

For Review only

LIM FUNG PEEN

WHERE THERE'S A WILL ...

Marshall Cavendish Editions

The average man on the street without a legal background has little or no knowledge about what to do or how to proceed when a loved one passes away. Some people assume that things will happen automatically through some government scheme, which is a common misconception. This book explains what happens when a person passes away, either having written a Will or intestate without a Will, and sets out clearly the procedure to follow and the stages involved before assets and property can be properly dealt with, and why it is important to set up a Will and the disadvantages if you do not have one.

The book contains interesting case studies of real-life situations to illustrate the different scenarios when a person passes away with and without a Will.

The Author

Lim Fung Peen is a director of Yuen Law LLC and a veteran of the legal industry, having been in practice since 1997. He heads the firm's Family and Private Wealth team which was ranked in *The Straits Times*' "Singapore Best Law Firms 2021" in the Family as well as Inheritance and Succession Private Wealth Management categories.

- Explains the importance of writing a Will and the consequences of not having one
- Explains and sets out the process of obtaining a Grant of Probate when a person passes away having written a Will
- Explains intestacy, when a person passes away without a Will and how to apply for a Letter of Administration

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WHERE THERE'S A WILL ...

A guide to setting up
a Will and managing
a loved one's estate

LIM FUNG PEEN



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To Vanessa

We have had a wonderful life together

because He first loved us.

Thanks to Him and you.

In memory of Chyna,

Thank you for your love for 17 years,

especially through the pandemic.

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FOREWORD

For some of us, death remains a subject that we would rather avoid discussing. We may believe that there is no hurry to consider the issue and that we have plenty of time left to do so. However, the general reluctance in our society to engage with end-of-life matters can unfortunately result in us delaying the issue until it is too late.

A Will is not merely a legal document. It is an expression of our wishes, and a way for us to continue providing for the needs of our loved ones even after we are gone. It is true that even without a Will, the default rules of intestate succession will apply to distribute our estate. However, these rules are blunt and inflexible, and may not take into account the specific needs and circumstances of our chosen beneficiaries. Our care and love for our families should not stop with death, and a Will is an easy way to ensure that they continue to be looked after when we are no longer around to do so.

Where there's a Will – A guide to setting up a Will and managing a loved one's estate is an essential read for everyone, regardless of their current stage of life. It provides solid practical guidance, whether one intends to make a Will or is preparing to fulfil the

wishes of a loved one by assisting with the administration of an estate. Both perspectives are well covered in this book.

As with Fung Peen's first book, *Lasting Power of Attorney – A guide to the LPA and how to set it up*, *Where there's a Will* encourages us to consider end-of-life matters. The first book helps us to express our ideals and preferences in what may be our last years of life, while this book helps us and our loved ones to prepare for when we are gone. While the two books are natural complements to each other, they are complete pieces that may be read independently.

Once again, Fung Peen deftly cuts through the legal jargon to make potentially complex concepts understandable and accessible to everyone. He applies the same clear writing style that made his first book a pleasure to read, drawing upon practical examples from his numerous years of experience to illustrate his points. The addition of flowcharts in this book is a nice touch that helps the reader to easily visualise the concepts being discussed. As before, Fung Peen's genuine belief in his cause and his passion for helping others shines through the pages of this book; he has helped numerous people with their end-of-life matters and seen first-hand the impact of proper planning on their families.

As will be clear from this book, making a Will is neither a complex nor difficult exercise. Simply setting aside a little time to plan for the future can give us and our families considerable peace of mind. Fung Peen has once again done society a great service by making these important issues accessible to everyone.

Vincent Ooi

Lecturer of Law, Singapore Management University

PREFACE

In my other book, *Lasting Power of Attorney – A guide to the LPA and how to set it up*, I share the whys, whats and hows of setting up an LPA. This book is meant to be a companion volume as a Will and LPA should both be done, like having a pair of chopsticks or ear-phones! Having one just would not be complete or work as well.

For the last few years, when giving talks and webinars, I coined the phrase "A Will is a great way to love your family". This turn of phrase was inspired by my late father who had done his Will. He was taken from us too early, when I had just completed my stint in national service. I see my father's foresight in preparing his Will as an act of love that provided my family with some respite in our grief in settling his modest estate with minimal fuss and expense.

This book is written for you if you wish to consider finishing the journey of life well, so that there will be minimal fuss and complications for your family, friends and loved ones. Even though you are entitled to draft your own Will or do one online and there is no legal requirement to appoint a lawyer to do so, I would urge you to consult one no matter how simple you think

your Will would be. Ultimately, your Will is a legal document and it is prudent to seek legal advice before finalising it.

