Tel : 03-7957 2829
Mobile : 019-326 4243
URL : www.rockwillstrust.my

THE PREDICAMENT OF NOT LEAVING A WILL

There was once a complacent friend who told me that we came to this world carrying nothing, so, it should be the same when we left to the other realm. Some old folks would say that our grandchildren would have their own blessings and happiness. These are the misconceptions that lead them to refusal and procrastination of making a Will.

Before I begin, I would like to share a true event with my readers. One day, I received a call from an anonymous. He said that he found my contact from a pile of cards in his father's possession. So, he wanted us to check whether his father had made any Will prior to his demise. I later found out that he did not. He did visit me several times to discuss the possibility of making a Will, but he kept procrastinating and eventually, no Will was made. When I told him about the news, his expression changed. His father had left them a lot of assets with two families. That was not something new but, rather a repetition of a classic scenario. Hence, I hope that you all would take some immediate actions after learning the consequences for not leaving a Will in order to avoid the facts above from happening to you.

Applying to Court for Appointment of Administrator

If the testator dies intestate, all his saving accounts, shares account, real properties and business will be frozen. His family members have to make an application to the court to appoint an administrator to unfreeze those accounts and properties. Applying for the appointment of administrator itself takes time, energy and most of all, waste of money.

Disputes in Choosing Administrator

Before applying for Letter of Administration, all beneficiaries must come to a unanimous decision as to the selection of administrator. Under such

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circumstances, if a particular beneficiary chooses other person or one of the beneficiaries as an administrator, then, he himself must give up his right to be the Administrator. Hence, if the class of beneficiaries is large, the process of choosing an Administrator will cause serious disputes among the family members. The most essential point is that the choice of Administrator may not be in accordance with the desire of the deceased. However, if a person makes a Will before his demise, then he will be able to choose someone he trusts to be his executor, and thus, reducing the family conflicts.

Requirement of Two Guarantors

In order to prevent misfeasance and nonfeasance of the Administrator, the court will require two guarantors. These two guarantors must have equal or best explained in Latin, 'pari passu', financial standing as the testator. These 'pari passu' guarantors are not easy to be found. Why? Supposed that the deceased is a billionaire, his guarantors must be a billionaire as well. If the family members are not able to search for such guarantors then, what is next? If such a situation occurred, the family members could apply to the court to reduce the number of guarantors and/or also, the status quo requirement. If the family members are still not able to find suitable guarantors, then, they will have to apply to the court, in hope, that the guarantor requirement could be removed. The above are reasons why the court would delay the grant of Letter of Administration.

Estate Distribution in Accordance to the Law

Many people think that after their demise, his assets will be transferred to their spouse or children automatically. Such thinking is wrong. If a person does not make a Will before his demise, his estate will be distributed in accordance with the Distribution Act 1958 (later amended by the 1997 Act). This may be contrary to his wishes and intentions. His assets might be shared among people whom he does not intend to benefit.

For example, A is survived by his parents, spouse and 4 children, according to the legislation, 1/4 of his estate will be distributed to his parents and spouse while another 2/4 will be distributed to his children. On the surface, this is a rather fair method of distribution. But, this may not have been the intentions

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and wishes of A. Because such provision will disperse and divide the person's estate into different distinction. Supposed that there are 7 beneficiaries, then, A's parents would get 1/8 respectively, 1/4 to his spouse and the remaining 1/8 would be distributed to his children. If A's parents demised without leaving a Will then, 1/4 of the share portion received from A will be distributed and shared equally among A's siblings. If a person was unwilling to cooperate or consent to such distribution then, the distribution of the estate cannot operate.

In order to prevent such a situation from happening, we must make a Will according to our wishes and intentions. Moreover, we might not want to distribute the estate according to the methods stipulated by the 1985 Act. We might have different intentions as to beneficiaries of our estate. Perhaps, to benefit a charitable foundation or people whom we are grateful of or perhaps, illegitimate children. The best way to avoid the complications above is through the instrument of Will, by stating our wishes and intentions clearly.