



CAPSTONE RFP PROGRAMME 2021

ESTATE PLANNING

By :

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ESTATE PLANNING



RAFIE BIN OMAR

Diploma In Law (DIL) - Institute Technology MARA

Bachelor of Laws (LL.B) - University of Melbourne, Australia

Master of Business Administration (MBA) with Excellence Award - UiTM

- **March 1989:** registered as Advocate & Solicitor of High Court of Malaya
- **1992** – registered as Shariah Lawyer at the Selangor Shariah Court
- **1994** - Legal Advisor - Malaysian Resources Corporation Berhad (MRCB) - Business Development and Corporate Affairs Division
- **1996** - Director of KL Sentral Sdn Bhd, subsidiary of MRCB which developed KLSentral
- **2000** - Legal Advisor - joined Danaharta, specializing in property matters
- **September 2001** - General Manager, Operations - Amanah Raya Berhad (ARB)
- **July 2003** - General Manager, Sales and Marketing – ARB
- **2007** - Chief Executive Officer (CEO) AmanahRaya Legacy Services - a wholly-owned subsidiary of ARB which involved in Wills preparation, registration and custodial services, probate and testate administration, distributions and management services.
- **2012** - Chief Publicity Officer of ARB
- **Since January 2013** - Advocate and Solicitor – ROA - own legal practice

ESTATE PLANNING

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 FEN FINANCIAL EDUCATION NETWORK Empowering Financial Freedom

MALAYSIA National Strategy for Financial Literacy 2019-2023




Overview of the Malaysian National Strategy for Financial Literacy



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123 JULY
2019

.... recent surveys conducted by the Organisation for Economic Co-operation and Development and Bank Negara Malaysia indicate that Malaysians have low financial knowledge and myopic "live for today" attitude when it comes to personal financial management.

Many Malaysians struggle to manage their money, making them highly vulnerable to the impact of a financial shock such as redundancy, long-term illness or even just a large unexpected bill. individuals tend to bear more risks and responsibility for their own financial decisions.....

Raising financial literacy is a long-term obligation that requires the sustained efforts and commitment of many parties. Improving the financial well-being of all Malaysians is an important priority for the country to realise our full potentials....

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⚡ THE STAR ONLINE • 1 MIN READ

'Financial well-being at dismal levels' - Nation | The Star Onli...

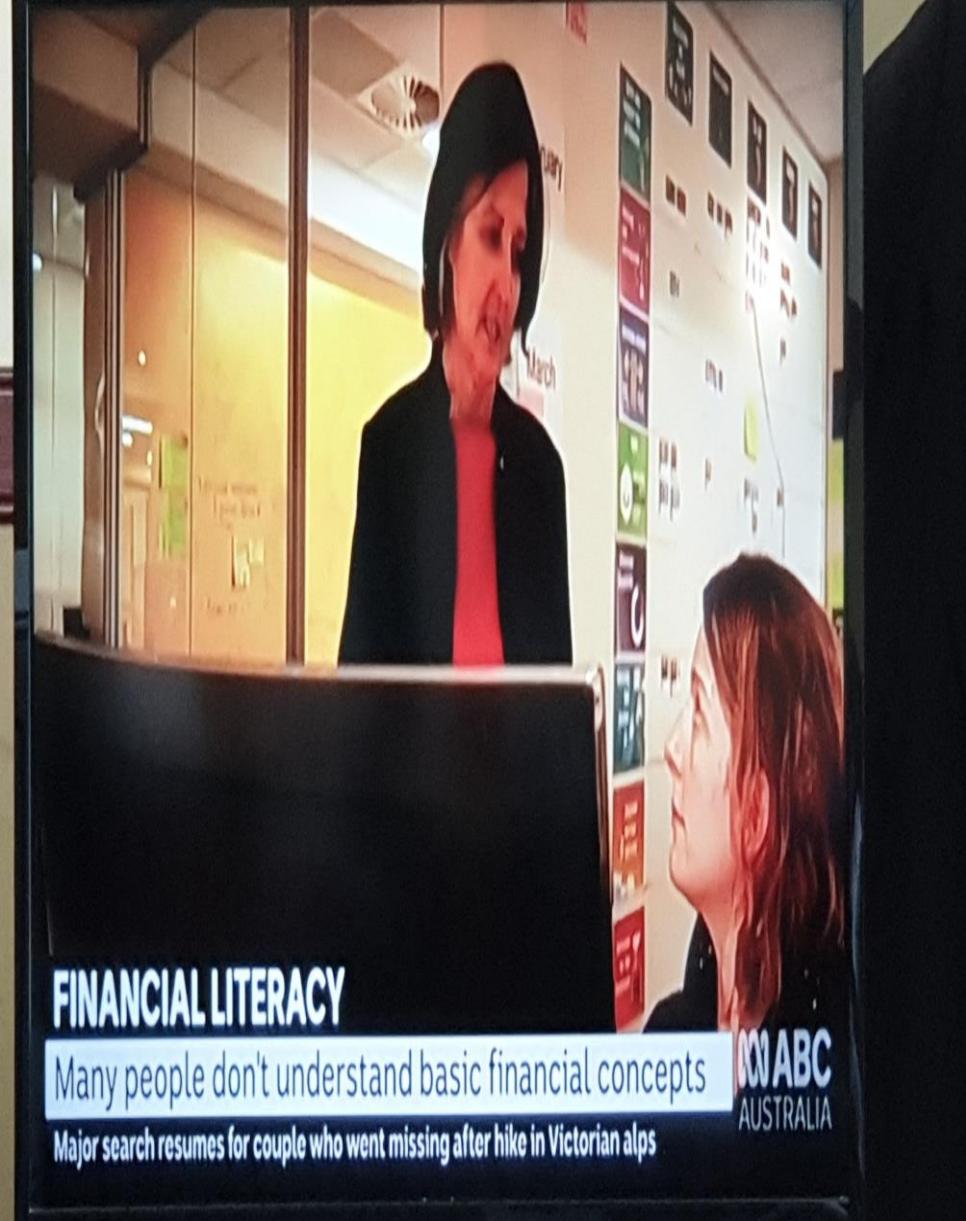
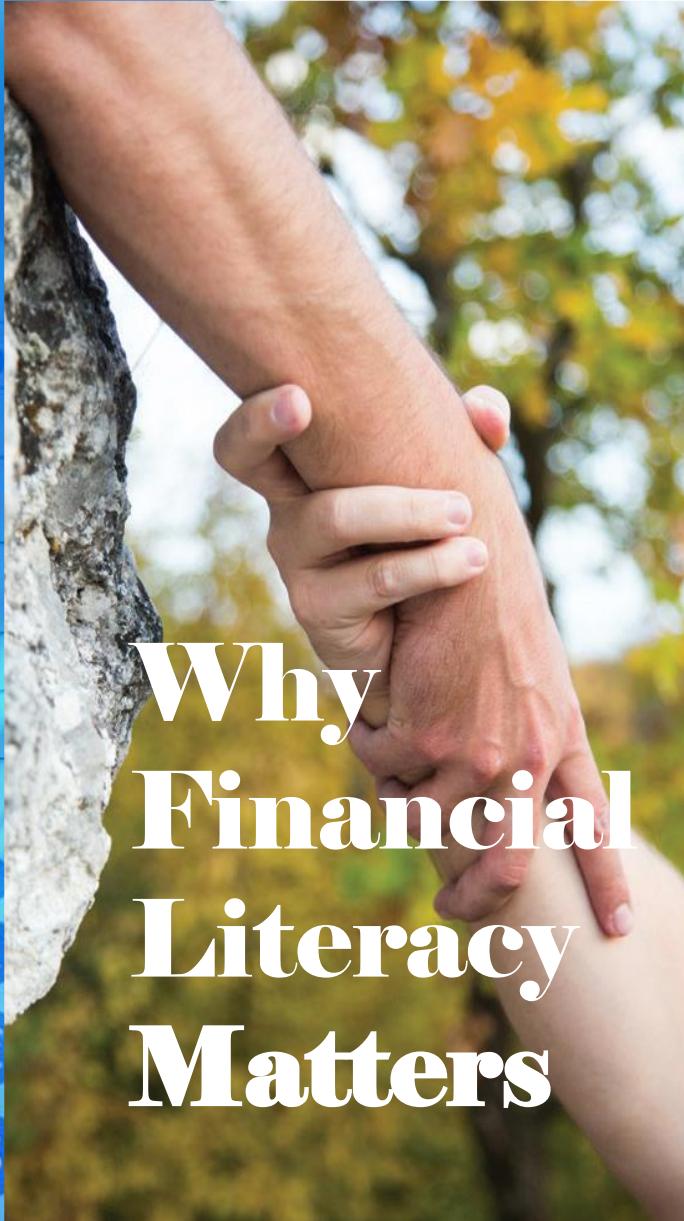
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Why Financial Literacy Matters



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Wealth
Accumulation



Wealth
Protection



Wealth
Distribution



NEITHER ABOUT REAL ESTATE; RUBBER ESTATE
NOR IT IS ABOUT OIL PALM ESTATE ONLY

TWO DAYS' OBJECTIVES

1. CONCEPTS & FUNDAMENTALS
2. TESTACY AND INTESTACY
3. ESTATES OF MUSLIMS
4. TRUSTS
5. POWER OF ATTORNEY
6. PERSONAL REPRESENTATIVES
7. LIFE INSURANCE & ESTATE PLANNING
8. EP FOR BUSINESS OWNERS



CONCEPTS & FUNDAMENTALS

Wealth
Accumulation

Wealth
Protection

Wealth
Distribution





Earning income, savings, asset building

Inflation, taxes & duties

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CONCEPTS & FUNDAMENTALS

MONDAY MARCH 12, 2007

ITS TIMES

ESTABLISHED 1845

Sabah and Sarawak RM1.80 Brunei BS1.80 www.nst.com.my • PP413/9/2007

50 MERDEKA! 1957-2007

Malaysians are living longer but are ill-prepared for their so-called golden years...

Where will YOU be WHEN YOU'RE 64?

Old, ill, poor and alone or in happy retirement?

Financial planners say you need between

RM1.4m and RM2.8m

to retire comfortably at 55.
SO WHAT DO YOU DO?

>> TURN TO P6/8 TO FIND OUT



ESTATE PLANNING

MFPC

Malaysian Financial
Planning Council

Competence.Ethics.Standards

CONCEPTS & FUNDAMENTALS

It's expensive to live longer

MALAYSIANS may be living longer today, but the extra years are sometimes painful and expensive.

Old age health complaints requiring operations often leave them with huge bills they can ill-afford in retirement.

Treatment in private hospitals can be expensive.

Pantai Medical Centre geriatrician Dr Rajbans Singh said a retiree generally spent between RM800 and RM1,000 a month on medication.

Surgeries for placing of pacemakers and joint replacements can cost up to RM10,000 and RM30,000 respectively, while the cost of treating terminal diseases can go up to RM100,000.

A basic laser eye surgery costs RM2,000 and tablets for osteoporosis, hypertension, Alzheimer's disease and painkillers range from RM300 to RM500.

Dr Rajbans said an elderly person usually had at least four illnesses.

"Some patients go for treatment in private hospitals but get their medication from government hospitals," he said, adding that the lower income group was the worst affected.

He said they had to wait long at government hospitals to see doctors.

As a result, they sometimes delay treatment or surgery and compromise by taking ad-

ditional medication.

"This is a bad sign as they resort to cheaper solutions which prolong the pain and lead to a deterioration of their health in the long term."

Sunway Medical Centre chief operating officer Ch'ng Lin Ling agrees with Dr Rajbans on the high cost of medical treatment for the elderly.

"A hip replacement at Sunway costs RM20,000. In 20 years, it would cost RM65,000."

"Knee surgery, which is about RM16,500 now, will cost about RM38,000 in 2027."

Currently, a pacemaker costs RM32,000, a session of kidney dialysis costs RM230 and a Parkinson implant costs RM150,000 at Sunway Medical Centre.

Alzheimer's Disease Foundation of Malaysia executive committee member Dr Yau Weng Keong said the elderly usually did not accept their ill health very well.

"Many do not want to face the fact that they need treatment although the signs are obvious."

"They would rather tolerate the pain," he said, adding that this was more common among the lower income group.

"They seek treatment at later stages when their health is critical."

Common diseases suffered by the elderly include osteo-



Some patients go for treatment in private hospitals but get their medication from government hospitals.

Dr Rajbans Singh
Pantai Medical Centre
geriatrician



Knee surgery, which is about RM16,500 now, will cost about RM38,000 in 2027.

Ch'ng Lin Ling
Sunway Medical Centre
chief operating officer



Many do not want to face the fact that they need treatment although the signs are obvious.

Dr Yau Weng Keong
Alzheimer's Disease
Foundation of Malaysia
executive committee member

porosis, diabetes, high cholesterol, hypertension, cataract, heart problems and cancer.

"I treat between 30 and 40 inpatients and 10 and 15 outpatients every day. Four out of five have patterns of intellectual failure, immobility, instability with falls and incontinence," he said.

Although government hospitals offered reduced fees for

surgeries and medication, patients still needed to pay for parts, implants and treatment which came up to a few thousand ringgit, Dr Yau added.

"Some patients from the lower income group lack the finances and we try to help them by appealing for funds through the Welfare Department and lending them mobile equipment such as wheel-

chairs or walking aids."

ABN-Amro vice-president and head of wealth management Michael Hui Hoong Tho suggested that employees should look at medical insurance coverage after retirement.

"They assume that they can buy the medical insurance later, but fail to realise that they may be uninsurable then."

HSBC Bank general manager for personal financial services U Chen Hock said medical insurance was essential for a problem-free retirement.

"A manager who spends RM2,400 per year in medical expenses would need about RM6,368 when he retires."

"The best way to cover this is to get an insurance policy," he said.

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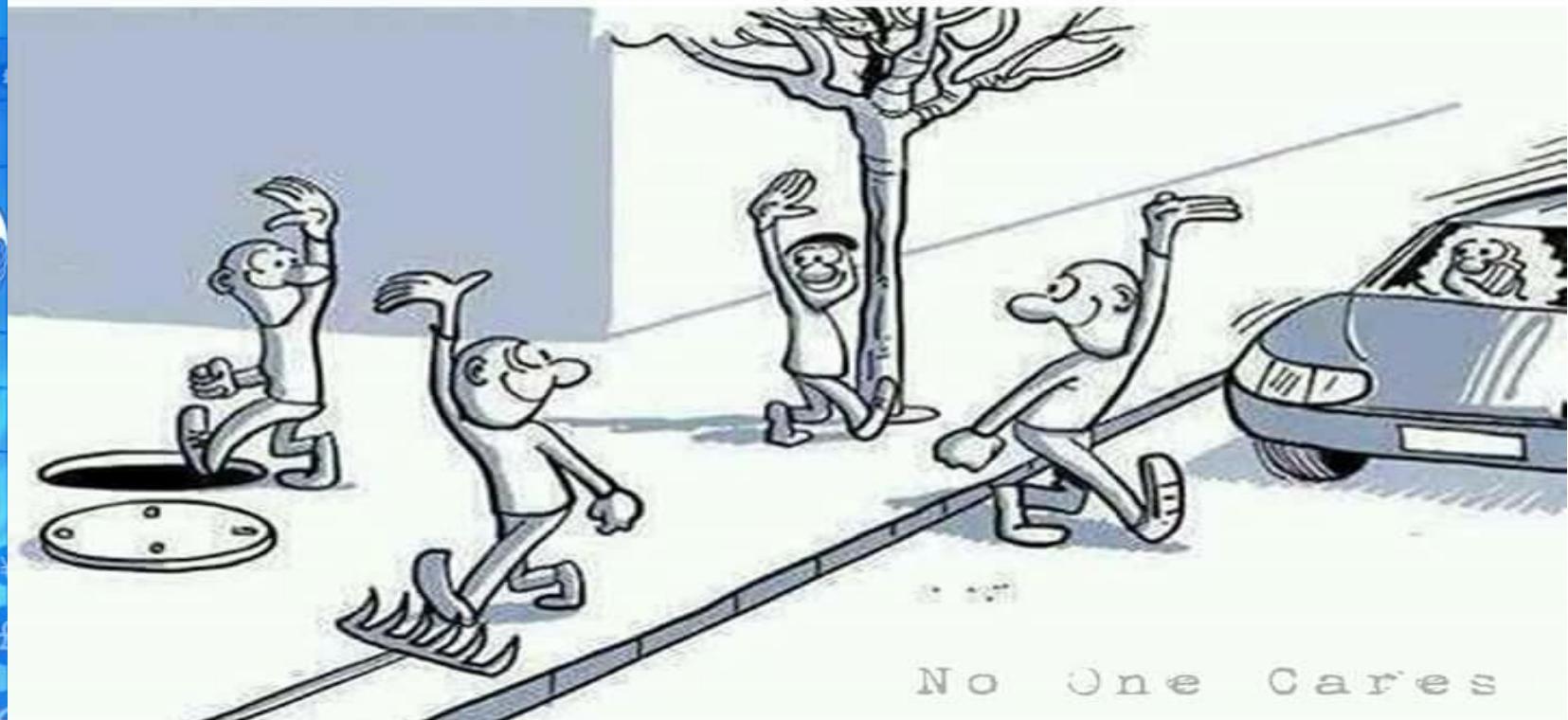
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CONCEPTS & FUNDAMENTALS

Nobody Knows When The



Last GoodBye Is

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CONCEPTS & FUNDAMENTALS

CNN US Crime + Justice Energy + Environment Extreme Weather Space + Science

Married for 51 years, they died of Covid-19 six minutes apart

By Harriet Kalk, CNN
Updated 0600 (ET) (0900 GMT) April 4, 2020



Adrian and Stuart Baker were married for more than 51 years, and their family called them inseparable. On March 29, they both died of complications due to Covid-19 -- just six minutes apart.

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CONCEPTS & FUNDAMENTALS

malaymail

Covid-19: Current status in Malaysia

Total cumulative Covid-19 cases as of April 17, 2020 noon: **5,251**

Total deaths as of April 17, 2020, 5pm: **86**

Total confirmed cases

5,251

Total active cases

2,198

including

New cases today

69

Total in ICU

51

(including 26 needing respiratory support)

Total recovered

2,967

including

New recoveries today

201

Total Deaths

86

Sources: Health Ministry, federal government

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CONCEPTS & FUNDAMENTALS

malaymail

Covid-19: Current status in Malaysia

Total cumulative Covid-19 cases as of January 12, 2021, 4pm: **141,533**

Total deaths as of January 12, 2021, 4pm: **559**

Total confirmed cases

141,533

Total active cases

30,390

including

New cases today

3,309

Total in ICU

190

(including 83 needing respiratory support)

Total recovered

110,584

including

New recoveries today

1,469

Total Deaths

559

including

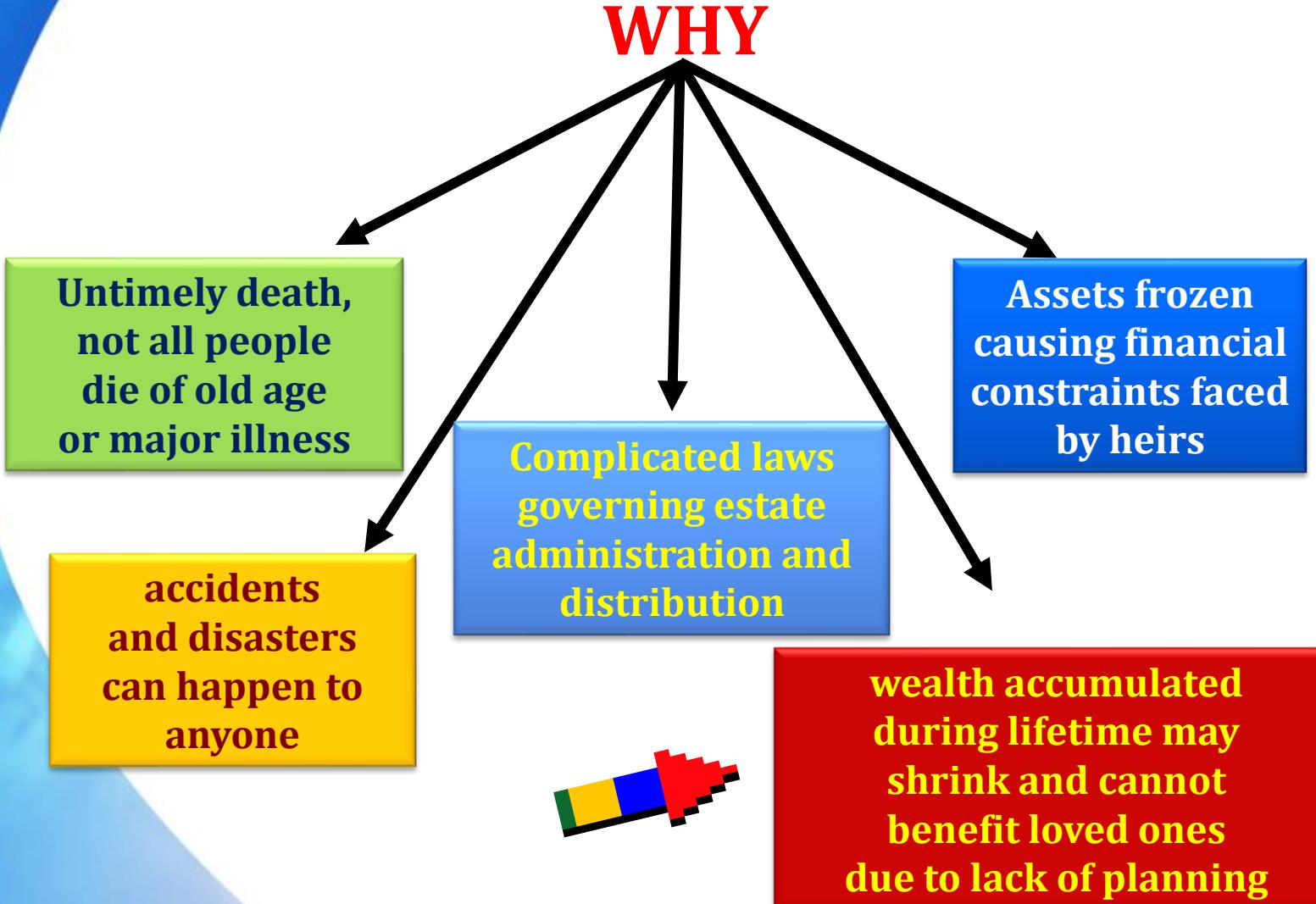
New deaths reported today

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CONCEPTS & FUNDAMENTALS



CONCEPTS & FUNDAMENTALS



CONCEPTS & FUNDAMENTALS

Implication when you don't plan
Upon Death, all assets frozen



ESTATE PLANNING

CONCEPTS & FUNDAMENTALS



THE STAR MONDAY September 27 1999

Freeze on joint account burdens living partner

I REFER to the letter, "Not right to freeze account when one signatory dies", (*The Star*, Sept 14) and agree with the writer, J.A. Holder, in his comments.

Why do we open a joint account? It could be for convenience to withdraw money by either party when one is not around (for example, being outstation, etc).

To many people, it could be for just-in-case situations.

For example, when one of the signatories dies.

Can one imagine the distress and frustration of the living party when the money cannot be withdrawn for the most important purpose — a funeral.

What is the point of opening a joint account when it cannot be operated at a time most needed?

Instead of alleviating the burden on the living, the freeze on the joint account gives more problems to

them.

There is money in the account and yet you cannot use it, especially at a time when it is most needed.

It is so unfair and illogical, especially when the money is yours.

It is hoped that the authorities will look into the matter and work out a solution to the problem.

UNFAIR,
Petaling Jaya.

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ESTATE PLANNING

CONCEPTS & FUNDAMENTALS

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NATION

THE STAR, SATURDAY 9 JUNE 2007

Houses all paid up but still unclaimed

PETALING JAYA: Family members of government servants who have passed away should check with the Treasury's Housing Loan Division. They could be owners of a house somewhere.

Division secretary Mohd Zaharil Kassim said they have 687 titles of properties where the government loans have been fully paid up but have yet to be claimed by their owners.

"I believe the titles belong to former government servants who have died and their beneficiaries know nothing of this."

He said they have sent notices to their last known addresses informing them of the fully paid loans but have failed to get any response.

He said those who take government loans

should update their addresses if they move elsewhere.

Updating of addresses can be done at the Bahagian Pinjaman Perumahan, Perbendaharaan Malaysia, Tingkat 1, Blok 8, Kompleks Pejabat Kerajaan, Jalan Duta, 50592 Kuala Lumpur.

