

# TJAGSA Practice Note

Faculty, The Judge Advocate General's School

## Estate Planning Note

## Uniform Probate Code § 2-513

### Preparation of Tangible Personal Property Memorandums Using Drafting Libraries (DL) Wills Software

When drafting wills, legal assistance attorneys commonly encounter clients that wish to give items of personal property upon death to friends or family. The best method for an attorney to accommodate a client's wishes is to create specific bequests in the client's will. Unfortunately, this method has its disadvantages. Multiple specific bequests can make wills lengthy and cumbersome. As a client disposes of the personal property during his lifetime, he should update his estate plan by executing a new will to reflect the changes relating to the specific bequest.

The laws of over half of the states allow the testator to make bequests of personal property by using writings separate and apart from a will. Twenty-seven states have enacted a provision (or a similar version) of the Uniform Probate Code (UPC) that allows for a separate writing "identifying devises of certain types of tangible personal property."<sup>1</sup> Military practitioners were introduced to personal property memorandums over a decade ago in an estate-planning note.<sup>2</sup> The current military will preparation software program, Drafting Libraries (DL) Wills, allows an attorney to provide a reference or a clause in a will to a tangible personal property memorandum (TPPM) and provides a basic form for drafting these separate documents. However, the attorney must be familiar with the substantive law in order to properly draft the will and the TPPM (or at least be able to advise the client regarding the drafting of a TPPM). A reliance on the DL Wills software, without understanding the substantive law may result in unintentional results that are contrary to testamentary desires of the client.

A provision of the Uniform Probate Code, UPC § 2-513, allows for distribution of tangible personal property according to a separate writing independent from the testator's will:<sup>3</sup>

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

The language of UPC § 2-513 provides four basic requirements for TPPMs.<sup>4</sup> First, a TPPM cannot alter specific bequests made in a will. Second, a TPPM may distribute only items of tangible personal property. Third, the TPPM must adequately describe and identify items with reasonable certainty. Finally, the testator must sign a TPPM.

Prior to 1990, an unsigned TPPM was effective if it was in the handwriting of the testator.<sup>5</sup> Currently, UPC § 2-513 requires the signature of the testator.<sup>6</sup> Nevertheless, an unsigned TPPM could still be given effect under UPC § 2-503 if the proponent could prove by clear and convincing evidence that the testator intended the TPPM to be in force.<sup>7</sup>

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1. UNIF. PROBATE CODE § 2-513 (amended 1990), 8 U.L.A. 147-48 (Supp. 1995). See Appendix A for a listing of applicable state statutes. Before 1990, UPC § 2-513 was titled "Separate Writing Identifying Bequest of Tangible Property." The current title is "Separate Writing Identifying Devise of Certain Types of Tangible Personal Property." *Id.*

2. Major B. Ingold, *Estate Planning Note, Making Bequest of Personal Property*, ARMY LAW., Nov. 1989, at 29.

3. UNIF. PROBATE CODE § 2-513.

4. See generally UNIF. PROBATE CODE § 2-513, commentary.

5. *Id.*

6. *Id.*

7. *Id.*

If the client desires to create a TPPM, the will should contain a reference to the memorandum or writing. The reference can indicate the TPPM will exist at the time of the testator's death, and provides the testator with flexibility in estate planning. The testator may create the TPPM before or after execution of a will.<sup>8</sup> One of the tremendous benefits of the TPPM is that the client may change the memorandum from time to time without modifying or updating the will.

### State TPPM Statutes and Trends

There is not a significant body of case law regarding creation or use of TPPMs. Some trends, however, have developed in the past decade. Not only is it important to understand some of the trends, but it is also important to understand that the states which do provide for TPPMs have enacted statutes in a variety of ways. Some states have enacted statutes that exactly mirror UPC § 2-153. Other states have slightly altered the language in UPC § 2-513, or have enacted legislation to carry out the intent of UPC § 2-513, but have done it in their own way using different language. Finally, several states still have statutes that mirror older versions of UPC § 2-513.

