



# Calling the shots from the grave

PHOTO: ISTOCKPHOTO

Besides dividing up the estate, making a will gives a person a 'voice' after his or her death



**Lorna Tan**  
Senior Correspondent

When it comes to making a will, most Singaporeans seem to prefer to put it off until the last minute, but that can be cutting things a bit too fine.

There is a wealth of reasons to get your affairs in order well before the fateful day, but complacency continues to rule in this area of financial planning.

The Insurance Nomination Law that came into effect in September last year has simplified the rules governing the process of nominating beneficiaries for life policies.

But this doesn't mean that you do not need to make a will as the nomination law covers only life policies and not other assets such as cash, shares, immovable property and businesses.

Ms Ang Kim Lan, director at Goodwins Law Corp, tells The Sunday Times: "Even for life policies, some people think it is more convenient to make a will so that they do not need to deal with different insurers if they have bought policies from different insurers."

"By drawing up a will, they deal with all their assets as a whole; that is, they can see who gets what and whether that is what they want."

Ms Lim Choi Ming, KhattarWong's partner, litigation, says a will is always better if you want to make specific bequests of property or assets to various people in specific proportions.

"Making a will gives you a voice after you are gone. Your wishes may extend beyond your immediate family and you may wish to provide for other persons or purposes," she said.

For instance, there was a case where a woman left her entire estate, including her four dogs, to her dog-loving maid.

For those inclined to giving back to society, a will is useful for mak-

ing donations to charities, says lawyer Amolat Singh from Amolat and Partners.

Besides, you can choose to be creative, call the shots and stipulate that certain conditions be met before the beneficiaries collect their share of the estate.

Creativity, as Mr Adrian Wee, director at law firm Characterist, recalls, can be interpreted in many ways.

He cites an individual whose will provided for a \$30,000 cash gift if a family friend "bears his buttocks" on the first anniversary of the death.

Others have made less testing demands, but the idea of being able to reach out from the grave clearly motivates some people, as The Sunday Times highlights.

## CASE 1 Ensuring upkeep of Peranakan home

Mr and Mrs Joseph Tan (not their real names), owned a Peranakan home and wanted to ensure its upkeep after their deaths. They wanted to enhance the Peranakan culture here.

In 1994, they made wills that stated their wish to bequeath the home to their family and descendants as a museum.

After their deaths, payments of \$2,000 a month would be made to the museum custodian, who has to be a male descendant until the lineage of male descendants runs out.

The payments are for the custodian's personal use and maintenance of the museum, says KhattarWong's Ms Lim.

## CASE 2 Ensuring upkeep of a horse

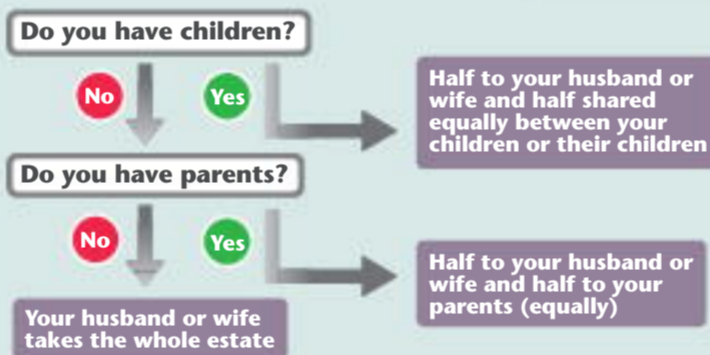
Ms Tania Lee (not her real name) wanted to ensure that her race horse would continue to enjoy the same standard of living after she died.

In 2008, she made a will stating that \$300,000 would be set aside for the horse - \$200,000 for its on-going maintenance and \$100,000 to the stable after the animal's natural death.