Mohd Zaharil said the division was improving on its information technology system known as End-to-End Financing System (ETEFS) and making scanning and imaging on loan files, which could result in loan matters being slightly delayed.

Borrowers who face any problems can contact the following officers: Rahim Abu Bakar at 03-2098 2429, Ramli Mustafha at 03-2098 2848 or Mohd Zaharil at 03-2098 2849.

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CONCEPTS & FUNDAMENTALS

Brothers fight over mother's estate

SIBU, Mon. - Preparation for funeral for a Chinese woman turned tragic yesterday when her children resorted to fighting over her property.

Just within hours after the woman's death at 8.30am, her children were summonsed.

However, as they gathered for the funeral preparation, talk turned to the distribution of a land parcel of the woman which is said to be very valuable.

The sons apparently could not see eye to eye and it became rough.

It is said that there were then relatives present at the house and some of them even got hurt when the fight erupted.

They sought treatment in the Sibu Hospital.

Four of them lodged a police report each.
-BP

ESTATE PLANNING

CONCEPTS & FUNDAMENTALS

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WORLD

THE STAR, TUESDAY 11 AUGUST 2009

Royal squabble after 'queen' dies

Relatives take positions for coming battle over her will

NEW DELHI: The death of an Indian queen who personified a lost era of aristocratic privilege and exotic glamour has sparked a bitter inheritance dispute among her surviving family.

Gayatri Devi (pic) was one of the most celebrated beauties of the last century, mixing traditional palace life in the royal city of Jaipur with private aeroplanes, cocktail parties and shopping trips to London.

She and her dashing husband, the Maharajah of Jaipur, Man Singh, whom she married in 1940, were idolised by Jaipur's local population and the international press, but her death has revealed a family at odds over property and money.

Indian newspapers have reported that many relatives are in conflict with each other and that, since Gayatri Devi's death on July 29, they have been positioning themselves for the coming battle over her will.

The *Times* of India predicted an "ugly showdown" over a fortune estimated at between US\$200 and US\$400mil (RM701.5mil and RM1.4bil), with the lease of the stunning Rambagh Palace in Jaipur likely to be one of many areas of dispute.



ahead.

Gayatri Devi's only son, Jagat Singh, died in 1997, and the *Times* reported that her grandchildren, Devraj and Lalita, have been waiting until official mourning finished at the weekend to press their claims.

"Things will be clear only after the will is read out," an unnamed associate of Devraj was quoted by the newspaper as saying. "Disputes will send a wrong message and damage the family's reputation."

Gayatri Devi was the third of the Maharajah of Jaipur's three concurrent wives and when he died on the polo field the title passed to Bhawani Singh, the son of his eldest wife.

Different branches of the family still exert control over the Jaipur estate, which has remained partially

intact long after the system of "princely states" was dismantled following independence from Britain in 1947.

The fate of Gayatri Devi's legacy – including stakes in at least 17 palaces, forts, hotels and houses, plus a famous jewellery collection – is unclear even to insiders.

The *Statesman* newspaper suggested that she may have changed her will at the expense of her two grandchildren.

Her son married into the Thai royal family and left India, but the marriage ended amid much acrimony.

"He was not allowed to see or communicate with his children," Gayatri Devi told one interviewer recently. "He took to drinking to offset his unhappiness and in the end this caused a liver problem and eventually his death."

She also admitted becoming estranged from Bhawani Singh, the current Maharajah.

Royal kill: In this photo taken in January 1961, Queen Elizabeth (centre), the Maharaja and the Maharani of Jaipur posing with the tiger killed by Prince Philip (far left) in Jaipur. — AFP

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She also admitted becoming estranged from Bhawani Singh, the current Maharajah.

Such troubles were in sharp contrast to the public image of the Jaipur royals, who were seen as an ideal family – equally at ease with poor local people as with friends such as Queen Elizabeth of Britain or US first lady Jacqueline Kennedy.

But in truth, disagreements and legal battles soured the last years of Gayatri Devi's life.

Her son clashed with the new Maharajah over an ownership dispute that went to the High Court and resulted in some royal belongings being placed in the care of receivers in 1992.

She herself also fell out with her Thai daughter-in-law and was accused of trying to take back property from her, though the two were reportedly reconciled just months ago.

The *Deccan Herald* detailed how, when her son died, Gayatri Devi – deep in depression – fought to stop his property and money being passed on to his wife and their children.

It said she instead wanted everything to go to the family of her husband's second wife, but in recent years she had spoken of wanting to "tidy everything up" after the messy disputes.

Whoever they are, the beneficiaries of her will stand to receive only a fraction of the wealth that Gayatri Devi enjoyed for most of her life – before the government ended "privy purse" payments to royal families in the 1970s.

She grew up in a palace with 500 servants and shot her first leopard aged 12.

Her week-long wedding was said to be the most expensive in history, with a black Bentley, a two-seater Packard sports car and a hill station residence among the presents she received.

"Life is not as glamorous and exciting as it used to be," she said in 2004, five years before her death at the age of 90. "I have been fortunate in living the kind of life that I have." — AFP



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CONCEPTS & FUNDAMENTALS

Joe Jackson cannot challenge his son's will



LOS ANGELES: Michael Jackson's father does not stand to inherit any of his son's assets and cannot challenge the appointment of the executors chosen by the singer to handle his will, a judge said on Tuesday.

Superior Court Judge Mitchell Beckloff said Joe Jackson was not named in the will but could pursue a motion to receive a family allowance from the estate

because he claimed his son had been supporting him.

Joe Jackson and his son had an often-strained relationship. Beckloff ended a contentious all-day hearing by telling Joe's lawyer, Brian Oxman, that his client had no standing to prolong the legal fray over Jackson's estate and would gain nothing from doing so.

"I don't think he gets to step into this and create further litigation. Joe Jackson takes none of this estate. This

is a decision his son made."

In another development, the court released an accounting that the estate had paid nearly US\$1 million (RM3.4 million) in expenses for the private family funeral held at Forest Lawn Memorial Park.

Earlier in Tuesday's hearing, Michael's mother, Katherine Jackson, withdrew her objections to the appointment of two Jackson associates as executors of his will. — AP

Joe
Jackson

CONCEPTS & FUNDAMENTALS

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Jacko's lucrative death >42



THE STAR, 29 OCT 2010 (WED) - Pg 42

MJ's lucrative death

King of pop is top-earning dead celebrity with RM851mil

NEW YORK: Michael Jackson's sudden death sparked an outpouring of grief around the world, but fans also opened their wallets to make him this year's top-earning dead celebrity with US\$275mil (RM851mil), *Forbes* said.

Jackson raked in more than the combined total of the other 12 celebrities on the list, *Forbes* magazine said.

He was ranked third on last

year's list with US\$90mil (RM278mil).

Elvis Presley came in second, earning US\$60mil (RM185mil) from admissions to his former home, Graceland, which is now a museum and tourist attraction in Memphis, Tennessee, a Cirque de Soleil show and more than 200 licensing and merchandise deals.

"Jackson's spot atop our top earning dead celebrities list

should come as no surprise given the renewed fan interest in music, videos and all things Michael Jackson," said *Forbes* writer Lacey Rose.

Jackson was 50 when he died in his Los Angeles home on June 25 last year, shortly before a planned series of comeback concerts in London.

The singer left behind three children and a debt of US\$500mil (RM1.5mil).

But his estate has generated millions since his death, mostly through record sales, the *This Is It* concert movie, licensing rights, deals to release new albums and a Cirque du Soleil stage show in Las Vegas.

"Thanks to a lucrative catalog, hit film and album sales, the late king of pop earned more in the last year than Lady Gaga, Madonna and Jay-Z, combined," said Rose. —Reuters

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CONCEPTS & FUNDAMENTALS

21.01.2007

NEW SUNDAY TIMES

RM40 BILLION

UNCLAIMED CASH AND ASSETS LEFT BY THE DEAD

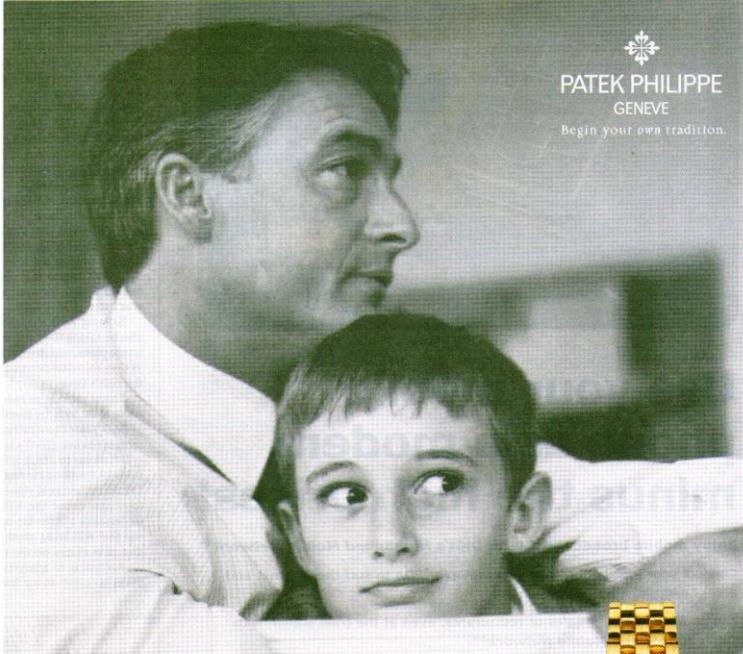


- RM38 billion in land and property
- RM1.5 billion with Registrar of Unclaimed Monies
- RM70 million with the EPF
- About a million land titles still in the name of dead people

Sudden demise by a family member without leaving a will not only creates problems of inheritance but also leaves the family stranded with outstanding loans and other obligations the deceased member may have.'

ESTATE PLANNING

CONCEPTS & FUNDAMENTALS

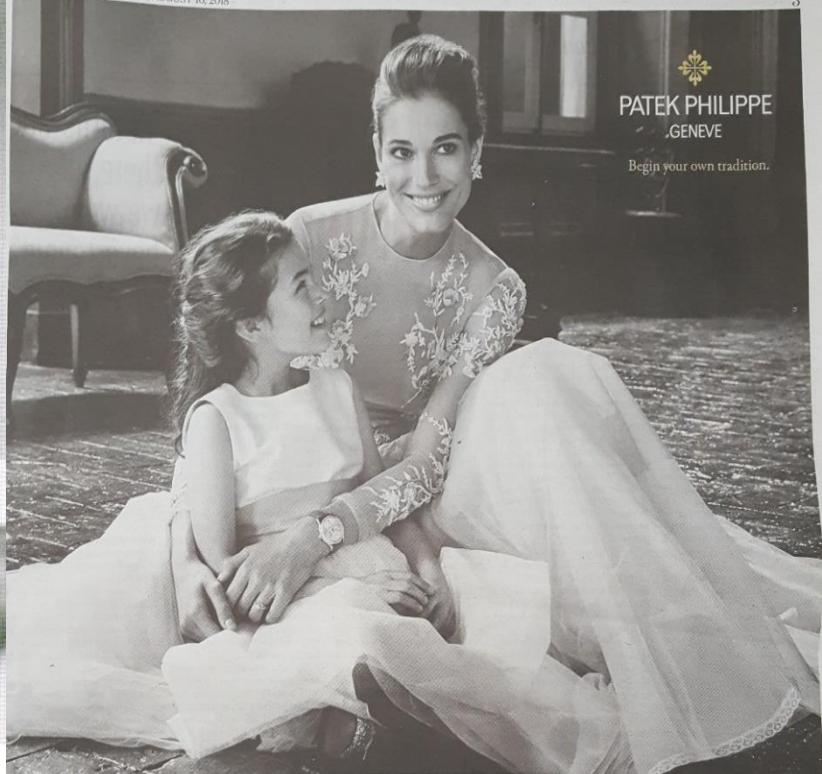


You never
actually own a Patek Philippe.
You merely
look after it for the next generation.



Annual Calendar
by Patek Philippe

Cortina watch



You never actually own
a Patek Philippe.
You merely look after it for
the next generation.



ASSETS (alive) vs ESTATE (death)

CONCEPTS & FUNDAMENTALS

EP = “the process of making appropriate arrangements for the protection, preservation and provision of a person's assets for the benefit of dependents and other beneficiaries”

Objectives of EP:

- ✓ Minimizing costs of Estate Administration (EA)
- ✓ Provisions of maintenance to dependents
- ✓ Avoiding disputes between beneficiaries
- ✓ Management of Deceased's Estate

CONCEPTS & FUNDAMENTALS

Human Factors

- AVOIDANCE
- PROCRASTINATION
- IGNORANCE

EP Process – 6 Steps:

- 1) ESTABLISH OBJECTIVES/ GOALS
- 2) INFORMATION OR DATA GATHERING
- 3) EVALUATE THE FINANCIAL SITUATION
- 4) FORMULATE PRACTICAL STRATEGIES
- 5) DEVELOP
- 6) IMPLEMENT, REVIEW AND REVISE

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EP PROCESS – 6 STEPS

1. Common Goals:

- ❖ funeral, testamentary expenses, settlement of outstanding liabilities
- ❖ maintain dependents' living standard
- ❖ income to dependents/beneficiaries
- ❖ adequate education funds
- ❖ provisions for charity/peculiar wishes

2. Data gathering:

- assets, income, liabilities, outstanding debts, business interest, dependents/beneficiaries
- fact-finder to obtain information
- extent of ownership/interest; limitations/ constraints e.g. land charge, restrictions on disposal etc.

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EP PROCESS – 6 STEPS

❖ 3. Analyze and Evaluate:

❖ SWOT of goals and aspirations

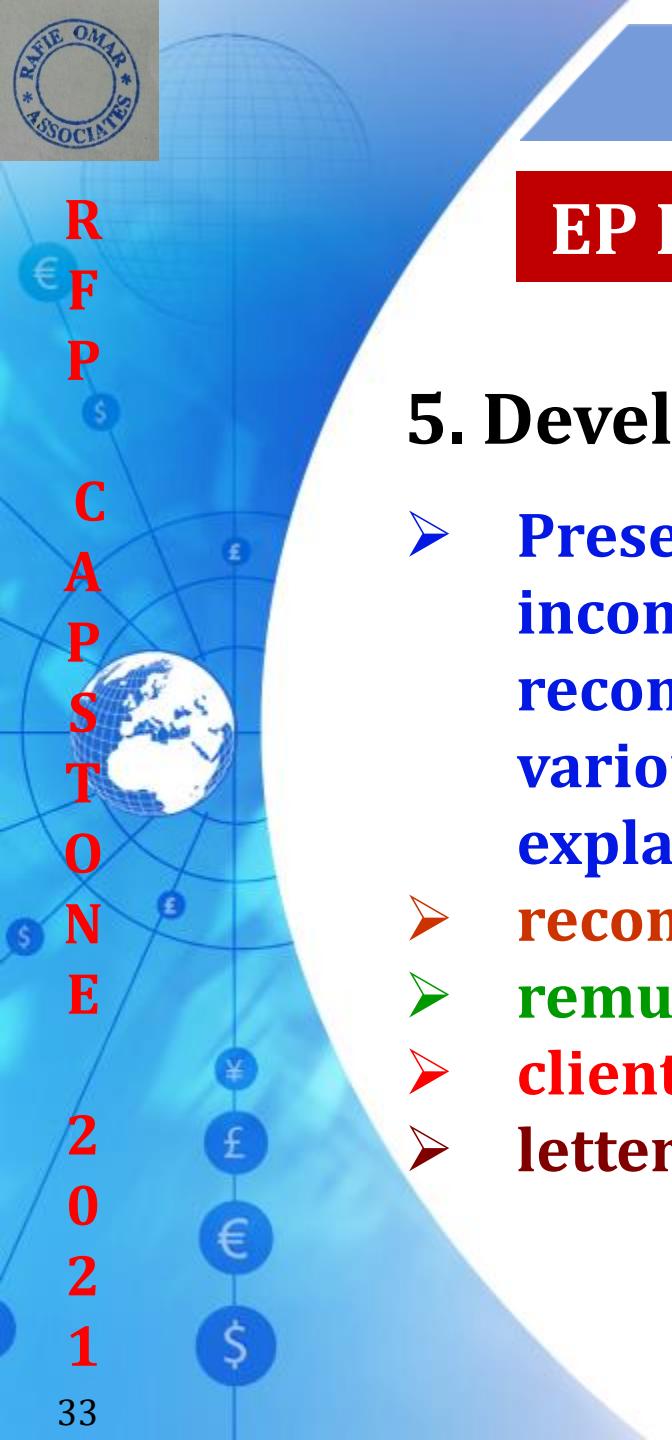
❖ Check gearing against liabilities at death

4. Formulate Practical Strategies:

- ✓ various strategies for different assets
- ✓ provisions to settle liabilities and preserve assets
e.g. nominations in Life Insurance or Takaful and EPF

5. Develop:

- Present the client's goal and objectives; income and liabilities; various recommendations; relevant EP tools for various assets; state the rationale and explanation for the recommendations



EP PROCESS – 6 STEPS

5. Develop an Estate Plan:

- Present the client's goal and objectives; income and liabilities; various recommendations; relevant EP tools for various assets; state the rationale and explanation for the recommendations
- recommended time schedule for execution
- remuneration be agreed upon
- client's authorization to proceed
- letter of discharge if client not agreeable

EP PROCESS – 6 STEPS

6. Implementation and Update:

- final stage when client consented the EP
- priorities be identified e.g. MRTA for Housing Loans
- lawyers, tax consultants, corporate trustees and insurance advisers be engaged
- update continually to specific concerns or issues and changes of law
- with consent, update family members or dependents

TESTACY vs INTESTACY

ASSETS & OWNERSHIP



ASNB

Amanah Saham Nasional Berhad
Syarikat milik penuh oleh Permodalan Nasional Berhad



TESTACY vs INTESTACY

Ownership Rights

- A. Outright ownership
- B. Life Interest ownership
- C. Term Interest ownership
- D. Future Interest ownership
- E. Business ownership
- F. Joint Tenancy ownership
- G. Tenancy In Common

Assets =/= Estate

2 steps in EA:

- place the estate in the hands of individuals OR organization Administrator - authorized to “take charge”
- ‘distribution’ of estates according to laws

TESTACY vs INTESTACY

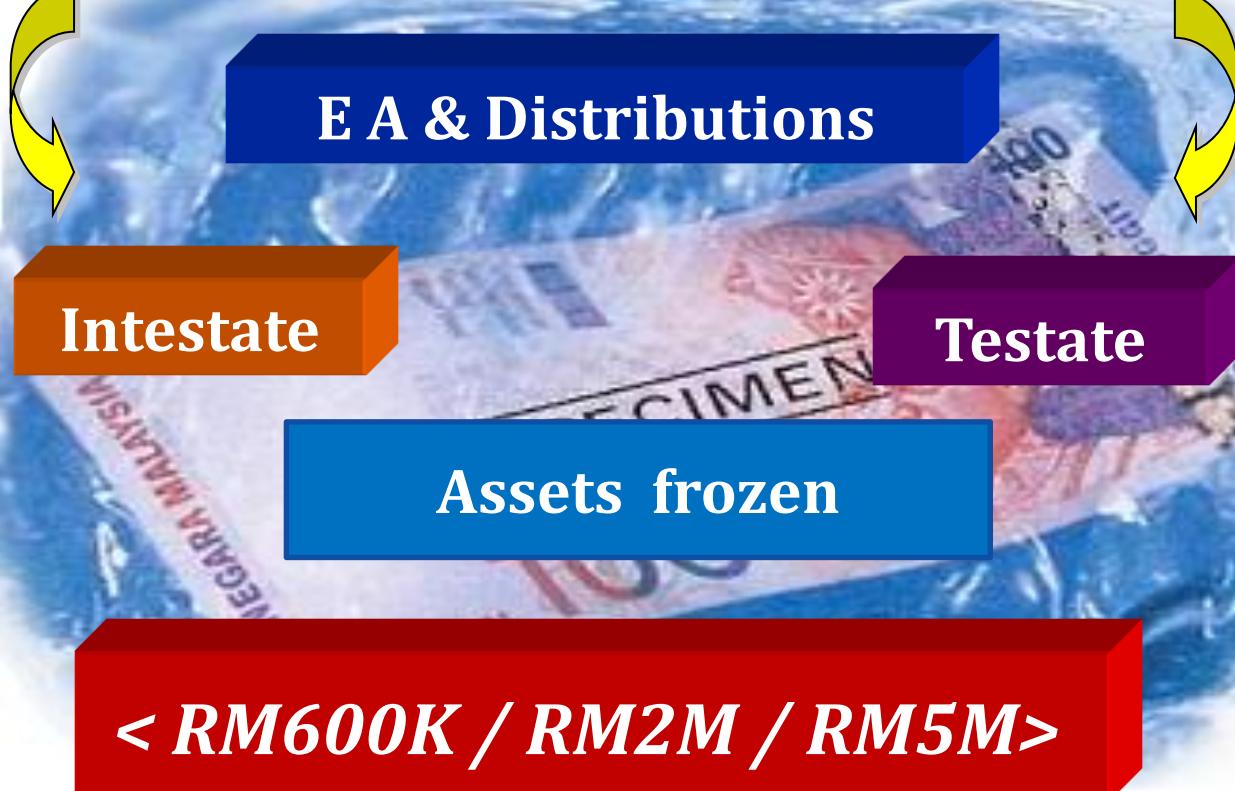
2 basic principles in EA:

- 1) all liabilities and creditors must be paid before assets are distributed or transferred
- 2) different laws for asset distribution to Muslims and Non-Muslims

e.g.

