



A Guide to Making a Will



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At Goodwins we focus on the things that matter to our clients, which is reflected in our culture of client care and quality control.

We have proven strength in our areas of practice and have leading lawyers in certain fields. We are able to consider matters from an international viewpoint. We have practising solicitors from Australia and England leading important areas of practice.

We work closely with lawyers in other countries, and with professionals such as accountants, tax consultants and financial advisers, to make sure you get in-depth expert advice. Our clients enjoy more than just a law service.

Private Client Services and Estate and Financial Planning are led by Stanley Jeremiah, who is both a lawyer and a chartered insurer with considerable experience working in and with the Financial Services Industry in Singapore and abroad.



This document has been awarded the Crystal Mark, which is the internationally recognised symbol of clarity. It shows that it is in plain English. As well as passing 35 technical tests, the document must pass independent testing on the public.

'Plain English' is language that the intended audience can read, understand and act upon the first time they read it. Plain English takes into account design and layout as well as language.

Goodwins Law Corporation

Tel: +65 6464 9449 Fax: +65 6323 4230 Email: info@goodwinslaw.com Web: www.goodwinslaw.com

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HOW WE CAN HELP YOU PLAN FOR THE FUTURE

This booklet refers to the law of Singapore. It does not apply to Muslims whose estates are governed by Muslim law. From time to time the law changes and details in this booklet (including the information relating to tax) may become out of date. There's no substitute for professional advice which is up to date and tailored to your own needs.

WHY SHOULD I MAKE A WILL?

There are many reasons for making a will. The two main reasons are that:

- γ you can control who gets your property after your death; and
- γ your assets can be managed properly and put to their best use by the person (or people) you choose to manage your estate.

If you don't make a will, your estate will be shared out under fixed rules of law. It may not benefit the people you want it to.

WHO CAN MAKE A WILL?

Anyone over 21 can make a will.

WHEN SHOULD I MAKE A WILL? The answer is simple – you should make a will now. Don't put it off. However, make sure you read and consider the following information carefully, and get all the relevant information about your assets before you start.

PREPARING TO MAKE YOUR WILL

Your assets

- γ Make a list of everything you own, including jointly owned property and bank accounts. Include things like money in banks as well as your house, your car and so on.
- γ Work out the value of each thing on your list as accurately as possible.

DECIDING WHO WILL BENEFIT

When you have prepared your list of assets, you must decide who will benefit from your estate. You must decide who will get:

- γ specific items such as your house, a watch or a particular item of jewellery;
- γ gifts of money, and how much they will get; and
- γ the residue (remainder) of your estate or how it will be divided.

DEFINITIONS

Beneficiary

A beneficiary is a person or organisation (for example, a charity) who benefits from your will. A beneficiary may also act as an executor of your will.

Executor

An executor is responsible for dealing with the affairs of a person after his or her death and makes sure that their wishes in their will are carried out. There can be a great deal of work involved, with many tasks taking a long time to complete and often needing legal or taxation knowledge. The period of administration can last for several years.

You can appoint your husband or wife, a relative or a friend to act as your executor. However, if you do not want those closest to you to have to deal with paperwork and possible court appearances at a time of sadness, you should appoint a professional executor such as us, Goodwins. As your executor, we would be committed to managing your estate efficiently so your beneficiaries suffer as little inconvenience as possible.

A professional executor will protect your assets against fraud and negligence, and will deal with your affairs in the strictest confidence, which is especially important when dealing with possible conflicts. Our executor fees are extremely competitive and are only payable from your estate after your death.

While we recommend that you appoint a professional executor, we also suggest that you appoint a friend or relative to act jointly with the professional. The joint executor will be consulted on the more personal matters but does not have to be involved with official duties such as dealing with courts, creditors, the Inland Revenue and so on.

Guardian

If you have children under 21, you should name the person you would want to look after them if you and your husband or wife, or partner, died. You can appoint more than one person to act as the guardian of your children.

Money and property you leave in your will for children under 21 will be held in trust until they are 21. We will include an appropriate trust in your will.

If the guardian you choose is not an executor, the guardian would not have automatic access to money you may leave for your children. Instead, they would get funds to raise your children from the executor.

