

NGEOW LAW PRACTICE ESTATE MANAGEMENT Handbook

Exclusive For Clients of Ngeow Law Practice



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ESTATE MANAGEMENT

At MESSRS NGEOW LAW PRACTICE, our Estate Management Team stands as one of the pillar of excellence in providing comprehensive and strategic solutions for the effective administration and protection of our clients' estates. With a team of seasoned legal professionals and experts specialising in estate planning, probate, and trust administration, we are dedicated to delivering unparalleled service tailored to the unique needs of each client.



KEY AREA OF EXPERTISE:

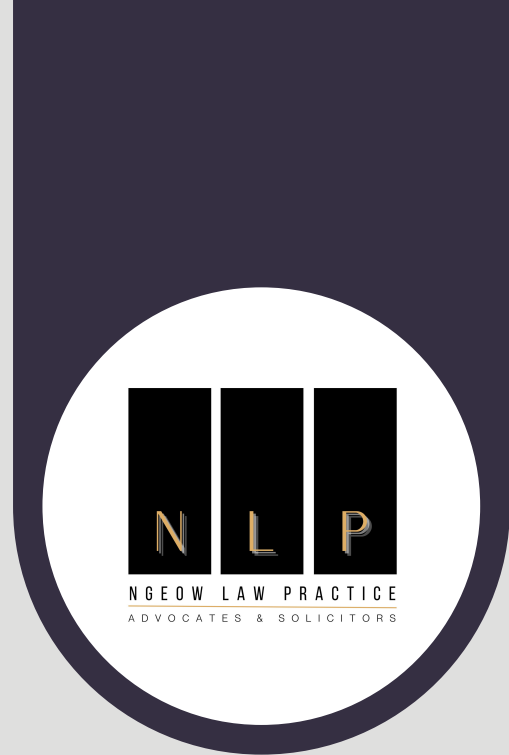
Estate Planning

Our skilled Team works closely with clients to develop personalised strategies that align with their financial objectives and familial considerations. From wills and trusts to advanced directives, our goal is to create robust plans that ensure the seamless transfer of assets and safeguard the interests of future generations.

Probate Services

The Estate Management Team at MESSRS NGEOW LAW PRACTICE is well-versed in navigating the complexities of the probate process. We guide clients through every stages, providing clarity and efficiency in the settlement of estates. We handle matters with sensitivity and precision, offering compassionate support during what can be a challenging time for families.

ESTATE MANAGEMENT



Trust Administration

We specialise in administration of trusts, diligently overseeing the distribution of assets in accordance with our clients' wishes. Our Team is committed to ensuring that the transition of assets is smooth, minimising the burden on beneficiaries and trustees alike.

Litigation Support

In event of disputes or challenges related to estate matters, our Estate Management Team provides robust litigation support. We are adept at protecting our clients' interests through strategic legal counsel and representation in court.

Client-Centric Approach

At the core of our Estate Management Department is the commitment of delivering exceptional client service. We prioritize clear communication, attention to detail, and a proactive approach to addressing the evolving needs of our clients. We understand the importance of building lasting relationships and are dedicated to exceeding expectations in every interaction.

WILL OR NO WILL?

Will and testament is a legal instrument in estate management which dictates the wishes of the Testator on how and to whom he/she wants to distribute his/her assets (movable or immovable) after his/her death. Here are the **FIVE** differences in having a will and not having a will.

TYPE OF APPLICATION

With a valid and written Will and upon the death of the Testator, the Executor named in the Will shall file an application to the High Court to obtain a Grant of Probate, which is a sealed court order appointing the Executor to manage the assets. However, if there is no Will, the application is for Letter of Administration, where the Court will grant an order to appoint an Administrator to manage the assets.



EXECUTOR OR ADMINISTRATOR

In a Will, the Court shall appoint the Executor(s) named by the Testator in the Will to distribute the assets upon his/her death. The Testator can appoint anyone of his/her choice to be the Executor(s). The Executor(s) need not be the Beneficiary of the Estate (Testator's Assets), however it is commonly seen in most cases that one of the Beneficiaries is named as Executor for practical reason.