The TPPM may distribute only items of tangible personal property. The practitioner should ensure clauses in wills referencing TPPMs apply only to tangible personal property. The UPC provision does not specifically define tangible personal property. Likewise, state TPPM statutes generally do not define tangible personal property.<sup>9</sup> Courts have indicated the ordinary meanings of the words "tangible"<sup>10</sup> and "intangible"<sup>11</sup>

as they apply to TPPMs.<sup>12</sup> The pre-1990 UPC provision expressly indicated "evidences of indebtedness, documents of title, and securities, and property used in a trade or business" were not items of tangible personal property to be disposed of in a TPPM.<sup>13</sup> These explicit limitations were later deleted from the UPC to improve clarity of the phrase tangible personal property.<sup>14</sup> The language of the various state TPPM provisions mirrors the evolution of the UPC provisions. Few state TPPM provisions define tangible personal property and many states retain the specific restrictions on tangible personal property. While these specific preclusions were eliminated from UPC § 2-513 in 1990, many states have not amended their own statutes relating to TPPMs.

State courts addressed the issue of what does or does not fit under the definition of tangible personal property. Courts hold the term "tangible personal property" designates personal and household items. Iowa provides a lengthy list of items qualifying as tangible personal property, such as household goods, furnishings, furniture, personal effects, clothing, jewelry, books, works of art, ornaments, and automobiles.<sup>15</sup> For example, courts have characterized "personal effects, clothing and household goods" as tangible personal property; while treasury bills, bonds, investment accounts, bank accounts, stocks, and certificates of deposit have been characterized as intangible personal property.<sup>16</sup> Iowa courts have specifically held the term "tangible personal property" under the state TPPM provision does not encompass a bank savings account.<sup>17</sup>

Minnesota courts agree with Iowa courts. In a Minnesota case,<sup>18</sup> a will contained the following clause:

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8. *Id.*

9. *See* Appendix A.

10. Tangible property has physical form and substance and is not intangible. Tangible property can be felt or touched, and is necessarily corporeal. BLACK'S LAW DICTIONARY 1456 (6th ed. 1990).

11. Intangible property is defined as property with no intrinsic and marketable value, but is merely representative or evidence of value (such as certificates of stock, bonds, promissory notes, copyrights, and franchises). *Id.* at 809.

12. *In re Estate of Mettel*, 566 N.W.2d 863 (Iowa 1997).

13. Before 1990, UPC § 2-513 prohibited the disposition of "evidences of indebtedness, documents of title, and securities, and property used in a trade or business" by way of a separate writing. The drafters of the UPC later eliminated these restrictions. *See generally* UNIF. PROBATE CODE § 2-513, commentary.

14. The comments regarding UPC § 2-513 indicate there was some confusion regarding the limitations ("evidences of indebtedness, documents of title, and securities, and property used in a trade or business") since evidences of indebtedness, documents of title, and securities are not items of tangible personal property, and partially to allow for the disposition of a broader scope of tangible personal property. *See generally* UNIF. PROBATE CODE § 2-513, commentary.

15. IOWA CODE § 633.276 (LEXIS 1999).

16. *In re Estate of Thompson*, 511 N.W.2d 374, 376-78 (Iowa 1994); *In re Estate of Oxley*, 262 N.W.2d 144, 150 (Iowa 1978). Iowa courts followed Colorado courts in determining bank accounts, credit union accounts, and insurance proceeds could not be disposed of by documents extrinsic to wills, because statutes expressly excluded such property. *In re Estate of Schmidt*, 638 P.2d 809, 810-811 (Colo. Ct. App. 1981).

17. A document titled "Instructions for Distribution of Specified Personal Property Authorized in my Last Will and Testament" listed, among other items, "what's left of my [savings]" to a named individual. At the time of death, there was \$ 62,939.43 remaining in a savings account in a bank, and the court held this was not tangible personal property. *In re Estate of Mettel*, 566 N.W.2d 863 (Iowa 1997).

18. *In re Estate of Gerald Edward Theis*, C8-97-790, 1997 Minn. App. LEXIS 1135 (Minn. Ct. App. Oct. 7, 1997).