Estate

Estate is simply a legal word that means everything you own and all your money added together.

When someone dies leaving a will, the executor has to collect all their assets. The total assets added together are known as the 'estate'. The executor then pays any debts of the person who died, pays the funeral expenses and gives out any specific gifts (see below) given in the will. What is left after all the debts have been paid and all the specific gifts have been given out is known as the 'residue' of the estate.

Specific Gift

You can give individual gifts of money, property or personal belongings to any beneficiary separate from the main gift of your estate (the gift would be taken out of your estate). You should not include many specific gifts in a will as it will make your estate difficult to deal with.

WHAT IS A WILL?

A will sets out in writing what will happen to a person's estate when he or she dies. While this one-line summary is accurate, there is much more to it than that.

(a) Wills take effect only on death

The first important point to note is that wills have no effect whatsoever during the person's lifetime. The significance of this is that a will can be withdrawn or changed at any time up to the time of death. It also means that the person is not giving any gifts during their lifetime.

It is important to realise that, with one minor exception, making a will does not restrict what you can do with your property during your life, nor does it mean that you will alter your tax position before the date of your death.

A will passes property to someone who will look after it and then distribute it to the beneficiaries in line with your instructions. The person who takes on this role is called an executor (or, if female, an executrix). The role of the executor is generally a temporary one, and is limited to distributing the assets of the person who has died and paying their debts and any tax bills.

It is also possible to create a trust in your will. However, any trust that is set up by a will only takes effect when the person dies and until then can be withdrawn or altered, just like any other part of the will.

You can withdraw your will by deliberately burning it or tearing it up, and by law it will also be withdrawn if you get married after you have written your will. You can add to or delete part of a will using a supplementary will called a 'codicil'. The important thing to remember is that a will is not necessarily your final decision and you should review your will regularly.

(b) What can wills do?

As well as being able to show who receives your property after your death, wills also have other uses. Not all of these will apply to everyone, but the following are some of the more common uses of wills.

γ Appointing guardians of children

You can appoint someone to look after your children until they are old enough to look after themselves.

γ Making funeral arrangements

You can use your will to show how you would like your funeral to be arranged. Normally, this is limited to saying whether you want to be cremated or buried.

A will can be a very flexible and useful document. However, in order to get the most out of it, it is important that you know what you want when you are considering making a will.

WHY SHOULD I MAKE A WILL?

If you don't make a will, the following things may happen.

γ Everything you leave (your estate) will go to your next of kin (family or relatives) according to fixed rules (known as Intestacy Rules). Your husband or wife and children qualify as next of kin, and so do close blood relatives if you are not married. If you leave a husband or wife, your whole estate may not go to him or her. In some circumstances, your parents may get nothing.

γ Statistically, the likelihood of a husband and wife dying at the same time or within a brief period are very small. The rules that apply to situations where a husband and wife die at the same time are complicated, especially if it is not clear which of the couple died first, for example, in an air crash. The rule in these cases is that the younger person is treated as the last to die with the Intestacy Rules applying to the assets of the elder. These assets then pass to the younger person's estate with the Intestacy Rules applying again if they have not left a will.

γ One effect of this is that the rules which apply to the estate can significantly limit the entitlement of the parents or other relatives of the person who dies first (or is treated as having died first). In this case, most of the property could pass to the other set of parents or relatives. A will can avoid this problem.

γ There is also the question of who will look after any children until they are old enough to look after themselves. If there is no will, the courts have the power to appoint a guardian who may not be the person you want or trust to bring up your children.

γ Another problem which can arise as a result of the Intestacy Rules is the possibility of a lot of money passing to the children at an early age. Not many 21-year-olds have the maturity to deal with a lot of money and this, together with the loss of their parents' stabilising influence, is obviously a cause for concern.

γ Your personal representatives (who take charge of your estate and wind it up) will also be chosen according to fixed rules. They may not be the people most suitable to act.

