

Instructions For “Memorandum Regarding Certain Personal Items”

Writing your Memorandum:

- describe the item in enough detail so that it cannot be confused with any other item
- identify the recipient by name and, if necessary, relationship, so that there can be no confusion
- date and sign the Memorandum
- store the dated, signed Memorandum with your signed Will
- let your executor know that there is a Memorandum

Changing your Memorandum:

- edits made on a Memorandum, even if initialed and dated, may be questioned regarding authenticity. If you wish to make a change to a gift, it is recommended that you print a new template and rewrite the Memorandum
- ensure that you physically remove old copies of the Memorandum when you store the updated Memorandum with your Will

It is true that “non-binding” means that your executor can use his or her discretion with respect to adherence to the wishes you state in your Memorandum, but you should have confidence that your executor will follow your wishes as closely as possible, using discretion wisely. This confidence is the reason you chose this executor in the first place.

The benefit of a Memorandum is that it provides you the flexibility to add or change gifts without having to prepare and execute a new Will.

The only caution is that it is possible to create conflict of gifts through the use of a Memorandum. A gift in the Memorandum may be given to another beneficiary in the Will as either a specific gift or as part of the residue. Listing an item in the Memorandum doesn't remove it from the residue. In such a case, the gift in the Will takes priority over the gifts in the Memorandum. When this happens, it is up to the executor and the beneficiaries of the residue to recognize your wishes for the items named in your Memorandum. However, since the Memorandum is not binding, the beneficiaries named in the Will are not bound to follow your wishes as stated in the Memorandum.

It is common that an item named in the Memorandum is a household good or personal effect. Household goods and personal effects are treated as a “class” of assets and are often left in the residue or given as a specific gift. To avoid conflict, household goods and personal effects can be explicitly removed from the residue with the instruction to give your executor the discretion to distribute them guided by your Memorandum. Again, the Memorandum is non-binding and it is up to the discretion of your executor to follow your wishes.

Memorandum Regarding Certain Personal Items of:

A Guide to Assist My Executor(s)

I recognize that this Memorandum regarding distribution of certain of my personal items does not have binding legal effect, but it is my wish that my Executor follow this Memorandum as though it formed a part of my Will. Where my Executor has discretion regarding the distribution of these items, I request my Executor to exercise that discretion in accordance with the indication below. If there is any conflict between what I have provided for herein and in my Will, the terms of my Will shall govern.

Accordingly, I ask that my Executor deliver the following items to the following people:

Item	Recipient

Signed by me this _____ day of _____, 20__.

(Signature)

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