In accordance with the provisions of Minnesota Statutes Section 524.2-513, I now reserve the right to prepare, and I hereby expressly refer to, a written list disposing of items of *tangible personal property* to the persons named in said list. . . . Any *personal property* not on such a list, or, if no such list shall be in existence at the time of my decease, then all of my personal property, I give to my wife . . . if she survives me; or if she does not survive me, then to my children who survive me, in equal shares.<sup>19</sup>

The surviving spouse contended the word “tangible” should not be added to the second provision in the clause designating any “personal property” to her. The district court ruled the phrase “personal property” referred only to “tangible personal property” rather than encompassing all of testator’s personal property. The wife asserted this interpretation was erroneous because the district court supplied the additional term “tangible” to alter the meaning of the clause, and thus denied her intangible property such as stocks and other securities. In the instant case, the first provision of the will referred specifically to a list disposing of “tangible personal property.” The second provision bequeaths “personal property not on such a list.” Neither the will nor the state probate code defined the phrase “personal property.” “Personal property” in the broadest and most general sense may include “everything that is the subject of ownership, not coming under denomination of real estate.”<sup>20</sup> The appellate court concluded the bequest of “personal property” in the will must be read in the context of that article (or clause) and the will as a whole. The appellate court concluded that it was clear from the context that the testator, by the bequest of “personal property” in the second paragraph, intended to give only tangible personal property to his wife. The lesson for the military practitioner is to make sure that clauses included in wills referencing TPPMs do not have conflicting or vague verbiage. In addition, the attorney should make sure the client understands the meaning of the phrase “tangible personal property.”

In most situations the military attorney may not actually draft the TPPM, but may draft a will referencing a TPPM and then give advice to a client who will draft their own TPPM. Attorneys must adequately advise a client about drafting a TPPM. In a Missouri case,<sup>21</sup> a woman executed a trust document and a warranty deed. She conveyed her home to the trust and bequeathed her estate to the trust. She expressly reserved the right to change, alter, or amend the trust during her lifetime. All assets held in the trust were identified in the trust document.

Several days after her death, a handwritten document entitled, “Schedule B,” was discovered in the testator’s home. “Schedule B” attempted to bequeath certain property to the testator’s nieces and nephews, and provided in relevant part:

In accordance with RSMo 474.333 (effective 1/1/81) and Article V of the . . . Trust, I hereby give and bequeath unto the following persons, the personal property listed after their names . . . .

Since my home is “personal property”, at the time of my demise, if I still have and own my property at 206 Donald Drive, I would like to have this sold and the money to be divided between Virginia Pritzel and Judith Ann Scrivner.

Balance of fine jewelry & crystal to be sold at a private sale for nieces & nephews mentioned in Living Trust.<sup>22</sup>

A dispute arose after her death between the beneficiaries regarding these directives because of an apparent conflict with the distributive provisions of Article V of the trust, which provided in relevant part:

This written statement or list, (hereinafter designated Schedule “B”, attached hereto) which the Grantor will date and sign and in which list the Grantor will describe the items and the persons to whom the Grantor gives said items . . . shall not be used to give, bequeath, or dispose of money, evidences of indebtedness, documents of title, securities, real property used in a trade or business, and no contrary construction should be made of said written statement or list.

The Probate Court resolved the problem created by the conflict in the documents. It declared the bequeaths in Schedule B were void and of no effect due to their conflict with Article V of the trust. The court specifically found Schedule B was not an amendment to the trust document, and was merely an effort to dispose of the specified items of property. A thorough examination of the trust instrument revealed the testator intended Schedule B to be utilized to dispose of only those items of personal property which could be disposed of in a written statement or list referenced in a will. This intent was unequivocally expressed in the trust document. Article V of the trust provided

19. *Id.* at \*4 (emphasis in original).