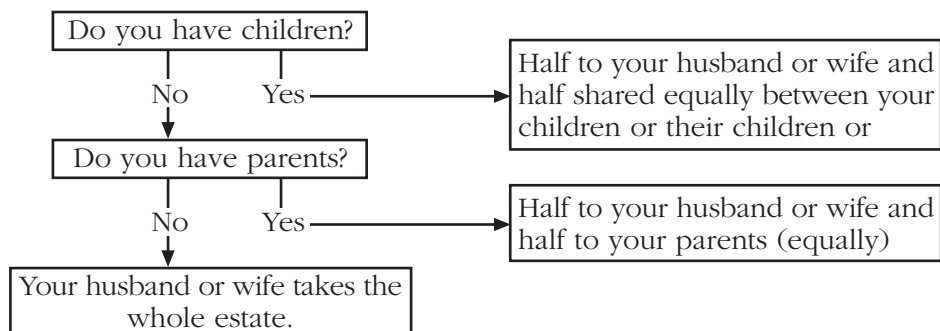
γ The only powers which the personal representatives will have will be those given by Acts of Parliament that were passed years ago. These may no longer be suitable and needless expense may arise.

But if you make a will, you can:

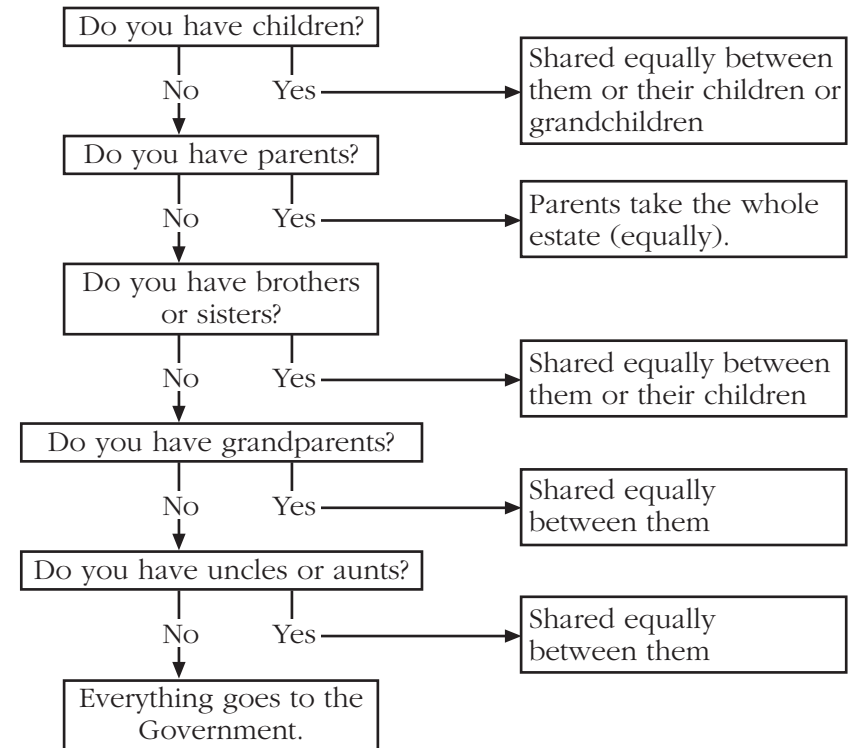
- γ decide exactly what you want done with your own property after your death;
- γ appoint personal representatives of your own choice and give them all the powers they need;
- γ save your beneficiaries from paying unnecessary tax;
- γ appoint guardians for young children; and
- γ say whether you want to be cremated or buried.

WHAT HAPPENS IF I DIE WITHOUT MAKING A WILL?

If You Are Married *[when you die]*



If You Are Not Married *(that is, single, widowed or divorced)*



A child includes an adopted child but does not include an illegitimate child or stepchild.

HOW TO MAKE A WILL

A will can be a simple document but you must think very carefully about what you want to go into it.

Do I need advice?

Yes, you do need advice. There is no law preventing you from drafting your own will but you will not be there if anything goes wrong. There are some good reasons why you should get advice from someone who can give you clear guidance on the contents.

You may think that there is not very much that can go wrong, but here are just a few of the mistakes that could be costly.