Distribution Act 1958 (Amended 1997) NOT applicable to Muslims who are governed by hukum Faraid

TESTACY vs INTESTACY



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TESTACY vs INTESTACY

Transfer by Testacy OR Intestacy:

- Testacy (or testate) - passes away leaving a valid Will
- Intestacy (or intestate) - passes away without a Will
- Personal Representative = Executor OR Administrator takes charge of the estate

Transfer by Statutory Law Provisions:

- moneys in EPF will be paid to a named nominee upon death under EPF Act
- death claim proceeds of life and personal accident insurance policies directly paid to named nominee(s) under FSA 2013 (Insurance Act 1996 -repealed)

TESTACY vs INTESTACY

TESTATE
= death with
a Will

INTESTATE
= death without*
leaving a Will

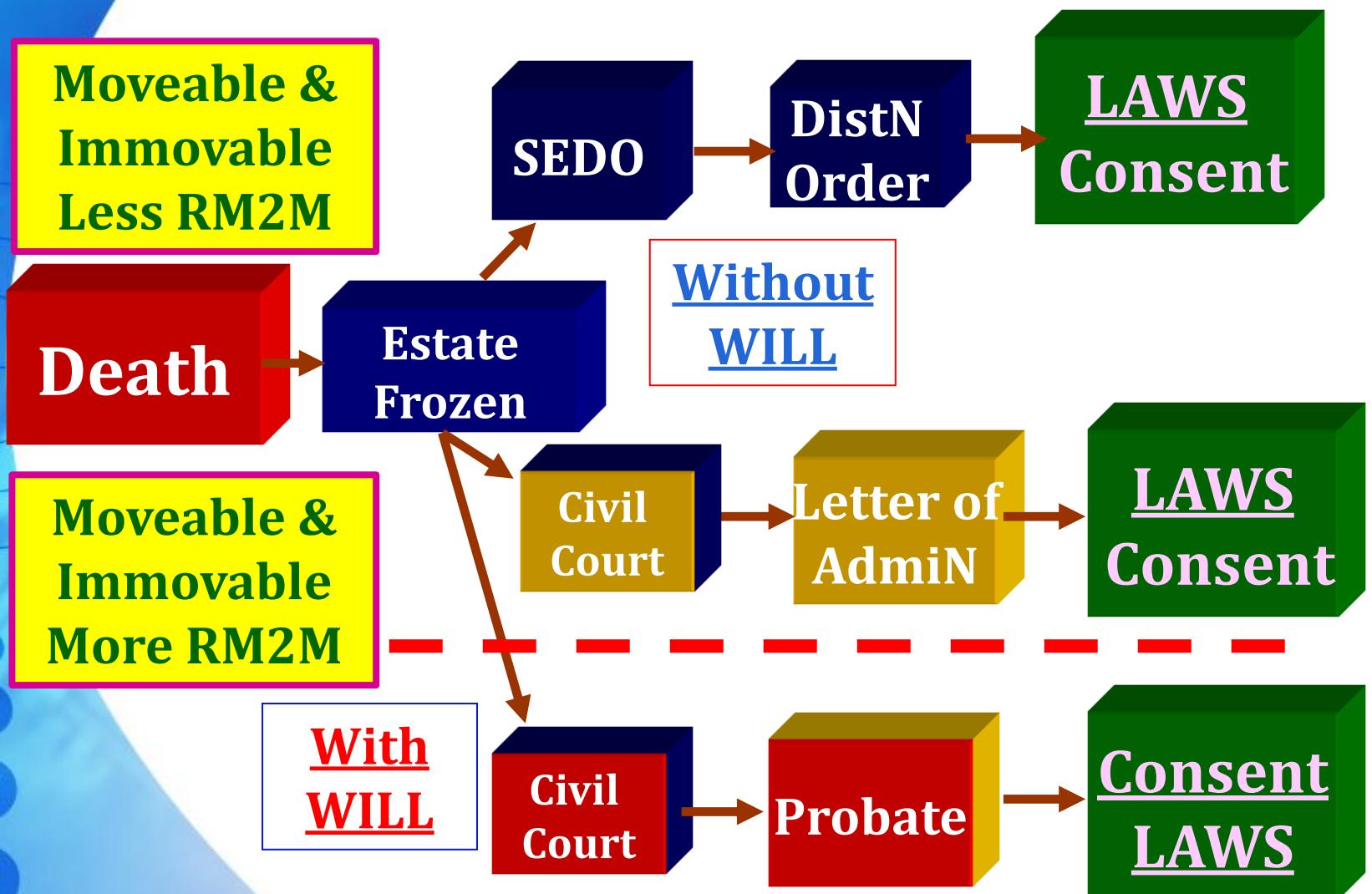
Executor is a person named in a Will to obtain Grant of Probate and distribute the deceased's estate according to his wishes

Administrator is a person appointed by the High Court to administer the deceased's estate where there is no Will, or where there is a Will* but without Executor

EXECUTOR

VS. **ADMINISTRATOR**

TESTACY vs INTESTACY



TESTACY vs INTESTACY

Transfer by Contract:

Assets subjected to contractual terms are placed completely or partially outside Probate OR EA processes

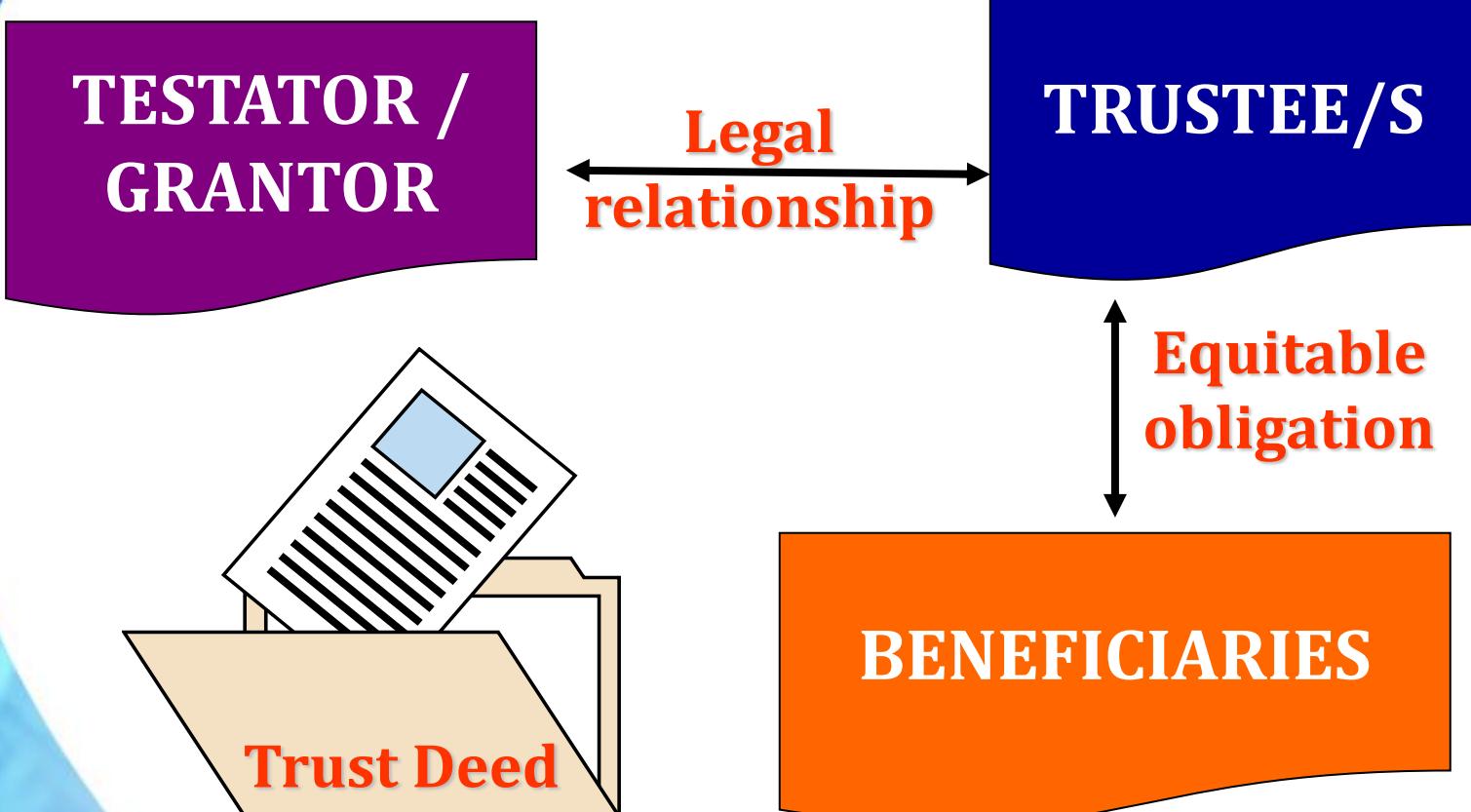
EP Tools:

1) Trust

arrangement whereby the Owner (Settlor) of asset transfer the legal rights to Trustee to hold or manage it for the benefit of Beneficiaries

TESTACY vs INTESTACY

The Process Of Trust



TESTACY vs INTESTACY

Transfer by Contract:

Assets subjected to contractual terms are placed completely or partially outside Probate OR Administration process

EP tools:

- 2) **Power of Attorney**
A PoA - an instrument that allows Owner of asset to appoint the Attorney or Donee) to deal with his assets as his “agent”
- 3) **Assignments of Insurance Policies**
- 4) **Joint Accounts – Bank and Unit Trusts**
- 5) **Buy-Sell Agreements among Business Owners**

ESTATE PLANNING

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22 My Money
Six Weeks

SATURDAY 15 October 2004

Who gets how much and what?

BY YAP MING HUI

WEALTH management is not complete in the absence of a distribution plan. Insufficient planning on distribution of one's wealth can prove to be the most costly and expensive oversight.

Indeed, it is a common predicament. Entrepreneurs build multi-million dollars worth of assets from scratch but pay very little attention to distribution, which leads to unnecessary hassles and disputes among family members upon death.

The fact is that the more one has, the more complicated one's wealth distribution becomes.

Based on our experience, I have compiled a list of best practices on this matter.

Matching the will with wealth transfer wishes

For non-Muslims, the will is the most powerful instrument in wealth distribution. The will dictates the distribution of one's wealth. Without a will, one's estate would be distributed according to Distribution Act 1958 (Amendment Act 1997), which may not necessarily be in accordance with one's wish.

As such, it is imperative to have a distribution plan which starts with a will in line with your aspirations.

There are a myriad of issues related to distributing wealth. A crucial question to ask oneself is: Ideally, whom do you want your wealth to go to when you die?

Once you have decided, the next step is to draft a will.

Appointment of beneficiaries of non-probate assets

Property that passes on to the beneficiaries without going through estate administration is generally classified as non-probate assets. One example of non-probate assets is life insurance policies that fall under the category of trust policies.

Under Section 166 of the Insurance Act 1996, where the nominee of the life policies are the spouse, children or, in the absence, parents, the policy's money do not form part of the deceased's estate.

As such the insurance company will pay the policy money without going through the probate process to the named nominees.

Another example of non-probate



asset is your EPF account. Under Employees Provident Fund Act 1991, the money in your EPF account would be paid to the named nominee based on the EPF nomination form upon your death.

Where a nominee has been appointed, the money in the EPF does not form part of the estate.

As a result, the EPF will pay the money directly to the named nominee without going through the estate administration process.

Non-probate assets are important in one's wealth distribution planning because the money comes in handy to family members.

They do not have to wait till the completion of estate administration to fund some of the immediate financial needs.

As such, it is important for you to appoint the appropriate person to

receive the money in time of emergency.

Provisions for double tragedy

In the event both husband and wife die together, their estates will be frozen at the same time pending application of Grant of Probate or the Letter of Administration (in the situation of both dying without a will).

In most cases where only very small and insignificant amount of cash is held under minor's name, there will practically be no financial resources available for the children.

To make sufficient provisions, your will must be written with the consideration of a possible double tragedy in mind. If you can afford it, set up a private trust to finance the children's living expenses during the estate administration period.

Provisions for minors and other dependants

Wealth distribution planning is especially challenging when there are minors and other dependents involved. More careful consideration is required under such circumstances.

Wealth distribution, in this instance, is always subject to a lot changes because the children are growing every day. Keep your estate plan flexible and review them every year.

Project net-worth statement and liabilities issues

Many high net worth individuals overlook the importance of preparing an estate net-worth statement.

An estate net-worth statement is basically a balance sheet stating the projected assets and liabilities status

upon one's death.

Most people seldom think of how much they will leave behind for their family in the event of their death. Sometimes, expenses during the estate administration are almost invariably greater than what one anticipates.

If one is concerned about the livelihood of one's loved ones, it is important for one to identify the expenses, liabilities and taxes that will reduce the estate that one intends to leave behind.

Make provision for adequate cash or liquid assets to cater for various situations.

● Yap Ming Hui, yapmh@whitmanindependent.com, is managing director of Whitman Independent Advisors Sdn Bhd, an independent financial advisor company.

ESTATE PLANNING

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EMPLOYEES PROVIDENT FUND

**It only takes
A MINUTE TO
NOMINATE
your loved ones**

Just by filling up their names along the dotted line will assure them of receiving your EPF savings in the event of your death. If not, your family will go through a tedious and time-consuming process to obtain relevant legal documents and certain fees may be imposed by the issuing authorities. And if you experience a life-changing event such as marriage, divorce or birth of your child, you may want to update your EPF nomination as well.

Do the right thing. Protect your loved ones from potential suffering. Nominate your beneficiaries today.

Savings for old age

For further info, visit www.kwsp.gov.my or call 03-8922 6000

Avoid further suffering for your loved ones

Nominate and update your EPF nomination today.

ones. By planning ahead, you can protect y important if you are the breadwinner.

can be assured of receiving your EPF savings

nomination:

all documents such as Letter of Administration, to substantiate their claim before they can consuming and there may be fees imposed all these documents are not needed and the

gs. This is likely to result in conflict between will go to the intended beneficiary. For Muslim ll be responsible for distributing your savings

birth of your child, you are advised to keep



ESTATE PLANNING

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Z, MONDAY 15 JUNE 2008

Time to get your EPF account in order

WHEN you start working, chances are you would list your father or mother as your beneficiary for your Employees Provident Fund (EPF) account.

When you get married, the logical thing to do would be to nominate your spouse as your beneficiary.

Common sense, however, is quite uncommon when it comes to simple housekeeping matters like this.

I know of a friend, in his 60s, who still has his mother, now in her 80s, as his nominee.

I have advised him to get his wife's name into the records, since they have no children, but he always has something more important to do.

Some people have learnt the hard way that the EPF will only give out the money to whoever is listed as the nominee.

Nothing in their will, nor last-minute instructions to immediate family members, will supersede what is officially on the EPF records.

Which is why I did not simply dismiss an e-mail that had been cir-

Some people have learnt the hard way that the EPF will only give out the money to whoever is listed as nominee



culating for the past few months about how the nomination list on the EPF database has been compromised, and that names have gone missing.

The e-mail is probably not genuine but if it stirs you to check on your latest EPF information, then it would have achieved its purpose.

Last week, my wife and I dropped by the EPF office to check and we were thankful that the information was correct, although my name had been misspelt in my wife's account.

We took the opportunity to make a fresh application to include our

two boys as nominees as well.

What is interesting is that there is now an option for the nominees' names to show up in the annual statements and this can act as a reminder that your records are up to date.

I find it strange that this has not been made compulsory but I reckon some people still like to keep their family members in suspense.

One person told me he would definitely not let his wife have his EPF money. When I asked him if he would nominate his children, he laughed: "They will know if I die before 55."

Take note that your EPF funds can be given to just about anybody as long as he/she is a "natural person" and you happen to have the person's IC number.

I mention "natural person" because the EPF, like insurance com-

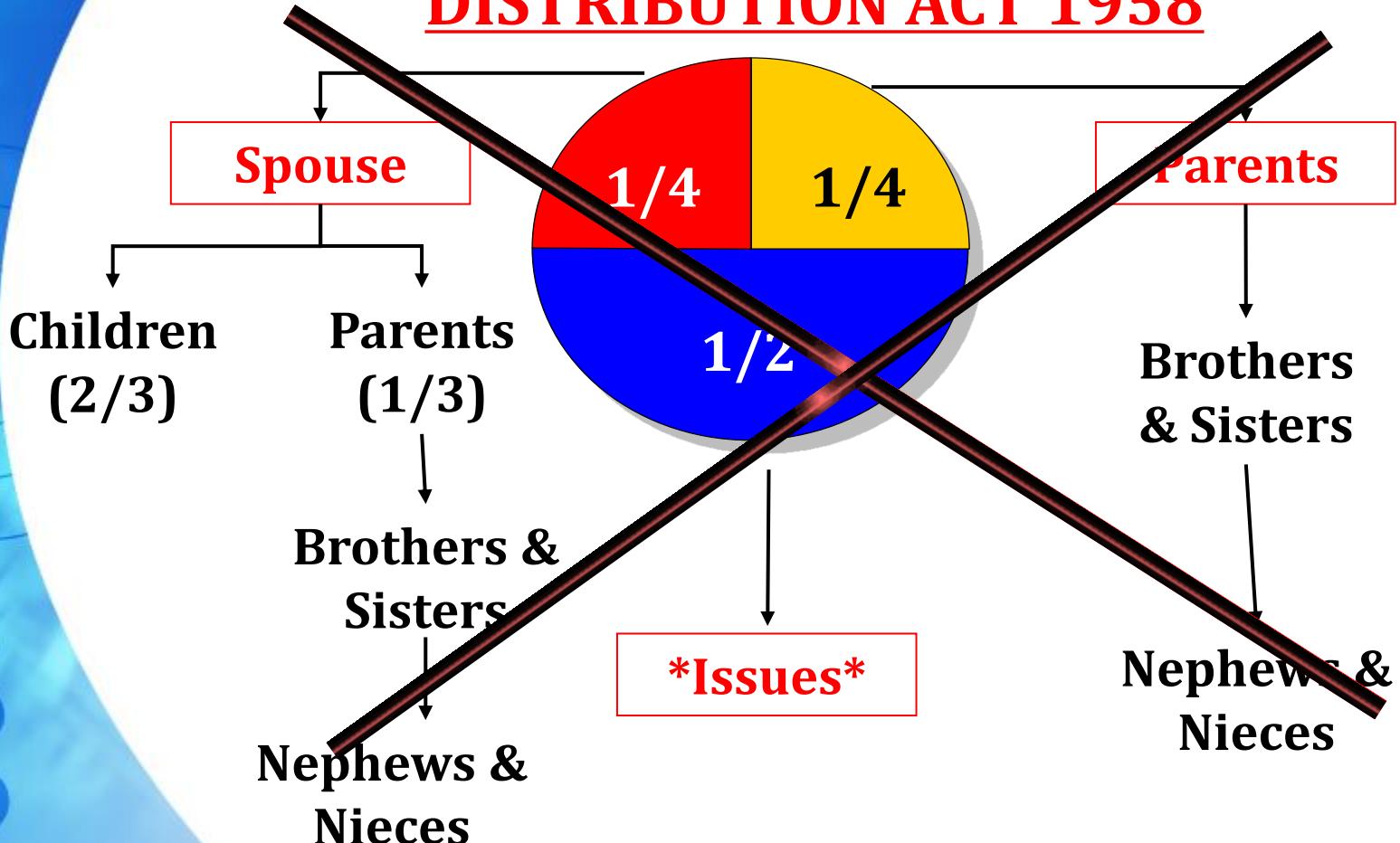
panies, has a clause that precludes "non-persons", such as charities, organisations and associations, to be named as nominees. So you can forget about naming your political party, or your cats and dogs as well.

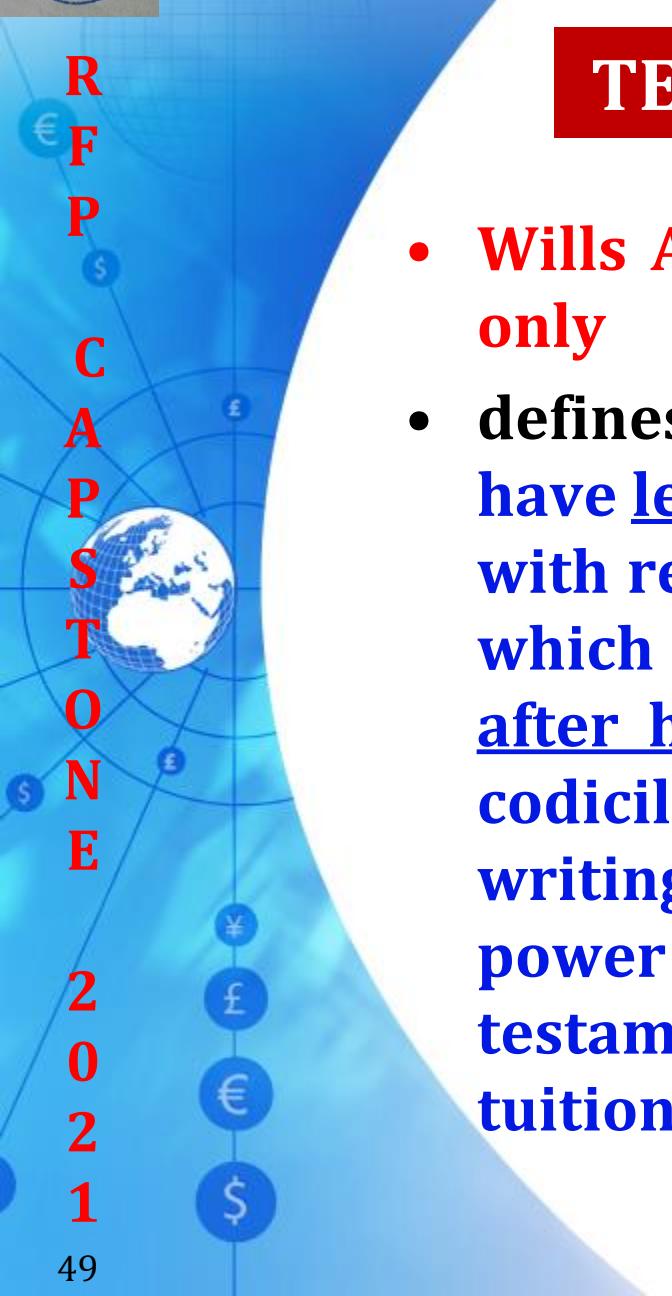
A doctor in Kuala Lumpur wrote in *The Star* last Friday about his dilemma in not being able to name his favourite charities as nominees. Although he has no dependents to bequeath his EPF money, the law is still the law.

Our EPF statements came out recently. It is important that all of us take that extra effort to check our records to make sure everything is in order.

• Deputy executive editor Soo Ewe Jin believes we should also regularly check our information in the electoral roll so that we never get turned away at the polling booth come election time.

TESTACY

DISTRIBUTION ACT 1958

A decorative graphic featuring a globe with a grid pattern. Overlaid on the globe are various currency symbols: a euro symbol (€) at the top left, a dollar sign (\$) near the center, a pound symbol (£) at the bottom left, a yen symbol (¥) at the bottom center, a euro symbol (€) at the bottom right, and a dollar sign (\$) at the bottom far right.

TESTACY

- **Wills Act 1959 is applicable to Non-Muslims only**
- **defines a Will as “ a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by Will or by writing in the nature of a Will in exercise of a power and also a disposition by Will or testament of the guardianship, custody and tuition of any child ”**

TESTACY

- main purpose: expresses Testator's declaration as to the disposition of his property
- Other purposes:
 - appointment of Executor/Executrix
 - appointment of Trustee(s) to manage all or part of the estate
 - appointment of Guardian(s) for minor or disabled children or dependents
 - instructions on burial, cremation or any other personal or peculiar wishes

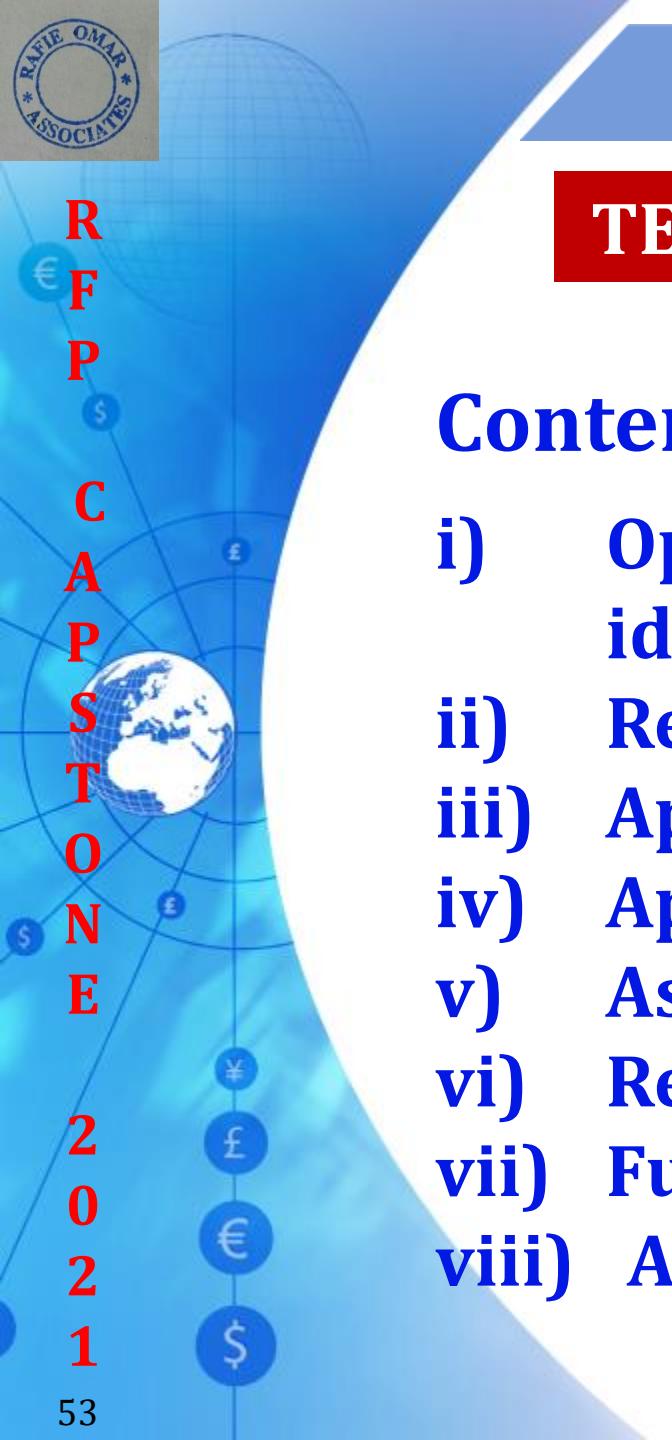
TESTACY

- A Will takes effect after death of Testator
- For a Will to have legal effect, the requirements are as follows:-
 - i) Must be in WRITING - unless it is a “Privileged Will” - it can be handwritten, typewritten or printed
 - ii) need not be in legal or formal language so long as it is capable of COMPREHENSION
 - iii) Testator must sign or affix his mark (e.g. thumbprint) at the end of the Will
 - iv) Testator must sign in the presence of at least 2 witnesses and the 3 must sign in the presence of each other.