Before I embarked on this book, my editor shared her observation with me:

The average man on the street without a legal background appears to have very little or no knowledge about what to do or how to proceed when a loved one passes away. For example, most people would know whether their recently deceased parents have written a Will, but beyond that as to what action they should take on the passing of their parents, not many people seem to know how to proceed or the stages involved before assets and property can be properly dealt with. A focus on that track would be practical and useful, as opposed to information on how to draft a Will, which has been covered many times in various books.

Her observation rings with much truth and I could not have agreed more after being in legal practice for more than 25 years. During the COVID-19 global pandemic, the demand for drafting of Wills surged as a major concern for many people rose to the forefront – How do I ensure my children and elderly parents are taken care of if I am no longer around?

In such times, it is my hope that we will all learn from each other and be more aware, so that we are able to make better decisions about such matters.

I also observe that many expatriates who work here often have a much greater awareness of such matters and they do not assume that things would automatically be settled for them through some government scheme. Unfortunately, I have often heard Singaporeans with this rejoinder when asked if they have prepared their Will: “No need, lah, the Government will distribute my assets for me, right?”

It may be that expatriates often face tax issues in their home countries (for example, capital gains tax and inheritance tax) and this makes them more alert as to how they should manage their assets whilst they are alive and equally after they die, as they do not want to burden their estate or beneficiaries with tax payments. Though we may not have capital gains tax and inheritance tax in Singapore, we do have taxes known as Seller's Stamp Duty, Buyer's Stamp Duty and Additional Buyer's Stamp Duty that could be imposed on your beneficiaries without proper planning in the distribution of shares in your apartment or house. Having had the opportunity to practice in conveyancing and real estate law in Singapore, I have witnessed how some families ended up paying more in tax unwittingly because they did not consider this aspect and how their beneficiaries might end up paying such taxes.

My hope is that this book will not only benefit readers in Singapore but also those in common law countries with a tradition of making Wills, such as Malaysia, Australia, Hong Kong and beyond. If you decide to prepare your Will, I will, of course, recommend that you consult a lawyer in your own home country, or a lawyer in Singapore if you reside here.

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INTRODUCTION

I started writing this book with much enthusiasm for researching the relevant varied and wide topics as I wanted this book to be as comprehensive as possible and, hopefully, be as useful to readers as possible. As I went deeper into the writing, I realised that I had not shared the guiding principles that I usually share with my own clients before they, too, dive into the numerous details of making decisions about the requirements for their own Wills. I do not want you to miss the forest for the trees. This often happens when we plunge straight into details without a suitable framework.

Just as we should warm up before embarking on physical exercises so as to prepare our bodies for exertion and avoid injury, I will take you through some basic “warm-ups” so that we avoid the common pitfalls of considering irrelevant matters or overthinking situations that we might foresee.

It best to start you off with some helpful considerations. So, let's warm up!

Don't Overthink

If you have not completed your Will after a few months of starting on it, you might be overthinking.

By all means, you should think through your requirements carefully, but I would caution against overthinking. We are all prone to overthink matters sometimes due to our fear of missing out something important, wanting to be in full control of a situation or wanting to effect certain outcomes, even though we know that we cannot control the future and we cannot possibly provide for every scenario. In some extreme cases, overthinking will prevent a person from making decisions, due to a failure to accept the fact that a Will can never cover every possible situation, that one can always think of more issues to consider, and our life circumstances will continue to change. One indication of overthinking is not finalising and signing your Will after a few months of starting on it.

Simplicity is the ultimate sophistication.

– **Leonardo Da Vinci**

A healthier way to approach the making of a Will is to start with the basics in terms of distribution. Some common and basic distribution plans in Wills are as follows:

1. For a single person, distributing all of your assets to your immediate family or friends or charities in equal shares, and appointing one of the adult beneficiaries to be the sole executor.
2. If you are married without children, giving a share of all your assets to your spouse and your parent(s) or

charities, and appointing one of the adult beneficiaries to be the sole executor.

3. If you are married with children under 21, giving all of your assets to your spouse and if your spouse predeceases you, giving all of your assets to your child (or children equally). Both spouses should each do their Wills – this is commonly called mirror Wills. Here, you may consider appointing your spouse to be the executor and another adult, should your spouse predecease you, as a replacement executor.

Update, Update, Update

We are constantly encouraged to upgrade, re-train and stay relevant in order to stay employable or in business. This has become more pertinent following the COVID-19 pandemic. If you have a smart phone, you would be familiar with updating the operating system of your phone from time to time to ensure that it works optimally. It is the same situation with your Will, which should be updated from time to time as your life circumstances change, for example, the person you chose as an executor may no longer wish to be appointed for good reasons, the needs of your beneficiaries might have changed or your assets might have changed, too.