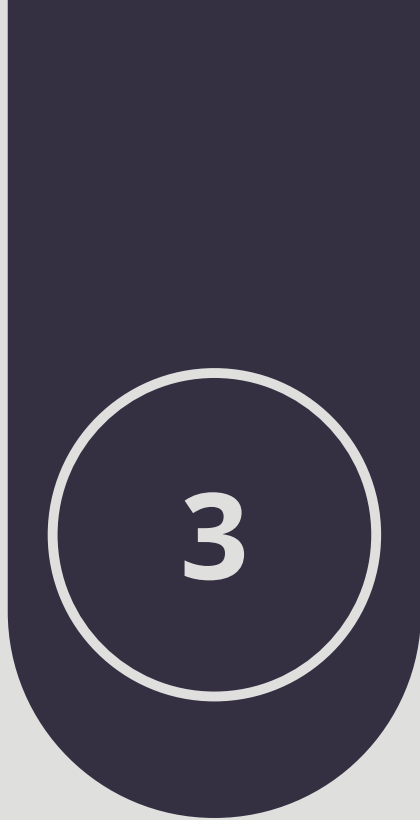
If there is no Will, the Court shall appoint an Administrator(s) among the Beneficiaries. All of the Beneficiaries are entitled under the law to be appointed as the Administrator(s). However, in most cases and for practical reason, the Beneficiaries will decide among themselves on who should be the Administrator, and in such event, all other Beneficiaries are required to renounce their rights to be appointed as Administrator.



BENEFICIARIES

In a Will, the Testator states clearly and expressly the Beneficiaries of his/her Estate and how it should be distributed among them. Therefore, the distribution of the Estate shall be done strictly in accordance with the wishes and manner stated in the Will. The Testator can name anyone as Beneficiaries, not necessarily to be somebody related to the Testator.

On the other hand, if someone die without a Will, then the distribution of his/her Estate shall be in accordance with Section 6 of Distribution Act 1958, summarised as follows:-



SCENARIOS <i>(The Deceased died leaving following beneficiaries)</i>	MANNER OF DISTRIBUTION
SPOUSE only	SPOUSE gets whole estate
CHILDREN only	CHILDREN gets whole estate, to be distributed equally among CHILDREN
PARENTS only	PARENTS gets whole estate, to be distributed equally among PARENTS
SPOUSE and CHILDREN	1/3 to the SPOUSE 2/3 to the CHILDREN, to be distributed equally among CHILDREN
SPOUSE and PARENTS	1/2 to the SPOUSE 1/2 to the PARENTS , to be distributed equally among PARENTS
CHILDREN and PARENTS	2/3 to the CHILDREN, to be distributed equally among CHILDREN 1/3 to the PARENTS , to be distributed equally among PARENTS
SPOUSE, CHILDREN and PARENTS	1/4 to the SPOUSE 1/2 to the CHILDREN, to be distributed equally among CHILDREN 1/4 to the PARENTS , to be distributed equally among PARENTS

COSTS

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Both application for grant of Probate and/or the grant of Letter of Administration to the High Court of Malaya involve costs such legal fees, filing fees, affirmation charges and so on.

However, comparatively the costs involved in an application for the grant of Letter of Administration are usually higher. This is because it involves multi-layer procedures in order to obtain the grant, for example a separate application for the renunciations by the Beneficiaries to be named as Administrator and subsequent application for dispensation of Surety. These procedures require filing of cause paper, which results in additional filing fees and affirmation charges. In addition, upon obtaining the grant of Letter of Administration, the Administrator maybe required to apply for a Distribution Order (another separate application) from High Court if there are immovable properties in the Estate distribution.

To apply for the grant of Probate, many of these procedural requirements are not necessary, and as such, costs incurred in terms of legal fees and disbursement are much lesser.

