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A SUMMARY ON WILLS AND PROBATE

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ABOUT NANYANG LAW LLC

We are a dynamic, innovative and vibrant boutique Singapore law firm. We are fully committed to providing the highest quality legal services to our clients and ensuring our clients have easy access to our professional staff.

We specialize in a variety of work such as corporate, intellectual property, chancery, litigation and corporate secretarial services.

As a result, our clients range from public listed companies to venture capital firms to individuals with specific needs.

We will be happy to meet you to discuss your needs and see how best your interests can be protected. We take this opportunity to reiterate our vision statement which is to provide quality and timely legal services, which adhere to the highest standards of integrity and excellence, delivered in a professional, responsible and client-oriented manner.

We look forward to being of assistance to you.

FOREWORD

Dear friends, partners and clients,

We hope you enjoyed reading our 3rd issue of Law @ Nanyang in May 2007.

For the 4th issue, we focus on the importance of making a will and the consequences if a will is not made.

We further hope you will find this issue informative. Please do not hesitate to contact us if you have any queries relating to this newsletter.

Happy reading!

Ng Kim Tean
Managing Director

A SUMMARY ON WILLS AND PROBATE

This article will give a general overview on the legal issues relating to Wills and Probate. It is not meant to be nor does it constitute legal advice. The aim of this article is to give an overall picture of certain issues that arise when making Wills or applying for Probate. It should also be noted that this article does not deal with Muslim estates wherein separate considerations apply. We recommend that readers consult us if they require advice on specific issues. We will be happy to answer any queries.

Why make a Will?

The person who makes the Will is known as the Testator. A Will allows the Testator to dispose of his/her assets as he or she wishes.

Once the Testator passes away, all assets in his/her name forms part of the deceased person's estate.

If a person does not make a Will and passes away, the person is said to have died intestate. This means that the deceased's person's assets will be distributed only in accordance with Section 7 of the Intestate Succession Act.

The law sets out the rules for distribution as follows:

Rules for distribution

In effecting such distribution, the following rules shall be observed:

Rule 1
If an intestate dies leaving a surviving spouse, no issue and no parent, the spouse shall be entitled to the whole of the estate.

Rule 2
If an intestate dies leaving a surviving spouse and issue, the spouse shall be entitled to one-half of the estate.

Rule 3
Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves issue shall be distributed by equal portions per stirpes to and amongst the children of the person dying intestate and such persons as legally represent those children, in case any of those children be then dead.

Proviso No. (1) — The persons who legally represent the children of an intestate are their descendants and not

their next-of-kin.

Proviso No. (2) — Descendants of the intestate to the remotest degree stand in the place of their parent or other ancestor, and take according to their stocks the share which he or she would have taken.

Rule 4
If an intestate dies leaving a surviving spouse and no issue but a parent or parents, the spouse shall be entitled to one-half of the estate and the parent or parents to the other half of the estate.

Rule 5
If there are no descendants the parent or parents of the intestate shall take the estate, in equal portions if there be two parents, subject to the rights of the surviving spouse (if any) as provided in rule 4.

Rule 6
If there are no surviving spouse, descendants or parents, the brothers and sisters and children of deceased brothers or sisters of the intestate shall share the estate in equal portions between the brothers and sisters and the children of any deceased brother or sister shall take according to their stocks the share which he or she would have taken.

Rule 7
If there are no surviving spouse, descendants, parents, brothers and sisters or children of such brothers and sisters but grandparents of the intestate the grandparents shall take the whole of the estate in equal portions.

Rule 8
If there are no surviving spouse, descendants, parents, brothers and sisters or their children or grandparents but uncles and aunts of the intestate the uncles and aunts shall take the whole of the estate in equal portions.

Rule 9
In default of distribution under the foregoing rules, the Government shall be entitled to the whole of the estate.

Thus, the advantage of making a Will is that it allows a person to ensure that his/her assets are distributed in accordance with his/her wishes. The people who gain from the Will are known as the beneficiaries.

Important Clauses in a Will

There are certain clauses that must be present in a Will. Some of these clauses are as follows:-

Firstly, the intention of the Testator must be clear i.e. that this is his/her last Will and Testament.

Secondly, there must be a revocation clause i.e. revoking all former Wills and testamentary dispositions made by the Testator.

Thirdly, the Testator must appoint someone to be the Executor and Trustee of the estate. The Executor and Trustee (who is one person) is the person who is in charge of the administration of the deceased's estate and must be over 21 years old. Being an executor is a time-consuming exercise and it is generally recommended that the Executor be someone who is closely related to the deceased or who will be financially rewarded for his/her time.