You should avoid the notion that your first Will is to be the only one you will ever have and it should last your entire lifetime. It would be most unfortunate if you have a Will which does not work well for your beneficiaries because it was not updated. It is not uncommon to encounter situations where, for example, an executor does not want to carry out his or her duties because

of personal or health reasons, or the assets referred to in a Will no longer exists. This leaves the family or beneficiaries with challenges to overcome that often requires considerable time and legal fees to resolve.

Tips

Good occasions to update your Will:

1. When your children are grown up and their needs have changed.
2. When the executor of your Will is getting old, in declining health or facing changes in personal circumstances.

Get Organised

It is common for people to do their Wills without providing a list of assets to accompany the legal document. In the days of snail mail, this would not present much of a problem as financial institutions (banks, insurance companies, stock broking firms, etc), government statutory boards (HDB, CPF and IRAS) as well as major service providers (telcos, utilities companies, town councils, etc) all provided annual hard copy statements of accounts. However, we have been transitioning to receive such statements of accounts via email. Now, if your family members have no access to your email user ID and password, they will have no means of discovering what your assets are in order to collect and distribute them or how to settle your liabilities. This is a real challenge for many families when they find themselves unable to ascertain such important information.

List of assets

List all your assets by identifying them with the account number or address: bank account number, insurance policy number or full

address of a property. It may be very useful to have the contact details of a person or organisation that can help with specific assets, for example, a bank representative, financial advisor, real estate agent, etc, so that your executor can seek their assistance if necessary. There is no need to list the value of the asset, as that is likely to change over time. The most crucial point is for your executor to be able to ascertain all of your assets and be able to settle your debts, too.

Prepare a list of your assets and attach it to your Will.

If your executor is unable to ascertain all of your assets, they would have to engage the services of a lawyer to make formal inquiries on their behalf and this would add to the time and expense in processing the application for the court order known as the Grant of Probate.

Inform your executor

It may seem obvious that one should inform his or her intended executor that a Will is being drawn up but there are cases where an executor is not aware of having been appointed as one. Such situations can arise as the executor does not have to sign the Will and may not be present when one is made as there is no legal requirement for the executor to be present when a Will is signed. Only the maker of a Will (the testator/testatrix) and the witnesses need to sign the Will to fulfill the requirements under the Wills Act (WA).¹ This author has encountered cases where a named executor refused to carry out the role and renounced it in court, leaving the estate to find a replacement executor.

¹ Wills Act (Cap 352, 1996 Rev Ed).

Inform your executor where to locate your Will.

It is not only important for an executor to know that he or she is being appointed, but it is also imperative that the executor knows where to locate the Will, as well as how to determine the existence of the assets and liabilities of the estate. It would help the executor if the testator makes a list of assets and attaches it to the Will.

Funeral arrangements

Some individuals prefer to include instructions for their funeral arrangements in their Will. However, the usual practice is to open a Will only after the funeral and it would then be too late to read the instructions.

It should be noted that a Will is essentially a document to distribute one's assets and if you want to include such instructions and wishes in your Will, you should give specific instructions to your family and executor to read your Will before funeral arrangements are made.

Some may choose to attach a separate Statement of Wishes to specify their wishes for their funeral, such as cremation or burial, the type of religious rites, etc.

Whether included in a Will or a Statement of Wishes, it is merely a wish and therefore not legally binding.

Share your funeral wishes with your family.

manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him within such time, not being less than 7 days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in any other case there shall be charged in respect of the re-registration such fees, not exceeding in the aggregate \$2, as may be prescribed by regulations made under this Schedule.

6. This Schedule shall be construed as one with the Registration of Births and Deaths Act.



ABOUT THE AUTHOR

Lim Fung Peen is a director of Yuen Law LLC and a veteran of the legal industry, having been in practice since 1997. He started out in general and commercial litigation and transitioned to focus more on family, inheritance and matrimonial work at the request of his clients. He currently heads the firm's Family and Private Wealth team and helps his clients in matters such as Mental Capacity Act deputyship, adoption, bankruptcy, property and conveyancing, divorce, employment, Wills, Lasting Power of Attorney, trusts and probate, estate planning, power of attorney, deed of family arrangements, tax, contentious family/matrimonial matters, employment/HR issues and more. His clients have included government statutory boards and well-known MNCs and SMEs, as well as expatriates and foreigners.

His team was ranked in *The Straits Times*' "Singapore Best Law Firms 2021" in the Family as well as Inheritance and Succession Private Wealth Management categories.

As a family man, Fung Peen strives to learn more about how to be a better husband and father, and this has in turn spurred him to help other families where he can. He considers it a great privilege and blessing to be able to help others by providing practical legal advice to resolve their family issues.