. Unfortunately, at his death, his heirs had little idea of where this cash was. But we digress.

In addition to our usual litany of having an estate plan in place with all of the requisite documents (will, trust, power of attorney, health care directives), time and attention should be paid to those personal items of yours. Do you want to leave behind a house or apartment full of junk (of course your stuff is not just junk) for your kids to fight about or laugh at as they pitch, pitch, pitch it? And what if it's actually valuable property, such as art, jewelry, guns, etc.? Or what if it's simply family heirlooms, such as letters, silverware, china, crystal, etc.?

Complicate it even further with in-laws who rapaciously sweep in at your death and clean out your residence (it has been known to happen), or even a child of yours from whom you've been estranged and who lives on the West Coast and does the same thing.

As Dr. Atul Gawande wrote in [a recent New Yorker article](#) referring to end-of-life situations that are applicable to our elder law practice, you have yourself a so-called Seagull Syndrome, “in which the family member who lives farthest away from the [client] flies into town and craps all over the plan.” It's especially worse if you have no plan for dealing with these items. Note also that litigation over estates is one of the fastest-growing areas of the law.

Now, add into the mix multiple marriages/blended families and the respective children of each. A potentially volatile mixture as to your stuff.

A “real” hypothetical: You're married. You die. You leave all of your personal property to your spouse. Your intent was to have your child(ren) inherit this stuff at your surviving spouse's death. However, the spouse remarries and then leaves everything to that second or third spouse. Your plan gone awry!

Take this COVID-19 shutdown time as an opportunity to review, writing down — even room by room — what you would like to go to whom upon your demise. Admittedly a somewhat tedious process, but well worthwhile.

It may also be an opportunity to decide what you want to get rid of now (decluttering), which can even elicit feelings of accomplishment.

Why now? Because it's a good time to review some ways to help minimize the inter- and intrafamily personal property conflicts that often arise after a death. The more stuff you can dispose of now, the less there will be to be potentially fought over at your demise.

Make a list of those specific items you want to go to a particular individual (your diamond bracelet to your only granddaughter) or to a charity (your Picasso). But before you make that list, find out if they really want that item. Ask if there is an item that means a lot to them. Maybe they don't want it/them (How many sets of china does your daughter really need?). What may be of sentimental value to you may be junk to your children, or vice versa.

Now that you've refined your list, keep it with your will/trust and/or give it to the person you have named as the executor/trustee of your estate. Don't forget, you can change this list as often as you'd like (someone dies before you, you can't now stand the originally named person, etc.).

As one of our mothers-in-law did upon being survived by three daughters, you can put tags on each of the items she wanted each to have with the respective daughter's name on the tags and threatening to come back and haunt them if they fought over these items. (They didn't, and she didn't.)

If you have as an objective trying to equalize the monetary value as to each of your children, get an appraisal of the more valuable items. It will also help for tax purposes and may surprise you, in either direction, as to that item's value, especially if certain items have not only sentimental value but monetary value — say, that Picasso.

For most of us, our personal items may have relatively little monetary value but often have significant sentimental value. If the kids disagree now as to who should get what, you might want to consider drawing lots, even before your death, or having everything sold at your death with the sales proceeds going into your estate. Try to be transparent as to how and why you're doing what you're doing.

Your property is yours, and one of the primary reasons for these suggestions is to help minimize the family conflicts which, unfortunately, can occur after your death over what are seemingly trivial items. And it's not only your death that could trigger the need to make these decisions, but also the possible need to make alternate housing arrangements (assisted living and/or skilled nursing), which would require you to downsize.

So start now!

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