



## Estate Planning - Family Harmony Taking Centrestage

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*Today be thankful and think how rich you are.  
Your family is priceless.  
Your health is wealth.  
Your time is gold.*

American author, Zig Ziglar (late)

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Your family means the world to you. It is for them that you have chosen work over weekend golf, a family holiday over new golf clubs, renovations to the home over a golf club membership.

Everything that was within your power to do to make them happier and more comfortable, you have done.

But is there more you can do, you wonder.....



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## ESTATE PLANNING AND THE FAMILY

You can start planning your estate at any age. Your initial planning would probably have focused on the generation of wealth. Then it progresses to its protection. You begin to plan for contingencies, which would include your passing. In most situations, your main heirs are your immediate family members. They will be the ones most affected by your passing. You want to make sure that each is cared for. You want also to make sure that the persons that you empower to see to their wellbeing are ready, able and willing AND capable, conscientious and trustworthy.

This article is about placing the continued harmony of your family at the heart of the decisions you make regarding the distribution of your wealth and the persons appointed to handle it.

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## SENSITIVITY

Your choices on the distribution of your wealth and the persons empowered with the task can be regarded by everyone as a reflection of your feelings towards individuals and regard for them. Unwittingly there may be hurt and eventual resentment and disharmony between family members because of your choices.

This is not what you intended. It is the last thing you want.

Your heirs can wear two hats; they are beneficiaries of your estate and they can be 'office bearers' who have a role and responsibility in the management of your estate. The executor of your will, trustee of a trust, protector of your assets held in a trust, member of an investment committee looking after your investments, guardian or co-guardian of your children are examples of office bearers.

As part of your estate planning and its distribution, you will find yourself making critical decisions on how your estate should be divided and who to trust undertake the distributions.



*For example:*

You have divided your assets equally between your children, Jane and Mary. Mary, the younger one, is made your sole executrix. In the event that Mary is unable to fulfill this function, Jane will be your sole executrix. You are motivated by practicality - Mary lives in Singapore, where your assets are. Jane lives in New York. With the time difference and distance, you don't want Jane inconvenienced. Jane sees it differently. You can't trust her, she thinks. Mary has always been your favourite, she believes. This just proves it.

If practicality is the basis for your decision, why is Jane even a choice, and a second one, at that! Jane's hurt consumes her and eventually spills into her relationship with Mary.

If their continued closeness is placed at the centre of your decisions, your choice may have been different. Couldn't they both have been executors, acting severally. Mary could have done all the leg work with both collaborating on all essential decisions. That would have brought them even closer together.

Addressing the feelings of your heirs, knowing each well enough and understanding the dynamics of their interrelationships can go a long way towards harmony.



## EXPLANATIONS

### **Is there any reason why explanations for your decisions cannot be given?**

The law itself does not stop a person from expressing the basis for decisions and choices.

However, explanations must be very carefully drafted. They cannot provide grounds for an unhappy heir to challenge your wishes. Hurtfully, challenges can come in the form of questioning your mental stability, whether you acted under duress and/or were unduly influenced.

Properly expressed, written explanations can be used as clear evidence of your wishes and soundness of mind. BUT more importantly, they serve to diffuse misunderstandings arising from your decisions.

*For example:*

**One can explain in a will as to why one heir will be receiving less.**

**“In the distribution of my cash assets, I have intentionally given John, my son, less than the other of my children. This is because John received a gift of S\$1,000,000.00 cash from me on 31 January 2005 which he used as a down payment for the purchase of his property at 25 Marina Drive.”**

This simple explanation reminds John of this inter-vivos gift. He is happy too because everyone else understands that Dad does not love him less. Everyone else is clear that Dad took the January 2005 gift into account in the distribution of his wealth.

Explanations may be contained in any document; a separate letter to each heir, a deed of family arrangement, a will, a trust deed and/or accompanying letter of wishes....

As my clients share their stories about their family circumstances and the basis for their decisions, sometimes it is wise to provide explanations for them.

## PARTICIPATION

The inevitability of death is often furthest from the mind of the living. No parent or child wants to accept the finality of departing from a loved one, especially of a parent. It is not uncommon therefore for the planning of one's estate being a solo journey taken with a lawyer.

### **BUT**

***Does** estate planning have to be about death?*

***Do** your estate plans have to be a secret?*

***How** well do you know your heirs' life plans?*

***Would** it bring your family closer to involve them in the discussions?*

A new client came to see me recently to draft his will. I thought he was coming alone. His entire family turned up. There was his wife, two adult sons and a third son under 21 years old. This was unusual. But what was more so was that they participated actively in asking pertinent questions relating to distributions. Then they asked about as many questions about executorship.

By the second meeting, they had decided who should be executors, in which order and whether they should act jointly or not. A complex order of executors was asked to be put in place. When explained to me, it made a lot of sense as it reflected the comfort level of the wife and the future plans of each child.

The distribution of the assets was more straightforward!

There was a buy-in from everyone. The family walked away knowing each other better and being closer.

