Post-Workshop ‘Cheat Sheet’

Workshop:	**Nuts & Bolts of Property Ownership, Managing ABSD Exposure and Inheritance Planning**
When:	25 February 2022
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Moderator:	Allen Lim, Vice-President of AEPA
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About the Workshop

In this workshop, Private Client lawyer Patrick Tan explored eight property-related Case Studies from the experiences of Patrick and from the media.

Key aspects of property were discussed including stamp duties, methods of owning property, buying property on trust and oral agreements, among others.

Please refer to the cheat sheet when reading these post workshop notes.

Case Study #1 – Best Friend Dies Suddenly Without Mortgage Insurance[i]

CK the deceased was Patrick’s best friend and godfather to Patrick’s son. Patrick has been telling thousands of people about estate planning but he could not convince his own best friend about something so basic as writing a Will.

People often say they can start planning when there in their 70s and 80s, and that can be harmful.

In the case, CK passed away without a will and his parents are to inherit his condo 50-50. There was no mortgage loan insurance. The parents didn’t want to sell the home for sentimental reasons and borrowed from loan sharks.

Lessons – (a) work with a trained professional on your estate planning (b) don’t wait till it’s too late (c) make sure your properties are covered with insurance.

Case Study #2 – Elderly Spouse of Deceased Loses Right to Live in HDB Family Home[ii]

Patrick started by cautioning people who are not properly trained to avoid giving advice on wills, because the law is not straightforward, and one can cause very negative results when dealing with something so important like an HDB flat.

In the case, a registered occupier is not an owner of the flat such as the mother. The deceased didn’t have a will and 50% of the home went to the mother and 50% went to her three sons equally.

The family had three main options to the family - sell the flat and divide the proceeds, the sons sell their shares to their mother, or the sons could give their shares to their mother.

In the end, the sons got the home sold and had their mother put into an elder care home.

Lessons: (a) the deceased could have written a will to protect his wife (b) seek a professional especially when it comes to important assets like the family home, and we have vulnerable beneficiaries such as an elderly mother.

Note: The sons could disclaim their shares through a deed of family arrangement. Such a gift to their mother would attract stamp duty because the distribution is not according to intestacy. The amount of stamp duty would roughly be 50% of the property value X 3% (the prevailing genera buyer’s stamp duty at the time).

If the mother cannot afford to purchase their share, the sons could have sold their share for $1 but the transaction would nevertheless attract stamp duty based on market valuation.

Case Study #3 - Vicki Zhao’s Husband Buys $28M Penthouse on Trust[iii]

To mitigate ABSD, he made their 10-year old daughter April Huang the beneficial owner of a luxury penthouse in Orchard Road.

This strategy has these benefits: (a) Ability to lock in a good property for the child (b) the purchase is based on the child's ABSD profile and if the child does not own any property beneficially at the material time, there will be no ABSD payable.

This strategy should not be used by parents to evade stamp duty. Once the property is purchased it belongs to the child already except that the child is too young to own it legally. The parents are usually the trustees during the child's minority, after which the property passes fully to the child when the child reaches 21 years old.

The trust must be irrevocable to show the parents do not benefit from the home. If the property is sold during the trust period, the sale proceeds belongs to the child and it should be shown that the proceeds are in the child's bank account.

If April passes away before she turns 21, her estate would own the property in which case since she has no will, the property would go back to the parents – even if the parents subsequently divorce.

Case Study #4 – How Can a Child Inherit a Property?[iv]

As the sole survivor of the family, Jolene inherited all the family's assets.

Her relatives were able to act as trustee and transfer the family's assets into a trust including a private condo and cash assets.

Fortunately, there were no disagreements over who would be the trustee and guardian.

Jolene was fortunate in that her family came together at a time of crisis – in spite of no estate planning being done. Imagine that her family is disagreeable and disputes arise – all to the detriment of Jolene.

Case Study #5 – Can One Will Away a Joint Tenancy Property?[v]

Lucky Tan and his wife were joint tenants of a semi-detached home. He willed his share to NKF to whom he was very indebted.

Patrick shared that in the case of a private property, one can server a joint tenancy into equal parts unilaterally without the consent of the other joint tenants although they will be notified of the severance. Hence for Lucky, he could sever the joint tenancy into a 50-50 tenancy in common without seeking his wife's consent. However, as a matter of prudence, parties to the joint tenancy property should discuss matters related to severance prior to severing to avoid dispute and disagreements.

To sever the joint tenancy into unequal parts, consent of the other joint tenants would be required.

Case Study #6 - Woman Loses Claim to to Home Purchased Based on Oral Agreement[vi]

Susan provided funds to her friend to purchase a home in his sole name. They had an oral agreement that she was entitled to a 73% share of the $1.7M home. She placed the property under his sole name to "save costs" on stamp duties and property tax. But the appeals court found no clear evidence of an oral agreement.

People buy properties in the names of others all the time. It is legitimate so long as you're not doing something fraudulent or illegal such as evading stamp duty or circumventing ownership rules illegally.

She argued that that even if her name is not on the title deed, all the money came from her, and hence her share in the property would go back to her on resulting trust. In the case, it was not clear that the monies provided towards paying instalments were a loan to her friend or contributed towards ownership in the home (equity).

Case Study #7 - Singaporean Buys Restricted Landed Properties for 3 Foreigners in her Name[vii]

She was supposed to purchase the properties and transfer the properties to the foreigners when they become citizens in the future.

This was in violation of the Residential Property Act, which states that foreigners and PRs cannot purchase non-gazetted residential properties such as landed property. Such properties are reserved for Singaporeans only except for Sentosa island properties or where special permission is granted by the Land dealings Approval Unit (LDAU).

Such a rule is quite universal as countries aim to protect their own land for their own citizens.

Case Study #8 - Implications of a Home Owned by a Company[viii]

The home of our first Prime Minister Lee Kuan Yew, 38 Oxley Road, was owned by a company called 38 Oxley Road Pte Ltd as of an SLA report dated 18 June 2017.

The company was set up in 2015, in the same year that LKY passed away.

Owning properties through companies is very popular at the time when we had estate duty up till February 2008. Since the property is not owned by the company and not the deceased, the estate duty at that time would not take the property into account for computation purposes. One other key benefit by placing the property under the ownership of the company is that it would ring-fence the property in the event of legal proceedings against the individual owner as the property then would not be considered as the individual owner's asset.

Additionally, the company can technically last forever whereas individuals do not. This helps to preserve the property immemorial.

Note: Members can access pre- and post-workshop notes by logging in at www.aepa.asia.

[i] From the speaker's own experience.
[ii] From the speaker's own experience.
[iii] "Vicki Zhao's Husband Spent S$28mil on a Two-Storey Luxury Penthouse Near Orchard Road," TodayOnline, 13 May 2020.
[iv] "Relatives to set up trust fund for miracle survivor," Straits Times, 2 April 2008.
[v] "Madam Lee: 'I paid for this house with my sweat'", Straits Times, 29 April 1996.
[vi] "Woman loses claim to 73% share in $1.7M house on appeal," Straits Times, 31 January 2022.
[vii] "Woman admits flouting law by buying landed properties for 3 foreigners under her name," Straits Times, 14 December 2021.
[viii] Based on Singapore Titles Automated Registration System report dated 18 June 2017 provided by Singapore Land Authority.