

Who Gets Grandma's Yellow Pie Plate?™

Transferring Nontitled Personal Property in North Dakota

The transfer of nontitled property, such as photographs and other family heirlooms, often creates more challenges among family members than the transfer of titled property. Here's how to deal with some of the issues that may arise.



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"This is no ordinary yellow pie plate. This actually belonged to my great-grandmother, who spent a lot of time in the kitchen with her daughters baking pies. The tradition of baking pies has continued on through the generations, and the yellow pie plate is always on the table at family gatherings. The pie plate holds a lot of special memories for my family. Who gets Grandma's yellow pie plate when she dies?"

– Andrea

Most people have personal belongings, such as wedding photographs, a baseball glove or a yellow pie plate, that have special meaning for them and other family members. These types of personal possessions, as well as jewelry; stamp, gun and coin collections; quilts; or sports equipment, are referred to as nontitled property because no legal documents (such as titles) exist to indicate who officially owns them.

What happens to your nontitled personal belongings when you die? Who decides who gets what? Planning for the transfer of personal belongings is a challenge facing owners of the items and, potentially, family members and legal representatives who may be left to make decisions about the items when a family member dies.

Nontitled property may or may not have financial value, but it often has sentimental, historical or emotional value both for the giver and receiver. Many people are familiar with the need to make decisions regarding the distribution of a home, savings account or vehicle when they die. In many cases, however, nontitled property is not included in the decision-making process.

Decisions about what to do with a person's belongings often are not made during ideal circumstances. Frequently these decisions are made in times of family crisis, such as when a death has occurred or when an elderly family member moves

to a health-care facility. The process becomes more challenging and sensitive if family members are left to make the decisions when they are grieving over the loss of a relative, selling the home in which they grew up and/or facing the increasing dependence of an older adult. While not easy, making decisions about the transfer of personal property can be an opportunity for family members to reminisce, share memories and work through the grieving process.

The transfer of nontitled property is an issue that impacts individuals regardless of their financial worth, heritage or cultural background. What surprises many people is that the transfer of nontitled personal property often creates more challenges among family members than the transfer of titled property. Why? Personal belongings usually have different meanings for each individual. The sentimental value or meaning attached to the personal property often may be more important than the financial or dollar value. Dividing items with sentimental value fairly to all parties can be very difficult.

People commonly have different perceptions of what is a fair process and what are fair results. Talking about one's possessions may be more personal than talking about other types of financial assets. Facing one's own death, as well as the death of family members, can be emotionally draining.



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Understand the Sensitivity of the Issue

If you are a son or daughter or other younger relative who feels the need to talk with an older relative regarding the distribution of his or her personal property, beginning the conversation may be the most difficult part. Here are several suggestions on ways to start a conversation about this sensitive issue.

Ask “what ifs.” For example, you could say, “Dad, have you given any thought about what you would want to have happen with the things in the house if you and Mom were no longer to live here? What concerns or special wishes would you have? What if we had to make decisions about what happens to your belongings, like your quilts and family photographs? What would you want us to do?”

Any of these questions can create anxiety for both the person raising the issues and the person trying to answer. You can provide reassurances by saying something such as, “Chances are, you will be living here for a long time, but if you would have to move or if you are unable to make those decisions in the future, I would like to know what you want so your wishes can be carried out.”

Look for natural opportunities to initiate a conversation. When a friend or relative is dealing with transferring personal belongings, use the situation to introduce the topic. Or describe a situation of a friend who recently experienced dividing his or her property. Follow up the story by asking, “What would you have done if you were in that situation?”

If the other person refuses to talk or denies the possibility of ever having to deal with transferring personal property, you cannot force his or her involvement.

You have a right to share your feelings and may feel better because you made the effort.



Determine What You Want to Accomplish

If you are thinking about the distribution of your nontitled property, you have several questions to ask yourself. What do you hope to accomplish when your nontitled property is transferred? Have you thought about what’s most important to you? If you have a co-owner, such as a spouse, do you know what is most important to him or her when transferring mutual personal property? Have you taken time to think about, share and discuss your transfer goals?