- γ If your will is not correctly witnessed, it may be completely invalid so that none of your wishes can be carried out.
- γ Even fairly simple words can lead to complicated legal disagreements. For example, in law the expression 'personal property' does **not** include land or buildings such as your home. So when you say 'I give **all** my personal property', you may think you have given **everything** you own but you would **not** have done so in law, if the property you own includes a flat or a house.
- γ If you choose words that are not clear, there could be disputes later.
- γ Even if you are divorced, you might still be responsible for your children from the previous marriage and this can affect what must go into your will.
- γ You may want to give your BMW to your son, but if you replace it with a Lexus at a later date, the gift will lapse (fail) so that your son will not receive your car.

WHY SHOULD I GO TO A LAWYER?

You can draw up your own will, or have it done by anyone you choose, but it is best to go to a lawyer. This isn't just because of the need to use language with a clear legal meaning, important though that is. It's also because a good lawyer will:

- γ help you to clarify your own ideas – your will needs to cater for a number of different eventualities and you may not have thought of all of them;
- γ use legal expertise in preparing the will – it will involve knowledge of the law of wills, of the law of property, trusts and tax, and perhaps of other subjects too; and
- γ make sure that the will cannot be challenged after your death.

Your will is probably the most important document you will ever sign and you have to get it right. The future wellbeing of your family may depend on it because a bad will can create lasting grievances and unhappiness.

WHAT WILL IT COST?

Our charges are likely to be small when weighed against the peace of mind you gain (and the tax savings which you may make). We will give you an idea of how much it is likely to cost after you have given us the information we ask for in our client information form.

At Goodwins, we believe that your will should be tailored to your own needs. There's really no such thing as a 'standard will' because everyone has a unique set of financial and family circumstances, lifestyle and preferences. We can't tell exactly what the cost will be until we know what we need.

YOUR WILL

It will save time if, before you see us, you think about the points mentioned below and on the next page, and prepare a note to bring with you so that we do not overlook anything. Also, fill in the client information form as fully and as accurately as possible.

(a) You as an individual

We will need to know a number of things about you. Some are obvious, such as whether you are married, are expecting to be married or were previously married, and whether you have young children, older ones and

perhaps grandchildren. Others may be less obvious. You should tell us if you have property abroad or if you or your family have interests under any existing trusts, along with any other facts that could be relevant.

(b) Your estate

It is helpful to make a list of the things you own and how much they are worth. The list might include a house or flat, any other land or buildings, investments (including money in shares, unit trusts and bank accounts), furniture and jewellery. It should mention any life or endowment insurance policies and any existing arrangements about what will happen to them when you die, for example, if you have nominated a beneficiary under Section 73 of the Conveyancing and Law of Property Act.

If you own a house or flat which is mortgaged, the list should say so and it should mention any other large debts and any hire-purchase or credit-sales agreements.

You should tell us if you are a co-owner (with your husband or wife or someone else) of your house or flat, or of any other property. If possible, also give the type of co-ownership (**joint** or **in common**) because different rules apply. If you are a joint owner, your share will automatically go to the other joint owner or owners when you die. You cannot leave it to anyone else in your will unless you make special arrangements.

(c) Executors and trustees

Making a will allows you to choose your own personal representatives who, if appointed by a will, are called **executors**. They will take charge of your estate, wind it up and distribute it according to your wishes.

If the will is very simple, one person could be appointed to act alone, but it is usually better to appoint at least two people, especially if there is a house or flat involved. You can appoint another person to cover the risk of an executor dying before you or not being able to act when the time comes.

You can appoint your husband or wife, friends or relatives (grown-up children, for example) who are reasonably businesslike. You can also appoint professional people such as lawyers or accountants. They would not charge you for appointing them. They would charge for the work they

do but this would not add much to the overall cost if you need professional help anyway. You may prefer to appoint a professional firm like a law corporation because they avoid the problem of having to deal with the death or retirement of particular individuals.

If a will creates a trust, it should appoint trustees as well as executors, but usually the same people are given both jobs.

Executors can have a lot of work to do (and even more if they are trustees as well). Non-professional ones are not paid for this work, but they can claim their expenses. You might consider leaving them something in your will. You should also make sure that they are willing to act for you before you appoint them.

(d) Your beneficiaries

The most important thing of all is how you want to divide your estate. The people or institutions that receive it are called **beneficiaries**. You can make two types of gift in your will.