** *Witnesses cannot be Beneficiaries*

TESTACY

- v) Testator's Age.
West Malaysia + Sarawak: 18; Sabah: 21
- vi) Testamentary Capacity
 - (a) Sound mind (b) Independent Choice
- vii) Revocation
 - (a) Express Revocation (b) A Later Will
In practice, a revocation clause is always added in a Will regardless whether there is an earlier Will
 - (c) Marriage automatically revokes a Will unless it is made in contemplation of marrying a particular person. A divorce does not revoke a Will. Re-marriage have same effect as marriage
 - (d) Destruction (e) Conversion to Islam



TESTACY

Contents of a Will

- i) **Opening - Testator's personal identity and aliases**
- ii) **Revocation**
- iii) **Appointment of Executor/Trustee**
- iv) **Appointment of Guardian**
- v) **Asset distribution**
- vi) **Residuary**
- vii) **Funeral**
- viii) **Attestation**

TESTACY

Types of Wills

- (a) Individual Will
- (b) Privileged Wills

S6 of the Wills Act governs Privileged Wills made by members of the Armed Forces, Mariners or Seamen

- (c) Mutual Wills
- (d) Joint Wills

Inheritance (Family Provision) Act 1971
allows 4 categories of dependents to apply to Court to “vary” the Will for their maintenance if Testator has not provided sufficiently for them



TESTACY

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F16

Tomorrow >> India Diary
A very fragile security set up



Sunday 21 February 2010
thestar.com.my/lifestyle

Star

FOCUS

If there's a will, there's a way

Generally, Malaysians know the importance of having a will but most are still putting off writing one. Till now, only 10% have written their wills.

BY SHAHANAAZ HABIB
shaz@thestar.com.my

FINAL year student Amy Liew (not her real name) was 18 when she called in will writer Jeff Chong. Her father was on his death bed and she needed to have his will done.

"When I first met him, Amy's father was weak but still able to talk. He asked for a simple will to make Amy his executor and for his savings to be divided equally among his children. He asked Chong to make the will immediately. It took about four hours then, and Chong could not do anything. But he promised to come back first thing the next morning."

When Chong arrived, he saw a tent set up in front of the house. Amy had died in the night.

"Amy's father had died in the night. As Chong drove off feeling a bit guilty, Amy's mother came out and showed the thumb print of her dead father for the will!"

"Of course I couldn't do that. It goes against my code of ethics," he says.

"Besides, her father's spirit might just pay me a visit if I did that."

Amy's father was just a few hours too late in getting his will made. That meant post-mortem expenses and the whole rigmarole of going to court to get a letter of administration (LA) to get hold of her assets.

It would not only cost her a few thousand ringgit in legal fees but it would also take away from your inheritance.

If there had been a will, Amy could easily have obtained a grant of probate from the court to wind up the assets and it would have been quick.

Malaysians procrastinate

Despite all the hassle it would save grieving family members a lot of trouble, many still don't write wills. In fact, only 10% have prepared their wills and the figure hasn't changed much over the years.

It isn't because people aren't aware of the importance of wills. Gone are the days when people were too superstitious to write their wills.

"Procrastination is the number one disease," says Chong.

"People are always saying 'Aiyah, I am still young' or 'Later lah. I've got no time now.'

Sometimes it takes a shock to jolt them like being admitted to the hospital or having a close friend or colleague die unexpectedly.

Chong says he once had three young couples come to him at the same time to write their wills. The reason: their badminton *kaka*, a fit and healthy man in his 30s who played with them regularly, had keeled over and died right in front of them.

There's also another perception that only the rich write wills or that wills are too expensive to make. Both, says Chong,



Chong: You never think twice about buying a house that costs RM300,000 so why can't you spend RM380 to will it?

are misconceptions. A will is not about how much assets you have but how to distribute it, he explains.

"You can have a loyalty to your Saga and still will it. Or a low-cost apartment or savings account or money in the bank and you can already will it."

Wills cost as little as RM380 to write. Then, at the high end, there are wills that cost up to RM12,000.

"You never think twice about buying a house that costs RM300,000 so why can't you spend RM380 to will it?" Chong reasons.

One amount one pays to write the will does not depend on one's fortunes but on how comprehensive the will is, he adds.

According to him, the richer a person is and still write a simple will (and be charged RM380). On the other hand, some

»A will is not about how much assets you have but how to distribute it«

JEFF CHONG

people in the middle income range may want a comprehensive will due to certain peculiarities, for instance they might want to set up a trust fund for their young kids or for their elderly parents.

For example, if you have an elderly mother or mentally disabled children, you might set up a

property trust to ensure that they can continue living in your house rent-free even if they are unable to look after themselves.

Or you can set up a maintenance trust with a caretaker to look after your parents' upkeep until they die or the money runs out, whichever comes first.

These are many considerations when young children are involved.

Parents often think that because their spouse is working and is financially inde-

pendent, they should name their young children as beneficiaries instead. But this can cause problems as well.

Under Malaysian law, a child can get hold of the money he or she inherits only when he or she turns 18.

It is important to be asking questions if it is wise to give huge sums of money or property to an 18-year-old.

For example, if you have RM2mil in your EPF savings and three children and make them your beneficiary, that's about RM700,000 per child. Does a child of 18 really feel mature enough to handle that sum of money?

Now in insurance policies, some properties and money in the bank and they could get a lot more than that. For example, a 15-year-old or 18-year-old daughter might be cheated by her boyfriend or your son his girlfriend.

It is better to have "a few rounds" to distribute the assets because it is unlikely that the child would be stupid enough to be cheated a second or third time around.

> SEE NEXT PAGE



ESTATE PLANNING

TESTACY

Chen to give away RM2.17b

BELJING: When Bill Gates and Warren Buffett visit Beijing this month in a drive to promote philanthropy among China's super-rich, one person they won't need to convince is Chen Guangbiao.

The demolition company tycoon pledged this month to give his fortune — estimated at more than US\$700 million (RM2.1 billion) — to charity after he dies and says more than 100 other rich Chinese had since contacted him to promise the same.

And the man who already has given away more than US\$200 million over the years hopes such pledges can spur China to become a "great charitable nation" in line with its growing wealth.

"If you have a cup of water, that's for one person to drink. If you have a bucket of water, that's for your family to drink. But if you own a river, you should share it for all to enjoy," Chen, 42, said.

Such views have made a media

darling out of Chen, who has been honoured as China's top philanthropist in the past two years, and put him at the centre of a debate over whether the country's swelling ranks of super-rich are too selfish.

China had 64 dollar billionaires last year, second only to the United States' 403, according to *Forbes*.

But several of China's richest have been laid low by corruption charges just as a widening wealth gap has caused official concerns of unrest among the poor.

Reports suggesting the super-rich were slow to answer an invitation to a Sept 29 banquet hosted by Gates and Buffett, out of fear they would be pressured to donate, has done little to enhance their poor image.

The reports angered Chen, who sports a bristling buzz-cut and who says he wants to be like "Jesus Christ, sacrificing myself to make other people happy", although he is not religious. "When I heard this, I was



Chen Guangbiao wants to leave his money to charity, not his two sons

indignant. Rich people like that are just too selfish," said Chen.

"They think their wealth is purely a creation of their hard work and has nothing to do with the opportunities created by their country or society."

Charity has grown as China pros-

pers. About US\$5 billion was given last year, says official figures.

That is down from a 2008 spike of US\$16 billion due to a massive earthquake that devastated southwest China that year, but slightly above previous years.

Chen built his fortune through his Huangpu Renewable Resources Utilization Group, based in Nanjing, a demolition company that recycles salvaged materials.

But he says none of that would have been possible if not for China's Communist Party-led economic transformation — views that have been lapped up by state media, no doubt due in part to an official desire for a positive "rich" role model.

Chen's rags-to-riches story perhaps makes him the perfect fit.

Growing up in rural eastern Jiangsu province as China was struggling to recover from Mao Zedong's disastrous economic policies, two of Chen's four siblings died of starva-

tion, he said.

Still, his parents often gave away what little they had, imprinting on their son a combination of personal thriftiness and generosity.

That thrift — and other idiosyncrasies — can reach extremes.

Chen pantomimes how he blows his nose in his hands to save a tissue and boasts that he takes taxis for his many trips to the airport rather than employ his personal driver.

In 2008, he changed the names of his two young boys in 2008 to "Huanjing" (environment) and "Huanbao" (protect the environment).

But his decision to leave none of this wealth for his sons — a breach of tradition in family-oriented China — is perhaps the clearest sign of his maverick nature.

"My parents left nothing to me and I wish to leave nothing for my kids" except the "spiritual wealth" that comes from philanthropy, said Chen. — AFP

TESTACY

SUNDAY STAR, 30 DECEMBER 2007 VIEWS F35

The biggest Chinese takeaway

WILLS often bring out the worst in people, a grim testimony to money being the root of all evil. Where the stakes are high, it can be a bitter, bruising battle even among the closest of siblings.

In extreme cases, the squabbles would have started long before the funeral rites are over, causing further anguish to the grieving families.

And once the issue goes to court, it could develop into a free-for-all with lots of mud-slinging among the feuding parties. Overnight, members of a once close-knit family could become sworn enemies as they turn against one another over who gets what.

Interestingly, humans may not always triumph in the battle of the wills; animals often turn out to be the eventual winners.

For instance in Britain, pet lovers are known to have left millions of pounds to animal charities, pet hospitals or zoo, but none to their human relatives.

In the case of Golda Bechal though, the benefactors of her multi-million pound estate were neither animals nor her family members.

They were, in effect, her best of friends - a Malaysian woman and her husband from Hong Kong!

For the 89-year-old widow had left almost her entire £10mil (RM70mil) fortune to Man Bee Lian and Man Kim Sing, who are also owners of her favourite Chinese restaurant.

Human drama

Dubbed the biggest Chinese takeaway by the British media, the massive "tip" had left the surviving family members with a nasty taste in their mouths.

As far as Bechal's five nephews and nieces are concerned, her enormous gratuity really takes the cake.

Their aunt, it would seem to them, had paid an extraordinary price for her favourite £3.70 (RM25.90) Cantonese dish of pickled leeks and bean sprouts at the couple's restaurant in Essex.

The disputed will thus set the stage for a

The way to a rich widow's will may be through the stomach, going by the £10mil Golda Bechal left to a couple who ran her favourite Chinese restaurant.



Massive tip: Malaysian restaurateur Man Bee Lian and her husband Man Kim Sing found themselves in the centre of a dramatic court battle when a lonely widow they had been friends with for over four decades left them almost her entire £10mil fortune.

dramatic court battle between the relatives and the Mans that struck at the very core of family relationship and true friendship.

For over a week, a powerful human drama of love and bitterness, suspicion and trust, unfolded in the courtroom.

While the family contended Bechal had signed over her fortune while suffering from dementia, the couple claimed she had once described them as a "bunch of hooligans" who were after her money.

And Bee Lian's testimony when she said Bechal told her: "I'll leave it to Kim and you

- you are the only people who look after me," must have touched a raw nerve.

In upholding the will, judge Sir Ronald Rattee declared that on the balance of probabilities, Bechal had testamentary capacity.

"It was not irrational to leave the bulk of her estate to Mrs Man, the daughter she would dearly wished to have had, and her husband," he was quoted as saying by the local media.

The judge's remarks underlined the somewhat deep and loving affection between the old lady and Bee Lian in particular, akin to a



EUROFILE

CHOI TUCK WO

twchoi@thestar.com.my

mother and daughter.

Above all, it demonstrated what was probably a warm and longstanding relationship that had stood the test of time.

With a friendship blossoming over four decades, the lonely widow had found solace in the couple following the death of her husband Simon, and son Peter, aged 28, within three years.

Filial duty

All of which brings us back to the power of wills over family and friends, a test of kinship and friendship.

The question is - should a family have automatic right to an estate or can it go to anyone irrespective of blood ties?

In France, for example, there are laws requiring a certain percentage of the estate to go to the family and the rest to anyone he or she chooses.

While this may help to quell family disputes over wills, it certainly did not leave the person much choice over what to do with his hard-earned money.

Having said that, strong family values are essential in any society, forming the bedrock of a harmonious nation. In times of crisis, we usually turn to our family members for both moral and financial support.

Indeed, taking care of the elderly can be an exasperating experience, especially if they become snappy and impatient due to age and illnesses.

But with greater understanding, patience and compassion, we can all make filial duty one of our top priorities in our New Year resolution.

Well, if there's a will, there's certainly a way.

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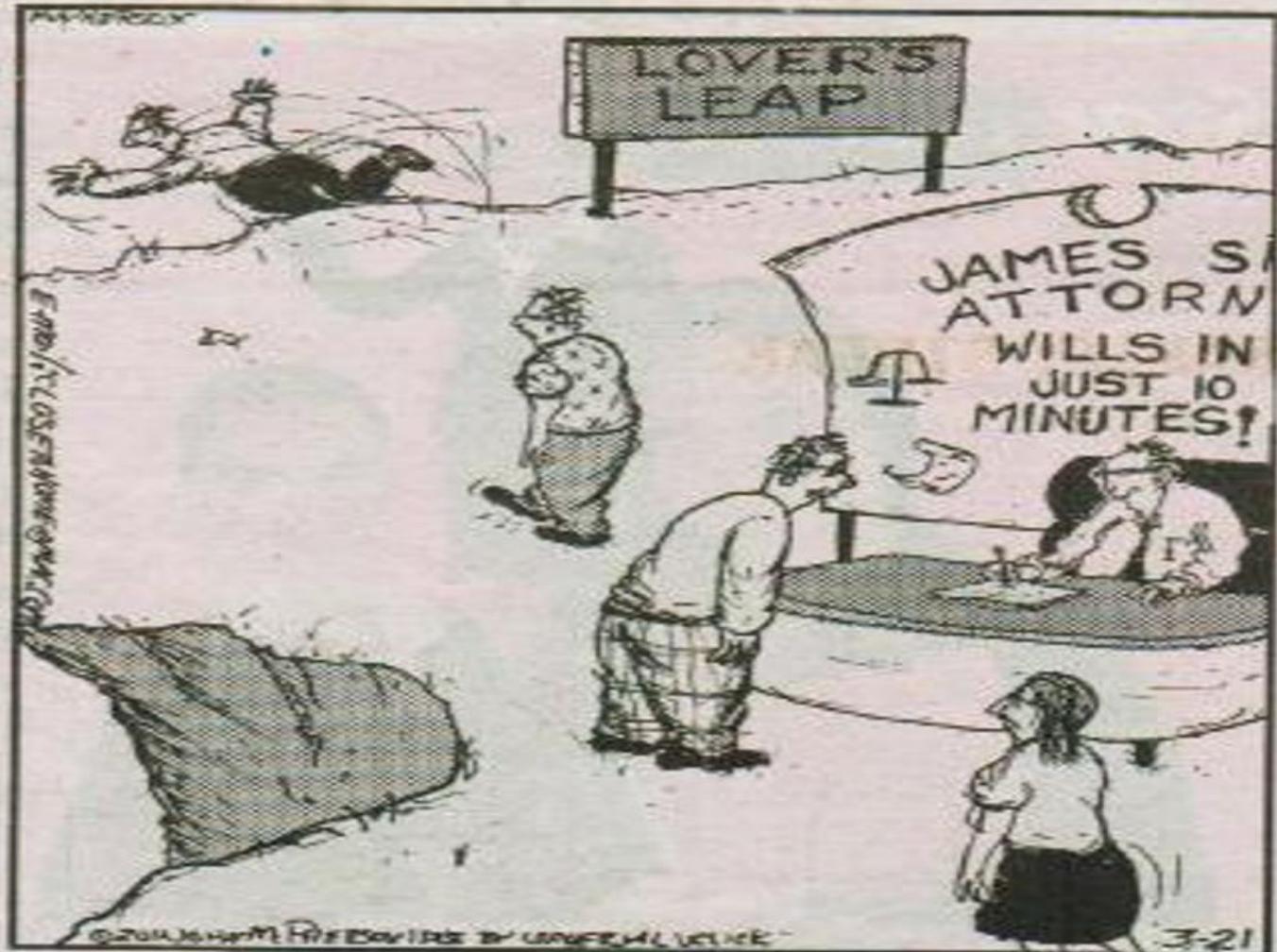
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CLOSE TO HOME by John McPherson



ESTATE PLANNING

INTESTACY

What happens when there is no will?

The Sun 19 Feb 06

WHEN A PERSON dies without a will, the estate is called intestate. Without a will, the intestate will be distributed according to the Distribution Act 1958 (Amendment 1997). For Muslims, the intestate will be distributed according to the Islamic distribution rules called the *Faraid*.

Once a person dies, all his or her estate will be frozen, except for EPF and insurance assets provided a nomination has been made. And to get those assets "thawed" can be a long and tedious process which will take even longer when there is no will.

In the case of non-Muslims, the heirs or creditors or whoever with interest in the estate left behind by the deceased will then have to apply for a Letter of Administration (LA) from the High Court to be appointed administrator of the estate.

If there is will, an application for a Grant of Probate will be made instead.

Explaining the procedures, Amanah Raya Bhd sales and marketing general manager Rafie Omar says a number of conditions must be fulfilled when applying for the LA.

For instance, a person applying for the LA must put up an administrative bond which equals the value of the estate. This is to ensure that the administrator will distribute the estate according to the law.

So if the heirs could not raise the bond, it would be difficult for them to apply to be an administrator or executor although the court may give

exemptions in certain cases.

However, one can seek the help of Amanah Raya as Official Administrator can be the administrator of the estate without having to pay a bond.

Amanah Raya was previously the Department of Public Trustees and Official Administrator.

It was corporatised on May 29, 1995 and commenced operations on Aug 1 1995. ARB is wholly owned by the government and has 20 branches nationwide.

To get an LA, the court would also need a list of the assets and liabilities of the deceased and details of the heirs or beneficiaries.

"Since there is no will, the process of identifying the assets and liabilities and of identifying and contacting the heirs especially when the person applying for the LA has no idea where they were before this, will inevitably take time, maybe even years," Rafie says.

If there is a will properly drawn up, the list of assets and liabilities may be already stated in the will.

If the assets - both movable and immovable - are valued below RM600,000, they would be considered as small estate and it will be handled at the Small Estate Distributor office, normally situated at the Land Office.

If the assets have a value above RM600,000, only then can one apply for an LA from the court.

Ascertaining the assets and liabilities, getting all the heirs near and far to sign the documents, having

documents prepared to be filed at the Land Office or the court and then having to wait for a date of hearing, all these take time," Rafie says.

Meanwhile, the family, the wife and children who have been depending on the deceased as their main source of income would now have to find an alternative source.

"This can cause substantial hardship. In many cases, the family may not be able to continue with the kind of life they are used to and some may later have to sell off the family home to pay off debts or estate duties," says Rafie.

With a will, the process of getting the assets unfrozen and distributed are usually faster.

Once the LA is issued and an executor is appointed, the administrator can start the distributing process according to the law.

"But there is the danger that the executor may not distribute according to the law. For instance, the executor may just stop at getting the savings account unfrozen and disappear with them," Rafie says.

There may also be disagreements among the beneficiaries over the court's decision on distribution and this will delay the distribution further, causing further hardship to the family.

Sometimes, the distribution of the estate could lead to complications such as when the husband has more than one wife.

"The distribution may also bene-

fit someone whom the deceased do not intend to benefit," Rafie says.

For example, if both parents die simultaneously, the children who are minors may end up without proper protection and support which they are entitled to from the parents' estate.

"So it is always better to write a will," Rafie says.

Amanah Raya estimates that only 10% of the population have got wills written.

In its survey, among reasons given for not writing a will is that they have nothing to give, that they are not ready, that they have never thought about it, that it is unnecessary, that they are still young, and that they do not have children.

Rafie, however, says writing a will is not merely about assets as one may have requests or obligations which can be carried out upon death.

"Even if it is just to take care of a dog or a cat, you can state it in your will how they are going to be cared for upon your death. You can also state in your will how you want your own funeral and burial rites to be. So making a will is not just about distributing assets."

Many Muslims feel that there is no need to write a will as inheritance distribution under *Faraid* Law which states the quan-



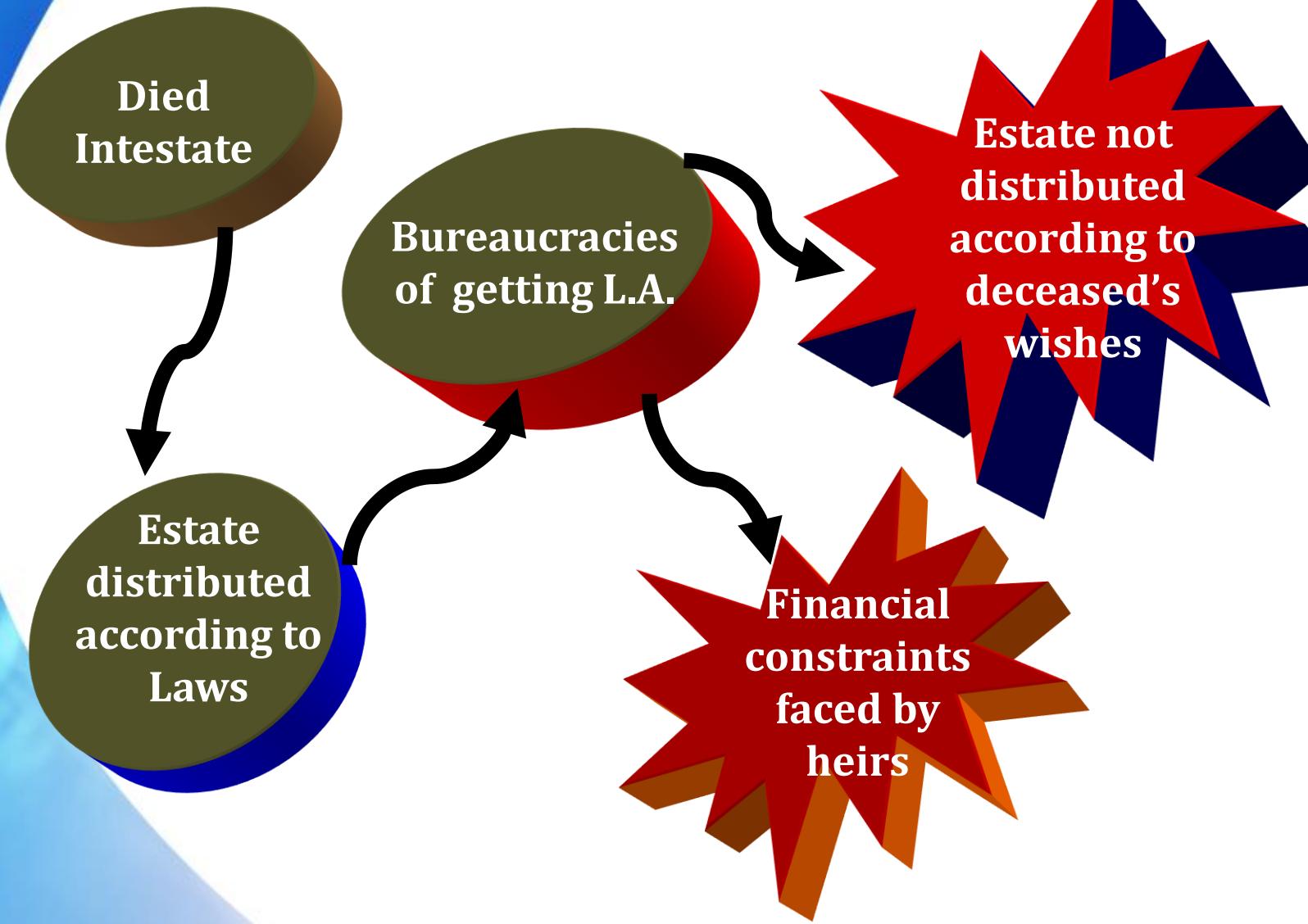
tum of distribution among the heirs are very clear. But Rafie reminds Muslims to write a will especially when there are beneficiaries other than the eligible heirs stated under *Faraid* Law such as when one wants to pass over some assets for charitable causes.

Although a Muslim's will can be done orally as a person need only say his wishes in front of two witnesses, "this can be disputed, so it is better to write", he says.