TIME

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Similarly, time required to obtain the grant of Probate is lesser than that of the grant of Letter of Administration. Generally, it takes 1 to 3 months to complete the process of application for grant of Probate, whereas it may takes more than 6 months for the whole exercise of the grant of Letter of Administration to be finalised.

Legal Requirements for a **Valid Will**

**Testator must be at
least 18 years old**

**Testator must be of
sound mind**

Must be in writing

**Must be signed by
the Testator**

**Must be signed in
the presence of 2
witnesses**



3 GOLDEN RULES OF WILL

CERTAINTY OF TESTATOR'S INTENTION

A Will must demonstrate the clear and express intention of the Testator. Mere discussion and conversation about writing a will or verbally giving someone the asset cannot equate to a real intention of creating a will. This is the reason why it is a legal requirement that a Will must be in written form.

CERTAINTY OF ASSETS

The assets and liabilities must clearly described in the Will, so that there will be no ambiguity in identifying it. For example, the phrase "I give my house at Ipoh to my son" is not clear in determining which house is the Testator referring to as there are no details of the property such as Title number or address.

CERTAINTY OF BENEFICIARIES

Similarly, Beneficiaries must also be clearly named in the Will, identified by their other particulars, such as identity card number and the relationship with the Testator. This is to avoid any ambiguity in identifying the Beneficiary. For example, the same phrase "I give my house at Ipoh to my son" is not clear in determining which son the Testator is referring to.

GRANT OF PROBATE



What is a Grant of Probate?

A Grant of Probate is a legal document issued by the High Court, acknowledging and granting powers to the Executor(s) named by the Testator in a Will, to execute and manage the Estate in accordance with wishes as stated in the Will. Upon obtaining the duly sealed grant of Probate from the High Court, the Executor(s) can then carry out the obligations and instructions under the Will, for example, to dispose off the assets, or transfer to the Beneficiaries accordingly, to withdraw money from banking accounts and so on.

To do so, the Executor(s) will generally require the Certified True Copy of the grant of Probate, to be submitted to the respective parties, such as bank, insurance company and land office.

Who can apply for Grant of Probate?

The Executor named in the Will shall apply for the grant of Probate.

In some cases, the Testator will grant power to the Executor(s) to appoint additional Executor(s) if necessary. In some other cases, the Testator may name two Executors, but in the event that one of them did not survive the Testator, or cannot be found or refused to act as an Executor, then the remaining Executor can proceed to apply for the grant of Probate, without the other.

In situation where the Testator named only one Executor, but he/she did not survive the Testator, or cannot be found or refused to act, then the Beneficiaries may apply for a grant of Letter of Administration with Will Annexed, whereby the Court will appoint an Administrator (among the Beneficiaries) instead of an Executor, and the Administrator shall execute the Will accordingly.

GRANT OF PROBATE



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What are the documents required to apply for Grant of Probate?

In order for the lawyer to prepare the application, the Executor(s) shall provide copy of the Will, death certificate of the deceased Testator, supporting documents which contain the particulars of the assets and liabilities, identity card copies of the Executor(s) and all Beneficiaries.

It is a good practice to furnish as much detail as possible with all information, especially in relation to the assets and liabilities, to the lawyer. For example, if there are immovable assets in the Will, it is good practice to give a copy of the Title or sale and purchase agreement. If there are banking accounts, to give the bank statement containing the account type and account number (without disclosing the balance). This will allow the lawyer to prepare the List of Assets and Liabilities as detailed and as accurate as possible.

The List of Assets and Liabilities is endorsed and sealed by the court upon the grant of Probate which will be referred to by banks, insurance companies, land offices.

Should the List of Assets and Liabilities contained missing or inaccurate information (for example, no or wrong details of the Title for immovable property or wrong account name or number of the banking accounts), it will hinder the distribution and transaction thereon, and there is no choice but to file an application to the Court to amend the List, which inevitably incurs additional costs and delays time.