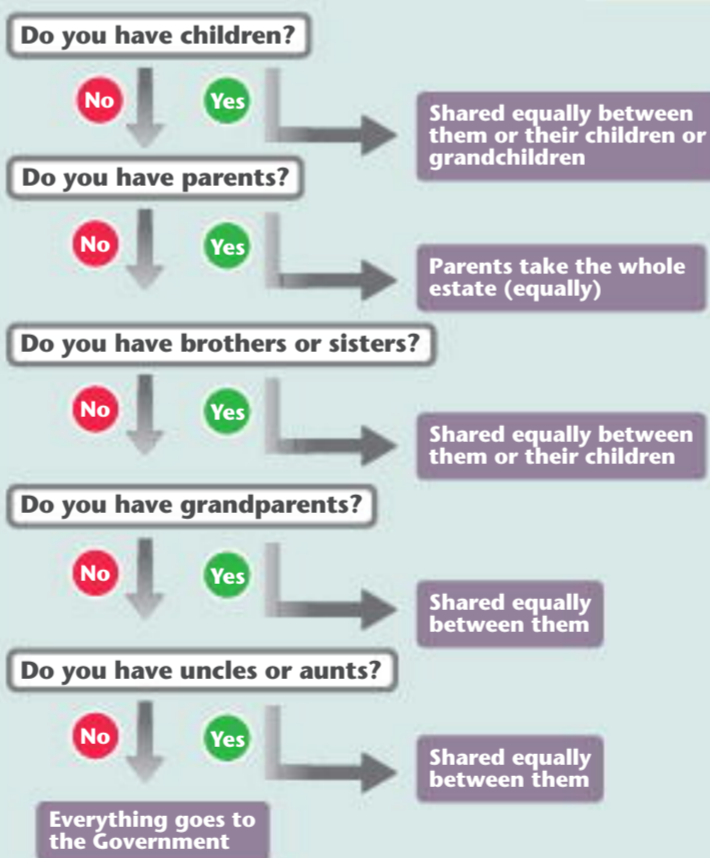
This condition was to ensure

## WHAT HAPPENS IF I DIE WITHOUT MAKING A WILL?

### If you are married (when you die)



### If you are not married (that is, single, widowed or divorced)



Source: Goodwins Law Corp

GRAPHICS: LIM KAILI

## MAKING A WILL: WHAT TO LOOK OUT FOR

### Choice of executors

You want an executor who would be likely - by reason of age or health - to outlive you. Executors should be able to effectively administer the estate and liaise with the beneficiaries, said Mr Adrian Wee, director at law firm Characterist.

So weigh up his educational level, ability to understand legal matters pertaining to the estate, relationship with likely beneficiaries and the level of trust between both of you.

### Check on status of assets

It is important to establish whether the property is capable of being bequeathed by way of a will.

For example, real estate held in joint tenancy cannot be disposed of by way of a will and instead passes automatically to the surviving joint owner or owners, said Mr Wee.

And unless a gift of a specific piece of property is desired, it is usually simpler to express the distribution in terms of a percentage of the whole estate.

This is because if the will provides for a gift of a specific property, it will be extremely difficult to trace the proceeds of such a sale, if it had been sold by you later in life, and to ascertain whether the beneficiary should be entitled to the proceeds.

### Overseas property

Take care when including overseas property as the law in that country will apply.

It is always prudent to ask a foreign lawyer first whether that property can be distributed by will in the way intended, advised lawyer Amolat Singh from Amolat and Partners.

### Pre-empting a challenge

Sometimes a person may not want to give anything to his wife or a particular child.

In this situation, it is prudent to include in the will a specific provision such as: "I am not giving anything in my will to ABC because I have already given her in my lifetime such of my assets as I think she deserves."

Or you could provide a nominal sum - \$100, for example, said Mr Singh. This eradicates a possible challenge by ABC claiming that he was unfairly left out of the will or that there was pressure from some quarters to cut him out.

### Role of witnesses

A will has to be signed in the presence of two independent witnesses who are above 21.

Witnesses cannot be beneficiaries in the will, said Ms Lim Choi Ming, partner at KhattarWong.

### When a doctor is necessary

If a will has to be made while you are in a hospital or a hospice, get the doctor to be one of the witnesses so that any challenge to your mental capacity can be eradicated.

### Muslims

Muslims must take note that they are not free to distribute their property as they like and they must comply with the provisions of the Administration of Muslim Law Act, said Mr Singh.

### Review your will

Ms Ang Kim Lan, director at Goodwins Law Corp, suggests that you review your will every three to five years or if there is a life-changing event such as a marriage, divorce or birth of another child.

Note that wills are invalidated when a person marries, so a new will must be drawn up.

Lorna Tan

that the stable would care for the horse and not put it down, no matter what, says Ms Lim.

### CASE 3 Preferred conduct at funeral wake

A will can be used to give directions on what to do at the wake, says Mr Singh.

Mr Lim Ah Seng (not his real name) set out in his will that those attending the wake need not pay their respects using joss sticks. Their presence would be enough. Mr Lim probably did this to reduce any awkwardness that may arise as half of his children are Taoists while the rest are Christians. He also provided for his wake to be no more than three days and to do away with elaborate ceremonies or rituals.

He wanted to be cremated and his ashes strewn into the sea - an unusual request for a Chinese man, notes Mr Singh.

The will was made when Mr Lim was 60. He died eight years later, owning a fully-paid up semi-detached house worth about \$1.8 million and about \$300,000 in shares and cash.

### CASE 4 Marrying a person of the same race

Ms Sharma Jeremiah (not her real name) wanted her youngest son to remain a Hindu and marry a woman of the Indian race. These were the two conditions stipulated in her will if her son were to inherit his share of her estate.

Ms Jeremiah was 60 when she

made the will and must have feared her son marrying outside his race.

She owned three landed properties and her total worth was about \$5 million, recalls Mr Singh.

### CASE 5 When there is no will

This case centres on a will not being made and resulted in a court case that made headlines in November when the judge rejected a bid by a businessman's mistress to get his estate to pay maintenance to their two young children.

When the man died, he had a legitimate wife and four grown-up children. He also had a mistress and two illegitimate children who are of primary schooling age.

Upon his death, the mistress made a monetary claim of \$3,000 for monthly maintenance against the estate.

The Court of Appeal ruled that illegitimate children are not entitled to maintenance from a deceased parent's estate.

Ms Lim, who acted for the legitimate children, says: "If the deceased had made a will providing for the two illegitimate children, this would be incontrovertible."

"However, as he did not do so, the law was that they were not entitled to maintenance from the estate of the deceased."

As a gesture of goodwill, the widow is making regular smaller payments for the upkeep of the two children although she need not do so under the law.

lorna@sph.com.sg



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