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INTESTACY



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INTESTACY

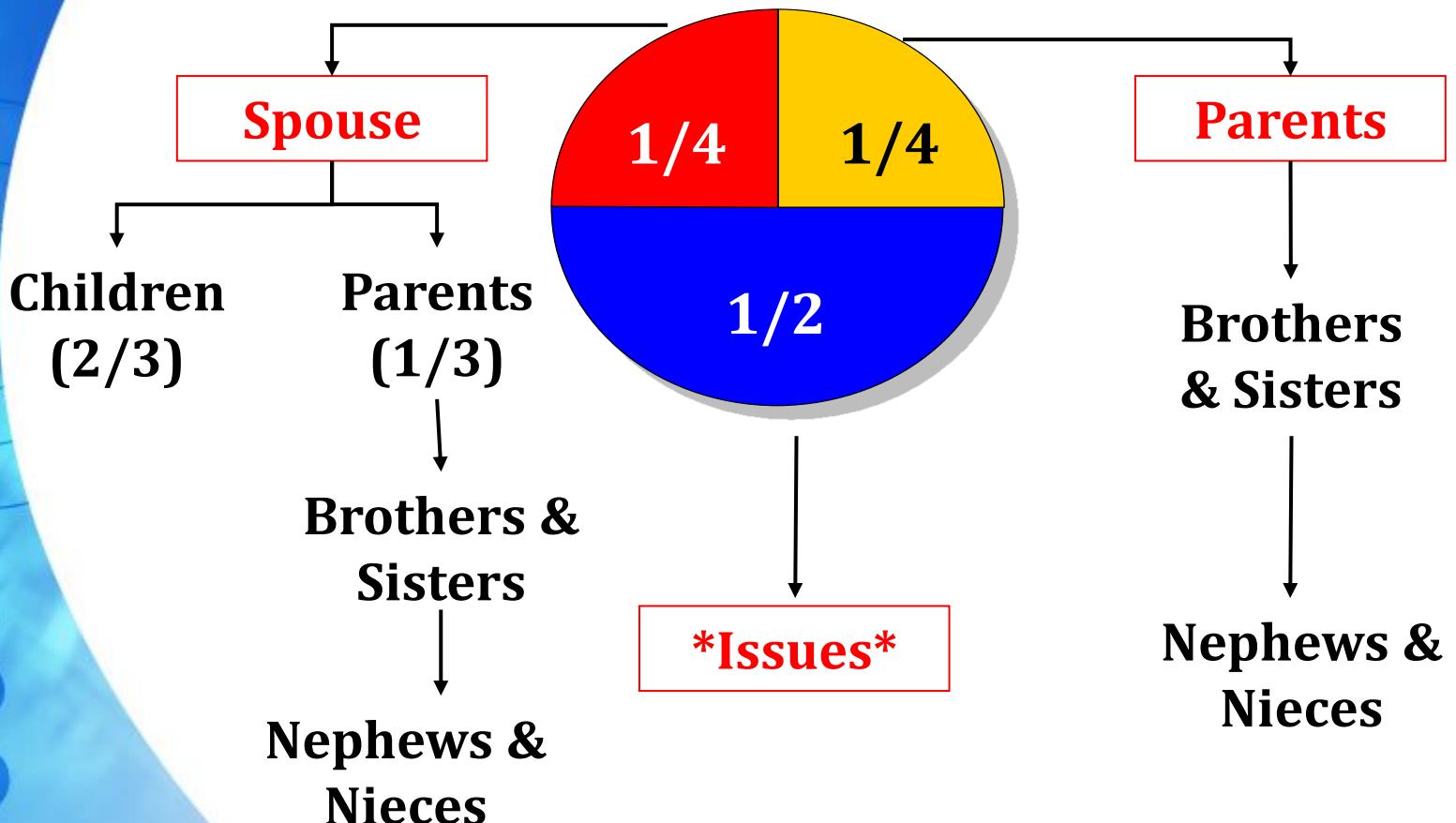
*with LA, Administrator(s) distribute estate to beneficiary(ies) according to **Distribution Act 1958 (Amended 1997)** - West Malaysia and Sarawak OR Intestate Succession Ordinance 1960 - Sabah*

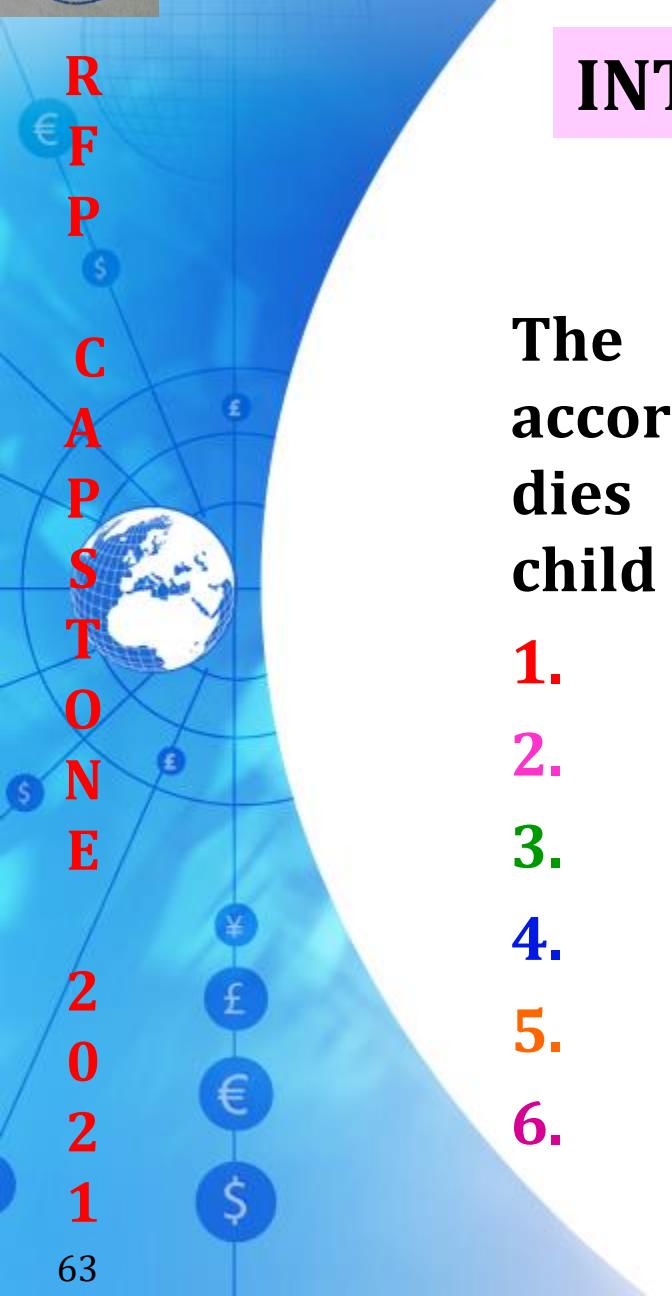
DISTRIBUTION ACT 1958

Survived by:	Entitlement
Spouse Only	Spouse – Whole Estate
Spouse & Parent (s)	Spouse – 1/2 Parent(s) – 1/2
Issue Only	Issue – Whole Estate
Parent (s) Only	Parent(s) – Whole Estate
Spouse & Issue	Spouse – 1/3 Issue – 2/3
Parent (s) & Issue	Parent(s) – 1/3 Issue – 2/3
Spouse, Parent(s) & Issue	Spouse – 1/4 Parent(s) – 1/4 Issue – 2/4

INTESTACY

DISTRIBUTION ACT 1958



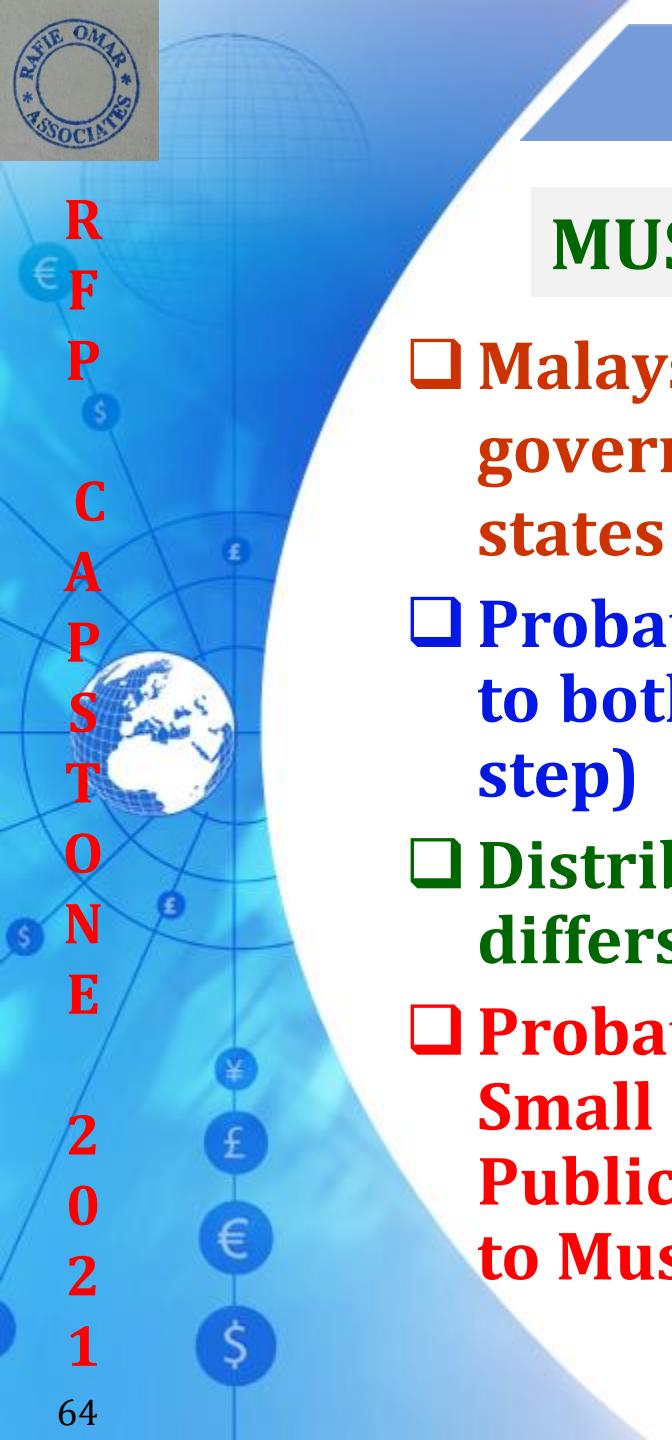
A decorative graphic on the left side of the slide features a globe with a grid pattern. Overlaid on the globe are various currency symbols: a euro symbol (€) at the top left, a dollar sign (\$) at the top right, a pound symbol (£) near the center, a yen symbol (¥) on the left, a pound symbol (£) on the right, a euro symbol (€) below the yen, and a dollar sign (\$) at the bottom right.

INTESTACY

DISTRIBUTION ACT 1958

The following person(s) are entitled in accordance to priority when an intestate dies without leaving a surviving spouse, child or parent:

1. Brothers and sisters
2. Grandparents
3. Uncles and Aunts
4. Great grand parents
5. Great uncles and aunts
6. Government



MUSLIMS

- Malaysia: Muslim estate distribution governed by laws applicable in respective states and influenced by local customs
- Probate/Administration process common to both non-Muslims and Muslims (the 1st step)
- Distribution of estate (the 2nd step) differs
- Probate and Administration Act 1959; Small Estate (Distribution) Act 1955 and Public Trust Corporation Act 1995 apply to Muslims as well

ESTATE PLANNING

MUSLIMS

F16

Inside>> P27
More than
promises needed



Sunday 20 SEPTEMBER
thestar.com.my/lifestyle

Star

FOCUS

Heirs need not lose out

The Muslim inheritance is a complicated matter and many are uninformed of the numerous ways to effectively provide for their heirs, especially women.

By SHAHANAAZ HIBB
shah@thestar.com.my

HASSAN died leaving behind his wife, two daughters and two sons. But before he died, he drew up a will for his assets to be divided equally among the five.

This differs from the *faraid* (Islamic law of inheritance and distribution) system. Under *faraid*, his wife gets 1/8 of his wealth while each son gets 1/4 and each daughter the portion of their sisters which means each boy will receive 7/24 of the assets while the sisters take 7/24 of the assets.

(In Islam, it is the male member's responsibility to take care of the female members like his wife, daughters, mother, sisters and aunts, hence the male is entitled to a larger portion of the inheritance share.)

So would Hassan's last wishes be accepted or would the *faraid* system overrule?

The final decision rests with the family members.

AmanahRayu Legacy Services' CEO Rafie Omar says Hassan's wishes will be carried out if all his heirs agree to it.

Many Muslims mistakenly think that the *faraid* comes first. But in Islam, *faraid* is inferior to the *hibah*.

Faraid is the law for distribution of estate upon death if the family can't reach an agreement. (Most heirs agree that everything should go to the mother.) Despite the *faraid* portion they are entitled to, what is the problem? No, there won't be any problem.

A fair solution

"*Faraid* provides the solution if a family can reach an agreement," he says.

So in the case of Hassan, if they all agree and say: "Yes, let's follow father's wishes and divide the equity among us five," says Rafie.

One critical point is that the agreement from the heirs must come after the person's death. It is not enough to have them agree in writing – before the person's death.

Because they can change their minds and if they do, the agreement made prior to the death becomes null and void.

Based on his own experience, Rafie finds when the heirs read the will, they normally agree with it and it is carried out.

If the wife of Hassan has one son who opposes the equal distribution and fights for his inheritance share, then the *faraid* system kicks in.

"The son who objects gets his two portions and the other four children who are left would be distributed equally among the remaining four," explains Rafie.

Based on his own experience, he says, usually even if one family member disagrees with the will, the others will go along with the will.

AmanahRayu Legacy Services Sdn Bhd (ARLS) is the wholly owned subsidiary of



Unusual feature: Under the *hibah*, if the gift or house is from a parent to his child or grandparent to his grandchild, it can be revoked.

>>Faraid provides the solution if a family can't reach a settlement

RAFIE OMAR

AmanahRayu, the country's premier trustee company, its services include will writing, trust accounts, legacy management and estate administration services. The company also provides services for writing wills for Muslims. So far, ARLS has written 30,972 wills or *wasiat* for Muslims and 4,886 for non-Muslims.

The *faraid* inheritance list apportions the asset based on most recent compilation of heirs. For full list refer to the website www.arb.com.my.

Unlike a non-Muslim will, the Muslim *wasiat* is unique because a person is

allowed to will only up to 1/3 of his assets and specifically that goes to non-heirs. That is because the gift or house is already provided for through the *faraid* system.

The 1/3 ruling came into existence during the Holy Prophet's time when one of his companions was given 1/3 of the inheritance after his death to be given to charity and the Prophet said "no".

Despite the 1/3 rule, Rafie says a Muslim here can still will all his assets or more than 1/3 to a non-heir, such as a wife.

But when he dies and the *wasiat* is to be implemented, if his next-of-kin objects, the wife will get 1/3 of the inheritance maximum. However, if all the heirs agree that the whole estate goes to the non-heir as stated in the *wasiat*, then he can do that.

"With the Muslim *wasiat*, consent of the heirs is fundamental," explains Rafie.

So can a person then name an heir for

Again, Rafie says, this is subject to approval from all the other heirs. If an heir is entitled for the 1/3 portion, then he would in fact be getting extra as he is

already entitled to a share under the *faraid* distribution. If everyone agrees to it, then it will be implemented.

Rafie says heirs too can do a *takharuf* which is a formal agreement to give up their share of the assets. Citing a court case in the 1980s, he says a wealthy Muslim man in Malaysia had a will that gave him all properties but since all his children were already doing well financially, none of them wanted to inherit.

"So they all agreed to 'takharuf' and give it to their children. That's not *faraid*. But that's not a problem since all the heirs agreed to it."

Unique features

There are other unique features in the Muslim *wasiat*. The debts of the dead person must be settled, however, before the assets can be distributed. After that comes the 1/3 portion as stated in the will – that must be given out next. Only after will the family decide that it goes through either family settlement or *faraid*.

With a Muslim *wasiat*, a person can deliberately exclude an heir from inheritance by making that intention very clear.

But with Muslim wills, such an exclusion is not possible.

As long as an heir and regardless of what is stated in the *wasiat* he is entitled to a share of the inheritance, even if it is only 1/3 unless he himself *takharuf* (gives up the right).

The *faraid* system is not without its critics, particularly when it comes to women and Muslim converts. With regards to families with all female heirs, the *faraid* system does not do well when it comes to families with all female heirs (see accompanying story on Page 18).

Since the rules of inheritance are different and rules should evolve to meet the times, the other argument for *faraid* is that it is a good way to settle disputes when it comes to family settlement, it does not work well when it comes to families with all female heirs.

Rafie suggests that Malaysians use other instruments to manage their wealth such as *hibah* (gifts) and trust funds to distribute their assets whichever way they want and to whom they want, as long as it complies with Islamic law.

Wasiat is not the solution," he adds.

Citing an example, he says, if a father with three children wants to leave all his money to his wife, he can do that because she is the one who takes care of him in his old age, he can do that.

With his wife dead, he can leave it to his son (*inter vivos*) and transfer everything to her name while he is still alive so it cannot be claimed by his other two children.

Otherwise, he notes, even if his other two children leave their claim to the wife after his lifetime, once he is dead, they can withdraw their consent and make their

> TURN TO PAGE 18

Numerous ways to provide for the women

> FROM PAGE 16

claim for it under the *faraid*.

Similarly, Rafie advises Muslims to *hibah* (give) to those not entitled to a share under the *faraid* system such as a sister, an adopted brother or a Muslim who is not your relative if you would like them to get something from you.

"So give what you want now when you are still alive," he says.

An unusual feature of the *hibah* is that when it is given to a male heir, his wife or grandchild it can be revoked. If the parent or grandparent asks for his gift or house

back, for whatever reason, the child or grandchild has a Syariah obligation to return it.

But if it is a gift to other people, then it cannot be revoked.

Another instrument is a trust fund for their loved ones.

Rafie says parents should consider transferring a sum of money or assets in a trust for their offspring.

"I will die, I leave no estate behind; so there's nothing others can claim. The trust for my child or children will not be frozen because it is theirs and not part of my estate."

The parent can manage and control the fund while he is alive and when he is dead, the appointed trustee would manage it according to the terms he has specified.

Not many people know this but our trust fund give out a dividend of 4.5% annually. So if you put RM100,000 in a trust fund, you will receive RM4,500 a year while you are still alive or you can plow it back to the fund so that it grows.

Another interesting alternative much practised in the past is *Wasiat* is a simple transfer of a piece of land from himself to himself as a trustee for a particular child or children.

"So when he dies, what is the status of the land? The land is not his estate. The land is the trust property for those children. And the land is transferred to them so that the land is transferred to them," he says.

"A lot of people have forgotten this. Muslim inheritance laws are very strict so it can't be changed."

One other aspect not to be forgotten is of course insurance policies and the EPF savings. For Muslims, the beneficiary does not take all the money in the plan as the executor and is responsible for distributing it according to the *faraid* or family settlement.

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MUSLIMS

Sunday April 4, 2010

News

Heirs need not lose out
By SHAHANAAZ HABIB



The Muslim inheritance is a complicated matter and many are uninformed of the numerous ways to effectively provide for their heirs, especially women.

"Faraid provides the solution if a family can't reach a settlement"- RAFIE OMAR
HASSAN died leaving behind his wife, two daughters and two sons. But before he died, he drew up a will for his assets to be divided equally among the five. His wishes differ from the faraid (Islamic law of inheritance and distribution) system.

Under faraid, his wife gets 1/8 of his assets, the two sons are entitled to twice the portion of their sisters which means each boy receives 7/24 of the assets while the sisters take 7/48 each. (In Islam, it is the male member's responsibility to take care of the female members like his wife, daughters, mother, sisters and aunts, hence the male is entitled to two portions of the female's share.) So would Hassan's last wishes be accepted or would the faraid system override it? The final decision rests with the family members.

AmanahRaya Legacy Services' CEO Rafie Omar says Hassan's wishes will be carried out if all his heirs agree to it. "Many Muslims mistakenly think that the faraid comes first. But in Islam, faraid is in fact second to family settlement. "Faraid is the law for distribution of estate upon death if the family can't reach a settlement themselves. If all the heirs agree that everything should go to the mother – despite the faraid portion they are entitled to – will that be a problem? No, there won't be any problem.



MUSLIMS

1. Malaysia - Shafii school hukum Faraid
2. Only assets owned at time of death are subject to Faraid
3. Only Muslims are entitled to inherit from the estate of a Muslim = heirs must be Muslims
4. The order of priority of payments out of the estate:
 - i. Settlement of all funeral expenses
 - ii. Settlement of debts (third party or fidyah)
 - iii. Settlement of any claim of Harta Sepencarian
 - iv. Testamentary disposition 1/3 to Non Heirs
 - v. Division of the residuary estate to legal heirs

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MUSLIMS

FARAID : BASIC SHARES BY PROPORTION

		HEIRS	SHARE
1	Husband	with no child or grandchild	1/2
		with child or grandchild	1/4
2	Wife	with no child or grandchild	1/4
		with child or grandchild	1/8
3	Son	with no daughter(s)	Residuary
		with daughter(s) [share 2:1]	Residuary
4	Daughter	sole survivor	1/2
		2 or more daughters (equal)	2/3
		with son (2:1 share)	Residuary
5	Father	with children or grandchildren	1/6
		without child or grandchild	Residuary
6	Mother		1/6

MUSLIMS

FARAID : BASIC SHARES BY PROPORTION

7.	Paternal Grandfather	
	sharing with Maternal grandfather	1/6
	with mother and father	NIL
8.	Paternal grandfather	with father
		NIL
		with son or grandson
		1/6
		without father, child or grandchild
		Residuary
9.	Brothers	
	with father, child or grandchild	NIL
	without father, child or grandchild	Residuary
10.	Sisters	sole
		1/2
		2 or more sisters
		2/3
		with brothers [share 2:1]
		Residuary
		with father, child or grandchild
		NIL

MUSLIMS

RULES OF INHERITANCE - FARAIID

“The Muslim law of inheritance comprises beyond question the most refined and elaborate set of rules for the devolution of property that is known to the civilized world”

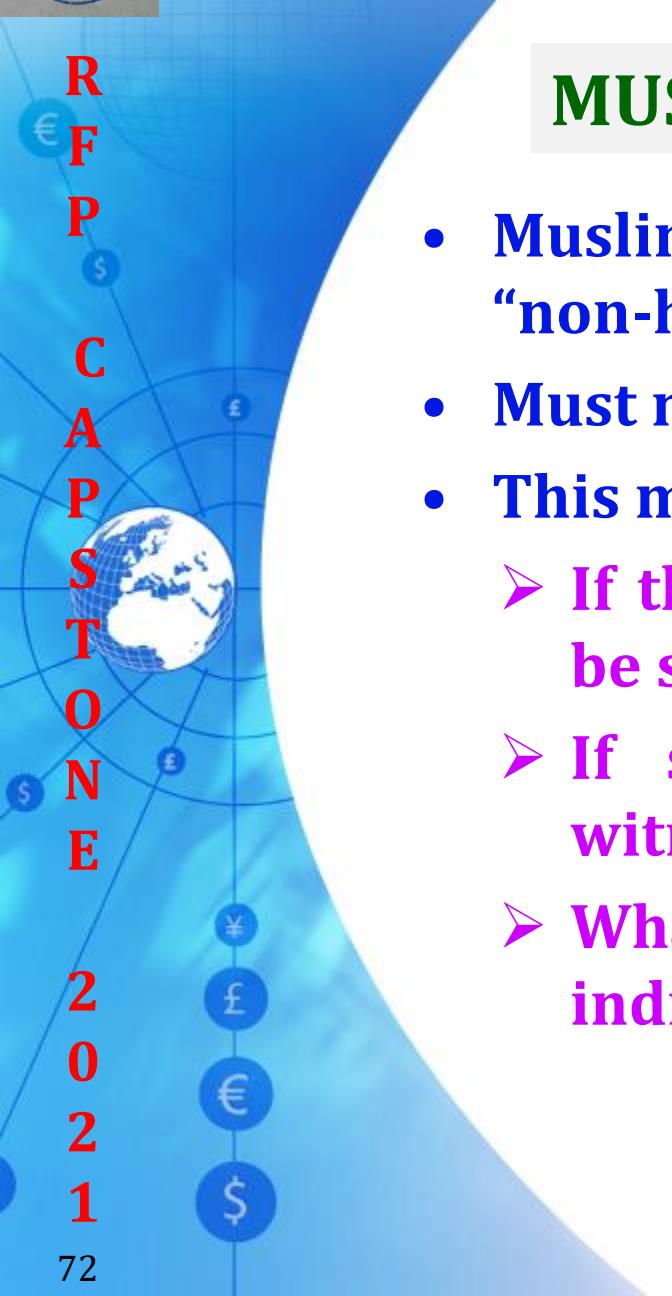
Professor Almaric Rumsey
(1825-1899)
King's College, London

MUSLIMS

Current Situation: Payment of Life Policy
Moneys as well as EPF ! SHARES!

