

Who gets the grandfather clock?

How many families do you know who fought over the settlement of their Mom and Dad's estate?

In my experience, these family feuds are often over things - not money. Who gets the sterling flatware and who gets the drop-leaf table are points of contention that rip apart the family fabric.

Mom and Dad, why on earth do you think that children who fought over who gets the last cookie and, as recently as last week, fought over who gets to stay in the beach house the third week in August will somehow miraculously change when you die? I have news for you. When you're gone, they will fight worse than ever. Face up to it now.

Even in estates where there are no tax issues - let's say the total value of the estate is less than \$675,000 - disputes over personal property can cause permanent schisms. Each child wants the teapot that was the center of every family dinner and embodiment of all memories of childhood love. The executor has to decide who gets it. What a job that is! The only way for an executor to escape with his skin is often to sell the piece - then everyone can be equally angry.

If tempers can flare over items of sentimental value, watch out when the monetary value of the disputed items rises or when the estate exceeds the federal exemption for estate tax.

Mom and Dad, don't bring this problem on yourselves. You may have heard at bridge club that you shouldn't mention these things in the will because then your heirs have to pay tax on them. Even worse, some estate planners might tell you that too. This is wrong. A decedent's property owned at death is subject to estate and inheritance tax. It doesn't matter whether the property is specifically mentioned in the will. What these "advisors" really mean is that if it isn't mentioned in the will, it's easier to cheat on the taxes by omitting to report the item. This is tax fraud, pure and simple. The same tax is due on a \$10,000 bank account as on a \$10,000 oriental rug, and it is absolutely fair and just that it be so.

Tempers may also rise when you or your Executor low-ball the value of valuable items, asking for "low" appraisals for "estate tax purposes" to try to reduce taxes. Then the property is divided up among the children using the appraised value. Surprise, surprise -- a child sells the breakfast table that was part of his share for double the appraised value and his siblings call foul.

The IRS is not as dumb as you think. Most people who have valuable collectibles - jewelry, artwork, antiques - realize that they must be insured. Your average homeowners insurance policy doesn't cover the loss of these items unless they are separately listed and valued. If you don't report the jewelry all the IRS has to ask for is a copy of the homeowner's policy. The IRS knows that if you live in a \$300,000 house, have three expensive cars, belong to the Country Club and have a winter place in Florida then your household furnishings are worth more than a couple of thousand dollars.

If you're afraid to talk to your kids about it, how do you think your executor (who may be one of the kids) is going to feel about it? The best thing you can do is make list of items, and who should receive them. Allow your children to have input. You be the one to settle the disputes. Then make the list part of your will or at least make it a non-binding memorandum, mentioned in

your will.

If you can't bear to talk about it, at least put a mechanism in your will for the division of the property. Maybe each child selects items in rotation. Who gets first choice is determined by lot.

Keep this in mind too: putting someone's name on an item with a tag is legally meaningless. All property is passed under the will or under the intestacy statute if there is no will. It doesn't matter if "Mom promised it to me" or if "Dad told me it would be mine." If all the other beneficiaries agree, you may be ok. But if there is any dispute, such oral representation, tags, notes, and letters are completely without any legal effect.

Also, there are the people who say "Grandma gave it to me years ago, I just left it in her house until she died." Even if this is true, the IRS takes the view, that this is not a completed gift. A completed gift of personal property, like a corner cupboard, requires delivery. How can you prove delivery in this instance? Even if you can prove delivery by some ingenious means, to the IRS, it still looks like a transfer with a retained right to the use of the property for life and is still subject to tax in the estate.

If you have a \$40,000 grand piano, by all means, dispose of it in your will. If you want your daughter to have it, bequeath it to her. The best gift you can give to your beneficiaries is to make a clear and incontestable disposition of all your property, including jewelry, furniture, collectibles and artwork. The last thing you want to bequeath to your children is a battle that will drive them away from mutually supporting each other.