20. BLACK’S LAW DICTIONARY 1217 (6th ed. 1990).

21. Central Trust Bank v. Scrivner, 963 S.W.2d 383 (Mo. Ct. App. 1998).

22. *Id.*

Schedule B may be considered an amendment to the trust “only with respect to those items of personal property described therein.” Schedule B operated to amend the provisions of the trust only to the extent that it disposed of personal property which would otherwise make up the corpus of the Trust and be distributed according to the provisions of the trust. The terms of the trust expressly and unequivocally limited the scope of Schedule B to those items of personal property authorized by state’s TPPM statute.<sup>23</sup> The trust instrument expressly prohibited a construction of Schedule B that was contrary to the testator’s intent that it not be used to give, bequeath, or dispose of money, evidences of indebtedness, documents of title, securities, or real property used in a trade or business. Therefore, the directive in Schedule B regarding the sale of the testator’s home and the distribution of the proceeds therefrom was void and of no force or effect.

While most TPPM provisions do not define tangible personal property, all provisions require a TPPM describe items of personal property and the beneficiaries with reasonable certainty. It is advisable to list each item of tangible personal property to be disposed by the TPPM, but that is not an actual requirement of most TPPM provisions.<sup>24</sup> Therefore, it is perfectly acceptable for a TPPM to refer to “all my tangible personal property other than money” or “all my personal tangible personal property located in my home” or analogous catch-all verbiage.<sup>25</sup> For example, in a recent case a handwritten note was found in a testator’s jewelry box that stated the testator wanted a beneficiary to have her dog and “these items” in the jewelry box. The court held the note was valid because it described the items with reasonable certainty.<sup>26</sup>

Practitioners should carefully avoid inconsistencies between provisions in a will and a TPPM. The practitioner must ensure vague descriptions in a TPPM do not appear to conflict or be inconsistent with descriptions of personal property in a will. A recent case exemplifies the problem of inconsistent provisions. The case involved a remarried testator that attempted to provide for his new wife and his children from a prior marriage as beneficiaries in his will.<sup>27</sup> One section of his will bequeathed to his wife a life estate in “all furnishings, appliances, and furniture” in their home. Another section of the will stated in part:

*Subject to the rights granted to my wife under Section 2.1 above, I give my tangible personal property to the extent provided therein, in accordance with a written list, signed by*

me and dated and otherwise prepared in accordance with the provisions of Minnesota Statutes, Section 524.2-513.

Attached to the will was a handwritten list of approximately seventy-five items of personal property to be divided between the testator’s two children. The personal representative petitioned for construction of the will, requesting the court determine whether dishes, china, silver, and crystal included in the handwritten list were validly bequeathed under the section of the will referencing the TPPM or were instead “furnishings,” subject to the section of the will devising to the wife a life estate in “all furnishings, appliances, and furniture” in their Minnesota home. The court observed the two sections of the will were inconsistent, and deemed the items were not furnishings. This case illustrates how inconsistencies in the language of a TPPM and of a bequest in a will may result in needless litigation between beneficiaries.

### Potential Pitfalls and Problem Areas in Using TPPMs

The DL Wills software, along with an understanding of applicable substantive law, aids the attorney with drafting wills referencing TPPMs and the actual preparation of a TPPM. However, there are potential pitfalls for the practitioner integrating TPPMs into estate plans. There are several issues TPPM provisions do not address. For example, what is the legal and practical effect of tangible personal property designated in a TPPM that the testator does not own upon his death? What is the result of a TPPM “bequest” when the designated beneficiary predeceases the testator or refuses the property?<sup>28</sup> In addition, military attorneys must recall the transitory nature of military clients and inform the client to keep their TPPMs (and applicable sections in their wills) up to date with their current state of domicile.

A primary concern is the use of TPPMs when a client fails to understand the term tangible personal property and attempts to give stocks, bonds, notes, checks, money, bank deposits and other forms of intangible personal property or real property in a TPPM. Another potential dilemma may occur in cases where the testator executes a TPPM in a manner that satisfies the applicable state requirements for a holographic will or codicil.<sup>29</sup> Is this a can of worms that the testator or drafting attorney wants to open?

23. MO. REV. STAT. § 474.333 (1999).

24. See generally UNIF. PROBATE CODE § 2-513 (amended 1990), 8 U.L.A. 147-148 (Supp. 1995), commentary.

25. *Id.*

26. Jones v. Ellison, 15 S.W.3d 710 (Ark. Ct. App. 2000).

27. *In re Estate of Robert J. Lloyd*, 1998 Minn. App. LEXIS 740 (Minn. Ct. App. Jan. 30, 1998).