S.130 FSA 2013 repeals
(S.167 Insurance Act 1996)





MUSLIMS

- Muslims may give away 1/3 or less of estate to “non-heirs”
- Must make some form of declaration
- This may be done orally or in writing
 - If the declaration is in writing, it need not be signed
 - If signed, it need not be attested by witnesses
 - What is essential is that the intention of the individual must be clear and unambiguous

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MUSLIMS

WILL

Wills Act 1959

- ❖ Document stating intention
- ❖ How estate is administered & distributed
- ❖ After death
- ❖ Who to administer

WASIYYAH

- / Iqrar of a person during life time
- With respect to property
- Carried out for purposes permissible by Islamic Law
- After the testator's death

- Muslim Wills (Selangor) Enactment 1999
- Muslim Wills (N.S.) Enactment 2004
- Muslim Wills (Melaka) Enactment 2005

MUSLIMS

BM: Mengapa masih ramai orang Melayu menganggap wasiat harta pusaka kurang penting?

RAFIE: Ada tiga sebab mengapa tidak ramai orang Melayu menulis wasiat ketika masih hidup. Pertama, mereka tidak faham apa itu wasiat dan kepentingannya, kedua, mereka tahu, tetapi tidak mahu menulis wasiat dan ketiga, mereka tahu tetapi tidak mampu untuk menulis wasiat.

Mereka tidak menganggap menulis wasiat penting kerana kebanyakannya berpendapat hanya kaedah faraid sajalah yang diguna pakai untuk membahagikan harta pusaka sebaik berlaku kematian.

Justeru, penggunaan surat wasiat tidak berguna dan akan diketepikan kerana mereka tidak faham dan beranggapan wasiat yang ditulis tidak dapat diguna pakai dengan adanya faraid.

BM: Adakah tanggapan itu benar?

RAFIE: Tanggapan itu salah sama sekali dan itulah yang ingin diperbetulkan oleh ARB dalam jangka masa terdekat. Sebenarnya, kaedah faraid memang diguna pakai untuk pengagihan harta pusaka seorang Muslim, tetapi ia terlakuk kepada situasi iaitu sebagai kaedah terakhir jika semua waris tidak mencapai kata sepakat dalam pengagihan harta pusaka si mati.

Malah, faraid hanya akan digunakan selepas hutang dan wasiat si mati diambil kira. Ini bermakna wasiat masih perkarai penting yang diberi perhatian jika berlaku kematian, sebaliknya faraid hanya sebagai jalan terakhir selepas semua waris gagal mencapai kata sepakat dan selepas ditolak jumlah hutang dan wasiat si mati.

BM: Adakah ini bermakna kaedah faraid juga mengambil kira faktor wasiat?

RAFIE: Memang benar. Kaedah faraid turut mengambil kira wasiat seseorang kerana ia adalah satu instrumen yang boleh diguna pakai bersama sistem faraid. Ia dijelaskan dalam al-Quran bahawa hanya satu pertiga daripada

TIGA SEBAB MELAYU
ABAI SURAT WASIAT

WASIAT adalah dokumen bertulis yang menetapkan jumlah harta yang ingin diwariskan kepada seorang apabila si penulis meninggal dunia. Ia dapat mencegah perbalahan di kalangan anggota keluarga apabila ibu atau bapa sudah tiada.

Namun, sehingga kini, pengetahuan mengenai wasiat di kalangan masyarakat Islam masih kurang berbanding masyarakat bukan Islam dan ini mungkin berlaku disebabkan kurangnya kesedaran serta pengetahuan mengenai perkara itu.

Wartawan Bisnes Metro (BM), **HATIPAH AHMAD** menemuramah Pengurus Besar Jualan dan Pemasaran Amanah Raya Berhad (ARB), Rafie Omar untuk mendapatkan maklumat lebih jelas me-

keseluruhan harta kita yang dibolehkan untuk diwasiatkan dan selebihnya iaitu dua pertiga perlu diagihkan melalui kaedah faraid.

Namun, ia masih ada pergecualian iaitu dengan persetujuan semua waris sama ada mengizinkan atau tidak harta yang diwasiatkan itu kepada bukan waris atau waris.

BM: Apa yang dimaksudkan dengan tidak faham definisi dan kepentingan wasiat?

RAFIE: Apabila seseorang itu sudah meninggal dunia, warisnya datang kepada ARB dan berkata mereka mahu melaksanakan wasiat si mati, sedangkan tiada wasiat dibuat ketika harta itu. Mereka sebenarnya tidak faham apa yang dimaksudkan dengan wasiat.

Wasiat adalah dokumen bertulis mengenai pembahagian harta yang diilngini oleh penulis wasiat untuk dilaksanakan selepas beliau meninggal dunia.

Wasiat itu akan disimpan di



“Mereka berpendapat hanya kaedah faraid saja akan diguna pakai”
- Rafie

ARB dan hanya dilaksanakan selepas beliau sudah meninggal dunia. Iini bermakna apabila sudah mati, barulah wasiat itu akan dilaksanakan dan ketika itu, ia tidak lagi dipanggil wasiat, sebaliknya

membuat wasiat. Antaranya sikap suka bertangguh, manakala golongan yang sedar tetapi tidak mampu pula kerana mereka tidak tahu caj yang dikenakan ARB.

Mereka mungkin berasa tidak mampu untuk memampung kos membuat wasiat sedangkan kos di ARB tidak semahal mana berbanding di luar.

Apabila seseorang itu datang untuk membuat wasiat, mereka hanya perlu membayar RM350 untuk proses dokumentasi. Jumlah ini seben-

arnya lebih rendah daripada yang dikenakan peguam swasta iaitu RM500.

Malah, mereka boleh membuat perubahan ke atas wasiat itu bila-bila masa tanpa sebarang bayaran tambahan. Biasanya, perubahan dibuat apabila jumlah anak semahal ramai.

Caj yang dikenakan selepas pentadbiran wasiat pulak (bermakna selepas berlaku kematian) ialah sebanyak dua peratus daripada nilai harta. Kos ini juga adalah lebih rendah berbanding swas-

ta yang mengenakan lima peratus nilai harta.

BM: Bolehkah jelaskan lebih lanjut mengenai faraid?

RAFIE: Sistem faraid adalah hukum pembahagian harta pusaka seperti yang diterangkan dalam al-Quran dengan terperinci mengenai pentadbiran harta pusaka seseorang Muslim. Ia sudah cukup sempurna untuk kegunaan manusia kerana menyatakan bahagian dan waris yang berhak menerimanya. Kita sebagai umat Islam mestilah menerimanya hukum ini dengan reda.

Sistem itu tidak mempunyai kelemahan, tetapi mungkin masyarayat yang tidak ada pemahaman mendalam mengenai pelaksanaannya menyebabkan sistem ini nampak tidak sempurna. Faraid adalah satu sistem yang adil dengan mengambil kira kebaikan semua waris yang ada.

BM: Adakah wasiat ditulis menurut kehendak Islam dan bagaimana pulak dengan wasiat orang bukan Islam. Adakah ia mempunyai perbezaan?

RAFIE: Di ARB, setiap wasiat orang Islam ditulis mengikut kehendak syarak dan dirujuk kepada Lembaga Pengawasan Syariah ARB, manakala wasiat konvensional (untuk bukan Islam) pulak ia ditadbir mengikut undang-undang sivil.

Perbezaan kedua-duanya ialah untuk orang Islam, mereka hanya boleh mewasiatkan tidak lebih satu pertiga daripada jumlah harta mereka dan lebih dua pertiga halgi akan dibahagikan secara faraid.

Pengecualian untuk mewasiatkan semua hartanya dibenarkan dengan syarat ia mendapat persetujuan daripada semua ahli warisnya selepas perwasiat meninggal dunia.

Wasiat konvensional pulak ialah terpulang kepada penulis wasiat untuk menentukan sama ada mahu mewasiatkan atau memberi keseluruhan hartanya atau sebahagian saja kepada sesiapa saja sama ada waris atau bukan waris.

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MUSLIMS

Wasiat

Civil Court

Grant of Probate

Distribution 1

OR

Distribution 2

OR

Distribution 3

1/3

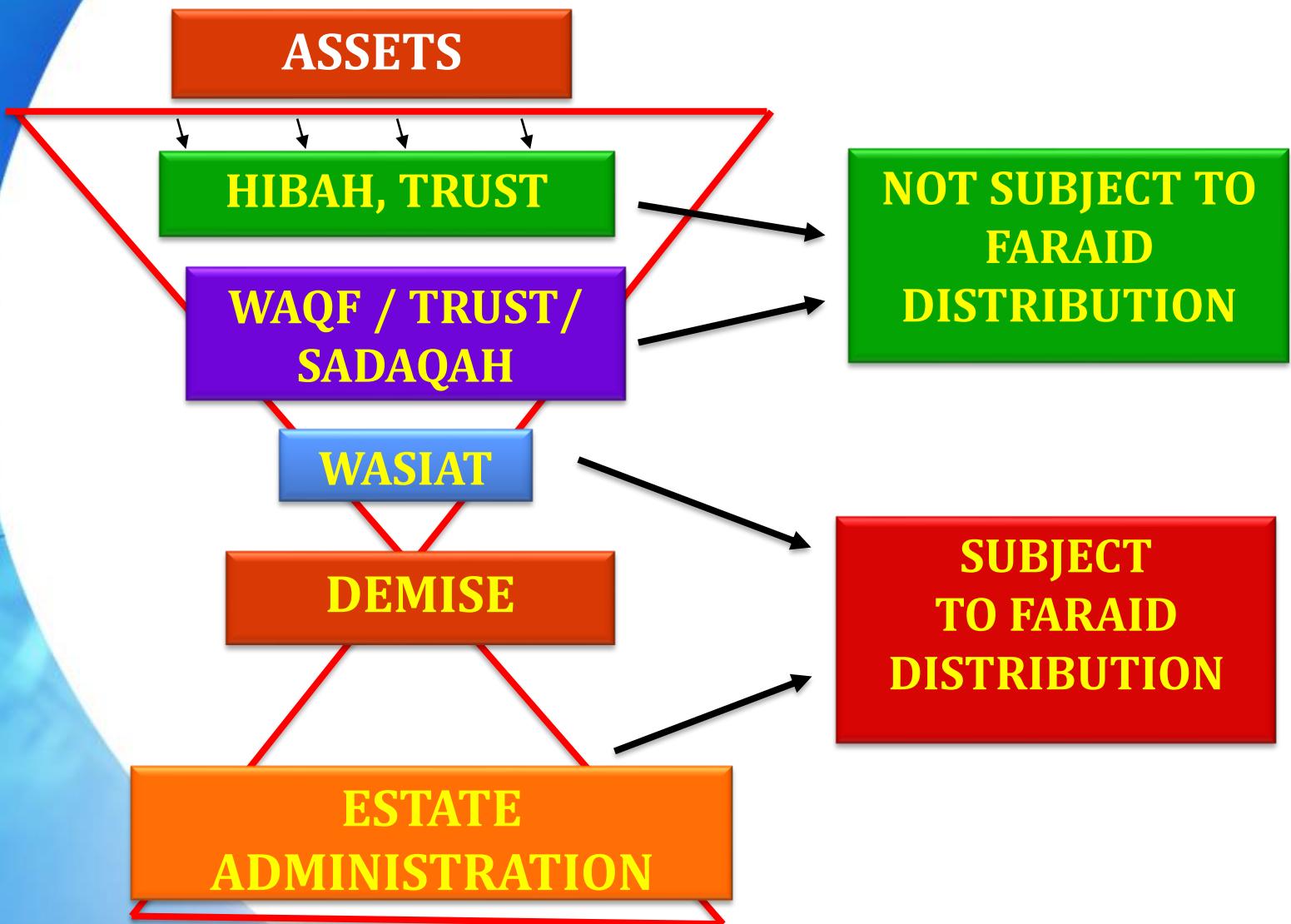
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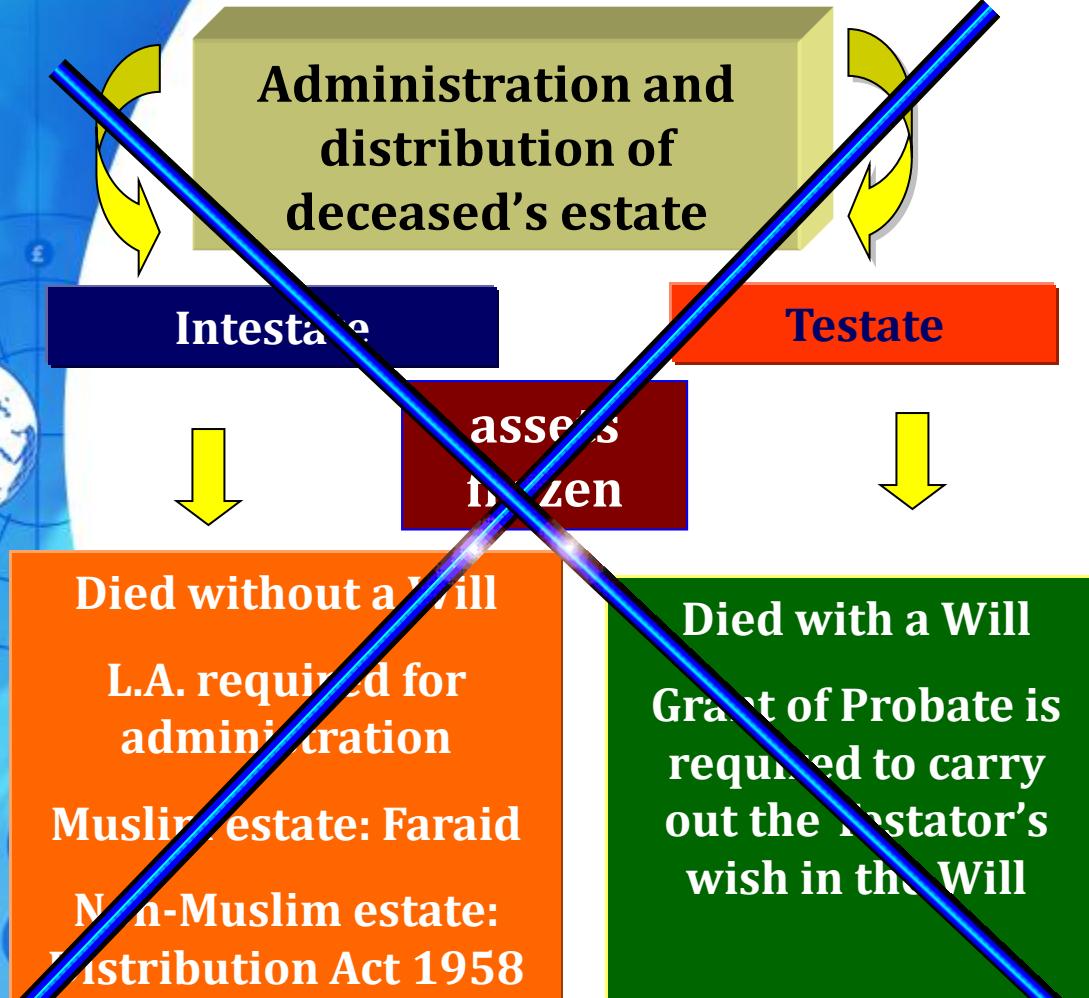
Beneficiary

Heirs
(Faraid)Heirs
(Faraid)Distribute your way
With all Heirs
Consenting

MUSLIMS

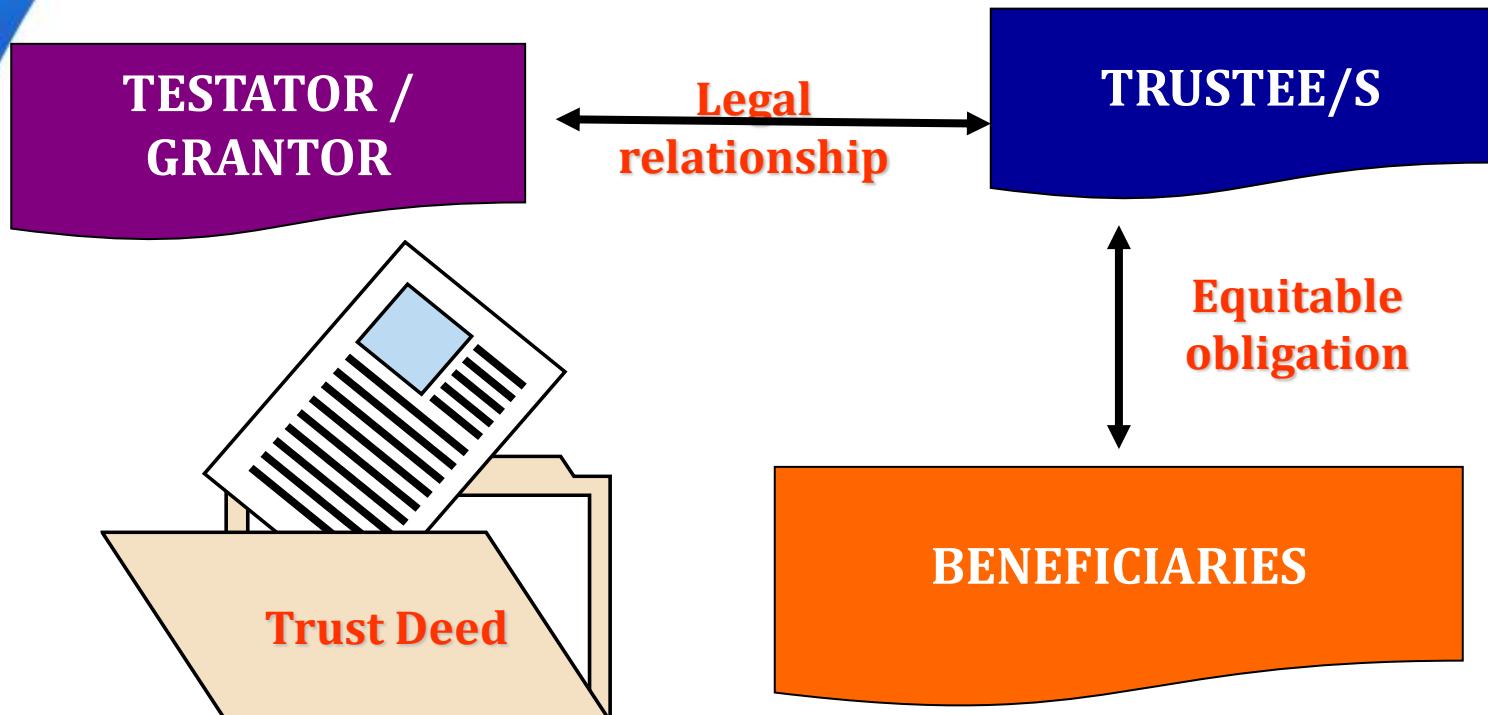
TRUSTS

Estate vs. Trust



*Trust Assets
managed
separately
by Trustee
per the
Trust Deed*

TRUSTS



A trust is created when the owner of an asset passes the legal title to another to hold on trust for the benefit of one or more beneficiaries

TRUSTS

PURPOSES OF A TRUST

1. to authorize the Trustee to manage the assets for the benefit of the beneficiaries.
Reasons:-
 - i. special skills or knowledge
 - ii. Settlor away for considerable time
 - iii. Trustee to manage assets upon death
2. Trustee as custodian to protect the interest of beneficiaries
3. protect beneficiaries from the creditors
4. tax advantages on investments in certain countries (may not be relevant in Malaysia)

TRUSTS

- Living Trust do not form part of estate and be dealt without Grant of Probate or L.A.
- Trustee may be individuals, professionals or trust corporations given specific instructions on management of assets
- usually stated in a Will or Deed Trust

Trusts Created:-

- 1) Via a Will – testamentary trust
- 2) Trust Deed – express – revocable/ irrevocable
- 3) Statutory law e.g. FSA 2013
- 4) By implication
- 5) By oral instructions

TRUSTS

THE 3 CERTAINTIES

In **Knight vs Knight** - for a trust to be recognized and enforceable in law, it must be constituted with the following 3 certainties:

- i. **Settlor's intention must be clear as to express his desire to create a trust**
- ii. **Subject matter or the assets referred to by the Settlor must be certain**
- iii. **Object matter or Beneficiary or class of beneficiaries whom the Settlor wishes to provide must be certain**

If any of these not present, incomplete or vague, the Trust will be considered as having "failed". If the trust fails, it reverts to the Settlor's estate

TRUSTS

- The Departments of Public Trustee and Official Administrator were corporatized in 1995 and commenced its operation as Amanah Raya Berhad (ARB) under the Public Trust Corporation Act 1995
- Besides providing services such as Administrators and Executors of estate for the deceased, it also provides a range of services such as legal, financial and administrative duties in preparing trust documents and wills.
- Estate planners need to familiarize themselves with ARB especially the various provisions on the laws which direct moneys to be paid to ARB under specific circumstances e.g. IFSA 2013

POWER OF ATTORNEY

- POA is a legal document whereby a person may authorize or empower another to act on his behalf
 - The person who authorizes or delegates his rights is called a Donor and the one who agrees to act on his behalf is called Donee or Attorney
 - The Attorney is the agent of the Donor and the formal instrument that legitimizes this authority by a deed is called POA
-
- POA operates under 'agency' principles
 - In West Malaysia these legal principles are further expanded and regulated by the Power of Attorney Act 1949

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POWER OF ATTORNEY

- i. Must be in writing, executed and authenticated before qualified individuals
- ii. May be revoked by Donor or renounced by Attorney - S. 5
- iii. Anyone may apply for and obtain information of any POA deposited with the High Court

Usefulness:-

- Partnerships – power to manage partnership
- immovable assets – Donee may execute transfer documents
- In EA – Donor (Executor or Administrator may appoint Attorney for assets outside country)
- Business, bank accounts etc. when Donor becomes unable to do so

POWER OF ATTORNEY

extinguished by:

- i. revoked by Donor
- ii. renounced by Donee
- iii. death of Donor / Donee
- iv. Donor / Donee unsound mind
- v. Donor declared bankrupt

Exceptions:

- ✓ S. 6 POA Act 1949 - if a POA is given for valuable consideration and expressed to be irrevocable
- ✓ S. 7 POA Act 1949 - when POA is declared irrevocable for a fixed period
- ✓ S. 30(6) Trustees Act 1949 - POA is still valid despite the death of the donor - any act done by the Donee is still valid and effective if 3rd party does not have actual notice of Donor's death or incapacity

PERSONAL REPRESENTATIVES

- Whoever appointed to take charge of estate
- certain duties imposed as well as powers conferred - found in:
 - Probate and Administration 1959 (P&A Act) and
 - Trustee Act 1949
 - Judicial precedents applicable where no legislative provisions

Defined in P&A Act: "*the Executor, original or by representative, or Administrator for the time being of a deceased person, and as regards any liability for payment of death duties includes any person who takes possession or intermeddles with the property of a deceased person without the authority of the personal representatives or the Court*"

PERSONAL REPRESENTATIVES

- P&A Act states that “representative shall not be granted to more than 4 persons in regard to the same property”
 - At anytime minimum 1 person acting as a PR but not more than 4
 - If beneficiaries are minors there must be minimum of two PRs
 - If a Trust Corporation is appointed the rule does not apply - Trust Corporation can act on its own
-
- Executor appointed by Testator in a Will
 - Intestacy - Courts decides who is most suitable to be Administrator
 - PR must not be a minor, must be of sound mind and not be a bankrupt

PERSONAL REPRESENTATIVES

- **Executor de son tort** (Latin phrase for an executor in his wrong) is someone who intermeddles with affairs of estate
- He acts as PR although he is neither executor nor administrator - personally liable for any wrong or losses to estate resulted by his actions
- **Administrator De Bonis Non** is appointed when the sole or surviving administrator dies without completing administration of estate
- He can exercise the powers by obtaining Letters of Administration De Bonis Non from Court

PERSONAL REPRESENTATIVES

Powers:

- sell or dispose off assets
- borrow
- purchase or enhance assets
- Invest/convert bonds or other securities
- lend provided it is a secured
- make advancements to beneficiaries or to withhold distribution
- provide maintenance of beneficiaries
- pay taxes and expenses
- continue business and legal dealings
- retain trust property

LIFE INSURANCE & EP

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Malaysian Takaful Association

MALAYSIAN TAKAFUL INDUSTRY

NUMBERS AT A GLANCE
AS AT 30 JUNE 2015

Family Takaful Certificates in Force

→ 4,490,108

Life insurance policies in Force

12,505,208

Malaysian Populations

→ 30.996 mil

Family Takaful certificates in force as a percentage
to the total population

→ 14.49%

Life Insurance policies in force as a percentage to the total population

40.34 %

Takaful certificates in business force as a percentage to the total population since 2000



Source : Monthly Statistical Bulletin of Bank Negara Malaysia



ESTATE PLANNING

MFPC

Malaysian Financial
Planning Council

Competence.Ethics.Standards

LIFE INSURANCE & EP

SUNDAY 3 JANUARY 2016 | PP0307103/2013 (0311623) (No. 20585) Peninsula RM1.50, Sabah RM2.00, Sarawak RM1.20.

nation
COUPLE TO HAND BACK CHILD
AN AMICABLE ENDING IS IN SIGHT FOR A TODDLER ALLEGEDLY SOLD BY DAD. >3

world
NATALIE COLE DEAD
SINGER NATALIE COLE DIES FROM MULTIPLE COMPLICATIONS. >32

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SUNDAY
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the people's paper

Malaysians under-insured

Malaysians are stuck between not buying enough insurance and not having enough money to afford premiums for the most basic protection, a survey has found. With the prices of medical treatment increasingly out of the reach of young working adults more keen on the latest gadgets, Bank Negara has stepped in with the LIFE Framework, designed to bring costs down.
> See reports by CHRISTINA CHIN on Pages 16 and 17

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ESTATE PLANNING

LIFE INSURANCE & EP

We don't have enough

Most Malaysians will struggle to cope with a health crisis, while loved ones will face difficulties after a breadwinner's death because we simply do not have enough insurance coverage. To address this, Bank Negara is introducing a new insurance framework to increase penetration and transparency.

