

Transferring Cherished Possessions: What Is Fair?

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As any parent, grandparent, or caregiver has experienced, the exclamation “But that’s not fair!” has likely been voiced in your family on occasion. Similar sentiments also can be expressed when an estate is settled. This may happen if the will isn’t clear or if it leaves the court or executor in charge of determining fairness. To avoid this, you will want to distribute your belongings in a way that minimizes potential conflict among your heirs.

Selecting an Executor

While it can be difficult to consider your death or the death of a loved one, death is inevitable. Because the topic can be uncomfortable, sometimes a person will delay estate planning or leave the details of divvying up their estate to their executor. Often overlooked are detailed instructions for transferring all personal belongings—both titled and non-titled property—to people you think will want and care for them upon your death.

Fairness is often a matter of perception, especially to the ones making the decisions. Decision-makers include the person making the estate plans (you) and the one implementing those plans (your executor). The person you appoint

as your executor—or who the court system appoints for you if you die *intestate*, i.e., without a will—will hold considerable power when settling your estate. You want to choose an executor who honors your wishes. Under Kentucky law, an executor must be at least 18 years old, of sound mind, and a Kentucky resident. A nonresident of Kentucky may also be named executor if related to the deceased person by blood, marriage, or adoption and age 18 or older.

Usually, a surviving spouse is chosen as the executor. If the spouse is not living, the oldest adult child or an adult child who lives nearby may be selected. When the children are under 18, or if there are no children, an executor might be a close relative or trusted friend. Each family’s situation will be different depending on what unique factors are at play, such as family structure, size, or the stability or maturity of potential heirs.

For more considerations when selecting an executor, along with details about what responsibilities an executor will have when settling your estate, refer to Kentucky Extension publication *Estate Planning Part 3: Selecting Your Team* (FCS5-423).

Determining “Fairness”

When an item has a different sentimental value to each heir, it isn't always easy to estimate what is equal or fair. While some family members may share the same vision, some may not. Further, some may prioritize the potential monetary value over sentimental or historical value. There also can be instances where the potential recipient prefers a different keepsake than what you intended to give and may get upset if that item is gifted to someone else.

In the aftermath of settling an estate, if someone feels unfairly treated, it may lead to future family conflict or estrangement. Having conversations with your heirs on what is fair—as well as how you would like the executor to promote fairness when your estate is settled—can reduce tension and disputes. This publication highlights many important questions to consider when determining fair value and a fair distribution process for your family.

Fair Value

Fairness can be weighed differently within a family depending on each member's goals and expectations. Some may feel an equal share is given when an equal number of items are distributed. In contrast, some may think it is fair when an equal dollar value is distributed. Still others may feel it is fair when individuals receive the items that mean the most to them in terms of sentimental value.

- Do you consider equality to be determined by monetary value, number of possessions, or sentimental value? Or should it be a combination? Do your heirs agree?
- Have you discussed with your loved ones the special items they'd like to inherit and why?
- What about any cherished or valuable items of which you only have one, but you have more than one heir who may want it?
- Who should be involved in the decision-making discussions? For example, will all adult children be involved? What about any spouses? Grandchildren?

Fair Process

There also may be debate around what is considered a fair process. For some individuals, following a fair asset distribution method may be more important than the items received. Although fairness may look different to different individuals—and the importance of following an agreeable process may vary—families often do not discuss what constitutes fairness for them.

- Do you want to decide how your belongings are distributed, or would you like your executor or heirs to do this for you? If the latter, how can you guide them to do this in a way that is “fair” and clear to all parties?

- Do you think everyone should be treated equally regardless of circumstance or situation? Or should additional considerations factor in, such as:
 - differences in physical, emotional, or financial needs?
 - past contributions to your health and well-being?
 - differences in birth order, age, gender, marital status, family size, etc.?
 - levels of kinship, such as blood relationship, adoption, or estrangement?
- What would you consider a fair process for dividing cherished possessions and other non-titled property? Consider your responses to questions posed in the previous section on determining fair value.
- Do you want these decisions made while you are living or after your death as your estate is settled?

Considering Sole Beneficiaries

If you have an only child or a sole beneficiary for your estate, have you considered ways to downsize, reduce clutter, or otherwise avoid “unfairly” burdening them with the responsibility of handling everything alone? Have you discussed your estate plans with them?

Only children may feel guilty discarding, disposing, or donating things that belonged to a deceased parent. They may not know what items you cherished and what items were insignificant to you. Further, they may feel overwhelmed by bearing all the responsibility of settling the estate. Discussing your wishes with an only child or sole beneficiary is also important as you make plans to transfer your titled and non-titled property.

Deciding how to transfer a lifetime of possessions can be difficult. Estate planning may be an emotionally challenging and time-consuming task, but advance planning can simplify the process for family members who settle your estate in the future. Determine what a fair process is for distributing your estate, and what fair value means to your family, to ease some of the stress that is often experienced in families after the death of a loved one.

References and Recommended Resources

- Huff, N. (2021). *Estate Planning Part 3: Selecting Your Team*. University of Kentucky Cooperative Extension Service, FCS5-423. <http://www2.ca.uky.edu/agc/pubs/FCS5/FCS5423/FCS5423.pdf>
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This publication is Part 2 of the Transferring Cherished Possessions series:

- Part 1: Where Do I Start?* (FCS5-479)
- Part 2: What Is Fair?* (FCS5-480)
- Part 3: Who Gets What?* (FCS5-481)
- Part 4: How Can We Communicate Without Conflict?* (FCS5-482)