28. A possible solution to the last question would be to designate alternate beneficiaries in the TPPM.

Tangible personal property items with significant monetary value should continue to be designated in a will as specific bequests. Distributions of expensive items have a greater potential to generate conflicts among potential beneficiaries. Because of the formality requirements of wills (and specific bequests) versus the relaxed standards for a TPPM, high value items and items likely to produce controversy or conflicts should continue to be listed in a will as specific bequests.

Attorneys preparing TPPMs or advising clients about them should be cautious concerning tangible personal property acquired during marriage. In the event a testator's TPPM bequeaths items to someone other than the surviving spouse, there may be an issue as to who is the "owner" of the property. In a second marriage, it might not be clear over a period of time as to which spouse brought property into the marriage. Even cohabitation can create similar potential conflicts. A comparable problem may arise in community property states. Generally, in community property states, household effects are part of the community property.<sup>30</sup> All property acquired during marriage is presumptively community property, provided the property was not acquired by gift, devise, or descent.<sup>31</sup> Potential problems exist where the testator attempts to bequeath community property by a TPPM.

The military practitioner should inform clients to update TPPMs periodically just as clients should update wills. The attorney should advise a client to destroy or adequately dispose of "old" TPPMs upon writing a new TPPM. Litigation could result in the event the testator died leaving two undated TPPMs with conflicting dispositions.

### Alternatives to TPPMs

Although twenty-seven states have TPPM provisions, the DL Wills software will only assist with the preparation of

TPPMs for twenty-three states.<sup>32</sup> There are some options available to the military practitioner for clients who do not have a state as a domicile that specifically recognizes TPPMs. The safest and most secure way to make these distributions of tangible personal property is by specific bequests in a will, or by a lifetime gift. Another method military practitioners have utilized for years is to bequest personal property to one trusted beneficiary (such as a spouse or parent), and then have a provision in the will that the client will prepare and leave a nonbinding memorandum of instruction to the executor requesting the distribution of the property to specific individuals. The practitioner must caution the client as this method could potentially lead to the frustration of the testator's intent since the memorandum is nonbinding.

Another solution available to clients that do not reside in a state that recognizes some form of TPPM is to use the doctrine of incorporation by reference to a specific writing regarding the distribution of personal property.<sup>33</sup> Generally, the rule of incorporation by reference generally has three elements.<sup>34</sup> First, the intention of the testator to incorporate an extrinsic document into the will must be unmistakably clear and appear in the will. A mere reference to an extrinsic document without evidence of intention to incorporate is inadequate.<sup>35</sup> Second, the reference must be to a written instrument in existence at the time the will is executed.<sup>36</sup> Third, the reference in the will must identify the extraneous document so definitely as to leave no doubt that the document referred to is the document proffered.<sup>37</sup> The doctrine of incorporation by reference is accepted in the great majority of state jurisdictions,<sup>38</sup> and a separate writing or document could be used to make binding gifts of tangible personal property. However, the practitioner must keep in mind the separate document or writing must exist at the time the will is executed and the will must refer to the separate document or writing. Military practitioners should avoid using the doctrine of incorporation by reference as a method for distributing tangible personal property. The problem with incorporation by reference is

29. Generally, a holographic will is one signed by and wholly in the handwriting of the testator. *See, e.g., In re Estate of Kleinman*, 970 P.2d 1286 (Utah 1998).

30. *See generally* James G. Dickinson, *Avoiding Conflicts Among Beneficiaries Over Bequests of Property*, 17 EST. PLAN. 216 (July/Aug. 1990).

31. *Id.*

32. Currently, the DL Wills software will not assist with the preparation of personal property memorandums for Nevada, South Dakota, Virginia, and Wisconsin. Although these four states recognize TPPMs, the drafting attorney does not have the advantage of a software program to draft TPPMs.