First, gifts of money, items (like jewellery) or other specific property to friends, relatives, charities or others. You can leave property (all your personal belongings, for example) to a beneficiary or to your executors, and ask them to share it out according to any informal wishes you may leave. If a specific gift of property is mortgaged when you die, the beneficiary will have to repay the debt unless the will says otherwise and there is enough money in your estate to pay off the mortgage.

Second, gifts of **residue**. The residue is the property that is left over when all debts and taxes have been paid and all the specific gifts have been given out. A will should always contain a gift of residue because you can't know in advance exactly what your estate will include. This gift will also include any specific gifts that fail (for example, because the beneficiary dies before you). If you have a husband or wife or children, or both, you will probably want the residue to go mainly to them.

(Please remember that certain people, including your husband or wife and your children, may be able to claim on your estate if they think the will does not provide enough for them. We can tell you more about this.)

None of these gifts needs to be a single gift. You can have **substitutionary gifts** (for example, ‘\$500 to my friend Tom or, if he dies before me, to his wife Mary’) or **joint gifts** (for example, ‘\$500 to my friends Tom and Mary in equal shares or, if one of them dies before me, \$500 to the survivor’). You can also have **trust gifts** where your trustees will hold the property to carry out your intentions. There are several different kinds of trust.

There are trusts for young children under which the trustees have the power either to use the income for their benefit or to let it build up. The capital does not pass to them until they reach 21 (or perhaps 25), but the trustees can decide to use it for their benefit in the meantime.

And there are discretionary trusts, which give the trustees power to share out income and capital among a group of beneficiaries.

We will want to know if any of your beneficiaries are disabled or financially vulnerable, or have any other particular problems or needs, because special trusts can be set up in these cases.

(e) Guardians for children

If any of your children are under 21 when you die, you should think about appointing a guardian or guardians. You should choose any guardian carefully and make sure that he or she is willing to act. If both parents of the child are still alive they will usually agree about the person or people to be appointed, and it is not normally possible for the appointment to take effect until after the surviving parent’s death.

(f) Your body

You may want your body to be available for therapeutic use (that is, corneal grafting and organ transplants). Your will can include these wishes, but it may not be read until some time after your death so you should tell close relatives. And, as an organ that is needed for an organ transplant must be removed quickly, you should also carry a **donor card**.

You may have a preference for burial or cremation or for a particular kind of funeral, or wishes about where you want to be buried or where you want your ashes to be scattered. You could mention these things in your will but, again, you should tell your close relatives.

(g) Other conditions

We will prepare a draft of the will for your approval before preparing a final version for you to sign. If you find that it contains legal conditions, don’t assume that we are just putting in a lot of unnecessary jargon. These conditions are actually very important. Most of them give your executors the powers they need to have, especially if they may also be acting as trustees. We will be happy to explain any of the conditions to you.

Most people would like wills to be short and easy to understand, and we feel the same way. We try to use plain English whenever possible, but the law and human life are complicated, and there’s a point beyond which the only way to simplify a will is to turn it into a bad or unsuitable will.

WHAT ABOUT TAX?

Tax is an important consideration when drafting a will. The way in which a will is drafted can have a significant effect on the amount of tax that must be paid.

TAX PLANNING IN THE WILL

One of the best reasons for making a will is that you can share out your estate in a way that will reduce the amount of tax your beneficiaries have to pay. One of the best reasons for coming to us is that we can tell you how to do it. There are two main taxes to consider – **estate duty** and **income tax**.

These things matter even if you are **not** wealthy. If you are wealthy, or even fairly well off, it may be very important.

If you own a large house or have money put aside, perhaps in the form of investments, you may fall into the **estate duty net**. Estate duty is not complicated but there are several ways in which the conditions of a will, though they may seem sensible, may give your beneficiaries unnecessary liability.

It’s a similar situation with income tax. Small differences in the wording of gifts, especially gifts to young children, can produce quite different results under this tax and it is too easy to burden your beneficiaries with liabilities which skilled advice would have avoided. You would never know you got it wrong and neither would they.

