

APPENDIX II

**LIST OR MEMORANDUM – SEPARATE WRITING IDENTIFYING
DEVISE OF TANGIBLE PERSONAL PROPERTY-
EXPLANATION AND ILLUSTRATION**

Separate Memorandum Permitted by New Jersey Probate Reform Act

New Jersey law permits the use of a separate memorandum, either in the testator's handwriting or signed by the testator, which specifically refers to it in the testator's Will as a means of disposing of certain tangible personal property not otherwise specifically disposed of by Will. The memorandum will be effective to dispose of such tangible personal property even if it is not executed with all of the testamentary formalities, and even if it is not made until after the Will is signed. N.J.S.A. 3B:3-11.

Property Which May be Disposed of by Memorandum

In general, the types of personal property that can be disposed of by memorandum are tangible, non-business personal property. Examples would include jewelry, silverware, antiques, stamp collections, china, glassware, furniture, and furnishings. Because automobiles do not appear to be covered by the statute, it might be better to make a specific provision in the Will concerning "any automobiles I may own at my death."

Property Which May Not be Disposed of by Memorandum

The statute specifically prohibits the use of the memorandum to transfer intangible personal property, such as securities, evidences of indebtedness, money, property used in trade or business, and documents of title. N.J.S.A. 3B:3-11.

Statutory Requirements

The statute requires that the separate memorandum must: (1) either be in the testator's handwriting or signed by the testator, and (2) describe the items and devisees with reasonable certainty. The Will must contain language referring to such memorandum. However, the separate memorandum need not be in existence when the Will is executed. It may thus be prepared before or after the execution of the Will. It may be changed as often as the testator wishes after the Will's execution. Thus, another visit to the attorney's office is not necessary.

However, the memorandum will not affect dispositions made by the Will. N.J.S.A. 3B:3-11. Therefore, if this approach is utilized, the terms of such separate memorandum must be carefully coordinated with any related provision in the Will.

Although N.J.S.A. 3B:3-11 provides that the signed memorandum may be altered by the testator or testatrix after its preparation, the attorney should note that the sample instructions to be provided for the client (which follow this section) instruct the client to prepare a new memorandum rather than alter or mark on an existing list or memorandum. This avoids questions concerning the true intent of the testator.

Sample Will Clause

Because the testator may either forget to include an item or may destroy the memorandum without replacement, a tangible personal property dispositive provision in the will should direct that any tangible personal property not listed in a memorandum, or if there is no such memorandum, all of such property is to be distributed in a specific manner (e.g., to the surviving spouse, but if not surviving, then to surviving children). See Will provisions.

When the drafter includes the memorandum language in his or her Will forms, the client should be provided with a sample memorandum, along with instructions on its use.

Summary of General Methods for Disposition of Tangible Personal Property

At the initial estate planning session, the attorney should discuss with the testator the five general methods of disposition of tangible personal property. These are: (1) specific devise of specific items or types of property to specific persons in Will; (2) devise of all tangible personal property to specific person or class of persons in Will; (3) use of list or memorandum; (4) combination of any of the three; or (5) allowing all items to pass with the residue.

INSTRUCTIONS FOR USE OF SEPARATE LIST OR MEMORANDUM
For the Disposition of Tangible Personal Property

New Jersey probate law permits the use of a separate writing or memorandum to dispose of your tangible personal property. If you wish to use such a writing or memorandum rather than itemize various items of tangible personal property in your Will, you should know and follow the requirements that are specifically set out in the law:

The law specifically identifies the types of tangible personal property which can and which cannot be disposed of by a separate writing or memorandum.

Tangible personal property which may not be disposed of by separate writing or memorandum includes money, evidences of indebtedness, documents of title, stocks, bonds, securities, property used in a trade or business, and other tangible personal property specifically disposed of by Will. All other types of tangible personal property, such as jewelry, silverware, antiques, stamp collections, china, glassware, furniture and furnishings, and other items of tangible personal property may be disposed of by separate writing or memorandum.

Other requirements in order to use a separate writing or memorandum are:

1. The memorandum or list must be in your handwriting, and should be signed and dated by you; or if typed or not in your handwriting, the memorandum or list must be signed and should be dated by you. Your signature need not be witnessed.
2. The memorandum or list must describe clearly each item so that a particular item will not be confused with any other similar item.
3. Your Will must specifically refer to the fact that you may be disposing of tangible personal property by a separate memorandum or list. If your Will does not mention a memorandum, discuss with us how to make sure that it does. NEVER make any change in the Will yourself.
4. The memorandum or list may be completed prior to or after the date of signing of your Will.
5. The memorandum or list, to be effective, must be in existence at the date of your death. Therefore, keep it in a place where it can be easily found. Advise your Executor of its existence and location.
6. You should clearly identify the beneficiary who is to receive each item by their proper name and relationship to you. Also, list the address of the beneficiary if the beneficiary is not a close relative.
7. From time to time, you may change the beneficiaries or items of property listed in the memorandum, or you may revise or revoke the memorandum. However, NEVER make changes by marking or altering the memorandum. Prepare a new memorandum and destroy the old one.

