

# PERSONAL PROPERTY MEMORANDUM



Prepared by



## OFFUTT AFB LEGAL OFFICE

### **WHAT IS A PERSONAL PROPERTY MEMORANDUM?**

A personal property memorandum is a written statement, referenced in a last will and testament that is used to dispose of items of tangible personal property that are not specifically disposed of by the will.

*Tangible personal property does NOT include money, securities (i.e. stocks and bonds), documents of title, automobiles, evidence of indebtedness (i.e. promissory notes) or property used in trade or business.*

The personal property memorandum is a convenient and efficient way for individuals to distribute many small items to multiple beneficiaries. The Uniform Probate Code, adopted in several states including Nebraska and Iowa, allows these documents to be entered into probate as a part of a will even though they often have no independent significance.

### **DO I WANT A PERSONAL PROPERTY MEMORANDUM?**

Laws providing for personal property memorandums balance the potential for fraud

and misuse with the interests of a testator in distributing their property in accordance with their wishes. The testator can avoid the inconvenience of having to list each item in their will. It also avoids having to execute a new will or codicil simply to change that list.

However, it is important to note that this document is not a codicil and cannot be used to change the disposition of items if they have been disposed of by the will. The memorandum must be referenced in the will to be valid. The executor of the will is required to search for the personal property memorandum for a certain period (usually 30 days). If such a document is mentioned in the will, but not used, the blank document should be included with the will so your estate is not held up in probate while the testator searches for it.

### **HOW DO I CREATE A PERSONAL PROPERTY MEMORANDUM?**

A personal property memorandum may be included in a will as a writing in existence at the time of the testator's death. However, the statement may be prepared before or after the execution of the will and altered at any time after its preparation. The testator makes a list of items that they wish to go to a specific

beneficiary. The items and intended beneficiary should be described with *reasonable certainty*, so that a third party could easily determine your intent.

You may also make the gift conditional by writing “only if” in the sentence. That way if your chosen beneficiary has predeceased you, you can select another individual instead of the property simply passing on to their heirs or beneficiaries.

### ***MAKING CHANGES TO A PERSONAL PROPERTY MEMORANDUM***

Personal property memorandums can be a good option for individuals with collections of items which may change in nature, or vary in size, because each time an item is sold or bought, a new will does not have to be drafted to include them.

Instead, simply cross out any non-existent items, add new items to the list, and then sign and date the revised memorandum. It is advisable to make a copy of the blank memorandum in the event that a significant number of revisions will be made over time. If multiple changes need to be made, the old copy can be torn up, thus revoking it, and a fresh one created. If you choose to create a new memorandum, remember to destroy the old one so as to prevent confusion later on.

The validity of the personal property memorandum depends on the will that references it. Thus, if you draft a new will, remember to reference the memorandum. This is because failing to include a reference to the personal property memorandum in

subsequent wills, will invalidate your memorandum.

### ***EXAMPLES OF CLAUSES***

#### ***Typical:***

“I leave my silver Rolex with gold trim to my brother Raymond Jones.”

#### ***Only if:***

If you wish for your brother to receive your favorite clock only if your spouse and children do not survive you, then you would write on your handwritten list:

“I give my grandfather clock with brass pipe chimes, to my brother Thomas only if my spouse and children fail to survive me.”

#### ***Different relatives:***

If you have a sister-in-law who also shares your love of a certain painting, and you want her to have it you would, for example, write:

“I give my 1946 painting of the barn and windmill by John Smith to my sister-in-law Jane M. McCarthy.”

Note: It is important to describe the gift and the beneficiary completely, so someone unfamiliar would be able to identify it. You should also give the name of the specific relative if you may have more than one. If you want an item to go to a person regardless of whether their relationship to you changes (such as a sister-in-law who may not remain in the family) it may be better to simply name them.

\*The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.