

# **Estate Settlement**

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## **The Util Method**

### **A Procedure for the Distribution of the Physical Assets of an Estate**

By John E. Bunting

#### **THE NEED**

As stressful as the death of the last remaining parent may be, sometimes the settling of an estate can lead to controversies and scars that last longer than the mourning process. Ill will that may have lain dormant can suddenly arise and develop a life of its own. Controversies, resentment and pain can become a permanent part of a family's future existence.

If problems develop during the estate settlement process, it is indicative that there are underlying problems that may not have been dealt with in the past. As much as some heirs may choose to minimize it, the distribution of the tangible personal property of an estate is a very real and very personal part of the grieving process. Beyond all of that, it has to be done.

While the Util Method described herein cannot correct existing relationship problems that may exist, it can act to prevent new sources of friction and remove a potentially destructive process from being affected by the past. The Util Method can result in estranged family members participating in a family activity which may have very positive long term benefits.

I believe there are three principal causes if disagreements develop among the heirs during the distribution of the physical assets of an estate. First, traditionally heirs have no concrete way of expressing their wishes without seeming to be overbearing or greedy. Often they are in the undesirable position of trying to express the sentimental value of a particular item to an unfamiliar executor while other family members attempt to do the same. Not everyone has the same abilities of presentation, expression and communication. The perceived lack of ability causes bitterness and withdrawal. Additionally some people are uncomfortable with competition when it involves family heirlooms. This can lead to frustration and bitterness. In sum, heirs have no private way of expressing what particular tangible items mean to them.

Next, distress, acrimony, and animosity can result when a person is not allowed to participate in the decision process or thinks that others are participating more intimately than s/he. This can happen both as the result of an heir not being the recipient of an item (anger, frustration) or of being the recipient (guilt, second-guessing). Commonly used decision-making processes do not allow a person to express the true utility of a piece of property.

Third, one task that is generally expected of an executor, in the absence of specific direction by the deceased, is to weigh one heir's wishes against those of the others. Making these decisions in a fair and just manner with little or no guidance would challenge Solomon.

Additionally, one of the goals of an executor should be to encourage the continued functioning of a family. The Util Method requires that all heirs participate in the distribution process intimately and equally. The time and effort that is required gives participants satisfaction.

### **THE CONCEPT OF UTILITY**

UTILITY: Utility is the sum of functional, sentimental, need, and monetary value that a person puts on a tangible or intangible.

UTIL: A util is a unit of utility.

"Utility" is a concept that is frequently employed in economic discussions. It is used in the same manner as the better-known "widget," which is a mythical representation of any good or service. The util, on the other hand, represents a unit of both intrinsic and perceived value. This is not limited to strictly monetary value but represents a broader, all-encompassing concept of worth. The worth of the same item varies from person to person and is, therefore, impossible for an executor to gauge.

Perhaps an example would be helpful. An oil painting portrait of a grandparent would generally be of more utility (utils) to an offspring than to someone unrelated. Further, if one offspring had not known the grandparent while another had spent considerable time visiting during his or her formative years the latter might assess a higher util value than the former. Utility is

very fluid.

To briefly summarize, the Util Method allows the minimum amount of decisions by the executor and the maximum participation by the heirs in the decision-making process during the settlement of an estate. This results in a positive feeling of satisfaction and fair play by the latter.

What follows is a detailed description of the Util Method as applied to an actual estate settlement.

### **THE UTIL METHOD**

The Util Method is a modified sealed bid auction using non-monetary units of value called utils. This process allows each heir an equal opportunity to take possession of any physical asset. No one has any advantage.

The first step for the executor is to make a detailed inventory of the tangible assets of the estate. This is not an easy process but is vital for the remainder of the process to work. The number of items may easily run into the thousands, especially if there are many books, but most of the process

has to be done anyhow. It is just a bit more detailed under the Util Method. As important, the added time is an investment in the future functioning of the family.

Using small adhesive labels that are denoted "removable", number them from 1 to 500, to start. Avery 05412 labels (5/16 x 1/2") work well. They stick very well on most surfaces yet can be removed and do not leave objectionable marks or residue. Small manila envelopes can be used to hold objects such as jewelry and the stickers can be affixed to the outside of the envelope. Next set up a video camera and, with your supply of prenumbered labels at hand, start affixing labels, showing the object to the camera and giving a brief description.

The description will vary depending on the particular item. Something simple, such as a set of six reed place mats can be described adequately as "421 A set of six reed place mats 421." However, a first edition of The Compleat Angler by Izaak Walton would need more than "189 The Compleat Angler 189." [NOTE: It is a convenience to the viewers if the description both starts and ends with the item number.]

