

Children as Stewards of Family Assets



“

*It is not what you do for your children,
but what you have taught them to do for themselves,
that will make them successful human beings.*

Ann Landers

”

Having amassed valuable assets during your lifetime, you want to give them away to your beneficiary children. To kill two birds with one stone, think about using your gifts as teaching tools.

Teach them Stewardship.

“STEWARDSHIP”

is managing or looking after another’s property.

It is an onerous responsibility.

By accepting and enjoying the benefits of owning the assets that you give them, your children take the responsibility of caring for them for the next generation and the ones after that. You teach them the responsibility of being stewards of the family wealth. You teach them as well the responsibility of being stewards of the wellbeing and happiness of those that are fall under their care.

Under the care of a steward, the assets cannot be lost or put at risk of being lost.

HOLDING STRUCTURES

The trend has been to place family wealth in structures constituting trusts, companies and the like. The purpose is preservation. By ensuring that your beneficiary children do not own the wealth directly, the wealth is protected from being lost at their hands. They may receive distributions of income and dividends generated from the assets. These are discretionary and the children have no entitlement to them. The trustees and directors of these structures will decide whether distributions will be made, when, how much and to whom.

Not being owners, the children are not responsible for the assets. Appointed (and often paid) professionals are the owners. They look after the wealth for the children and generations that follow.

REAL ESTATE

For many parents, real estate constitutes their most valuable asset/s. Shifting a parent’s ownership of real estate into a holding structure is expensive. There is stamp duty to be paid.

If the payment of stamp duty is a deterrent, then ownership must remain with the parent and transferred only upon death. A will is used.

The will identifies who the beneficiaries are and each beneficiaries’ share to the real estate. Any uncertainty or discretion in the will on the distribution creates the avenue for stamp duty to be imposed.

There being no estate duty on the assets owned at death, the will presents a useful tool for transferring what is often the most valuable asset/s of a family; real estate.

Most parents leave their real estate to their children using the will.

Looked after properly, the real estate can remain within the family for generations.

Children being looked upon as stewards of the family real estate is an attractive concept.

GROOMING STEWARDS

“

*The things you do for yourself are gone when you are gone,
but the things you do for others remain as your legacy.*

Kalu Kalu

”

Your legacy of real estate can be enjoyed by generations of family members only if the stewardship role is fulfilled properly. This means that ownership cannot leave a steward-beneficiary.

I am asked by parents how real estate ownership may leave their children unwittingly. Next parents arrange for me to meet the children to relate the possibilities.

Everyone is familiar with the story “Cinderella”. Here are some twists to it.

Prince Charming promises Cinderella his castle

Prince Charming’s father, the King, is ailing. His medical bills alone deplete the royal coffers. The nurse is costing too much as well. The Prince decides to save costs by dismissing the nurse. But the Prince finds the task of filling the nurse’s shoes unbearable; diaper changes, night feeds, keeping track of the pills....Overwhelmed, he turns to his girlfriend, Cinderella, for help. Being cash strapped, Prince Charming promises Cinderella that in exchange for her services as a nurse, he will transfer his ownership of his summer cottage to Cinderella at the end of 12 months. He didn’t think the King will live beyond a month.

Under Cinderella’s care, the King lives for 13 months!

After the funeral, Cinderella asks for the summer cottage. Prince Charming has changed his mind. He refuses to transfer ownership to Cinderella. Cinderella asks the Court to enforce the promise.

Whoever says that promises are meant to be broken did not meet *promissory estoppel*.

The Court finds that the Prince is to be estopped from reneging on his promise. They hold that the Prince’s promise of the cottage in exchange for nursing services to

be rendered by Cinderella for a year is a contract between the parties. Cinderella relied upon its existence and acted accordingly. The Court orders the transfer of the cottage to Cinderella.

A steward should never use family assets as bait or in a bargain.

Prince Charming, his cars and the banker

Prince Charming inherits the royal vineyard and castle from the King.

Being a collector of sports cars, Prince Charming uses much of the cash his father left behind to fill his large garage at the castle with his dream cars. He buys a Ferrari, Lamborghini, Aston Martin, McLaren....Then he sees the latest Bugatti. He has run out of cash!

The kingdom’s banker will not extend an unsecured loan. The Prince mortgages his vineyard to the bank.

Forest fires ravage the vines that year. There is not enough in the royal coffers to repay the loan. The Bank’s forecloses on the vineyard and puts it up for sale.

Some rich merchants buy the vineyard.

A steward should never use family assets as collateral.



Prince Charming in business

Cinderella forgives Prince Charming for the broken promise involving the summer cottage. They start dating again.

Prince Charming recounts how pretty the glass slipper Cinderella wore to the ball looked on her feet and how it brought them together. Prince Charming decides to become the Jimmy Choo of the kingdom. He turns into an entrepreneur and enters the shoes business.

Prince Charming still has the castle in his name. His legal advisers warn him of his exposure to debt and creditors should his business fail.

