

PAPA, DON'T LEAVE ME ALONE

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“Papa, don’t leave me alone,” the soft voice in between sobs rang out loud in the quietness of the funeral parlour. It was heart wrenching to hear the pleas of the 10-year-old boy as he knelt beside the cortege of his papa and mama.

A cruel twist of fate had made him an orphan and now his greatest fear is without his parents, he will be alone.

But Alan would not be left alone. His uncles and aunts from both the paternal and maternal side are so ever willing to be his guardian. They are actually fighting over him and that has left Alan confused.

Why are my uncles and aunts arguing with one another and in such harsh tones? Why are they so nice to me and yet so angry with one another? Why? The innocent one does not understand.

Little known to Alan, his papa and mama have left him with a sizeable estate, more than enough for his education and living expenses until he reaches adulthood. They have amassed wealth, got adequate protection through a number of insurance policies but one thing they failed to do was to plan for their estate. No will. No instructions on guardianship for their under-aged only child. No instructions on how their estate is to be distributed upon their demise.

With both his mama and papa having no surviving parents, Alan is the sole beneficiary of their estate under the Distribution Act 1958 (amended 1997). Under this Act, anyone dies intestacy will have their:

- entire estate distributed to surviving spouse; or
- $\frac{1}{2}$ to surviving spouse and surviving parents; or
- entire estate to surviving children if there are no surviving spouse and parents; or
- entire estate to surviving parents if there are no surviving spouse or children; or
- $\frac{1}{3}$ to surviving spouse and $\frac{2}{3}$ to children if there are no surviving parents; or

- $\frac{2}{3}$ to surviving children and $\frac{1}{3}$ to surviving parents if there are no surviving spouse; or
- $\frac{1}{4}$ to surviving spouse, $\frac{1}{4}$ to surviving parents and $\frac{1}{2}$ to surviving children

Had Alan's parents written their wills, the situation of quarrelsome relatives would not arise. An executor would have been appointed to seek a Grant of Probate from the courts and to administer the distribution of their estate according to their wishes.

At the same time, they could have appointed someone they trusted as a guardian who is sincere and genuinely concerned about Alan's welfare and not after his inheritance. This would help take care of his emotional needs at the time he feels lost and alone.

It is common for spouses as to be appointed as executor, but it would be prudent to appoint a licensed trustee company as substitute in case of situations like Alan's. With a will and an executor appointment in place, the whole estate administration process can be initiated and completed within 12 – 18 months. This is definitely much better than to let beneficiaries wait for 5 years or more of court process before they can get their hands on their inheritance.

Some testators actually use testamentary trust provisions to protect the estate, especially in the case of children, so that the estate is professionally managed and not squandered until the beneficiaries are mature enough.

All these are possible when the will is done by a professional.

This article is contributed by Rockwills Trustee Berhad, a licensed Trust Company which specialises in Estate Planning.