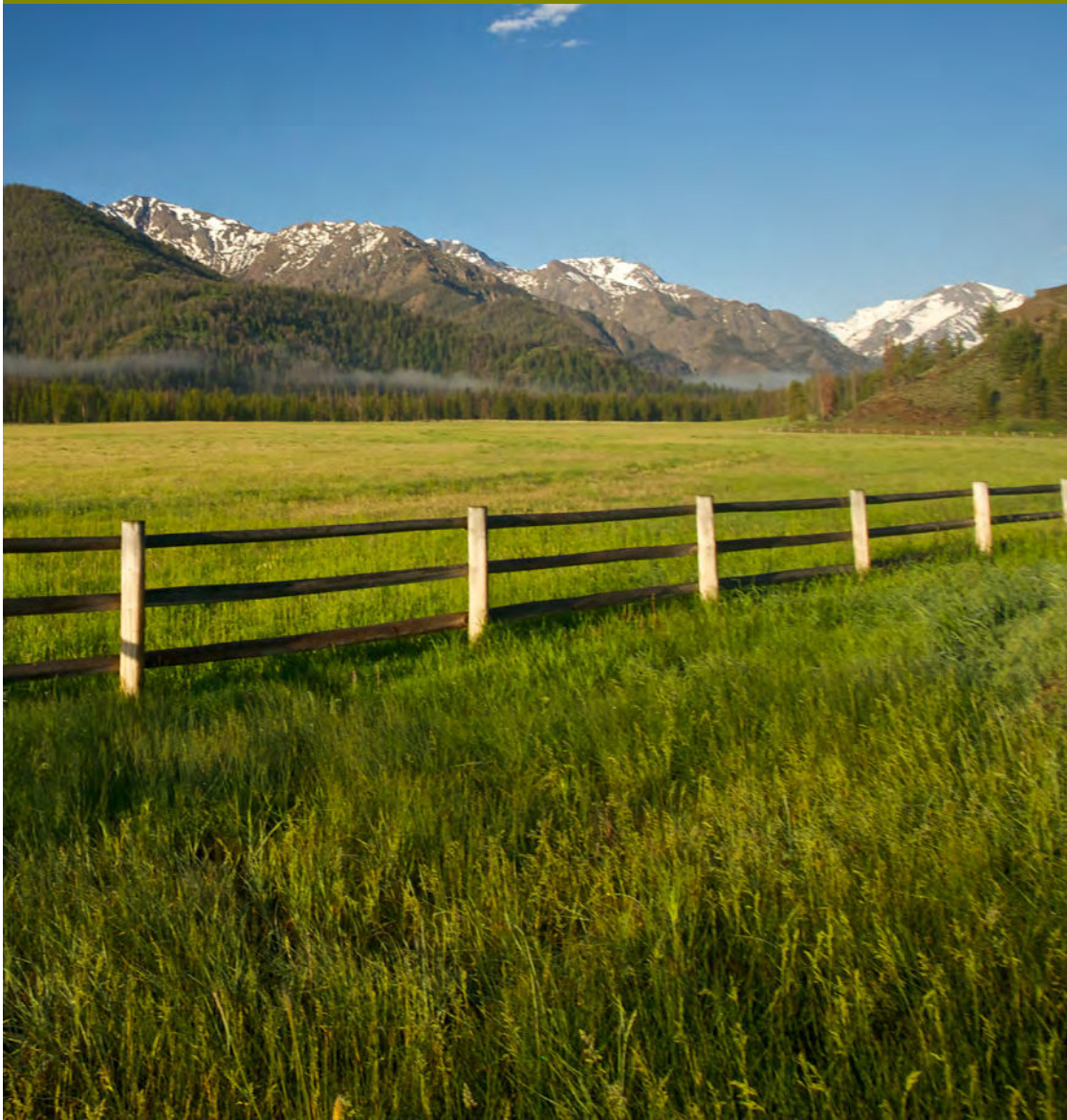


PLANNING AHEAD, DIFFICULT DECISIONS

# The Personal Property Memorandum



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**W**ills and trusts can be useful tools for determining who should receive your property after you die. Unfortunately, consulting an attorney to draft and sign these documents can be time-consuming, dull, and expensive. Even after you have finalized your estate plan, these difficulties can arise anew as family circumstances, wishes, and laws change over time.