Stories by CHRISTINA CHIN
sgchriss@thestar.com.my

MALAYSIANS are grossly under-insured. And those who have insurance aren't adequately covered.

Offering policies with higher assured won't work because life insurance is not a priority for most Malaysians, says Victor Kho, president of the National Association of Malaysia Life Insurance Fieldforce and Advisers (Namilia).

The younger generation especially would rather focus on their education or material possessions and luxury goods, which actually are way pricier than insurance payments, Kho says, pointing to how a life policy can cost as little as RM100.

"No one has ever gone bankrupt because they bought insurance. How much do you pay for your car insurance? A basic life policy is a fraction of that. So it's not saving enough money is a poor excuse," he argues.

And among those who have insurance, they're probably not keeping up with their policies. They think agents just want to make a sale. But the reality is that with rising healthcare costs and changes in medical needs, more protection is a must, Kho explains.

Quoting the "2013 Protection Gap in Malaysia" study, Life Insurance Association of Malaysia (Liam) says that 10 in 10 long says four to five of every 10 Malaysians don't have life insurance. And those who do have some don't have sufficient coverage for their loved ones.

Putting things into perspective, Prudential Assurance Malaysia chief marketing officer (CMO) Alvin Tan says that 90% of Malaysians have some form of life insurance. And yes, those who are covered just don't have enough.

"With your current insurance policy, the rule of thumb is to insure a sum equivalent to 10 times your annual salary," she explains.

"With Malaysia's gross income per capita of RM32,000, the current average sum assured of RM50,000 is far below the ideal amount one

should be insured for.

"This means that Malaysians are generally under-insured. When something unfortunate were to happen to the family's breadwinner and they're only left with a RM50,000 life insurance policy. Today, RM50,000 may not get the family very far. They may have difficulties sustaining their current standard of living," she says.

There's a growing demand for insurance products with more risk and investment elements but the level of awareness among Malaysians about protection is low. Our premium contribution is only 3.1% of the GDP, which is lower than Australia (5.6%), Hong Kong (12.7%), Japan (8.4%), and Singapore (5%), according to Bank Negara.

To promote long-term growth and a more competitive market, the "LIFE Framework"

was developed by Bank Negara. It completed its public consultation on the Framework in 2014 and has been implemented in phases.

In a statement, Bank Negara says, "Currently, most consumers buy life insurance only via takaful products through an intermediary like agents, brokers and consultants who are financially literate and savvy enough not to need financial advice or product recommendation. Online products will not appeal to them with straightforward, easy to understand and sole-life for protection products."

"Like online banking, an online account will be introduced by all insurance and takaful operators, policy owners and takaful participants to obtain information on the status of their policies and certificates, and get real-time updates and downloadable transaction forms easily."

With the Framework, insurers and operators will have greater flexibility to manage their expenses. This will encourage product innovation and is beneficial to consumers. The industry, however, must continue to safeguard consumer interests in the more liberal environment, according to the bank's statement. For example, in the case of investment-linked products, they must ensure a proportion of premiums are allocated to the unit funds, before deduction of charges.

Kho hopes the Framework, aimed at liberalising the industry, succeeds in increasing professionalism and promotion. Whether it gives rise to higher premiums, he thinks will be determined by market forces. The relevant authorities must, however, manage the rising insurance premiums and distribution costs. And, insurance must be fair to consumers. Don't increase premiums unnecessarily just to make a huge profit, he says.

Arguing that insurance costs can agents to justify higher premiums is wrong. We must be properly compensated for getting new business and providing life-long service."

To improve the industry, he adds, is that insurers will have greater control over the products they introduce and agents' commissions and premiums will all be determined by

"Agents get a bad reputation because people don't trust the insurance companies. There are over 80,000 agents nationwide. Only a few are crooks. We've appealed to the central bank for disciplinary powers to clamp down on these errant agents."

Victor Kho



demand and supply, Kho explains.

Assuring consumers that they will be protected, he says complaints about errant agents or insurance can be made to Bank Negara. And, Namilia, the liaison body, is there both members and consumers benefit because when policyholders suffer, agents suffer too.

There are 18 insurance companies for consumers to choose from, so be smart and shop around. The price of insurance may not don't just go for the cheapest policy because you could end up much poorer in the long run when you need you are not adequately protected," he warns.

There are, however, many areas of the industry still in need of improvement. Namilia, Bank Negara and Liam have their work cut out, he admits, stressing that there is a need for an extensive public awareness campaign on

The LIFE Framework will:

- Increase value of products and services to protect against unforeseen circumstances. For example, the industry must introduce commission-free pure protection products relating to term, critical illness and non-life coverage. This will lead to lower costs for consumers.
- Strengthen transparency, professionalism, and market practices by introducing a balanced scorecard for intermediaries. Currently, the intermediaries' compensation is based on sales. With the scorecard, remuneration will take into account non-sold products, serviceability of advice, service quality and high ethical and professional conduct.
- Improve product disclosure in sales illustrations.
- Increase access to more products and diversify distribution channels – especially direct channels (walk-in to head office/branch premises or through websites).

Pricier protection?

Like Singapore, our commissions will be determined by the market. This is fair and timely but Bank Negara must ensure that premiums are affordable or the country's bank's goal to increase penetration will fail," he says, adding that the perception that agents are rich because they drive big cars is wrong.

He says close to half of an agent's income is used to cover the costs of meeting prospective clients and follow-ups.

A senior insurance agent who decided to be named is worried that the proposed "LIFE Framework" could push insurance further out of reach for Malaysians. Already, moving from the 6% Goods and Services Tax for medical and health-related coverage, he fears "product-driven" insurers will again hike up the premiums soon.

Allowing the free market to determine the commission of agents is a good move but it must be used to reward to make consumers pay more for coverage.

"Now, agents' commissions are capped. By 2018, I believe the LIFE Framework will be fully rolled out and the industry will be open

most people buy what the agents propose and some agents tend to push products with higher commission earnings, Federation of Malaysian Consumers Association secretary general Datin Paul Selvaraj observes.

The high commissions paid to high-profile consumers mustn't underestimate the importance of insurance, he warns. He thinks not enough consumers educate consumers on making the right choices.

"Many pay premiums without knowing what they're entitled to until they make a trouble because of medical bills."

Consumers must understand insurance policies well, he stresses.

Insurance is a profit-making product. Investment is an add-on benefit of certain policies. It's cheaper if you are getting a protection policy. If you want to know about investment, talk to an expert. Let's be clear – insurance is for you," he says.

Welcoming Bank Negara's

Framework, financial adviser and author Yap Mawardi sees it as a good initiative. Allowing the sale of insurance online, he feels, will result in cheaper premiums as consumers

have an option whether to buy from an agent or to buy direct.

Selvaraj agrees. He expects the price of premiums to drop with the introduction of online purchases. He, however, calls on Bank Negara to ensure that consumers are protected.

"In 2014, the highest number of reports received by the Financial Sector Complaints Centre was about online purchases. So Bank Negara must monitor all online transactions closely. We cannot have a situation where someone who buys insurance online is denied a claim because of a technical glitch."

Yap advises consumers to consult independent financial advisers on money-related matters, especially when the future of the family is involved.

Financial consultants, he says, are not only for the rich. The middle-class, especially need sound, holistic advice, too.

"Insurance agents don't know the details of your financial situation. There may be a mismatch between what is needed and what is bought."

"A financial adviser will take into account factors like the assets available and dependants' needs to calculate how much insurance is needed and the various investment options available according to the budget."

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LIFE INSURANCE & EP

- Useful tool in Risk management of individual “personal risks” such as death, permanent disability and major illnesses
- Very important tool for EP

ADVANTAGES:-

(1) It guarantees immediate “cash estate” for the policy owner the moment he has effected an insurance policy on his life

- This “cash estate” can be acquired with a relatively small initial contribution or premiums, compared with other types of assets of significant value, e.g. purchase of immoveable assets

LIFE INSURANCE & EP

ADVANTAGES:-

- (2) "immediate cash available" - great use to the estate and the beneficiaries as other assets may be "frozen" until Probate or LA obtained from Courts
- (3) payment of proceeds obtained from insurance company promptly upon death of policy owner - if documentation correctly done e.g. nominees, proof of age, medical reports and other
- (4) proceeds may also enjoy the benefit of a "creditor-protection"
- (5) proceeds greatly useful for business organizations and their owners, sole-proprietors, partners or shareholders in a company

LIFE INSURANCE & EP

S.130 FSA 2013 – Schedule 10 incorporating
Insurance Act 1996 – (repealed)

Schedule 10 sets out provisions for the payment of policy moneys upon death of a policy owner under a life policy, including a life policy under section 23 of the Civil Law Act 1956 [Act 97] and a personal accident policy affected by him upon his own life

LIFE INSURANCE & EP



LAWS OF MALAYSIA

Act 758

Financial Services Act 2013

Date of Royal Assent

18 Mar 2013

Date of publication in the *Gazette*

22 Mar 2013

An Act to provide for the regulation and supervision of financial institutions, payment systems and other relevant entities and the oversight of the money market and foreign exchange market to promote financial stability and for related, consequential or incidental matters.

[30 June 2013, PU(B) 276/2013.
except s.129 and Schedule 9.]

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Prescription by Minister of additional business or activity
4. Prescription by Bank of additional agreement, dealing, transaction or person
5. Classification of, and construction of references to, insurance business

PART II

REGULATORY OBJECTIVES AND POWERS AND FUNCTIONS OF BANK

6. Regulatory objectives
7. Powers and functions of Bank

PART III

AUTHORIZATION AND REGISTRATION

Division 1



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Modifications for group policies

19. This Division provides for the application of Division 2 of this Part to a group policy in accordance with the following modifications:

- (a) reference to consumer insurance contract, however described in Division 2, shall be references to that part of the group policy which provides for cover for the person insured who made the misrepresentation;
- (b) reference to claims and premium shall be references to claims and premium in relation to the cover for the person insured who made the misrepresentation;
- (c) any refund of premium under subparagraph 16(2) or 17(5) shall be made to the person insured if he had paid the premium for his cover; and
- (d) in respect of the cover for the person insured, the right to terminate his cover wherever referred to in Division 2, shall be that of the group policy owner.

SCHEDULE 10

[Section 130]

PAYMENT OF POLICY MONEYS UNDER LIFE POLICY AND PERSONAL ACCIDENT POLICY

Paragraph

1. Application of Schedule
2. Power to make nomination
3. Revocation of nomination
4. Payment of policy moneys where there is nomination
5. Trust of policy moneys
6. Nominee other than nominee under subparagraph 5(1)
7. Assigned or pledged policy moneys
8. Payment of policy moneys where there is no nomination
9. Payment to person incompetent to contract
10. Distribution of policy moneys in due course of administration
11. Licensed insurer not bound to see application of policy moneys
12. Interest on claim amount
13. Schedule to prevail over policy and any other written law

1. In this Schedule, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956, and a personal accident policy, effected by a policy owner upon his own life providing for payment of policy moneys on his death.
2. (1) A policy owner who has attained the age of sixteen years may nominate an individual to receive policy moneys payable upon his death under the policy by notifying the licensed insurer in writing the name, date of birth, national registration identity card number or

Application of Schedule

Power to make nomination

LIFE INSURANCE & EP

birth certificate number and address of the nominee.

- (2) A nomination under subparagraph (1) may be made—
 - (a) at the time the policy is issued; or
 - (b) if the policy has already been issued, by notifying the licensed insurer in writing or by submitting the policy for an endorsement of the nomination by the insurer.
- (3) A nomination made under subparagraph (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subparagraph.
- (4) The licensed insurer—
 - (a) shall prominently display in the nomination form that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;
 - (b) shall record the nomination and the particulars of the nominee in its register of policies; and
 - (c) shall return the policy to the policy owner after endorsing the nomination on the policy or by issuing an endorsement to the original policy by registered mail to the policy owner and the nomination shall take effect from the date the nomination is registered by the insurer.
- (5) A failure to comply with subparagraph (4) shall not affect the validity of the nomination if it is otherwise proved that the nomination was made by the policy owner and given to the licensed insurer.
- (6) A nomination made under subparagraph (1) may be in favour of one person or several persons and where there is more than one nominee, the policy owner may direct that specified shares be paid to the nominees and in the absence of such direction by the policy owner, the licensed insurer shall pay the nominees in equal shares.

Revocation of nomination

3. (1) A nomination, including a nomination to which paragraph 5 applies, shall be revoked—

- (a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the policy owner;
 - (b) by a notice in writing given by the policy owner to the licensed insurer; or
 - (c) by any subsequent nomination.

- (2) Subject to subparagraph (1), a nomination shall not be revoked by a will or by any other act, event or means.

- (3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the licensed insurer shall pay the share to the remaining nominees in proportion to their respective shares.

4. (1) Subject to subparagraph (2), where a policy owner dies having made a nomination, the licensed insurer shall pay the policy moneys according to the direction of the nomination upon receipt of a claim by the nominee together with proof of death of the policy

Payment of policy moneys where there is nomination

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owner.

(2) Where a nominee fails to claim the policy moneys within sixty days of the licensed insurer becoming aware of the death of the policy owner, the insurer shall immediately notify the nominee in writing at his last known address of his entitlement to claim the policy moneys.

(3) Where a nominee fails to claim the policy moneys within twelve months of the licensed insurer becoming aware of the death of the policy owner despite notification under subparagraph (2), paragraph 8 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under paragraph 5, dies after the death of the policy owner but before any policy moneys has been paid to him as nominee, paragraph 3 or 8 shall apply to the policy, as the case may be.

5. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if—

- (a) the nominee is his spouse or child; or
- (b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) Notwithstanding any written law to the contrary, a payment under subparagraph (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.

(3) The policy owner may, by the policy, or by a notice in writing to the licensed insurer, appoint any person other than himself to be trustee of the policy moneys and where there is no trustee appointed—

- (a) the nominee who is competent to contract; or
- (b) where the nominee is incompetent to contract, the parent of the incompetent nominee other than the policy owner and where there is no surviving parent, the Public Trustee or a trust company nominated by the policy owner,

shall be the trustee of the policy moneys and the receipt of a trustee shall be a discharge to the insurer for all liability in respect of the policy moneys paid to the trustee.

(4) If there is more than one nominee who is competent to contract, the nominees shall be joint trustees and the consent for the purposes of this paragraph shall be given by all such trustees.

(5) A policy owner shall not deal with a policy to which subparagraph (1) applies by revoking a nomination or adding a nominee other than his spouse, child or parent under the policy, by varying or surrendering the policy, or by assigning or pledging the policy as security, without the written consent of the trustee.

(6) If it is proved that the policy was effected and the premiums paid with intent to defraud a creditor of the policy owner, the creditor shall be entitled to receive from the policy moneys payable under the policy a sum equal to the premiums paid under that policy.

6. (1) A nominee, other than a nominee under subparagraph 5(1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased

Trust of policy moneys

Nominee other than
nominee under
subparagraph 5(1)

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policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid.

(2) The nominee referred to in subparagraph (1) shall distribute the policy moneys in due course of administration of the estate of the deceased policy owner in accordance with the will of that policy owner or the law relating to the distribution of the estate of deceased persons as applicable to that policy owner.

(3) Notwithstanding subparagraph (1), a nominee to whom policy moneys have been assigned under subsubparagraph 2(4)(a) shall receive the policy moneys solely as a beneficiary and not as an executor.

7. (1) Notwithstanding a nomination under paragraph 2 or the creation of a trust under subparagraph 5(1), where the policy moneys, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and subject to the rights under the security or the assignment being preserved, the licensed insurer shall pay the balance of the policy moneys to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which written notification of the security or the assignment was given to the licensed insurer, both security and assignment being treated as one class for this purpose.

8. (1) Where a policy owner dies without having made a nomination, subject to paragraph 7, the licensed insurer shall pay the policy moneys of the deceased policy owner to the lawful executor or administrator of his estate.

(2) Where the licensed insurer is satisfied that there is no lawful executor or administrator of the estate of the deceased policy owner at the time of payment of policy moneys, the insurer may pay the policy moneys to the deceased policy owner's spouse, child or parent in accordance with section 6 of the Distribution Act 1958 [Act 300] and where there is no spouse, child or parent and—

(a) where the policy moneys do not exceed one hundred thousand ringgit or such greater amount as may be prescribed by the Bank, the insurer may pay all such policy moneys without requiring a grant of probate or letters of administration or distribution order to a person who satisfies the insurer that he is entitled to the property of the deceased policy owner under his will or under the law relating to the disposition of property or that he is named as an executor in the will or has the consent of all the lawful beneficiaries to be the administrator of the estate of the deceased policy owner; or

(b) where the policy moneys exceed one hundred thousand ringgit, or such greater amount as may be prescribed by the Bank, the insurer may pay to the person referred to in subsubparagraph (a) the amount referred to in that subsubparagraph and pay the balance of the policy moneys to the lawful executor or administrator of the estate of the deceased policy owner.

(3) In this paragraph, a reference to policy moneys is a reference to the aggregate amount of policy moneys in respect of all policies of

Assigned or pledged
policy moneys

Payment of policy
moneys where there is no
nomination

Act 300.

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Payment to person
incompetent to contract
Act 50.

Distribution of policy
moneys in due course of
administration

Licensed insurer not

the policy owner with that licensed insurer where the policy owner has not made any nomination.

Act 97.

(4) The grant of probate or letters of administration or distribution order in respect of a personal estate comprising policy moneys, by a court in Malaysia or a competent authority outside Malaysia, or its court certified copy shall be sufficient proof to the licensed insurer to pay the policy moneys to the person named therein as the lawful executor or administrator provided that the same has been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [Act 97].

(5) Policy moneys paid under this paragraph shall be deemed to have been duly paid and the licensed insurer shall be discharged from liability in respect of the policy moneys so paid notwithstanding the absence or invalidity of, or any defect in the grant of probate or letters of administration or distribution order or any other document having the same effect.

(6) A person to whom a payment is made under this paragraph shall give a receipt which shall be deemed to be a valid receipt.

9. Where a person has not attained the age of eighteen years, or who is certified by a medical practitioner fully registered under the Medical Act 1971 [Act 50] to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the licensed insurer—

(a) in the case of a nominee under subparagraph 5(1), shall pay the policy moneys to the trustee appointed under subparagraph 5(3), or where no such trustee has been appointed, to the parent of the incompetent nominee, and where there is no surviving parent of the incompetent nominee—

(i) if the policy moneys do not exceed fifty thousand ringgit, may pay the policy moneys to a person who satisfies the insurer that he will apply the policy moneys for the maintenance and benefit of the nominee under subparagraph 5(1), as the case may be, or a person to whom policy moneys are payable under subparagraph 8(2), subject to the execution of an undertaking by that person that the policy moneys will be applied solely for the maintenance and benefit of the nominee; and

(ii) if the policy moneys exceed fifty thousand ringgit, shall pay the policy moneys to the Public Trustee or a trust company nominated by the policy owner; or

(b) in the case of a person to whom policy moneys are payable under subparagraph 8(2), pay to the Public Trustee or a trust company nominated by the policy owner.

10. A person to whom policy moneys may be paid under subparagraphs 8(2)(a) and (b) shall receive the policy moneys as an executor and not solely as a beneficiary and shall distribute the policy moneys in due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

11. A licensed insurer shall not in any circumstances be bound or

LIFE INSURANCE & EP

bound to see application of policy moneys concerned to ensure the application of any policy moneys which it has paid in respect of any person under this Schedule.

Interest on claim amount

12. (1) Where a claim or a part of a claim made under a life policy, or under a personal accident policy upon the death of the policy owner is not paid by the licensed insurer within sixty days of notification of the claim, the insurer shall pay a minimum compound interest at the average fixed deposit rate applicable for the period of twelve months for licensed banks as published by the Bank plus one per cent or such other rate as may be specified by the Bank, on the amount of policy moneys upon expiry of the sixty days until the date of payment.

(2) Where the balance of policy moneys are to be paid by a licensed insurer to the lawful executor or administrator of the estate of the deceased policy owner under subparagraph 8(2)(b), interest payable under subparagraph (1) shall only apply to the balance of policy moneys upon expiry of sixty days from the time that the lawful executor or administrator produces the grant of probate or letters of administration or distribution order until the date of payment.

Schedule to prevail over policy and any other written law

13. (1) This Schedule shall have effect in relation to a policy which is in force on or after the appointed date, and in relation to a nomination made before, on or after the appointed date, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Schedule.

(2) This Schedule shall have full force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution, or disposition, of the estates of deceased persons, or in any practice or custom in relation to these matters.

EP FOR BUSINESS OWNERS

14 My Money
BizWeek

Managing wealth through generations

At end-2003, there was an estimated 7.7 million high net worth individuals (HNWI) in the world. Compared to the previous year, the number has risen 7.5%. This is based on a World Wealth Report published in June this year by Capgemini and Merrill Lynch. (HNWIs are people with financial assets of at least US\$1mil, excluding home real estate.)

The survey revealed that the total global wealth of these HNWIs climbed 7.7% to US\$28.8 trillion. This rising worldwide trend is expected to continue with the World Wealth Report predicting HNWI financial wealth to grow by 7% per annum, to exceed US\$40 trillion by 2008.

Interestingly, the survey revealed that for many wealthy investors, wealth management has become multigenerational. Many families are creating "100-year plans," in which family members are treated as business divisions and emphasis is put on corporate-inspired guidelines such as family mission statements, governance structures and guidelines for communication.

Combating the Third Generation Curse

and planning asset allocations. They also offer privacy and are a good way to diversify investment portfolios.

Trusts are often compared to wills and for a good reason as they are similar. So what are the differences?

A will comes into play after one's passing but a trust set up during one's lifetime can actually start benefiting you while you are still alive. For example, trust can be made revocable or irrevocable. If it is revocable, you can ter-

financial affairs in the trust and to look after you financially."

Naturally, the cost in funding and managing a trust is substantially higher but there is a growing preference for trusts among modern families. Trusts generally do not have to be registered, and the contents of the trust deed are confidential document. Therefore, the distribution process is often private.

A trust can be fixed or discretionary. In a fixed trust, the shares and timing of distribution to the beneficiaries are clearly set out in the trust deed by the settlor. Hence, although the trustees have the power to administer and manage the trust, they cannot decide the proportion in which the assets are to be distributed among the beneficiaries.

Under a discretionary trust, the emphasis is on flexibility, and the trustee will generally have complete discretion as to when, how much and to whom (from within the beneficiary group) the trust assets are distributed. The beneficiaries under a trust may be defined either by name or



ESTATE PLANNING

EP FOR BUSINESS OWNERS

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Continuity for the single business owner

A single business owner often plays multiple roles in the business, ranging from daily operations to managing issues and challenges. In other words, the continuity of the business hinges on the life of the owner. This article discusses the available options to ensure business continuity and growth

The Key Man

BEING the sole active business owner, you are "key" to the company's sustainability.

In the event of an unfortunate circumstance, sales and profits may drop; creditors may call on debts to be repaid instantly and your personal assets may be at risk to cover your standing as a guarantee for the company loan. Then the so-called key man insurance comes in play as it provides a form of assurance against financial loss when the company loses the owner due to death, disability or illness.

In the unfortunate event of death or disability, the proceeds from the insurance policy will help pay business taxes and debts so that the family is left with more financially burdened and the business can continue to operate if so desired.