THE MAIN PROBLEM – ESTATE DUTY

- γ You can avoid or reduce the tax by making large gifts during your lifetime. As long as you survive for more than five years after making the gift, there is the possibility of saving tax this way.
- γ Each husband or wife has an individual exemption from estate duty. There can be advantages in splitting assets equally between the husband and wife so that each owns enough to be able to use their exemption to the full.
- γ There are other methods we can advise you on, such as transferring insurance policies to the bank for repaying the outstanding mortgage on your residential property when you die. This removes the insurance payment from your estate and possibly provides your family with a house that is **debt-free** and **exempt** from estate duty.

WHEN IS THE TAX DUE?

It is the responsibility of the executors to make sure that any tax is paid. They must normally do this **before** they are entitled to receive the formal grant of probate which allows them to deal with any of the assets in the estate. The situation can arise where the executors have tax to pay but no assets which they can sell to get the money to pay the bill.

FUNDING ESTATE DUTY

If finding the money to pay the tax is likely to be a problem, one solution is a life assurance policy which you can take out as a Section 73 Conveyancing and Law of Property Act (CLPA) trust policy. The proceeds of the policy will not form part of the estate and the beneficiaries will be able to use the money from the policy to pay the tax bill. In this way, it is possible to build up a fund (within limits) that estate duty does not apply to. Compared with the overall tax bill, the annual or monthly amount you have to pay can represent a very small percentage of the total estate.

REDUCING THE TAX BILL

There are several broad strategies that can be used, but a combination of two or more of them is usually likely to be more suitable. The three main choices are:

- γ gifts of your assets, during your lifetime, which if you make more than five years before your death, will not be considered as part of your estate for estate duty purposes;
- γ gifts on death; and
- γ providing funds to pay the tax bill.

COMPLETING THE WILL

Don't hesitate to ask us about anything which seems wrong or to ask for an explanation of anything which puzzles you in your will **before** you execute it.

Execution involves the will being dated and then signed and witnessed according to strict rules. If these are not followed, it won't be valid. If you execute the will at our office, we will guide you through the procedure.

When you have executed the will, you should keep it in a safe place, such as at your bank. We will give you a copy. It is a good idea to use the notes which you made beforehand as the basis for keeping an up-to-date record of your personal affairs (including where your will and other documents are) our firm's name and address, and details of your estate. We advise all our clients to have their will registered at the Wills Registry.

CHANGING THE WILL

The last thing likely to be on your mind when you have signed what is supposed to be your 'last will and testament' is the fact that it might need to be amended at some stage in the future. After all, if you have paid for a will to be drafted, you would expect it to last. Unfortunately, a will does not come with a lifetime guarantee so regular reviews are unavoidable.

WHY DO WILLS NEED REVIEWING?

There are many reasons why a will should be reviewed, but the most important occasions which should lead to a review are:

- γ getting married or divorced;
- γ the birth of children or grandchildren;
- γ the death of a beneficiary under the will;
- γ changes to executors, trustees or
- γ guardians;
- γ getting rid of or gaining assets set out in the will;
- γ changes in the tax laws; and
- γ changing your mind.

You should review your will every few years (normally every five or six years) just to make sure that there have been no changes in your own circumstances or those of your beneficiaries, or in the law or tax system.

Simple alterations to a will may be made by a codicil (a document executed in the same way, which makes minor changes to the will but leaves most of it as it was). If you need to make a lot of alterations, it is better to have a new will.

Never try to alter a will yourself by crossing bits out or putting bits in – changes made in this way will almost certainly be invalid. Even if you want to cancel a will altogether, don't try to do it yourself. You may not do it correctly, and even if you do, it will leave questions in people's minds.

Remember that:

- γ if you marry after making a will, it is automatically cancelled unless you were intending to marry when you made it and the will says so; and
- γ if you separate from your husband or wife or divorce after making a will, your will will still be valid.

THE WILL IN A WIDER CONTEXT

To make a will is to plan for the future, but it is only one of several ways of doing this and your visit to us may give us an opportunity to discuss your affairs in general. One thing in particular deserves a mention here.

Lifetime tax planning

The tax savings which can be made through a will are very important but are bound to be limited. If your estate is likely to be very large, you should consider the possibility of tax planning during your lifetime. We will be happy to work with your financial planner or insurance adviser, or other professional adviser, to help you use various devices (including a trust) to achieve effective tax planning.