Prince Charming must protect the castle by *seemingly* relinquishing his ownership of it. He transfers ownership of it to Cinderella, who he trusts. Any creditor seeking to recover payment from Prince Charming will have no castle to go after.

LEGAL AND EQUITABLE OWNERSHIP

Ownership of real estate has 2 components; **legal ownership** and **equitable ownership**. The equitable owner enjoys actual rights like the use and enjoyment of the real estate, an entitlement to rentals, the right to live in it, etc.

The title deed for real estate shows who the registered owner is. This refers to legal ownership.

Although the legal owner in most instances is also the equitable one, this need not be so. For example, "XYZ – On trust" on a title deed indicates that XYZ holds legal ownership only. The equitable ownership rests with the beneficiaries of the trust.

Not all trusts appear on a title deed. *Resulting Trusts* and *Constructive Trusts* are ones that only a Court can decide exists. A proponent of its existence must apply to the Court for an order of its existence. A Hearing follows where the both sides present their case. Based on the facts, the Court decides if the Trust exists.

There is uncertainty as the Court's decision will be based on the strength of the proof presented, the credibility of witnesses and the submissions put forth by each side.

Coming back to the story.....

The shoe business is hard work, Prince Charming realises, after talking to other businessmen. Prince Charming decides to shove the venture even before it begins. Luckily there are no debts and no creditors.

Prince Charming wants the castle back.

Cinderella is not so forgiving afterall, Prince Charming discovers to his disdain. She refuses to return it. He had given it to her, but it wasn't intended as an outright gift. He had only intended for Cinderella to hold the castle for him to duck possible creditors, the Courts are told. The Prince is able to provide evidence of his intention- the timing of the gift, conversations he had with his legal advisers are all adduced at the hearing. Cinderella, on the other hand, cannot rebut this evidence or prove her case.

Prince Charming asks the Courts to find a *Resulting Trust* is his favour where Cinderella holds the castle for him.

The Courts find the Prince's intentions for the transfer of ownership devious. Had there been an existing business, debts or creditors to duck, his actions could have been illegal. They would certainly then not have found a *Resulting Trust*. But bad thoughts alone are not illegal acts.

The Court finds that a *Resulting Trust* exists. Cinderella holds the castle on trust for the Prince.

Only transfer family assets if the steward has good reason to. Once tainted by illegality, there cannot be a good reason.

Prince Charming and Cinderella are married

Could this change the outcome above?

Yes!

The Court sees marriage as a close and intimate relationship where it is conceivable for one party to make an outright gift to the other. Where a transfer of ownership is made by a husband to a wife, the Court will presume that an advancement by the husband was intended.

The proof given by the Prince and Cinderella are not conclusive as to what the intentions were. The Court will rely on the presumption of advancement to decide how to allocate the title for the castle.

Unless Prince Charming can rebut the presumption, Cinderella is both the legal and equitable owner of the castle. He fails to do this. There is no *Resulting Trust*. Prince Charming has lost the castle.

Generally, the Court is more inclined to believe that a transfer of ownership from a husband to his wife must have been intended. The basis is historic. The likelihood of a wife making such a gift is remote as men owned property and should provide for the maintenance of their wives who had none of their own.

It is the husbands who find themselves having to rebut the presumption of advancement rather than a giftor wife.

Family assets should remain with the lineal family. Once given by a steward husband to his wife, he will have an uphill task proving that an outright gift was not intended.

Prince Charming says, “Didn’t we both agree that you would hold the castle for me?”

This is when Prince Charming is able to provide tape-recordings of a conversation between Cinderella and him where they both agreed that the castle will be held for him. Cinderella and Prince Charming had a *common intention* that the transfer of castle would NOT to be an outright gift.

The Court finds the existence of a *Constructive Trust*. Because both parties had the same intention-an agreement-when the gift was made, that one would hold it for the other, Cinderella becomes a trustee of the Castle for the Prince based on a *Constructive Trust*. The Prince is the equitable owner.

Having made the mistake of transferring family wealth to a third party, a steward may be able to hold on to equitable ownership if it can be proved that both parties agreed at the outset that one would hold it for the other; that it would not be an outright gift.



Living happy ever after in the castle

Under law, a gift or inheritance to a Child *given at any time, does not belong to the spouse.*

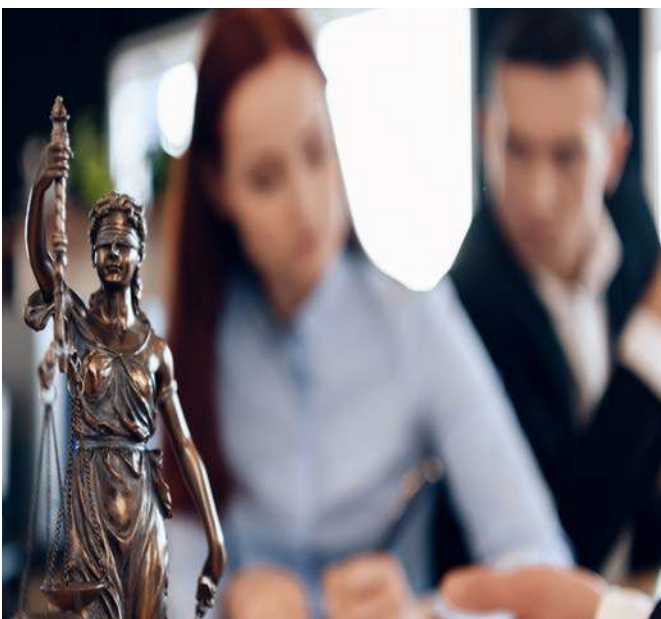
NOT even in a breakup, where the division of assets fall under the control of the Court, do gifts or inheritance fall into the pool of matrimonial assets which are up for consideration to be divided; Women's Charter section 112 (10).