Some situations, including major changes in tax law or the size of an estate, demand formal revisions to an estate plan. The language in the will and the terms of Wyoming law can also provide flexibility regarding a number of matters (i.e., automatic disinheritance of ex-spouses after divorce).<sup>1</sup> But what about minor changes regarding who should receive your personal property? Is it really worth racking up new bills simply to ensure that Joel, rather than Ethan, gets his grandmother's collection of antique glasses? What if you change your mind next year? It just doesn't seem practical to draw up new documents every time this happens.

Like many states, Wyoming offers a flexible alternative. While wills generally should be self-contained and final when signed,<sup>2</sup> Wyoming law allows a person who has signed a will (called a "testator") to use a separate document commonly known as a "Personal Property Memorandum" to direct who will receive certain pieces of tangible personal property after the testator's death.<sup>3</sup> Such a list provides a great deal of flexibility to people who want to formalize their wishes regarding the legal recipients of certain items of property without having to constantly update their wills.<sup>4</sup>

## A Basic Introduction to Different Types of Property

Property passing to a deceased person's heirs can include both real property and personal property.<sup>5</sup> The term "real property" (often called "real estate") refers to land and certain things attached to it (such as buildings).<sup>6</sup> "Personal property" (also known as "personalty") is the generic term for all types of property other than real property.

Personal property falls into two major categories. Intangible property has no physical existence. It includes things like stock options and business goodwill (an accounting concept meaning the value of an

asset owned that is intangible but has a quantifiable "prudent value" in a business). In contrast, tangible personal property can be seen, weighed, measured, felt, touched, or otherwise perceived by the senses. Examples of tangible personal property include furniture, jewelry, china, and books. These types of tangible personal items can be important to a testator but may be too voluminous to justify specific references in a will. Often, they are best handled after death with a Personal Property Memorandum.

## What is a Personal Property Memorandum?

A person may wish to ensure that specific items of tangible personal property pass to specified people upon his or her death. For instance, a person may desire to transfer jewelry, family heirlooms, clothes, collectables, furniture, and other valuable or sentimental items to certain family members or others. If the person dies without having executed a will, these items will pass according to the default standards provided by Wyoming law,<sup>7</sup> which may not correspond to what the person intended. A valid will changes the default rules, generally allowing the testator to control who receives the testator's real and personal property (other than the testator's final expenses and the estate's administration fees, debts, and taxes).<sup>8</sup>

Most people have much tangible personal property. It can, therefore, be cumbersome to specify who will receive each book, necklace, sculpture, and so on in the terms of a testator's will. People's relationships and tangible property change over time, and it may be unreasonable to expect someone to formally amend his or her estate plan in response to these constant changes.

Wyoming law provides a solution to this problem by allowing a will to incorporate the terms of an external document commonly known as the "Personal Property Memorandum" (the statute itself uses the phrase "written statement referred to in will disposing of certain personal property").<sup>9</sup> In contrast to a will, which can only be changed through the execution of a will amendment (called a "codicil") or new will (along with all of the cumbersome execution formalities),<sup>10</sup> the testator can change the memorandum at any time before his or her death.

Take the example of Edward, who has a valuable collection of albums by the late “high priestess of soul,” Nina Simone. First, Ed will sign a will referring to the existence of the memorandum. Ed can then change the memorandum as needed over the course of his life. The memorandum will list specific items Ed owns and the specific individuals who should receive them after he dies. Today, Ed might want his records to go to his grandson, Dusty. To ensure that intent is carried out, he will write a reasonably certain reference to his albums next to Dusty’s name, date the memorandum, and make sure the designation is either in Ed’s handwriting or signed by Ed.<sup>11</sup> He is free to prepare the memorandum either before or after signing the will.<sup>12</sup> If Ed needs to execute a new will in the future, he can include a provision referring to the preexisting memorandum. Ed can alter the memorandum’s provisions after it has been prepared if each alteration is signed and dated. So, if Ed starts to doubt whether Dusty will fully appreciate the nuances of Ms. Simone’s voice, he can simply edit the memorandum to leave the records to someone with “better taste” in music.