Sensitivity, explanations and participation can go a long way towards diffusing disharmony arising from misunderstandings.



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*A strong family  
Has well-worn seats  
At the dinner table.*

[www.theartofdomesticity.com](http://www.theartofdomesticity.com)

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## SOME IDEAS

### ■ **Splitting up the enjoyment over time**

You have heirs of different generations. You realise that if you bequeath a specific asset to the heirs in the older generation, you have no certainty that the ones in the younger generation will inherit it after that.

You CAN HAVE your younger heirs enjoy the asset once the older ones have passed on. This involves not giving the ownership of the asset to the first category of beneficiaries. They can have the use and enjoyment of it during their lifetime. Upon their passing it goes to the next category of heirs.

A trust is often used for this purpose with the trustee taking charge. The trustee is most often a professional one and paid for these services. However, there is no reason why a will cannot make the same distribution. The challenge is to find an executor/trustee willing to take on the responsibility. The person must be young enough to straddle both generations and have the capacity and patience to deal with the first generation and then the second. There will be onerous fiduciary duties as well like ensuring that the asset is not destroyed or neglected.

This sort of arrangement might work where heirs are not too far apart in age. For example, where one heir is the first divorced wife and the second one, a younger wife. The sensitivities of the situation are obvious and the need for the agreement and understanding of both heirs is critical. Equally critical is the choice of executor/trustee. Ideally the individual must know the individuals well, the dynamics of their relationship and circumstances. It should also be someone they both respect and know to be objective and fair.



### ■ Equal division of each asset

For some, a fair distribution means that each member should have identical portions of each asset. The distribution is simple. Each asset is then divided equally between each heir.

But what happens to illiquid assets like a house or an apartment? Do each share the house equally and then the apartment equally too?

What happens if one heir needs the money and want to sell?

Rather than deal with questions like these, I have had clients gradually liquidate illiquid assets. Distribution is easy after that.

However, one parent (client) who made equal distributions of each real estate had a heart-warming reason – “Each sibling would be persuaded to help the one in need,” she replied.

The asset was not the focus; it became a means to keep the children in-touch and close. All three children were appointed executors and they could act severally. She explained that she knew that they would cooperate and look out for each other and that the sense of fair play that she had carefully instilled in each would guide them to make the right decisions collectively.



### ■ One-of-a-kind assets

Some assets have tremendous sentimental value, like the family home and jewellery. Then there are others which are unique like artwork.

Everyone wants them.

At the peril of causing fights, they are sold and the cash distributed. This is heart wrenching for everyone.

One client refused to sell the home. Calling the 2 children (both young adults) together, the family decided that unless one child was unable to buy the other out within 6 months of the Grant of Probate, the home would be sold and the proceeds divided equally. If one child was inclined to buy the other out, 2 valuers would be engaged to determine the value of the whole property and the sum would be averaged and then divided by 2. The executor would appoint the valuers. The entire sale mechanism was spelt out. If both wanted to buy out the other, in the absence of an agreement, the property would be sold. The executor would be the mediator. Neither child can be an executor, not even in default. A series of close family friends were identified to be executor, and the order of priority stipulated. They were all individuals who knew the children well and were respected by them. Also, they were younger than the parent but old and savvy enough.

A lighter touch may have been to make the testator's "desires" known to the heirs rather than address all scenarios. One client suggested that the heirs having inherited the property should give the other the right of first refusal. These children were well placed in life and very close. They were both married and their spouses were very close as well. In fact, the spouses (husbands) were made co- executors. In working with the testator, the families would fly in and attend each meeting with her. All went amicably well.



### ■ Buckets of equal value

When there are many assets and of various types, division can be tricky. It can involve valuing each non-cash asset and then having combinations placed in buckets to be distributed. It may sound simple and logical. But the distribution can go amiss if values begin to move.

For this method to work, there must be transparency and an agreement between the heirs, and then the testator and heirs, of the values and who receives which bucket.

Depending on the nature of the assets, where some illiquid assets are better given to specific heirs, and there is cash component available for distribution as well, it may be an option to have the valuation undertaken at specific (more current) event (like within a month of death) and having any shortfalls in value topped up with cash.

### ■ Who needs it most?

Not every heir may be equally placed financially. A division may turn out to be unequal to help the financially vulnerable ones.

Altruistic as it may seem, there is a high chance of unhappiness ensuing.

For one, the perceptions of wealth or the lack thereof may be outdated and incorrect.

Also, good virtues like hard work and success operate against the heirs.

The success of this method hinges on an agreement among all heirs that this method is fair.

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## A CREATIVE LAWYER AS YOUR SOUNDING BOARD

One size does not fit all when it comes to estate planning.

Each family is different and each testator too.

The task of the lawyer is to know a client and family well enough to act as a useful sounding board.

Together they can tailor-make a plan that gives a client the peace of mind that the family will remain close.

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*Peace and Harmony.  
This is the real wealth of a family.*  
Unknown”

## AUTHOR

[Amita Dutt](#)

## 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.

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