With this form of insurance, the company owns the policy and is the beneficiary. For example, the UOB TermREFUND Director's Package encourages the business owner to set aside 2% to 3% of the company's profit to create a fund to pay for expenses and debts, and replace the loss of profits when necessary. TermREFUND also offers full refund of the total premium paid at maturity.

As long as premium expenses are not tax allowable, the proceeds and premium refunds from such policies are also not subject to income tax.

In the event of accidental total permanent disability (ADTPD), TermREFUND pays an additional 200% of the sum assured with a maximum benefit of RM3mil and covers up to age 65. TermREFUND also covers up to the age of 60. The maximum benefit payable for natural TPD is RM1.5mil per life and it covers up to age 60.

In the event of accidental death, the maximum benefit is set at RM2mil in addition to 100% sum assured and covers up to age 65. For natural death, TermREFUND pays 100% of the sum assured.

For death, there is also a further 10% of the sum assured as a bereavement benefit, subject to a maximum of RM10,000.

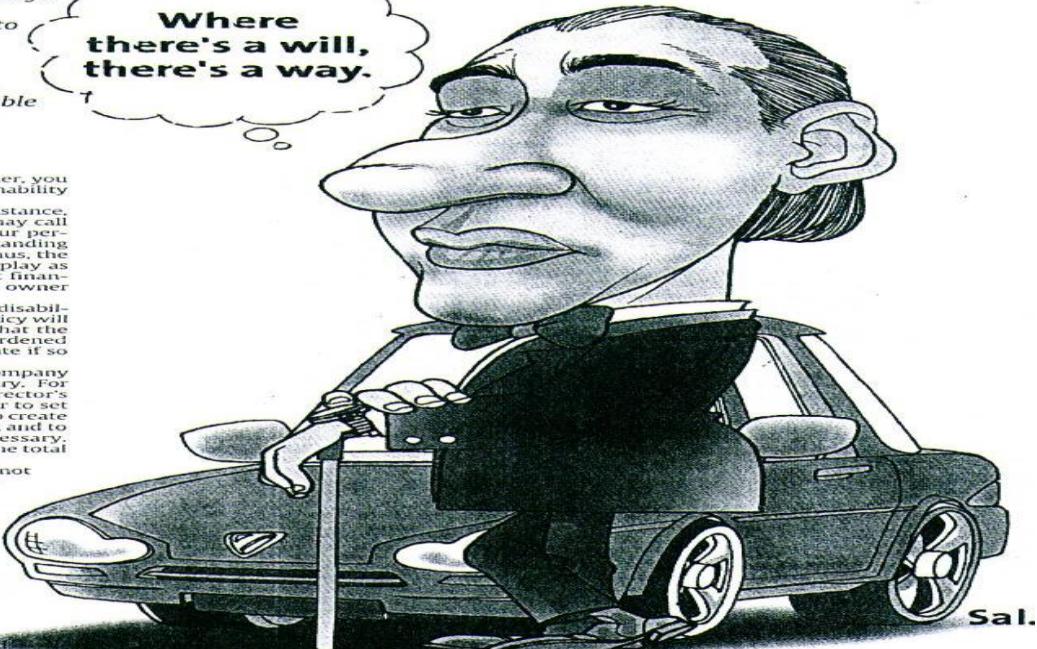
Where there's a Will, there's a Way

A will is crucial in granting the heirs of the single business owner the right to continue the business.

A will, quite simply, is a declaration of how one's assets will be distributed when one dies, who the beneficiaries are, what they may receive and when they may receive it. Beneficiaries may even include unborn children. Anyone aged 18 years (in Peninsular Malaysia and Sarawak) or 21 years (in Sabah) can make a will.

There is a general misconception that making a will is an extremely time-consuming and complicated process. In reality, wills are affordable and easy to make. The business owner may choose to assign the task to an attorney, trust company or a financial planner.

Where
there's a will,
there's a way.



Sal.

Says UOB Trustee CEO Ong Sau Yin: "Normally, in the process of getting a will written, the business owner is forced to think about the fate of their business which may not be around to run the business if she/he isn't. Sometimes, it's a good idea to involve an estate planner as they are able to advise you during this planning process."

A person named in a will to carry out the instructions in the will is called an executor. Your executor (either an individual or a trust corporation) should be trustworthy with company expenses, good judgment and the fair use of a referee. Among the duties of the executor which commences after the death of the testator (the person who made the will) are taking an inventory of estate assets, applying for the Grant or Representation, paying off debts and estate's taxes and distributing money and properties following the instructions in the deceased's will.

Business Continuity

As Ralph Waldo Emerson once said: "So much of a man is preoccupation seeking its routine, and so much respect that the path of each man's genius contracts itself to a very few hours." Hence, to ensure a lifetime of heritage that may be shared with generations to come, there is a need for the single business owner to take a step back to plan for contingencies.

This is the second of a three-article consumer education campaign series from United Overseas Bank (Malaysia) Bhd to educate readers on corporate financial services. For further information, readers are encouraged to call UOB 1300-800-0260/80-021-2688821 (JB) or 04-2401 121 (Penang). Readers are also encouraged to check out www.uob.com.my for further details.

EP FOR BUSINESS OWNERS

Business organizations can be broadly divided into 3 categories:

- Sole Proprietorships
- Partnerships
- Companies: Limited by shares
 - Private Ltd (Sdn Bhd)
 - Public Ltd (Bhd)
- other business owners not classified as Professionals by law must register with Registrar of Businesses under CCM
- regulated by the Registration of Business Act 1956 and the Registration of Business Rules 1957

EP FOR BUSINESS OWNERS

SOLE PROPRIETOR

- Assets and Liabilities are that of the individual himself
- No distinction in law assets held in the name of business or in personal name of sole-proprietor = “unlimited personal liability”
- upon his death assets and liabilities of business are that of his personal estate
- a sole proprietor can make provisions in his Will as to the manner he wants to deal with his business or its assets and liabilities

EP FOR BUSINESS OWNERS

SOLE PROPRIETOR

common possibilities for the Heirs:-

- 1) Executor or Administrator liquidates the business and distributes the net proceeds
- 2) family members carry on the business immediately
- 3) business passes through the probate process
- 4) Executor or Administrator carries on the business until it can be sold to an interested third-party
- 5) business is sold at a prearranged price to a buyer through a buy-sell agreement ("BSA")

EP FOR BUSINESS OWNERS

PARTNERSHIPS

- may consist of professional practices or registered businesses - same principles apply like SP
- partnerships in Malaysia are also regulated by the Partnership Act 1961 and some provisions contained therein are very important
- partnership a business entity but the assets, liabilities, and legal responsibilities are effectively that of the individual partners
- partnership is “not a separate legal entity” compared to a company

EP FOR BUSINESS OWNERS

PARTNERSHIPS

- many partnerships operate without written agreement
- profits and assets of a partnership are deemed to be that of individual partners in proportion that is agreed among them
- liabilities of partnership are no reflection of the profit sharing arrangement between the partners - “jointly and severally liable”
- any one partner may be liable to the full debt and if he were to pass away, his estate will be liable for it

EP FOR BUSINESS OWNERS

PARTNERSHIPS

- Estate Planners need to be aware of the consequences of death to a partner
- Partnership Act S.35(1) states "*subject to any agreement among the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner*"
- If no agreement among the partners for the business to carry on, death of a partner cause partnership be dissolved
- S.41 of the Act - "Rights of Partners as to Application of Partnership Property"

EP FOR BUSINESS OWNERS

PARTNERSHIPS

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interest as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm - S.41 of the Partnership Act

EP FOR BUSINESS OWNERS

PARTNERSHIPS

- Upon death of a partner, surviving partners do the necessary to wind-up the business - all debts be paid, outstanding payments to partnership be collected and all assets converted into cash
- forced sale - lower valuation of assets and net proceeds are apportioned to various partners' interest
- Surviving partners cannot obtain loans on credit or assets of the business
- transactions or contracts initiated before the death of partner must be completed
- New contracts may only be entered into on the personal liability of surviving partners
- Profits be divided with the deceased partner's estate but Losses borne by surviving partners

EP FOR BUSINESS OWNERS

PARTNERSHIPS

- professional bodies have to be notified and the appropriate arrangements completed to effect the change of ownership
- most effective way to avoid disputes and make arrangements for smooth process of “business continuation” upon the death of a partner is to ensure that partners enter into an agreement to make the necessary and appropriate arrangements

If it is the desire of all partners, that upon death to any one of them, the remaining partner(s) should be allowed to carry on the business, then a “BSA” is recommended among the partners

EP FOR BUSINESS OWNERS

Business succession planning goes beyond just writing a will to make your wishes come true. There is a popular old saying that professes “businesses and wealth will not survive more than three generations”.

Most of the time it is due to personal conflicts and no proper comprehensive financial and estate planning.

Read more at <http://www.thestar.com.my/news/community/2013/11/27>

EP FOR BUSINESS OWNERS

New Companies Act to reduce cost of doing business

KUALA LUMPUR: The new [Companies Act 2016](#) and [Companies Regulations 2017](#), which came into effect in January, aim to reduce the cost of doing business, especially for small and medium-sized enterprises.

“Basically there are a lot of business-friendly policies that have been newly introduced. One of the major changes is a ‘single member and single director company’ as compared to previous requirements of two directors and members.

“It is actually to accord them with better protection if they are operating as a sole proprietor, or in a partnership because the liability will now be on the company and not on the individual.

“Other than that, there are de-regulatory measures that we have introduced such as private companies no longer being required to hold annual general meetings, which is actually a cost-saving concept that we have introduced.

“Basically, our aim is to lower the cost for private companies to do business, especially the smaller businesses,” said Companies Commission of Malaysia acting director of regulatory and legal services division Norhaiza Jemon at a conference themed “The Companies Act 2016 and Regulations – Impact and Significance” here yesterday.

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EP FOR BUSINESS OWNERS

Companies will no longer be required to state its

Power of Members to Require Circulation of State

Reforming the policies relating to **share buyback** and **financial assistance** via introduction of solvency test provided that a special resolution is passed by its shareholders

simplify laws & procedures for companies, promoters may incorporate companies

Introduction of Sin after incorporation

Members' Right For Management Review

Removing the mandatory requirement for private companies to hold Annual General Meeting

THE COMPANIES ACT 2016

Introduction of Business Review Report

Introducing alternative procedures for the **reduction of capital** through solvency statements

ividends be distributed out of profits and is only allowed if it meets solvency test

migration towards No Par Value Regime

abolishing the maximum age for directorship

Statutory Declaration by Promoters/ Directors to be replaced with statement of compliance

EP FOR BUSINESS OWNERS

COMPANY

- owners of company = shareholders
- For EP, the consequences of death to a shareholder and its implications to other shareholders of the company is paramount

Upon death of a shareholder his shares in the company is part of his estate and to estate administration process

Articles of Association of company (AA) dictates 3 main principles:

- (i) Only PR of deceased shareholder recognized as having the right to deal with the shares - Probate or LA has to be obtained by PR before he is permitted to deal with the shares

EP FOR BUSINESS OWNERS

COMPANY

AA dictates 3 main principles:....

- ii) Beneficiaries may request the same be transferred to themselves or may nominate others to receive their shares
In either case, Directors have the right to decline or suspend the registration of shares to anyone accordingly
- (iii) Beneficiaries are also entitled to dividends, other advantages and same rights as the deceased shareholder would have been entitled to if he is alive

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EP FOR BUSINESS OWNERS

- Beneficiaries e.g. spouse and immediate family have no adequate knowledge of the business and may not want to retain the shares
- they prefer to dispose off the shares for cash, especially if it is minority shares of a private limited company with very little financial benefits
- surviving shareholders would purchase the shares of the deceased shareholder from Beneficiaries - not wise to allow shares to be sold to "outsiders" who are unknown or not familiar to them
- Beneficiaries' desire to sell the shares at a favorable price is not a matter that can be easily negotiated and resolved

EP FOR BUSINESS OWNERS

- ❖ BSA - the most efficient ways for businesses to be continued upon the death of a business owners - particularly for partnerships and private limited companies
- ❖ recommended provided the partners and shareholders:
 - do not want their family members to be involved in the business but instead
 - wish to give them a reasonable or fair compensation for their interest or share in the business
- ❖ primary objective must be established among the business owners before BSA is recommended

EP FOR BUSINESS OWNERS

Main features of BSA using Life Insurance as funding mechanism:

- (1) surviving partners/shareholders must buy and the Estate must sell
- (2) price is specified or determined by mutual consent of the partners at the time of signing the BSA - allow revision of price
- (3) partners are to purchase and maintain life insurance in agreed amount to finance the purchase of the deceased partner's interest
- (4) any increase in excess of the insurance proceeds must be stated
- (5) surviving partners assume all debts and release Estate from further obligations

EP FOR BUSINESS OWNERS

Main features of BSA using Life Insurance as funding mechanism:

- (6) event of permanent disability of a partner must also be provided
- (7) purchase of additional life insurance, should the need arise
- (8) if the partnership is terminated in circumstances other than death
- (9) ownership and control of policies and manner in which policies disposed off
- (10) provide for appointment of Trustees acceptable by all partners

EP FOR BUSINESS OWNERS

KEY PERSONS

- many private limited companies between 2 to 5 shareholders who are also directors of the companies - “closely held” business with dominant personalities responsible for success of company
- MD or ED, someone with special skills or knowledge, “special goodwill” influence brings business to company = labelled as “Key-person”
 - compensate the organization for loss of Key-person due to death or permanent disability
 - insurance moneys other advantages:
 - (a) business reserve or contingency fund
 - (b) indemnifies losses that may occur from business transactions

EP FOR BUSINESS OWNERS

- BSA - premiums for insurance paid by individual partners or shareholders
- If partnership or company's funds are used - such moneys are treated as 'benefit-in-kind' to individual partner or shareholder
- **company is not policy owner or even if it is - cannot claim premiums as a "deductible business expense"**
 - proceeds upon death - tax free
 - for Key-person - uncertainty tax treatment resolved by Inland Revenue Board's Public Ruling No 2/2003 @ 30/12/2003
 - premiums for term/personal accident policies (i.e. policies without cash values), on life of employees who are not shareholders - allowable as expenses

ESTATE PLANNING

CONCLUSIONS

NEW SUNDAY TIMES JUNE 5, 2005

IT has been a gloomy and miserable week. Early in the week, R.V. Veera, a colleague at the *New Straits Times*, asked if he could work for another year.

I told him he was. He was 67, and the company seldom re-hires people beyond the age of 60.

But Veera was one of the nicest and most straightforward journalists I know. I jokingly told him he should retire, play with his grandchildren...

But all he said was "one more year..."

The next day, he left the office for dinner with his daughter in Brickfields where he collapsed and died. I did not know he had cancer.

At 4am, I awoke — one of those rare days — to look at the final copy of the day's newspaper straight from the press. For a moment I thought it was a bad dream. On the obituaries page, I saw a picture of Veera and an announcement of his last rites.

The next day, I could call to verify it but by early morning, I knew.

Just before I left home that morning, my wife called from Melbourne where she is visiting my daughter. She was crying.

Her close friend, Jimi Rizal, 39, had just passed away due to a sudden illness. Three years ago, Jimi's wife died of cancer. Today, their seven-year-old child was born.

Jimi had called a week earlier, asking her for a *teh tarik*. But she was leaving for Australia and promised that they would meet up after she returned. She cannot get over not having seen him one last time.

The next day, a close friend called and in a shaken voice, informed me that our good friend, Gan, had just lost his 12-year-old son weeks after what we all thought had been a successful bone marrow transplant.

At the funeral parlour in Petaling Jaya, when Gan recounted the last moments of his beloved eldest son who fought so hard to live, there was hardly a dry eye.

Such is life. So fragile.

We rarely know exactly what to say to the closest ones of those who depart so suddenly. I scoured books and surfed the Internet trying to find out what people say in such occasions.

But there never seems to be the right thing to say because only time heals grief. I came across a letter on the Internet written by a young man who had lost someone he loved. She wrote:

Dear God,

Instead of letting people die and having to make new ones, why don't You just keep the ones You have now?

We all know that life is unpredictable, the inevitability of life. We have all gone through such personal tragedies in our own lives.

And surprisingly, someone always raises the question: "Why did I not do more? I could have made life happier (for the departed ones)."

We all do.

In an anonymous Internet posting titled *If tomorrow Never Comes*, a tormented writer writes:

If I knew it would be the last time that I'd see you fall asleep, I would tuck you in more tightly and pray to God, your soul to keep you safe.

If I knew it would be the last time that I see you walk out the door, I would give you a hug and kiss and call you back for one more kiss.

If I knew it would be the last time I'd hear your voice lifted up in praise. I would videotape each action and word, so I could play them back day after day.

If I knew it would be the last time, I

Don't leave the loving till tomorrow...

THE SUNDAY COLUMN

BY KALIMULLAH HASSAN

could spare an extra minute or two to stop and say "I love you", instead of assuming you would know.

If I knew it would be the last time I would be there to share your day, I would never think, "Well I'm sure you'll have many more, so I can let just this one slip away."

For surely there's always tomorrow to make up for an oversight, and we always give a second chance to make everything right.

There will always be another day to say our last words. And certainly there's another chance to say on "Any thing I can do?"

But just in case I might be wrong, and today is the day, I like to say how much I love you and I hope we never forget that tomorrow is not promised to anyone, young or old alike, and today may be the last chance we get to hold our loved one tight.

Why wait for tomorrow when you can do it now?

For if tomorrow never comes, you'll take that extra time for a smile, hug, or kiss. You never know to whom someone, what turned out to be their one last wish.

So hold your loved ones close today, whispering in their ear. Tell them how much you love them and that you'll always hold them dear. Take time to say "I'm sorry" or "Please forgive me".

"I'm sorry" or "Please forgive me" tomorrow never comes, you'll have no regrets about today.

A wise old man, and as we learn to accept that we will not live forever, we try to make the best of what we have.

But we keep learning new things and keep changing. There are many teachings who teach us that there are so many different perspectives to life.

A close friend of mine, very generous and compassionate human being, always says "It is more blessed to give".

He lives by what he preaches, trying to help others whenever he can.

But I never realised the depth of what he meant until he emailed me a story which he always cherished. It is about a young man who bought a car given to his friend by his brother.

It is probably fictional but it tells us that we can always help make people happy and make ourselves happy. The story goes thus:

A friend of mine named Paul received a call from his brother, a priest. One evening when Paul came out of his office, a street urchin was walking around the shiny new car, admiring it.

"Is this your car, Mister?" he asked. Paul nodded. "My brother gave it to me as a present."

The boy was astounded. "You mean your brother gave it to you and it didn't cost you nothing? Boy, I wish..." he hesitated.

Of course, Paul thought he knew what he was going to wish for. He was going to wish he had a brother like that.

"I wish I had a brother like you," said the boy, running all the way down to his heels. "I wish," the boy went on, "that I could be a brother like that."

Paul looked at the boy in astonishment. Then impulsively he added, "Would you like a ride in my car?"

"Yes, I'd love that!"

After a short ride, the boy turned and with his eyes aglow, said, "Mister, would you mind driving in front of my house?"

Paul smiled a little. He thought he knew what the lad wanted. He wanted to show his neighbours that he could ride around in a big car. But Paul was wrong again.

"Will you stop when those two steps are up?" the boy asked. He ran up the steps. Then in a little while he came back, but he was not coming fast.

He was carrying his little crippled brother, a sickly child, up the bottom step, then sort of squeezed up against him and pointed to the car.

There she is, Betty, just like I told you," said Paul. His brother climbed in beside him and the three of them began a膜orable ride.

That evening, Paul learned what it means when people say "It is more blessed to give".

The lesson in all these is that we should not wait for tomorrow to do what we can today. There is never a "more right" time than the present to do the simple things that can help to make our lives and that of others happier.

Giving is a virtue that we could all easily learn to do.

It is not easy to be magnanimous all the time. Somehow, it has become the natural tendency for people, especially in the cities, to be selfish, self-centred, hurtful and malicious.

Altruism, philanthropy and humanity are getting to be rarer commodities in our world.

That is why the good people like Veera and Jimi Rizal and Gan's young boy will always be remembered with fondness.

■ kmh@NSTP.COM.MY

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Opinion 17

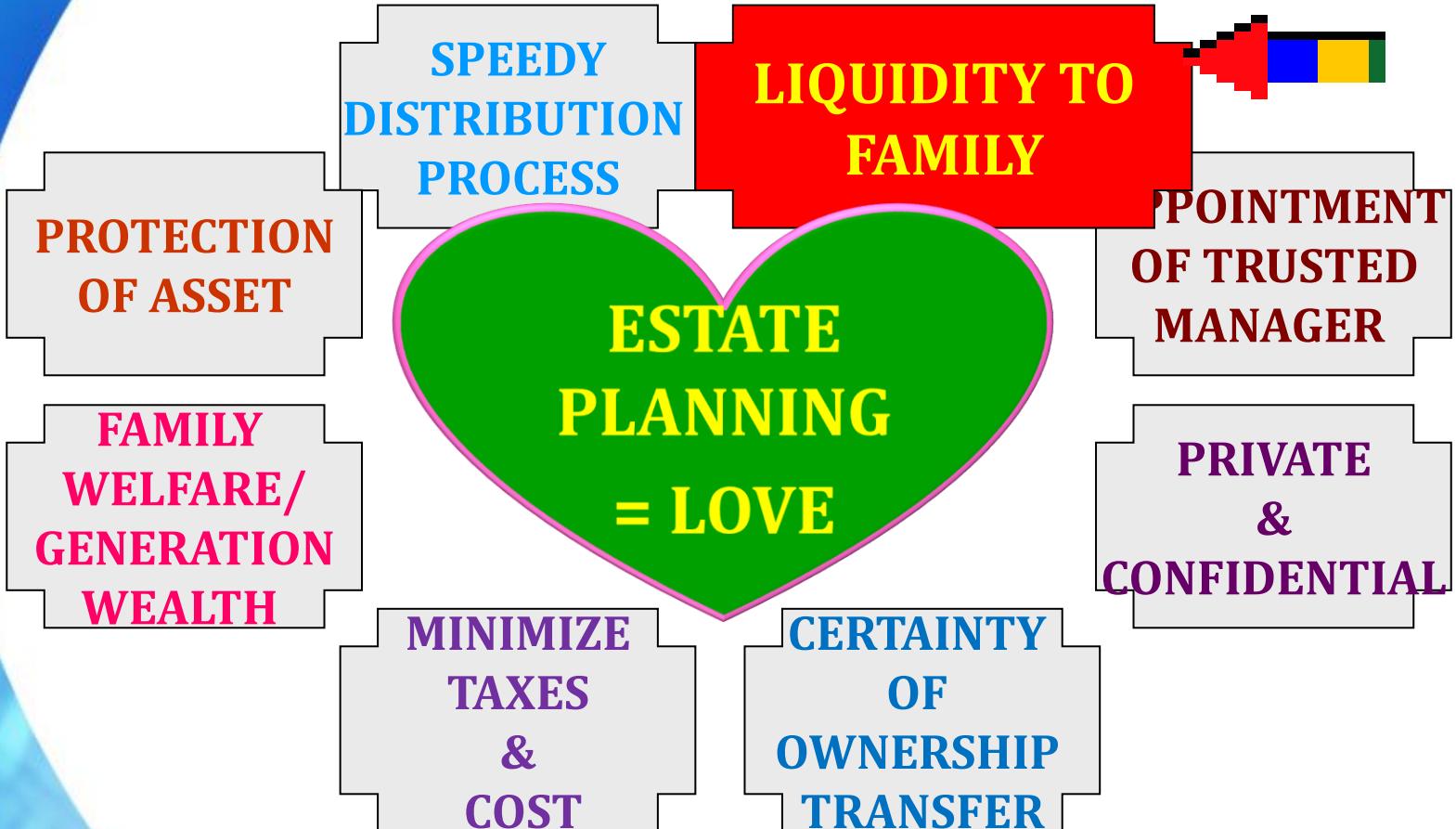


CONCLUSIONS

- ❖ lifelong process
- ❖ financial, emotional and logistic issues
- ❖ positive experience - involves reviewing your future
- ❖ advance planning to show your love
- ❖ provide continuity for single business owner
- ❖ help in wealth management through generations
- ❖ complex structures to meet different needs within legal boundaries : to be advised by qualified and experienced Estate Planner

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CONCLUSIONS



Proper planning ensures accumulated wealth will be managed and distributed according to wishes with minimum hassles!

CONCLUSIONS



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CONCLUSIONS

CAN ANYONE HELP?



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Will
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Trust
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Insurance
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Legal
Adviser



Let RFP help
YOU...

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Questions



ESTATE PLANNING

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