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SUCCESSFUL ESTATE PLANNING VIA “L.E.G.A.C.Y.” PRINCIPLE

BY TAN SENG CHUAN

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In an Asian context, death is a taboo topic that is avoided. However, whether one chooses to avoid discussing this topic or not, it's a certainty that comes eventually. The emotional aspect of this can be hard to handle; thus, it will be wise and prudent for one to do some estate planning to ensure that their estate is distributed according to their wishes so as to minimize the financial impacts and other implications that may arise for their families and loved ones, as well to prevent delays, dispute & going into intestacy.

According to MoneySense (1), “Estate planning is about how you want your estate—the money and savings you worked hard for—distributed after your death. It is about making sure that the people and causes you care about receive in accordance what you want to give them and in what proportion as well”. In this article, below is the “L.E.G.A.C.Y” principles for one to take reference while doing their estate planning, and helping them move from success to significance:



Liquidity, lasting power of attorney (LPA)

Upon a person's demise, his or her assets will typically be frozen until the letter of probate or letter of administration is obtained for the distribution of the estate. In this case, having liquidity is the first thing in estate planning because expenses and fees such as taxes, probate fees, final expenses are easily paid from the estate. In addition, the distribution process may take a while depending on the situation, and the family may also need funds to maintain their lifestyle & settle monthly expenses during this difficult period, having liquidity will ensure the above mentioned two situations are taken care of and the family standard of living will also not be too affected.

L also stands for the lasting power of attorney (LPA). According to MoneySense (2), “An LPA is a legal document that lets you (the donor) appoint one or more people you trust to be your donees” who “will act and make decisions on your behalf should you lose mental capacity one day”. This LPA is important in estate planning as well because a person may be mentally incapacitated before their demise, and their family members may not be able to make legal decisions on their behalf. The LPA encompasses two broad areas of personal welfare and property & affairs. There are two types of LPA forms (Form 1 & 2), and one can find out more details and the processing of doing LPA via the Office of Public Guardian (OPG) website (3). Apart from LPA, one should also consider Advance Care Planning (ACP) & the Advance Medical Directive (AMD) as well in estate planning, as this happens & kicks in before a person's demise just like LPA. The ACP & AMD allows one to express his or her wishes & preference for healthcare matters, and it will serve as a guide for the family members & medical caregivers to make decisions for the person when one is terminally ill and/or have lost their mental capacity to make end-of-life healthcare decisions.



Gather inventory list of asset & liabilities

The third step in this process will be to gather an inventory list of all assets & liabilities, by taking stock of what one owns, one can have a better understanding of how to protect & distribute them. This inventory list will include things like bank account savings, fixed deposits, investment, properties, jewellery/artwork etc with detail description and their respective values; as well as liabilities that includes loans/debts, credit cards, personal income taxes, mortgages etc. It is also important to note the amount CPF savings, the cash value & sum assured for insurance plans as well.



Assess own situation and form out distribution plan & instruction

This is the most important and complicated step in this process, after the above mentioned three pointers, the next step is an assessment of one's situation, deciding on the distribution plan & instruction on using the various tools that are available & applicable. Some of these tools include: will, trust, CPF nomination & insurance nomination. By having a legal document through writing a will, it allows one to indicate his or her distribution plan & instruction of his or her estate much faster and more convenient way, instead of distribution via the Intestate Succession Act which typically takes more time and may not be what the person wants. For better planning, control, privacy & creditor's protection, one can consider setting up a trust for the distribution to be managed by the trustee. Apart from will & trust, one should also do their CPF & insurance nominations as well. CPF does not fall within the scope of a will or trust, and doing a CPF nomination will allow the distribution of CPF savings to the named beneficiaries. By doing an insurance nomination (either via 49L or 49M nomination), it will bypass the administrative or probate process to speed up the pay out to the beneficiaries as well.

For Muslims, it is important to note that the administration of their estate will be in accordance to the Faraid (or the Muslim inheritance law), which is provided for under the Administration of Muslim Law Act (AMLA) administered by the Syariah Court in Singapore. For an individual with overseas assets, they may want to take note of the various foreign laws and taxation schemes like estate duty which may be applicable as well. One may also want to consider giving to charity in his or her estate planning as well. Depending on each individual's situation, wishes & size of the person's estate, the complexity of the estate planning will differ from person to person. Hence, it will be good to go through this process in detail with a competent & trusted practitioner to map out the estate planning and plan accordingly.



Executor, guardian, deputy, caregiver

The next thing that one should take note of in his/her estate planning should be the appointment of suitable candidate for the important roles of being an executor, guardian, deputy or a caregiver. Although it sounds easy, it may not be easy to find suitable & trusted candidates for these roles. An executor will be responsible for carrying out the distribution wishes of a person according to his/her will after the grant of probate is obtained, and he/she needs to be over 21 years old, not a bankrupt and of sound mind. In a situation where the executor becomes bankrupt, mentally unsound or simply chooses to turn down the role after being nominated, it will be important to ensure that there is a replacement executor being named as a contingency, or even an executor like a law firm or a trust company.

Appointment of guardian is important for those with children below the age of 21, especially testamentary guardian in the event that both parents are no longer around. The guardian will be the one responsible for the custody of their children until the age of 21. The other important roles of a deputy & caregiver need to be considered seriously as well. The appointment of a deputy will be applicable if one has not done a LPA and will be useful for parents with children that have an intellectual disability.

In such a case, these parents may also apply to the court to appoint themselves as deputies for their children and another person as a successor deputy for their children, in case they have lost mental capacity or passed away. When applicable & necessary, the appointment of a caregiver for care giving needs of the care recipients (for children, elderly etc) should be planned for as well.



Conduct regular review of estate plan

Just like regular reviews for financial planning, it is also important for one to conduct regular reviews of their estate planning & estate plan. In that event that there are changes to an individual's family or life stage like getting married/divorced; having children etc, one should review whether their estate plan are relevant with these changes; and more important in line with their distribution goals & objectives. In addition, one should take note of estate preservation while conducting their review of their estate plan & planning. This may include things ensuring sufficient risk management in the form of insurance (like health & medical insurance to pay for medical bills, plans to pay off estate duties for overseas property/assets) to minimize leakages in the forms of expense & taxes.

Notes:

- 1- <https://www.moneysense.gov.sg/articles/2018/10/what-is-estate-planning>
- 2- <https://www.moneysense.gov.sg/articles/2018/11/lasting-power-of-attorney-lpa>
- 3- <https://www.msf.gov.sg/opg/Pages/Home.aspx>

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You only live once (YOLO)

Contrary to the online slang of YOLO which sometimes embrace silly & dangerous behaviours, YOLO here means that we only have one life to live; and we should live our life to the fullest. However by always planning ahead and by working hard & doing proper financial planning, one can still enjoy successes in life and simultaneously achieve financial success, as well as spending quality time with their family & loved ones, and creating experiences & memories.

With proper estate planning, one can then move from success to significance: by passing their gift of love & achieving wealth transfer that transcend generations, and creating a legacy for themselves. By doing so, this is truly YOLO and living life to the fullest.

In conclusion, I hope the above mentioned "L.E.G.A.C.Y" principles are useful for your reference in your estate planning process. However, estate planning is an extensive and broad topic that entails more details that is beyond the scope of this article. Do work with a competent & trusted practitioner to go into details for estate planning, and I hope that you can move from success to significance with estate planning!



Tan Seng Chuan is a licensed financial practitioner and an active IFPAS member. He holds the ChFC®/S, CLU®/S, IBF and AEPP designations.