GRANT OF PROBATE



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What are the procedures to apply for Grant of Probate?

First, the Executor(s) appoints a lawyer and provides the required documents as explained above. In the course of preparing for the cause papers, the lawyer may conduct relevant searches, such as land search, if necessary.

Once the cause papers are ready, the lawyer will make appointment with the Executor(s) to affirm the relevant affidavits before a Commissioner for Oath. The witnesses for the Will are required to also affirm the affidavits, affirming that they have witnessed the attestation of the Will and that the Testator has signed the Will in sound mind and without duress.

Once all the cause papers are ready, the lawyer will file the application to the High Court, a date will be fixed for the hearing of the application.

The Executor(s) is required to physically present at the hearing, together with the lawyer. This is for the court to verify the identity of the Executor(s). At the hearing, the Executor(s) is required to present the Original Will, Original Death Certificate of the deceased Testator, Original Identity Card of the Executor(s), to the court for verification purposes. The Original Will will be taken and kept by the Court. The lawyer will present the application and seek for an order to be granted.

Upon checking through the application, provided that there are no other issues such as challenges filed by any party, the High Court will order the Grant of Probate on the day of hearing.

GRANT OF PROBATE



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How long does it take to obtain the Grant of Probate?

There is no fixed time frame for an application for grant of Probate to be completed. Generally, it takes approximately 3 months, from the date the lawyer is appointed and provided all necessary documents are in order.

There are various factors that could contribute to a delay. For example, delay by the Executor(s) in providing sufficient and detailed information to the lawyer resulting in the delay in drafting and preparation, delay in the appointment with the Commissioner for Oath, delay by the witnesses in affirming the affidavits. After which, it depends on how soon the Court can fix a hearing date for the application, sometimes, that depends on the volume of cases and capacity of the Court.

Can someone challenge the Grant of Probate?

The grant of Probate or the application itself can be challenged or contested by parties who have their interests vested in the Estate of the Testator. Some common grounds for challenge are pertaining to the validity of the Will, on the basis such as : the legal requirements are not fulfilled, or the Testator's mental health condition during the attestation the Will was questionable, or the Testator signed the Will under duress or undue influence, or the qualification of the Will writer is questionable.



LETTER OF ADMINISTRATION

What is a Letter of Administration?

Letter of Administration (LA) is a legal document issued by the High Court appointing and granting power to the Administrator(s) to administer the Estate of the Deceased in accordance with the provision of Section 6 of the Distribution Act 1958. The Administrator(s) cannot act outside the purview Section 6. In another word, the Administrator(s) must distribute the Estate in accordance with the percentage and formula as stated in the law. In the event the distribution differ from Section 6, the Administrator(s) must obtain a court order.

Upon obtaining the duly sealed Letter of Administration, the Administrator(s) can then proceed to manage the Estate of the Deceased, such as to transfer properties to the Beneficiaries, to withdraw money from banking accounts and so on.

In addition, the Administrator(s) is required to apply to the Court for a Distribution Order in order to distribute the assets to the Beneficiaries. Generally, certified true copy of the grant of Letter of Administration and Distribution Order are required by the relevant parties, such as land registration department, insurance company, banks, to proceed.



LETTER OF ADMINISTRATION

Who can apply for Letter of Administration?

Any person who may have an interest in the Estate of the Deceased, can apply for the Letter of Administration. Generally, they are the Beneficiaries, or a creditor.

Any Beneficiary(ies) as described in Section 6 of the Distribution Act 1958 can apply. Should there be more than one Beneficiaries, the Beneficiaries can elect one among them to be the Administrator, and in such event, the remaining Beneficiaries are required to renounce their right (to be the Administrator) by way of affidavit, which will be filed in the High Court together with the application.

In an application for Letter of Administration, there is legal requirement to produce two Surety, who have assets within Malaysia that the value of the assets must be equivalent to the value of the Deceased's estate are to be provided. The main reason of having sureties is to serve as security.