An important part of transferring personal property is identifying your goals and coming to an agreement on what you want to accomplish with other co-owners. Goals need to be identified to determine what you and other co-owners want to happen. Decide what you hope to accomplish with the property transfer process. Is preserving memories of primary importance? How important is maintaining or improving family relationships? Is treating everyone in the family equally or recognizing differences important?

Some individuals prefer to take the differences among family members into account with a desire to be equitable when transferring personal belongings. Considerations may include contributions through the years (care, gifts), needs (financial, emotional, physical) and other differences among family members such as age, birth order or marital status. Do you wish to maintain privacy and control within your family? Do you want to contribute to society, such as donating historical items to a museum?

Addressing these types of questions will help determine your goals. The method of property transfer you select should be based on the goals you have identified as an individual, as a couple or as a family. Once goals are identified, deciding how to best accomplish them is easier.

Another benefit of identifying goals is letting potential receivers know what you are trying to accomplish. This can help avoid misunderstandings and assumptions about your intentions.

Determine What Fair Means in Your Family

Many people say they want to be fair to all members of their family when their belongings are transferred. What does fair mean? Different perceptions about what is fair are inevitable and normal. Family members can have many different ideas of what would make both the process and end result fair when deciding who gets what personal belongings. What unwritten rules or assumptions do members of your family have about what is fair when transferring nontitled personal property?

Some individuals may feel the process used to decide the way in which transfers are done is more important than who actually gets the items. For example, family members may feel good about the end result if each person’s viewpoint is heard or if a lottery system is used to divide important items.

Different feelings about who should be involved and when transfers should occur can be the source of disagreements. The issue of who is and is not family can arise quickly. Is the process fair if the daughters-in-law are involved and the sons-in-law are not? Is the process fair if one son gets to receive items now, while other siblings have to wait? Is the process fair if local grandchildren are involved while those who live far away are not?

Does fair always mean equal? No! Some family members consider the distribution of belongings to be fair when everyone has received an equal amount. In this case, differences among family members are not emphasized. When dealing with nontitled property, challenges quickly arise about whether equal means an equal number of items, equal dollar value or equal in terms of emotional value.

What makes dividing equally even more difficult is that the sentimental meaning or value of items will differ for each individual. What one person considers as equal emotional value may not be what another would consider equal. Some personal belongings may or may not have financial value. Who determines the value of an item and whether the value is measured in emotional terms, dollars and cents, or some combination?

Research has shown that disputes over inheritance and property distribution are one of the major reasons for adult siblings to break off relationships with one another. Attorneys who work with estate planning say that personal property, not titled property, often is what causes the most problems when settling an estate. Material possessions seem to become more valuable and bring a greater potential for conflict when the titled property or the rest of the estate is not large in dollar value.

The challenge of how to divide personal property fairly when the value is not easily measured in dollars adds sensitivity to property transfers.

Different ideas of what is fair can make the process and the results of property transfer decisions frustrating, hurtful and damaging to relationships. On the other hand, taking time to understand family members' different perceptions of what is fair can reduce misunderstandings, help them learn about one another's wishes and strengthen relationships.

Identify the Meaning of Personal Possessions

While Grandma's yellow pie plate or Dad's gun collection are material possessions, such personal belongings may trigger memories, emotions and feelings. Recognize that personal property may have sentimental value to both current owners and potential receivers. Also realize that for some, such items may not carry as much meaning and indeed may be considered as just "stuff" or "junk."

The sentimental value assigned to belongings by someone who is 83 years old may be different from that of someone who is 57 or 23 years old. Grandpa's journal may seem like just a dust collector to a grandchild who is 7 but may be considered a treasure of family history to the son or daughter who is 47 years of age. A husband and wife may name the same special object but give different reasons why the item is special. One study revealed that when naming special objects, mothers and daughters tend to be more alike in their answers than fathers and sons.

Recognize Distribution Options and Consequences

Families use a variety of methods to distribute nontitled property. Distribution methods that require planning prior to death include making a gift, labeling items, making a will, and preparing a list of personal property and specifying the intended recipient. Auctions and other types of sales held either within the family or for the general public, or an in-family distribution using some kind of selection, such as a lottery, may occur either before or after the death of the property owner.

These methods are used frequently when a person moves into smaller living quarters (for example, moving from a house to an apartment or long-term care facility), as well as after death. When owners fail to plan for nontitled property prior to their death, distribution methods are more limited.