If any of the beneficiaries are under 21 years of age, then the Testator must name 2 people to be the Executors and the Trustees.

Fourthly, if there are any minor children, the Testator must also appoint a guardian of the infant(s). Again, it can be the same person as the Executor.

Fifthly, the Testator must make it clear which asset is to go to which person. Some people prefer to leave it in a very general form. For example, "*all my assets, in whatever form and wheresoever situated are to go to my spouse*." Whereas there can also be specific legacies, for example, a painting to go to a friend or a piece of jewellery to a favourite aunt. Just ensure that the beneficiary is clearly named.

It must also be remembered that certain gifts cannot be included in a Will. One example is a property that is held by 2 (or more) people as joint tenants. In such a situation, the right of survivorship applies. This means that when one of the owners passes away, the legal title of the property automatically passes to the surviving joint owner(s).

Sixthly, it is recommended that there be a residuary gift clause, especially when the Testator has made specific gifts. The residuary gift clause will capture all other assets which have not been specifically dealt with. If this clause is missing, the assets which have not been dealt with will be distributed in accordance with Section 7 of the Intestate Succession Act.

A person's assets usually changes over time. Thus, if a person is not entirely sure of what to do with his/her assets, it is recommended that the person does not make a specific legacy. This is because that specific asset may have been sold/lost before the Testator passes away.

The Will needs to be signed in front of 2 witnesses. The witnesses cannot be someone who is also named as a beneficiary of the Will and must be over 21 years old.

Once a person has made a Will, it is prudent that the Executor is told of its existence and knows where the original Will is kept. Another recommendation is that the Testator keeps a list of his/her assets with the original Will and which is updated when the assets change.

Applying for Probate

Once the Testator passes away, the legal title to the gifts do not "automatically" pass to the beneficiaries. However, in smaller estates and depending on the gift, for example, a specific piece of jewellery or a stamp collection (which has more sentimental value rather than financial value), etc., the Executor may just physically give the gift to the beneficiaries.

However, before any gifts are given away, it is recommended that the Executor apply to Court to obtain the Grant of Probate or if a person has died intestate i.e. without a will, someone will need to apply for the Letters of Administration. In the latter situation, the person is known as the Administrator.

The effect of obtaining the Grant of Probate/Letters of Administration will give the Executor/Administrator the legal right to deal with the deceased person's estate.

Applying for the Grant of Probate or the Letters of Administration is procedural and involves filing various documents in Court. It usually takes some time to obtain this.

For some estates, it may be necessary to pay estate duty tax. This has to be paid within 6 months of the death of the Testator. If it is not paid within this time, late payment interest will be charged. Thus, it is always recommended that the Executor/Administrator consults a lawyer soon after the Testator passes away, so the necessary can be done before the expiration of the 6 months.

Tax exemptions are given to moveable and immoveable properties below a certain value.

The latest trend, especially in larger estates which would usually attract estate duty, is to create various trusts. If this is done, it would not be necessary to pay estate duty. We would be happy to answer any queries you may have in relation to estate/tax planning. This is something we would highly recommend as in addition to paying less (or no) tax, it may also make things easier for the surviving family members.

CASE STUDY

There have been many cases where parties had to seek the assistance of the courts, for example, when the Testator was of ill health when he/she executed the Will or when the deceased died intestate (i.e. without a Will) and legal questions arose over the assets owned by the deceased.

The facts of the case *R Mahendran & Another v R. Arumuganathan [1999] 2 SLR 579* are as follows:-

Mrs. Ramanathan, a widow, died on 11 October 1993 at the age of 73. The bulk of her estate comprised of a house, some jewellery and some cash in a POSB account. For years the Deceased suffered from ill health. She was survived by 9 children.

Her Will was dated 28 July 1993 and witnessed by her eldest son and his secretary and executed while she was admitted at Youngberg Adventist Hospital. The eldest son claimed that as her hand was shaking at that time due to her illness, he supported her hand as she signed her name in the Will.

The application for grant of probate was resisted by one of the Deceased's sons and his wife. They resisted it on the grounds that the Will was forged or the deceased did not have the mental capacity to execute the Will due to her poor medical condition at the material time or she did not know and approve the contents of her Will, or that the execution of the Will had been procured by fraud.

The Court of Appeal said that based on the evidence and the facts of the case, the grounds for resisting the grant of probate had not been proved.

It is our recommendation that in cases where an elderly person who is of poor health is making a Will, it is best that an independent party explains the contents of the Will and witnesses the execution of the Will. It is also prudent if the independent party speaks to the Testator's doctor to ensure that the doctor is of the opinion that the Testator has the mental capacity to make a Will.

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