

Settling an estate can be difficult and time-consuming. If you have ever been in the position of trying to find all the papers and information needed at the time of death and for estate settlement, you know how much time and frustration can be involved. Some simple preparations can make the process much easier.

At the time of a death, there are all kinds of immediate questions. Is there a Will and/or trust? Where are the Will and trust? What kind of funeral service should there be? Where are the telephone numbers of relatives? Who else do we need to call?

More questions arise as estate settlement proceeds. What bills need to be paid? Wasn't there land in another state? Where are all the stock certificates? How do we divide some of the personal belongings? Who gets the china and silver candlesticks? Was there more than one life insurance policy?

There are two things you can do to help your family handle your affairs upon your death: You can prepare a letter of last instruction and a separate writing (e.g., letter, document) identifying how you want your personal tangible property distributed, with exceptions explained below. These documents are not a substitute for a Will; they are separate from and in addition to your Will. You can change them or update them any time you want or need to.

## LETTER OF LAST INSTRUCTION

A letter of last instruction informs your survivors about the location of important papers and specifies your wishes about matters not covered in your



Will. You should inform the person who is to handle the settlement of your estate of the letter and its location. Put this letter in your permanent home file along with a copy of your Will.

The following are some of the types of information you may want to include.

- Instructions about the funeral or memorial service and burial.
- Exact location of the Will.
- Names of friends and relatives you would like informed of your death. Include phone numbers and addresses or specify the location of an address book that includes the information.
- Location of all safe-deposit boxes and keys and lists of contents.

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- List of professional advisors, such as lawyer, life insurance agent, accountant, and stockbroker.
- Location of insurance policies and annuities.
- Location of other documents, such as birth certificate, social security card, marriage/divorce papers, military discharge papers, auto registration, credit cards, adoption papers, and naturalization or citizenship papers.
- Membership certificates, especially those that may provide death or cemetery benefits.
- Location of pension statements and records on death benefits.
- List of income sources.
- List and location of all bank accounts, stocks, bonds, properties, mortgages, and deeds.
- Instructions concerning business.
- Statement of reasons for disinheritance, if any.
- Father's name and mother's maiden name (necessary for death certificate).
- Veterinarian and special care instructions for pets if applicable.

This list can make it easier—and often less expensive—for your family to settle your estate. Do not forget to keep it updated. The list is also valuable while you are living to keep your personal affairs in order.

### **SEPARATE WRITING TO DESIGNATE TANGIBLE PROPERTY**

A woman preparing to see a lawyer for a Will commented about how much difficulty she was having deciding who should get various items, such as the crystal and china. These can be difficult decisions, but they are not necessarily ones that need to be specified in your Will.

Because most of us continually acquire more personal goods, it would be difficult to keep a Will

up to date if all items were designated in a Will. In addition, family structures change with marriage, divorce, and the addition of children and grandchildren. Personal relationships sometimes change, as do our wishes for giving certain things to certain people.

In the case of family heirlooms or items with sentimental meaning for specific people, consider gifting them before death. This way you will see the recipient's pleasure when they receive the gift.

New Mexico law provides that a person may prepare a list that designates who is to receive tangible personal property, such as the silver candlesticks and the china. To be valid, this list must be referred to in the Will. Another way to handle tangible personal property is to include a residuary clause to ensure that assets not left specifically to anyone will pass through the Will.

The list cannot be used to dispose of other types of property, such as money, certificates of deposit (CDs), notes, land, homes, stocks, or automobiles. The separate list is not a substitute for a Will.

The separate list must be in the handwriting of or signed by the testator or testatrix. It can be prepared before or after the Will and can be changed as needed. Keep one copy at home with your Will and letter of instruction. You may want to keep a copy in your safe-deposit box.

The New Mexico law providing for the separate listing reads as follows:

#### **45-2-513—Separate Writing Identifying Bequest of Tangible Property**

“A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of titles and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must be either in the handwriting of the testator or be signed by him and must describe the items and devisees with reasonable certainty. The writing may be:

- A. Referred to as one to be in existence at the time of the testator's death;
- B. Prepared before or after the execution of the will;

- C. Altered by the testator after its preparation; or
- D. A writing which has no significance apart from its effect upon the dispositions made by the will.”

**WHERE TO KEEP YOUR WILL**

The recommended practice is to keep the original Will in your safe-deposit box, keep one copy at home, and leave one copy with your attorney.

There is a common misconception that a Will should not be kept in a safe-deposit box because the box is sealed upon the death of a person and it can only be opened after securing a court order.

Each state has its own laws regarding the search procedure upon death. In New Mexico, a safe-deposit box can be opened in the presence of a bank officer by court order or by a spouse, a parent, an adult descendent, or a person named as personal representative in a copy of a purported Will produced by the representative.

The only items that can be removed from the box in the presence of the bank officer are 1) a Will, 2) a deed to a burial plot and burial instructions, and 3) insurance policies (these must be given to the beneficiary named in the policy). No other contents can be removed until the personal representative is qualified to claim the contents.

**DEFINITIONS**

**Devisee:** A person named to receive real or personal property.

**Estate:** All the property a person owns, both real and personal.

**Intangible property:** Includes insurance policies, bank accounts, employee benefits, and stock options.

**Personal property:** All property a person owns other than real property.

**Personal representative:** The person or institution named in the Will to take possession of the decedent’s entire estate, to manage it, to pay all debts, and to distribute the property according to the provisions of the Will.

**Real property:** Includes land and any fixed and permanent improvements on it, such as buildings.

**Tangible property:** Property such as jewelry, artwork, furniture, and cars.

**Testator (male), testatrix (female):** The person who makes a Will.

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