TOCQUEVILLE

Estate Planning: Four Ways to Avoid the Fight Over the Family Home

BY PAUL KLEINSCHMIDT ON *APRIL 26, 2019*

The transfer of the family estate from one generation to the next can be a wonderful event. In reality, however, it is often fraught with peril. A particular family story that has become public is cautionary:

Lee Kuan Yew, the founding father of Singapore, was nothing if not far-sighted and meticulous. During his tenure as prime minister, from 1959 to 1990, the tiny city-state without any natural resources was transformed from one of the poorest countries in the world into a global financial hub. Marking his tenure were orderliness, stability, and transparency, instrumental qualities in attracting the foreign investment that would fuel the country's rise. Lee's family, meanwhile, long at the forefront of Singapore's ruling class, was noted for its discretion and humility. This makes the public display of discord now centered on the fate of the house that belonged to Lee an ironic, but perhaps not rare, occurrence.

At issue is what is to happen to Lee Kuan Yew's home at 38 Oxley Road in the wake of his death. His three children are in deep conflict over the matter. Mr. Lee's youngest two children profess that their father wanted the home demolished after his death to avoid the cost of preserving it, and to preempt its use as state propaganda. Meanwhile, Lee Hsien Loong, the eldest child and current prime minister of Singapore, claims his father had simply wished for the equal division of his estate among the three children. The dispute has played out quite publicly through Facebook posts and primetime addresses on state TV. It is, in short, somewhat of a national embarrassment.

Leaving behind a messy estate is no one's idea of prudence. However, when drafting an estate plan, even the most well-intentioned and informed testators can be tripped up by the legacy of family properties. Vacation homes can be even more perilous than primary residences in this regard, as they are often a symbol of a family's shared values and sense of identity, and the place where many collective memories were created. Unfortunately, the emotional and financial investments that testators make in such properties often cause them to ignore the potential emotional and financial burdens placed on inheritors.

To begin with, it costs more today to maintain and operate a large property than it did for one's parents. Older houses are more difficult to repair and maintain, property taxes tend to rise, capable help is much more expensive, and utilities charges have risen more than official inflation figures.

In addition to the ever-increasing financial strains, the emotional dimension of estate inheritance should not be ignored. Heirs frequently feel a responsibility to preserve and promote the family myth, and an obligation to past generations can permeate many aspects of their life and affect their emotional well-being and decision-making capabilities.

Logistics present another challenge. When a large family property is left to several heirs jointly, the devil is in the details of communal life, even if only on weekends and holidays. In theory, of course, all heirs share the same carefree childhood nostalgia, but adulthood presents other realities. The families of the testator's children may use the home with varying frequency, while the need for more or less space based on the number of family members will surely bring into question the cost-sharing arrangement. Meanwhile, all heirs might not have the same level of income; hence, they might all face different financial and budgetary constraints. They may thus feel differently about discretionary or even necessary expenditures.

The complexities don't end there. Whose decorating, architectural, and landscaping tastes will prevail? Who's in charge of accounting and bill payment? Who gets called when the boiler breaks? What if one heir wishes to sell? How do spouses with no emotional attachments to the ancestral home fit into the picture?

At this point, some readers might be feeling relieved by a more modest family financial picture; but it is a common misconception that estate disputes occur only when huge fortunes are at stake. In fact, the smaller the estate, the more likely that a large percentage of a family's net worth is represented by real estate; as a result, the family possesses less liquid capital to deal with the property itself.

When thinking ahead, the temptation for testators to keep the family united through such a home may be strong. In reality, however, it is just as likely to cause a harmonious family to be drawn apart under the stress and tension of the considerations listed above. This might lead one to conclude that family homes are money pits that inheritors can ill afford, and that a testator would be better off selling, donating, or even bulldozing the property in question. It's advisable to contemplate all options, of course, but families can make these cherished homes a beneficial part of their lives if handled well. Here then, are some important questions to consider in doing so:

1) Is the home really worth holding onto?

- What do the upkeep costs look like compared to the potential proceeds of a sale?
- Could each heir derive more value from the proceeds of a sale and application to other pursuits or homes than from sharing the family home?
- Can children who do not want to be involved be bought out?

2) Has it been clearly established how the property will transfer from one generation to the next in the most tax-efficient manner possible? Is a Grantor Retained Annuity Trust (GRAT) right for your family? Or the formation of a family LLC? Or an outright gift? Work with your family's trusted advisors to determine the best route forward.

3) Is the bequeathing generation attempting to control the family from the grave? A detailed plan put together by both the bequeathing and inheriting generations has a much greater chance of success than one imposed by the patriarch or matriarch of the family. Consider bringing in an outsider to facilitate these conversations.

4) Have clarity of purpose, communication, and accountability been achieved?

- Do you have a mission statement?
- Do you have a framework for making decisions and resolving disputes?
- Do you have clear house rules?
- Have you defined responsibilities for all parties?
- Have you digitized logistics using online calendars and document repositories so that each family has access, and there is transparency throughout?

As with almost every other aspect of inter-generational wealth transfer, the ancestral home can quickly turn into a liability without clear communication and sound planning. But managed properly, it can be a powerful device for preserving the fabric and identity of a multi-generational family. It can be a place for cousins (the future stewards of the family) to forge meaningful relationships as they all learn family values, understand family history, and build self-esteem. And it can be an invaluable shelter from the storms of everyday life.

And isn't that what family wealth should be all about?

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April 26, 2019