

## Testamentary Gifts Overview

### Specific Asset Bequests

Many bequests transfer a specific item to a beneficiary. For example, a will might state, "I hereby give and bequeath my 1958 Edsel to my nephew, Harold Johnson." This bequest has the effect of transferring this specific property to the named beneficiary.

In some states, it is permissible to create a written list of tangible personal property and to reference that list in the will. In these states, the will could state that the tangible personal property would be transferred to the beneficiaries specified on the list. This method permits an individual to make transfers of furniture, jewelry and other personal items by a list that may then be changed as personal property is either sold or acquired.

If a specific asset is bequeathed and that item has been transferred, consumed or for any other reason is not in the estate at date of death, the specific bequest lapses. However, an exception to this rule exists if a will has alternative provisions. For example, the will could state, "I hereby give and bequeath my 1958 Edsel to my nephew, Harold Johnson; however, if at my death I do not own a 1958 Edsel, then I instead transfer the sum of \$10,000 to Harold Johnson."

### Specific Amount

Another common transfer within a will is the gift of a specific amount. For example, "I hereby give and bequeath the specific amount of \$10,000 to my niece, Jane Johnson." This provision has the effect of transferring that dollar amount to the named beneficiary.

Testators should exercise some caution in selecting specific amounts. For example, a will might specify amounts for transfers to children, with the entire residue to charity. It is quite common for the eventual estate to be much larger than contemplated when a will is initially drafted. If the testator truly intends for the specified amounts to be transferred to the family, regardless of the estate size, then specific amounts are the appropriate solution. However, it is important for advisors to emphasize that the specific amount could be substantially reduced in value by inflation at the date of death.

One caution in transferring a specific amount relates to income in respect of a decedent (IRD). If the estate satisfies a specific amount bequest out of IRD assets, the estate will be liable for the income tax on the specific amount. In a large estate subject to estate tax with a majority of the estate comprised of IRD, it is possible that the estate tax apportionment clause would allocate the non-IRD assets to pay estate tax. If there is a bequest of specific amount and only IRD assets remaining in the estate, the estate will be subject to income tax on the distribution to charity. If the estate includes IRD, it is preferable to bequeath value to charity with a fractional formula, rather than a specific dollar amount.

## **Bequest of a Percent of the Residue**

A fractional amount or percent of the residue may be transferred to charity. The major advantage of this method is that all beneficiaries will share in either appreciation or depreciation of estate value. Since the vast majority of estates appreciate between the date of the signing of a will and the date of death, the family and charity benefit proportionally from the growth of the estate.

If the estate consists predominantly of illiquid assets, the fractional transfer may raise administration issues. In states that permit the executor to make non pro-rata allocation, with approval by the probate court, he or she may distribute non-liquid assets to the various fractional interest beneficiaries.

## **Undivided Percentage of Asset Bequests**

A testator may bequeath or devise an undivided percentage of a particular asset. For example, a testator with a large parcel of real property could choose to transfer an undivided 10% of that property to charity, with the balance to family. This interest will qualify for a charitable estate tax deduction, but there could be a reduction in value for the minority interests. [Rev. Rul. 87-37](#).

Similarly, it is permissible to allocate an undivided percentage of a life insurance policy, an IRA, pension plan or other assets transferable by contract. The custodian of an IRA or the insurance company will then distribute the selected fraction to the charity, and the estate will receive the appropriate charitable estate tax deduction.

For help with this issue, contact the Wordell Law Group at [www.WordellLaw.com](http://www.WordellLaw.com).

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