33. The doctrine of incorporation by reference is an old one. Preceding the Statute of Frauds, the doctrine of incorporation by reference first appeared in England to allow a deviser of land to describe the terms of the conveyance in an extrinsic document. *See generally* 3 A.L.R.2d 682; THOMAS E. ATKINSON, HANDBOOK ON THE LAW OF WILLS § 80, 385 (2d ed. 1953). Today, the UPC § 2-510 provides "[a] writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification." UNIF. PROBATE CODE § 2-510, 8 U.L.A. 146 (Supp. 1995).

34. *Bottrell v. Spengler*, 175 N.E. 781 (Ill. 1931); *Newton v. Seaman's Friend Soc'y*, 130 Mass. 91 (1881).

35. *Wagner v. Clauson*, 78 N.E.2d 203 (Ill. 1948); *Whitham v. Whitham*, 66 P.2d 281 (Or. 1937).

36. *Daniel v. Tyler's Ex'r*, 178 S.W.2d 411 (Ky. 1943); *Simon v. Grayson*, 102 P.2d 1081 (Cal. 1940).

37. *In re Bauer's Estate*, 124 P.2d 630 (Cal. Ct. App. 1942).

38. Generally, all states except Louisiana and New York recognize the doctrine of incorporation by reference. *See generally* ATKINSON, *supra* note 33, at 385.

that unlike the TPPM, the testator is not allowed to alter, change, or amend the separate document or writing after the will has been executed. Numerous reported cases serve as examples of litigation generated by using this doctrine.<sup>39</sup>

### Practical Application of TPPMs & DL Wills

To use a TPPM, the drafter must accomplish two things. First, a clause should be inserted into the testator's will regarding the disposition of tangible personal property by a separate writing.<sup>40</sup> This clause should also inform the executor of the implications if a TPPM is not located within a designated period of time upon death.<sup>41</sup> Second, the attorney should assist in the preparation of the TPPM (or at least provide guidance to the client regarding how to draft the TPPM).

When preparing a will referencing a TPPM, the DL Wills software will take the drafter through three different "question screens."<sup>42</sup> By making the pertinent selections, the DL Wills software will insert the following provision into the will:

Second: I give all tangible personal property owned by me at the time of my death, including without limitation personal effects, clothing, jewelry, furniture, furnishings, household goods, automobiles and other vehicles, together with all insurance policies relating thereto, in accordance with a written memorandum [some states use "statement" or "lists" instead of memorandum] which I intend to prepare and sign, disposing of such property or any part thereof, as permitted by [name of state inserted] law. If I sign more

than one such memorandum, the memorandum which bears a date later than that of any other such memorandum shall govern. [Inserted for some states: I intend said memorandum to comply with [state code provision] and that the property listed thereon shall pass in accordance with said memorandum]. I intend to leave such a memorandum at my death, but if no such memorandum is found and identified as such by my personal representative within thirty days after the probate of this will, any such memorandum thereafter found shall be deemed null and void.—Or—I intend to leave such a memorandum at my death, but if no such memorandum is found and identified as such by my personal representative within ninety days after my death, any such memorandum thereafter found shall be deemed null and void.—Or—[nothing if "no such presumption is to be considered in the will" was selected]. In the absence of such a memorandum, or to the extent that such memorandum fails to effectively dispose of any such property for any reason, including the death of any beneficiary, I give such property or the portion not effectively disposed of as hereafter provided with respect to my residuary estate.

The DL Wills Program offers the drafting attorney the option to prepare a TPPM for the twenty-three states previously indicated. However, the form the DL Wills Program provides does not vary between the states. The DL Wills program does not provide specific information on applicable state law or case

39. *Gifford v. Estate of Gifford*, 805 S.W.2d 71 (Ark. 1991). For a more detailed analysis of reported cases regarding incorporation by reference; see generally, Jodi M. Graves, *Incorporation by Reference, Integration, and Holographic Wills in Gifford v. Estate of Gifford*, 46 ARK. L. REV. 1013 (1994).

40. A general residuary bequest will not be considered a reference in the will to a written statement or list for purposes of a TPPM. *Adkins v. Woodfin*, 525 So. 2d 447 (Fla. Dist. Ct. App. 1988).