ORGANIZATION OF DOCUMENTS AND RECORDS

A CRITICAL COMPONENT OF ESTATE PLANNING

The development and implementation of a comprehensive and cohesive estate plan are essential to achieve the most efficient use of an individual's wealth, both for the estate owner and his or her heirs. However, substantial costs and delays will be suffered if family members and caregivers are unable to locate information and documents at critical times. This information will have to be retrieved quickly if an individual loses capacity, must be placed in a hospital or care facility, or passes away. We urge everyone to take the appropriate steps to organize the information and communicate with the people who will be most likely to handle the care, housing, and estate settlement decisions. Although the types of records and documents will differ somewhat from individual to individual, the discussion below might provide useful guidance.

PERSONAL INFORMATION AND RECORDS

Personal identification documents are often necessary to get things done. These documents have been made even more essential by new homeland security rules that will require appropriate identification to accomplish many everyday tasks. It would be helpful to have quick access to birth certificates, Social Security cards, passports, and any other identification papers. Family records, such as marriage certificates, divorce agreements, and adoption information, should be available. For individuals not born citizens of the U.S., citizenship or residency documents might be extremely important, particularly for applications to receive government benefits or to file accurate income or estate tax forms. Finally, medical information, such as the names and numbers of physicians, hospitals, pharmacies, Medicare or Medicaid information, and any other relevant health care information, should be consolidated where it can be quickly retrieved.

ESTATE PLANNING DOCUMENTS

Will. Of course, every individual with the capacity to execute a will should have completed this task. Surveys have indicated, however, that more than 70 percent of Americans have not done so. After completing a will, it is important to inform the chosen personal representative of his or her role in settling the estate and to let the appropriate individual(s) know where to find the will. Sometimes the will is stored with the attorney who prepared the document, but often it is kept in a safe, accessible place in the home. Certainly, pertinent information such as the name and phone number of the attorney who prepared the will could be useful to the executor, because legal assistance is generally recommended to help the executor settle the estate.

Trusts. Trusts are often prepared as part of the estate plan. The grantor, trustee, and beneficiaries should generally have the original (or copies of) trust documents. Again, the documents should be accessible, and the phone numbers of the appropriate individuals, such as legal counsel, trustees, and tax preparers, should be readily available to the people who will have to perform any transaction with the trust.

Living Will. A living will (advance medical directive) is a document for declarants to state their intentions with respect to health care if they are not capable of stating the intention at the time they receive the health care. This document should be available to family members who will have to arrange health care and should be provided to the declarant's physicians and health care facilities where the care is provided.

Power of Attorney. A power of attorney gives the agent (or attorney-in-fact) the ability to act in behalf of the principal. The power can be limited to perform one specific act (e.g., to sign an agreement of sale for the principal) or can be broad enough to handle all financial matters. Generally, a broad (or general) power of attorney is made durable so that the attorney-in-fact can continue to act for the principal after the principal loses capacity. Another form of power of attorney is limited to making health care decisions for the principal. Of course, the attorney-in-fact should be given one or more original documents, and access to the document should be given to any successor attorneys-in-fact. It may also be a good idea to make any financial institution where the principal does business aware of the power of attorney to ensure that the institution will be willing to comply.

FINANCIAL RECORDS AND INFORMATION

Although the financial information that should be consolidated and found easily by family members is potentially voluminous, it should be stored in a safe, organized fashion. All financial accounts, records of pension plans or IRAs, individual securities, mortgage or loan information, keys to safe deposit boxes, titles to automobiles, annuities, and life insurance policies should be organized and the location communicated to the appropriate individuals. Tax returns and records will generally be necessary to prepare future returns or settle an estate. Deeds, leases, or other contracts related to real estate should be safeguarded and available to family members. Jewelry, furs, or collectibles may be hidden or placed in safe storage, and records of such property (and appraisals) will have to be available to appropriate family members. Of course, family members should have access to the names and numbers of any financial, tax, and legal advisers who assisted in creating the estate. These individuals are often invaluable in facilitating the organization of the informational.

RECORDS AND INFORMATION INVENTORY

One good method to summarize and complete the task of organizing documents and records is to prepare a checklist of the types of items discussed above. The inventory should indicate the existence and location of the items relevant to the individual. Phone numbers and addresses of advisers and important contacts should be included. This inventory should be provided to the individuals who will potentially handle the estate of an individual who loses capacity or passes away. It can be prepared informally or according to inventory checklists available in business or legal book stores.

RESOURCES

- Legal resource room www.Judiciary.State.NJ.US.will.htm
- Pre arranged funeral: <https://www.njfds.com/public/>
A consumer Guide 973-783-1145
- Also speak with your funeral director for choices.
- Getting your House In Order – Presbyterian Church in Morristown (October 2003)
- Are your Affairs in Order? A Planning Guide and Resource Book. Bryn Mawr Presbyterian Church (April 2007).

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