Because everything is being videotaped, people can see more than just the spoken description, which helps jog memories. Also title pages, patterns, wear and other important details can be shown. The concept of full disclosure is paramount.

It is recommended that the labeling and videotaping be done prior to the appraisal. By having the items labeled with numbers, there is no confusion as to which appraised value goes with which item. Right from the start, each item has its own identity. Lots of items, i.e. a group of items for appraisal purposes, can be easily assembled using the individual item numbers. To make a lot, the items need not be consecutively numbered. For example, "Appraisal Lot #86, consisting of Items #42 - 63, 118, 120, kitchen utensils, valued at \$42.00." The lots are used for appraisal purposes, not for Util Method purposes.

Following the videotaping, a simple database is created. The following represents the fields of data in such a database and a sufficient description. The field labeled APPRAISAL allows for entering the value of any items of significant worth which,

again, is done in the interest of full disclosure. BID ROUND 1, BID ROUND 2 and RECPNT will be explained below.

ITEM #	DESCRIPTION	APPRAISAL	BID ROUND 1	BID ROUND 2	R
656	small coffee table 22x18, wooden				

The creation of the database goes surprisingly quickly. Someone simply watches the videotape and enters information. The written description need not be detailed because the videotape provides more than enough information and, equally important, documentation. After any appraisals are completed, the values are entered in the database.

The next step is preparing packets for the heirs. Each packet should contain a copy of any videotape(s), an explanation of the auction process, and two printed copies of the database. One copy is returned with the heir's bids. Ideally a copy of the explanation should have already been sent so that heirs can mentally prepare themselves for what is probably an unfamiliar procedure and receive answers to any questions

they might have.

Now, in the comfort and privacy of their own homes and at their own leisure, heirs can view the tangible items of an estate and make the sometimes very difficult decisions about the util value of each item. This is not an easy or quick process for them. In fact the difficulty helps reinforce to each heir that s/he is fully participating in determining the outcome. If someone else bids a higher number of utils, it simply means that the item meant more to him or her. Not receiving an item is the result of his or her own decision.

### **SAMPLE RULES OF THE UTIL BIDDING PROCESS**

(With notes for executors)

**PROCESS:** This is a modified, sealed bid auction with currency in the form of "utils" which are mythical units of utility. Each heir will submit bids for any and all items that s/he wishes to inherit. No one will know what any other heir's bid is until the time awards are made.

[NOTE TO EXECUTOR: This is to prevent outright competitive

bidding, cooperative bidding and, after the awarding, guilt on the part of the recipient. Obviously there is no guarantee of this but at least the intent is suggested.]

**ROUNDS:** There will be two rounds of bidding. For Round One, you will be granted 500,000 utils to be bid as you wish. Please note that this is a modified sealed bid auction. Any utils that are bid, regardless of the awarding, are gone forever. However, you do not need to bid all of your utils in this round. Any unbid utils will be credited towards Round Two, when each heir will be granted another 250,000 utils.

[NOTE TO EXECUTOR: Assuming that the estate is to be equally distributed among multiple heirs, each heir starts with an equal number of utils, say 500,000. The actual number is immaterial in the long run, but the high number permits a feeling of flexibility during the bidding process. Also the number of rounds of bidding is variable. You must strike a balance between a process that could go on forever while providing sufficient opportunity for people to participate even if they lose out on several meaningful items.]

**RETURN DATE:** All bids for Round One must be returned by [DATE].

[NOTE TO EXECUTOR: Leave ample time for viewing and making decisions. The heirs will find this to be a difficult process. Also, if others must be consulted, such as grandchildren of the deceased, heirs must be permitted sufficient time to do so.]

**AWARDING:** After bids are received from Round One, an award sheet will be sent to each heir indicating the items that were bid on, the highest bid and who was the recipient.

**ROUND TWO:** Two printouts of the updated database listing remaining items will be sent to each heir. This time the heirs will be granted 250,000 utils plus any utils that were not bid in Round One.

**TIES:** In the event of a tie (an equal number of utils bid by two people on any particular item) there will be a toss of a coin with the eldest having "heads".

## TIPS and HINTS for PARTICIPANTS

Example 1: If a particular item means "everything" to you, then you can literally bid your entire allotment of utils on that item. Obviously this means that it would be your only bid, but you would be virtually assured to receive that item.

Example 2: If there is an item that is of no particular significance but you feel should remain within the family, you can put in a bid of 1 util. This would mean that if anyone else bids s/he would probably get it, but that it would not be disposed of with the remainder of the estate.

\*Many thanks to Dr. Les McAllister (Beloit College) for introducing me to the concept of utility, the "util", and the field of economics.

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