41. Although not required by UPC § 2-513, it maybe be advisable to include in the will instructions to the executor or personal representative to distribute the personal property among a named class of individuals as the executor deems fair and equitable considering the wishes of the individuals if a TPPM is not found within a certain period of time following the testator's death (such as 30, 60, or days). The DL Wills Program, however, does not include this type of language in the TPPM clause. Alternatively, a provision could be included in will regarding the absence of a TPPM, or to the extent the TPPM fails to effectively dispose of property for any reason, including the death of any beneficiary, giving the property or the portion not effectively disposed of as provided with respect to the residuary estate.

42. The DL Wills "question screens" for the TPPM currently are in the following format:

How are the personal effects and other tangible personal property of the Testator to be bequeathed:

- a. All to one beneficiary.
- b. As per a schedule of specific bequests or a personal property memorandum (with items which are not listed passing as part of the residuary estate)(SELECT)
- c. As provided with regard to the residuary estate.

Is the Testator going to use a personal property memorandum?  
SELECT YES

Is the Will to contain a conclusive presumption that no personal property memorandum exists if none is found:

- a. Within 30 days after the probate of the Will.
- b. Within 90 days after the death of the Testator.
- c. No such presumption is to be contained in the Will.

law on TPPMs. The DL Wills Program does not provide any guidance or checklist for the attorney or the client regarding the TPPM. The DL Wills software simply provides a very basic TPPM form.

Military practitioners can easily create a TPPM for clients using the DL Wills software program and performing some basic document drafting.<sup>43</sup> Military practitioners should either assist the client with the preparation of the documents, or advise the client regarding the preparation of the TPPM.<sup>44</sup> The military practitioner should advise the client to retain the TPPM in the same location as the will, but not to attach the TPPM to the will. The testator should inform the executor or personal representative about the existence, meaning, and location of the TPPM.

Many clients want to ensure the orderly distribution of personal property that may have greater sentimental than monetary value. In the case where the client desires to make dispositions of tangible personal property, and for clients whose domicile recognizes some type of TPPM, military practitioners should advise clients regarding TPPMs in order to provide a great deal of flexibility in estate plans. Clients can effectively dispose of property by using the TPPM as an estate planning tool. Practitioners must carefully draft provisions in a client's will regarding a TPPM, and properly advise a client regarding the preparation of the TPPM. By understanding the basic requirements for TPPMs, the military practitioner can assist a client in keeping testamentary desires up to date and successfully carrying out an estate plan. Major Rick Rousseau.<sup>45</sup>

## Appendix A

### Summary of State Statutes Relating to Tangible Personal Property Memorandums

State	Statute Section	Title	Compared to UPC § 2-513 (1990 version)
Alaska	ALASK STAT. § 13.12.513 (LEXIS 2000)	Separate writing identifying devise of certain types of tangible personal property.	Uses the language of the pre-1990 version.
Arizona	ARIZ. REV. STAT. § 14-2513 (LEXIS 2000)	References to separate lists; requirements.	Uses language similar to the pre-1990 version. Different structure.
Arkansas	ARK. STAT. ANN. § 28-25-107 (LEXIS 1999)	Incorporation of writing by reference.	Uses language similar to the pre-1990 version. Different structure.
Colorado	COLO. REV. STAT. § 15-11-513 (LEXIS 1999)	Separate writing identifying devise of certain types of tangible personal property.	Same language, but kept pre-1990 clause allowing document to be handwritten.
Delaware	DEL. CODE ANN. § 212 (LEXIS 1999)	Separate writing identifying bequest of tangible property.	Uses language similar to the pre-1990 version.
Florida	FLA. STAT. § 732.515 (LEXIS 1999)	Separate writing identifying devises of tangible property.	Same language, but kept pre-1990 clause regarding property used in trade or business.
Hawaii	HAW. REV. STAT. § 560:2-513 (LEXIS 1999)	Separate writing identifying devise of certain types of tangible personal property.	Same language.
Idaho	IDAHO CODE § 15-2-513 (LEXIS 1999)	Separate writing identifying bequest of tangible property.	Uses the language of the pre-1990 version.
Iowa	IOWA CODE § 633.276 (LEXIS 1999)	Separate identification of bequest.	Uses language similar to the pre-1990 version. Includes definition of tangible personal property.
Kansas	KAN. STAT. ANN. § 59-623 (LEXIS 1999)	Reference in will to statement to dispose of certain tangible personal property; admissibility.	Uses language similar to the pre-1990 version.
Maine	ME. REV. STAT. § 2-513 (LEXIS 1999)	Separate writing identifying bequest of tangible property.	Uses the language of the pre-1990 version.
Michigan	MICH. STAT. ANN. § 27.12513 (LEXIS 1999)	Separate writing identifying devise of certain types of tangible personal property.	Same language. Effective 1 April 2000.

