

## You can secure your wills digitally soon

Singapore Academy of Law's new service is a game-changer that will boost legacy planning



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He had a successful career and was a good parent to his children.

But when it came to a critical aspect of his financial strategy - planning the distribution of his assets among his loved ones after death - he unwittingly made what could have been a distressing error.

It all looked like it was well on track: He had his lawyer draft a will and even gave copies of it to all his beneficiaries to ensure that his wishes would be carried out.

While they could only open the envelopes containing the document after his death, he expressed his hope that they would respect the terms and conditions of the will as these were his final wishes.

This was because he had wanted some of his children to receive more than the others.

But what seemed to be a case of water-tight legacy planning hit a snag after the man died - he had kept the original copy of the will and no one knew where it was.

The family searched all his belongings at home and still could not find it.

His lawyer and all the beneficiaries only had copies, which cannot be used to apply to the court for a grant of probate to legally distribute the assets.

Photocopies are not valid because the man could have destroyed the original due to a change of mind before he died.

People who want to challenge such cases in court usually offer this probable explanation on why the original is missing.

If so, the law would deem that the man had died without a will and that his assets would be distributed equally among his children.

Legacy planning is expected to get a big boost soon because the SAL is expected to expand its wills services, including allowing the public to upload copies of their actual wills online with its registry. While details of this service are still being worked out, the SAL told Invest it will be rolled out progressively later this year.

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Fortunately for this family, the children respected their father's wishes and all signed an undertaking not to challenge the will's validity and the copy was submitted to court as proof of his last wishes.

The law cannot offer protection in every situation.

While many people are familiar with the purpose of wills, this case highlights how human error and mishaps can easily upset the best-laid plans which even the law cannot remedy.

The recent story of a woman whose body was discovered in her condominium unit two years after she died is but another example of how vulnerable people can be and that we cannot expect help to be easily available all the time.

Yes, the law is there to protect you but have you thought of the following scenarios:

- You have a trusted lawyer who does and keeps your will. If the lawyer retires or dies before you, what is the contingency plan?
- Does your family know where you have kept the original copy of your will? How safe is it and can someone unwittingly throw it away as they clear out your belongings in your old age?
- An aggrieved relative is unhappy because he somehow finds that he will not be getting any inheritance. When you are frail and unable to care for yourself, he could search your belongings, find your will and tear it up.

## PUBLIC CUSTODIAN OF LEGACY MATTERS

The good news is that there will soon be a public body that can act as a guardian angel to watch over the legacy matters of families.

The Singapore Academy of Law (SAL), which supports the work of the judiciary and promotes excellence of the legal industry, maintains a registry that allows the public to submit a record of their will.

But such records comprise only details relating to the making of the will, including the lawyer responsible for drafting it as well as information on where it is kept - such as in the lawyer's office, a safe deposit box in a bank or even a particular drawer at home.

But the actual will, which details the beneficiaries and assets involved, is not kept at the registry.

However, some families still find such a service useful because it allows them to at least do a final check to see whether their relatives have made wills, especially when death occurs suddenly and there is no opportunity for the deceased to leave any instructions.

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It is expected to be a game-changer.

- If wills can be uploaded to the SAL, families will no longer have to worry about missing wills. As the SAL is also the governing agency for legal authentication services, wills that are uploaded digitally with the registry can be deemed to be the original document.

- The Chief Justice of Singapore chairs SAL's governing body and given that the judiciary is renowned for its efficiency, you can expect probate matters to be resolved even quicker. So if a will is stored electronically, it is possible for it to be flagged to the relevant parties, such as a family's lawyers and appointed executors, the moment a death notice has been reported to the authorities.

- In the long term, there is also a potential for the SAL to act as the regulator to oversee the proper execution of wills and prevent abuses and illegal activities.

The SAL is already helping both buyers and sellers of properties to safeguard funds involved by acting as the stakeholder pending the transactions' completion.

This came about after several cases in the past when lawyers absconded with such funds.

## **YOU HAVE TO DO YOUR PART TO MAKE THIS WORK**

But even the best system cannot help you if you do not keep your end of the bargain, which is to keep your legacy matters in order.

For instance, about half of eligible members of the Central Provident Fund have not named beneficiaries of their funds even though the process is simple, does not require a lawyer and can even be done online.

When it comes to wills, even more are unprepared - only 14 per cent of people here have wills that are up to date. Most do not even have wills or have ones that are outdated or do not adequately cover their needs.

A will is actually a "living document" that needs to be changed as you become older.

For instance, the first will for young couples is usually a simple one - everything to the surviving spouse.

But as kids come along, the list of beneficiaries will become longer. Similarly, the content and distribution of assets will change as people's wealth grows during their lifetime.

What this means is that those who choose to keep their wills with the SAL when the service is available have to remember to update their records.

After all, the latest document will revoke all previous wills, including one that is stored in SAL if it is not updated.

But it is still good to know that soon, when there is a will, there is a way to make it safe.

## Strict checks needed if wills are stored online

Wills are probably the most contentious but necessary documents for families.

Those who don't have one risk having the assets they have accumulated in their lifetime going to undeserving relatives.

What is worse, people who die intestate (without wills) could deprive some of those who are dearest to them, such as step-children, nephews or even friends who have been caring for them in old age, of the inheritance meant for them.

Then again, having a will does not mean there will be peace and harmony - numerous families have ended up battling in the courts after some relatives discover that they have been given less than others.

So when it comes to storing wills online, it is paramount that the contents be kept secret until the death of the testator (the owner of the will).

People who want to register information relating to their wills must log in to the site using their SingPass account. And while the testators are still alive, only they and their lawyers can access the information.

When the Singapore Academy of Law (SAL) launches a new service that will allow people to store and access the digital copies of their wills, tighter checks and screenings will be needed.

This is because it is not uncommon for many seniors to let their children or caregivers have access to their SingPass account and other personal documents to facilitate any transactions on their behalf.

Imagine if some of those relatives should decide to take a peek at the wills or, worse, lodge new ones by posing as the testators since they have access to all the tools needed to log in.

To prevent such abuses, a second-level security check is needed, such as through verification by phone calls or virtual meetings by SAL officials with the testators.

Given the serious ramification of an untimely disclosure of wills, it is prudent not to give immediate access, even if it is a request to view: the SAL should be given enough time to make the checks or, in expedited cases, charge a fee to have the verification done on the same day.

Checks with the testators themselves are needed to authenticate that any request is genuine. If the testators themselves cannot speak lucidly in such cases due to poor health, for example, all requests to view their wills should be denied.

Such safeguards are needed to protect the integrity of the system - after all, it will be uncommon for testators to make such requests as they would have access to physical copies of their own wills.

And any request to replace the original will with an updated one has to be authenticated in the same manner.

If there is reason to doubt that the testators may not be mentally capable to make such requests, an order from the court may be needed to protect the interest of the testators.

Such procedures may seem cumbersome but they go a long way in reducing the possibility of ugly family battles in court.

The SAL is the institution that promotes legal excellence and it deserves the public's full support for taking the initiative to improve the administration of wills.

Such a service will go a long way towards instilling confidence in Singapore even as its population ages. It shows that the country not only has a legal system that protects its people but that it is also able to uphold the final wishes of those who are no longer with us.

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