Even if you can't afford to make lifetime gifts to your family at the moment, you could take out an insurance policy under Section 73 CLPA to cover some of the estate duty due on your death and this could be held in a trust so that the policy money itself (up to \$600,000 for each beneficiary) will not be taxable.

Estate duty is based on a very simple principle. When you die, everything that you own is valued and any gifts that you made during the five years before your death will be added to this. If the total value (not including residential property where the exemption is \$9 million) is more than an exempt amount (currently \$600,000), tax is payable at 5% on the first \$12 million and 10% after that, unless there is some exemption that applies, for example, all CPF contributions are exempt even if they are more than \$600,000.

Estate duty is not just a rich man's problem because the limit is low. The current exemption is only \$600,000 for all your assets (not including residential property). This includes commercial property, CPF funds, shares, unit trusts, bank accounts, insurance policies, jewellery and so on, even the car you own. If you add them up, you may find that your estate (that is, everything you own and all your money) is more than the exempt amount and estate duty applies.

Please let us know if you need advice on estate or financial planning. We have access to friendly financial planners and insurance advisors who may be able to work with us to help you.

NOMINATIONS

Here are a few points on nominations.

Central Provident Fund ("CPF")

You can nominate beneficiaries to your CPF Funds using the nomination forms and procedure set out by the CPF Board. It is important to note that this nomination does not include CPF Funds put into investments such as shares, unit trust and insurance policies, through your CPF investment account, but it does include CPF Funds held in fixed deposits with banks.

Insurance Policies

a) NTUC INCOME Policies

You can nominate beneficiaries to your policies issued by INCOME in line with the conditions of the Co-operative Societies Act, using forms and procedures provided by INCOME. However, it is important to note that unlike CPF nominations and wills, this nomination is not automatically cancelled when you get married. If you marry after you made your original nomination and now have different family obligations, make sure you nominate your beneficiaries again using the procedures set out by INCOME.

b) Section 73 Conveyancing and Law of Property Act [CLPA] Policies

A Section 73 CLPA policy is an insurance policy that insures a person's life for the benefit of his or her husband or wife or children. The effect is to create a trust for the beneficiaries who have been nominated. The courts have ruled that it is not necessary to refer to Section 73, as just by expressing that the policy is for the benefit of a husband or wife or children you would be setting up a trust under the section. A beneficiary named under Section 73 will have immediate rights under the policy.

The insured person (if he or she does not nominate other trustees) is also a trustee so must act to preserve the interest of the beneficiaries and **cannot** deal with the policy as if it is his or her own property. The insured person will not be able to change or exclude the nominated beneficiary (even though the conditions in the policy contract may allow). Not everyone who nominates a husband or wife or child as a beneficiary on a policy on their own life fully understands this.

However, Section 73 CLPA policies can be used effectively for tax planning. A Section 73 policy which is for the benefit of the husband or wife or children (including paying all lifetime benefits such as critical-illness payments) will probably qualify for 'non-aggregation' under **Section 23 of the Estate Duty Act**. That is, the payment under the policy will not be added to the rest of your estate. Instead the gift to each beneficiary will be assessed separately, so you can create an estate that is exempt from estate duty of up to (currently) \$600,000 for each beneficiary. We will be happy to discuss this with you or you can consult your insurance advisor or financial planner.

Other Nominations

There is currently no legislation for nominating beneficiaries for insurance policies in Singapore. So, following general principles, the proceeds of insurance policies would be treated in the same way as other assets of the insured person (they would generally become part of the insured person's estate to be shared out according to Intestacy Rules if there is no will). Nominations of friends or other relations (such as parents) not entitled under the insured person's estate would probably be open to challenge by the insured person's estate. So, we recommend that these gifts of policy proceeds are shared out in a will.

Goodwins Law Corporation
3 Anson Road #07-01
Springleaf Tower
Singapore 079909

Tel: +65 6464 9449
Fax: +65 6323 4230
Email: info@goodwinslaw.com
Web: www.goodwinslaw.com

Advocates & Solicitors
Notaries Public
Commissioners for Oaths