43. For a sample TPPM from the DL Wills Program with some suggested additional language see the July 2000, *The Army Lawyer* ("Miscellaneous Documents") at <[www.jagcnet.army.mil](http://www.jagcnet.army.mil)>. The practitioner should consider the suggestions for modifications to the basic DL Wills TPPM.

44. For a sample instruction sheet for the attorney and client see the July 2000, *The Army Lawyer* ("Miscellaneous Documents") at <[www.jagcnet.army.mil](http://www.jagcnet.army.mil)>. The instructions serve as a checklist for advising the client and then as a memorandum for the client to retain.

45. Major Vivian Shafer of the 48th Graduate Course, assisted with the preparation of this article.

Minnesota	MINN. STAT. § 524.2-513 (LEXIS 1999)	Separate writing identifying bequest of tangible property.	Uses the language of the pre-1990 version.
Missouri	MO. REV. STAT. § 474.333 (LEXIS 1999)	Will may provide for disposal of personal property by separate list.	Uses language similar to the pre-1990 version. Different structure.
Montana	MONT. CODE ANN. § 72-2-533 (LEXIS 1999)	Separate writing identifying disposition of tangible personal property.	Same language. Different structure.
Nebraska	NEB. REV. STAT. § 30-2338 (LEXIS 1999)	Separate writing identifying bequest of tangible property.	Uses language similar to the pre-1990 version. Includes language regarding date of writing.
Nevada	NEV. REV. STAT. § 133.045 (LEXIS 2000)	Disposition of certain tangible personal property by reference to list or statement; requirements.	Similar language, but more expansive with specific requirements. Kept pre-1990 language regarding tangible personal property.
New Jersey	N.J. REV. STAT. § 3B:3-11 (LEXIS 2000)	Identifying devise of tangible personal property by separate writing.	Uses language similar to the pre-1990 version.
New Mexico	N.M. STAT. ANN. § 45-2-513 (LEXIS 2000)	Separate writing identifying devise of certain types of tangible personal property.	Same language. Different structure.
North Dakota	N.D. CECT. CODE § 30.1-08-13 (LEXIS 2000)	Separate writing identifying devise of certain types of tangible personal property.	Same language.
South Carolina	S.C. CODE ANN. § 62-2-512 (LEXIS 1999)	Separate writing identifying devise of certain types of tangible personal property.	Uses language similar to the pre-1990 version.
South Dakota	S.D. CODIFIED LAWS § 29A-2-513 (LEXIS 2000)	Separate writing identifying devise of certain types of tangible personal property.	Same language.
Utah	UTAH CODE ANN. § 75-2-513 (LEXIS 1999)	Separate writing identifying devise of certain types of tangible personal property.	Same language.
Virginia	VA. CODE ANN. § 64.1-45.1 (LEXIS 1999)	Separate writing identifying recipients of tangible personal property; liability for distribution; action to recover property.	Similar language, but more expansive with specific requirements. Contains provision regarding personal representative.
Washington	WASH. REV. CODE § 11.12.260 (LEXIS 2000)	Separate writing may direct disposition of tangible personal property, requirements.	Similar language, but more expansive with specific requirements. Requires reference to document in will. Defines tangible personal property.
Wisconsin	WIS. STAT. § 853.32 (LEXIS 1999)	Effect of reference to another document.	Similar language, but more expansive with specific requirements. Requirements differ depending on date of execution. See language!
Wyoming	WYO. STAT. ANN. § 2-6-124 (LEXIS 2000)	Written statement referred to in will disposing of certain personal property.	Uses language similar to the pre-1990 version. Different structure.