The memorandum **cannot** be used to transfer real estate, money, evidences of debt (i.e., promissory notes and bonds), documents of title (i.e., title documents to a vehicle), securities (i.e., stocks), or property used in a trade or business.<sup>13</sup>

A memorandum will have no effect unless accompanied by a will, which will likely require consultation with a licensed attorney. If there is a conflict between

how a specific item is distributed under the terms of the will and the memorandum, the provision in the will takes priority.<sup>14</sup> This typically results in the estate’s items of tangible personal property passing as follows:

- Specific gifts of tangible personal property in the will take priority.
- Specific gifts of tangible personal property referred to in the memorandum pass next, to the extent that they have not passed by specific reference in the will.
- Finally, the rest of the testator’s tangible personal property passes according to the remaining terms of the will.

It is common for property to pass through a trust at death, rather than via a will. But Wyoming law does not specifically authorize incorporation of a memorandum into a trust. It is, therefore, common for someone who has executed both a will and a trust to refer to the memorandum in both documents.

The drafter of a Personal Property Memorandum should ensure that the document is kept in a safe place so that it is not altered, destroyed, or lost. It is often a good idea to ensure that one’s personal representative, trustee, and heirs know the document’s location.

Below is a sample of a Personal Property Memorandum:

**Personal Property Memorandum of Jane Doe**

Article X of my Will dated 00/00/00, and Article Y of the Z Revocable Trust under agreement dated 00/00/00, as amended 00/00/00, refer to the disposition at my death of certain items of tangible personal property in accordance with a memorandum signed by me. I, Jane Doe, do hereby make this memorandum for that purpose and to comply with the provisions of Wyoming law (Wyo. Stat. Ann. § 2-6-124).

If the recipient of a particular item of personal property does not survive me, such item shall be disposed of as though it had not been listed in this memorandum.

Description of Tangible Personal Property	Person to Receive Property Address and Relationship

Date \_\_\_\_\_ Signature \_\_\_\_\_



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<sup>1</sup> Wyo. Stat. Ann. § 2-6-118.

<sup>2</sup> In re Estate of Zelikovitz, 923 P.2d 740, 743 (Wyo. 1996) (requiring that will amendments conform to Wyoming rules for formal execution of wills).

<sup>3</sup> Wyo. Stat. Ann. § 2-6-124(a).

<sup>4</sup> While Wyoming has not adopted the Uniform Probate Code, this model law explains the rationale and function of the Personal Property Memorandum. Uniform Probate Code § 2-513 (2010), <http://www.uniformlaws.org/shared/docs/probate%20code/upc%202010.pdf>.

<sup>5</sup> Wyo. Stat. Ann. § 2-6-102; see also id. § 2-1-301(a) (xxix) (defining property as including real and personal property).

<sup>6</sup> Black's Law Dictionary, 2009, 9th edition.

<sup>7</sup> Wyo. Stat. Ann. §§ 2-4-101 et seq.

<sup>8</sup> Wyo. Stat. Ann. § 2-6-101.

<sup>9</sup> Wyo. Stat. Ann. § 2-6-124(a).

<sup>10</sup> Wyo. Stat. Ann. § 2-6-112.

<sup>11</sup> Wyo. Stat. Ann. § 2-6-124(a).

<sup>12</sup> Wyo. Stat. Ann. § 2-6-124(b).

<sup>13</sup> Wyo. Stat. Ann. § 2-6-124(a).

It is not entirely clear what the statute means by “property used in a trade or business.” The statute’s exception language appears to have been derived from an older version of the Uniform Probate Code. Many state statutes and the Uniform Probate Code no longer use that language because it is redundant (evidence of indebtedness, documents, of title, and securities are not tangible personal property) and confusing. Uniform Probate Code § 2-513 cmt. (1990). See *Bruckett v. Mott*, in which an Arizona appellate court arrived at the counterintuitive conclusion that an insurance policy could be considered an item of tangible personal property under Arizona’s statute because it was not expressly excluded from the memorandum statute. 733 P.2d 673 (Ariz. Ct. App. 1994).

<sup>14</sup>Wyo. Stat. Ann. § 2-6-124(a) (allowing the memorandum to distribute items “not otherwise specifically disposed of by the will”); Restatement (Third) of Property: Wills & Other Donative Transfers § 3.9 cmt. e (2012).

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