

## WILLING BUT TOO LATE

Chris is frantic. He was supposed to meet with Mr Lee fifteen minutes ago but he is nowhere near the Lee residence in Bukit Tunku. With the bad traffic jam, he is going to be very late for his appointment. And it doesn't help that he does not have his mobile phone, which he had absentmindedly left in his office. He hoped that Mr Lee would not mind that he is late!

"I guess he would not. There had been numerous appointments in the past nine months when he had not only kept me waiting but each time, came out of it none the better," Chris thought to himself.

Forty-five minutes later, he was in front of the gate of the Lee residence. Mr Lee's car was nowhere in sight. The maid came to the gate and she was not in her cheery self. "Sir is in hospital," she said.

Chris rushed to the hospital only to find out that Mr Lee had had a heart attack. He was responsive but still in critical condition.

Why did everything go wrong and on the day when Mr Lee was finally ready to have his will written? Chris was exasperated. It had been a long protracted process. Chris recalled when he first received a call from Mr Lee enquiring about will writing and their first meeting in which he briefed him. Chris even left behind a checklist to help him plan for the distribution of his assets and prompt him on the contents of the will.

Mr Lee had wanted to discuss with his wife and in subsequent appointments, Mr Lee had alluded to how busy he had been and had no time to even go through the checklist. He also had wanted to compile a list of his assets etc and that, to him, is an arduous task to accomplish.

Chris, however, had been patiently following up with Mr Lee, who for one reason or another just could not get down to giving him the instructions for his will to be prepared. But things changed just a few days ago. Mr Lee wanted to get his will done urgently. Chris learnt that Mr Lee was jolted by the sudden death of his good friend who died in an airline tragedy.

As it turned out, it is now just too late for Mr Lee.

For a will to be considered valid, the testator or will maker must have the necessary testamentary capacity to make and execute the will. This simply means that he must be of sound mind when he executed the will.

In the medical state that he was in, he was not in the mental capacity to provide instructions and even if he did, and if he could sign on the dotted lines and have the will witnessed by two witnesses, the validity of the will could be challenged in a court of law as his mental capacity was suspect.

Chris was frustrated and angry with himself for not being more assertive and allowing Mr Lee to drag his feet. Now his family may face the consequences of intestacy should Mr Lee pass on.

With a properly executed will, Mr Lee would have his assets distributed to his beneficiaries according to his wishes as expressed in the provisions of his will. Without one, the distribution of his estate will then be in accordance with the Distribution Act 1958 (as amended in 1997) which may not be in line with his wishes and the administration of the estate will be a lot more cumbersome without a probate coming from a will.

It is the innate nature in some (dare we say, many?) to procrastinate and leave death and after death matters to later. It can just wait. If only, the advice of Charles Dickens is oft heeded: "Never do tomorrow what you can do today. Procrastination is the thief of time."

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