When then can Cinderella, as a spouse, become an owner?

- Where real estate is concerned, and the couple turn it into the home that they live in during their marriage (ie. a matrimonial home), it becomes a "matrimonial asset". The Court throws it into the pool of assets up for consideration to be divided if the marriage breaks down.
- Where the couple do not live on the property but it is "substantially improved" by both of them or the Spouse during the marriage, it becomes a "matrimonial asset" and accordingly is up for consideration to be divided in a break down. While one can perhaps say that repainting of the walls cannot possibly be a substantial improvement, enhancements like installing a pool and making extensions like a patio, extra rooms, may be.

Stewards should not use the family real estate as their home during the marriage.

Renovations and works undertaken must be traceable to funds owned by the Steward alone.



Prince Charming dies

A fervent search for his will shows that none was made. Lost is the chance for the Prince to have chosen the heirs for the family wealth. By default, with Cinderella (his wife) surviving him, she will have the full, if not at least half of his assets according to the laws of intestacy.

The distribution of real estate in Singapore will be decided by the laws of Singapore. Regardless of where the deceased is domiciled at the time of passing, the provisions of the Intestacy Succession Act will determine its distribution.

Here's the distribution of the family real estate in Singapore held by Prince Charming.

■ Rule 1

If the Prince dies and is *not survived by his Parents (the King and Queen) or any of his Children*, Cinderella inherits the entire real estate. The Prince's Siblings will inherit nothing.

The real estate leaves the royal family circle altogether.

■ Rule 2

If the Prince has *Children and is survived by them, Cinderella inherits half of the real estate* and the Children will share the other half equally. If the King and/or Queen are surviving, neither will have any share.

Half the real estate is at risk of leaving the family circle through Cinderella.

■ Rule 3

If the Prince has either *no Children or is not survived by any of them, but is survived by his Parents, Cinderella inherits half of the real estate* and the other half goes (back) to the King and Queen, to be shared equally by them. If there is only one Parent is surviving, then the full half goes to that Parent.

Half the real estate is at risk of leaving the family circle through Cinderella.

When Parents make a will leaving the family assets to a steward, have the steward make one too.

HOW CAN PARENTS MAKE EFFECTIVE STEWARDS OUT OF THEIR CHILDREN?

“

All good men and women must take responsibility to create legacies what will take the next generation to a level we could only imagine.

— Jim Rohn, a motivational speaker —

■ Awareness and understanding

On many occasions, I have happily met and spoken to the future stewards of my clients, their children.

Having heard the thoughts and concerns of Parents, I am able to guide their Children on their estate plans. The approaches are bespoke.

■ Make a will

Once Parents have had their Wills made, they have their children meet me to start conversations about their estate plans.

■ Lawyers on speed dial

Transfer of ownership requires the services of a Lawyer. Children should discuss their intentions and its implications with a Lawyer before making any bold move.

AUTHOR



Amita Dutt
Consultant (Full Time)
amita.dutt@rhtlawasia.com

ABOUT RHTLAW ASIA

RHTLaw Asia offers a different perspective on client experience and commercial thinking. As a leading regional law firm headquartered in Singapore, clients can expect intelligent and innovative solutions from a team that is attuned to the nuances of doing business in Asia. With access to our own ASEAN Plus Group, a network of leading firms comprising over 2000+ lawyers in 16 jurisdictions around Asia, as well as our membership with The Interlex Group, a global network of leading law firms, we help clients understand the local challenges, navigate the regional complexity to deliver the competitive advantage for their businesses in Asia.

We collaborate closely with the RHT Group of Companies to provide an all-rounded integrated business solution. We believe in pushing the boundaries of what can be achieved for our clients in this evolving marketplace.

OUR PRIVATE WEALTH (INVESTMENTS, ESTATE PLANNING AND TAX SOLUTIONS) TEAM



Tan Chong Huat
Co-Head of
Practice



Kaylee Kwok
Co-Head of
Practice



**Professor
Leslie Chew, SC**
Senior Consultant



**Professor
Stephen Phua**
Senior Consultant



Amita Dutt
Consultant
(Full Time)



Suppiah Thangaveloo
Consultant



Amanda Chen
Partner
(Foreign Lawyer)



Nigel Pereira
Partner



Sandra Han
Partner