When property owners make decisions prior to death, the person transferring the property can consider the wishes of the recipients and pay attention to special memories shared with the recipients. Doing so may help eliminate misunderstandings about the owner's wishes. When decisions are made after a death, they may not accurately reflect the wishes of the owner. Very often more than one person feels he or she has been promised or is entitled to the same item.

No method is perfect or right for all families. For families to find the best method for their situation, they first need to identify goals and then keep these goals in mind as they select a distribution method. Individuals and other family members involved should discuss, identify and agree upon a method or methods of transfer before beginning the distribution process.

Example of a list for non-titled property and who will receive the property

Distribution of Personal Property According to North Dakota Century Code, Section 30.1-08-13 (2-513)

Page ____ of ____

To: My Family, Heirs or Personal Representative

This is the list that I referred to in my Last Will and Testament. Therefore, please distribute the items listed below to the person I have named:

Item	To Be Distributed to
Grandfather's clock (from living room)	My sister, Angela Anderson Jones
Grandma's jewelry box	My niece, Emily Johnson
Grandfather's woodworking tools (from basement)	My brother John's son Nathan

Signature _____ Date ____/____/____

Note: North Dakota law allows you to distribute your tangible personal property in this manner. However, this method is not a legal way to distribute bank accounts, cash, evidence of indebtedness, documents of title, securities and property used in trade or business.

North Dakota Law

While families may be creative as they seek solutions to any problems that arise, they also need to be aware of North Dakota statutes governing the transfer of property after death and work within the legal guidelines. If you own property at the time of your death and have not made a will, North Dakota intestate succession law dictates how your titled and nontitled property will be distributed.

An explanation of how your property is distributed if you die without a will is available in NDSU Extension publication "Estate Planning in North Dakota: Wills and Probate" at www.ag.ndsu.edu/pubs/yf/fammgmt/fe553.pdf.

The North Dakota Uniform Probate Code contains a provision allowing a person to refer in his or her will to a separate listing that disposes of tangible personal property. The list cannot be used to distribute cash, stocks and bonds, mutual funds, other intangible personal property or real estate.



The list is not a part of the will. The list must identify both the items and the people to receive them with reasonable certainty. (For example, "to my niece, Mara Johnson, the opal ring that belonged to Grandma Dolores") The list may be prepared either before or after the will is written. The list can be either in the handwriting of the owner or signed by the owner.

The separate listing should be kept with the will so the personal representative is able to distribute items to intended recipients. The separate listing can be changed as new possessions are added without the formalities required for a new will or codicil. The list should be dated and signed each time a change is made. Or a new list can be made each time changes occur. (See example on Page 3.)

Gifts

Property may be transferred to others by making a gift of it prior to death. While these gifts frequently take place at birthdays and holidays, they may occur at any time. One grandmother chose to give her grandson's fiancée a crystal bowl as a shower gift. She included a note explaining that originally the bowl was received as a gift when she and her husband were married 50 years earlier.

Gifts of up to \$13,000 (\$26,000 for married couples effective Jan. 1, 2009), or property equal to that amount, may be gifted annually without paying a federal gift tax. Such gifts reduce the size of your estate and may reduce future estate taxes. Gifts also allow you to pass on stories and special memories associated with specific items.

Summary

Transferring personal property can be a time to celebrate a person's life, share memories and stories, and continue traditions and family history. Sharing stories about special objects helps family members understand their past, discover another aspect of their family and appreciate the real accomplishments of their ancestors.

Without consciously asking about family history, a person may have a dim and distorted vision of the past. Sharing stories and meanings about significant belongings helps preserve family history, memories and traditions. However, no magic formulas or solutions are available for transferring personal property.

This publication has provided some factors to consider whether you are planning for the transfer of your own personal property or working with family members or legal representatives to plan for the transfer of property of a family member who has died.

References

- Adapted from: Montguide MT199701HR, "Who Gets Grandma's Yellow Pie Plate" (2008), Marlene S. Stum and Marsha A. Goetting, Ph.D., C.F.P., C.F.C.S., Extension family economics specialist
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For more information on this and other topics, see: www.ag.ndsu.edu

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