Creditor(s) to the Deceased can also apply for the Letter of Administration. The creditor obtained the power to administer the Estate so that the Deceased's assets can be crystallised to pay and settle the debts owed to the creditor. To be appointed, the creditor is required to show documentary proof of the debt while making the application.



LETTER OF ADMINISTRATION

What are the procedures to apply for Letter of Administration?

The procedures are similar to the application of Grant of Probate. Firstly, the Administrator(s) has to appoint a lawyer and furnish the required documents in order to draft the relevant cause papers. Again, it is important that the informations and documents are as detailed as possible to avoid any unnecessary mistakes or delays. In some cases, the lawyer may conduct relevant searches.

As explained above, there are more procedures and applications involved in obtaining the Letter of Administration, as compared to grant of Probate. This is because the Deceased has died without stating clearly his wishes and directions pertaining to his assets and liabilities in a Will.

The Administrator(s) is required to affirm the relevant affidavits in the application before a Commissioner for Oath. All other Beneficiaries are also required to affirm affidavit renouncing their rights to become the Administrator before a Commissioner for Oath. All these take coordination and arrangement. Once all of the cause papers are ready, the lawyer will then file the application to the High Court.

After the filing, the Court will then fix a date for the hearing of the application. The Administrator(s) is required to physical attend the hearing together with the lawyer, and bring along the Original Death Certificate of the Deceased and the Original Identity Card of the Administrator(s) to be presented to the court for verification. Upon satisfied that all are in order, the Court will order the grant of Letter of Administration to the Administrator(s).



LETTER OF ADMINISTRATION

Another form of Letter of Administration is issued by the respective land administrator in land offices. This is applicable where the total value of the Deceased's Estate is below RM2,000,000.00. In such case, the Beneficiaries can apply to the land administrator by filing up the necessary forms and attending the hearing.

It is advisable to consult a lawyer who is experienced in estate management before making an application for the Letter of Administration. The lawyer should explain the complete process of the administration, not just the application but the subsequent administration and distribution, such as transfer of properties, as it involve various legal and procedural aspects. The Administrator(s) or the Beneficiary(ies) should be properly briefed and thus be able to appreciate and foresee in advance the entire process.



LETTER OF ADMINISTRATION

How long does it take to obtain the Letter of Administration?

There is no fixed time frame to complete the process of an application for Letter of Administration. Generally, it takes more than 3 months from the date of filing of the application. Sometimes, it could be longer as there may be a few separate applications to be made in between.

Factors that could contribute to delay include : delay by the family in providing information and documents, insufficient or inaccurate documents, lawyer conducting searches, arrangement with Commissioner for Oath, long hearing date, postponement due to any other reasons.

Once the Letter of Administration is issued, the Administrator(s) may be required to make another application for Distribution Order, this is especially for cases where the distribution involves immovable property. This will entail another costs and time. The Distribution Order is needed for the conveyance of the property at the relevant land office.

For the application of Letter of Administration with the land administrator at the respective land offices, generally and depending on the schedule of the land offices, the hearing is generally fixed approximately 6 months from the date the application is made , and the subsequently, a second hearing fixed for the hearing of Distribution Order. All the Beneficiaries are required to be present at the land office for the hearings.

DISTRIBUTION ORDER



What is a Distribution Order?

Unlike a Will where the Testator expressly stated in writing how the assets are to be distributed, the Administrator(s) can only distribute the assets in the Estate as provided in Section 6 of Distribution Act 1958, listed down above.

In case where a person die without a Will (and without a named individual as executor of the Will), it is the High Court that appoints the Administrator(s) through granting of the Letter of Administration. In view thereof, the Administrator(s) has to, subsequently, apply for a Distribution Order, pertaining to the distribution of the Deceased's assets pursuant to Section 6 of the Distribution Act 1958.

There may be instances where all of the Beneficiaries mutually agreed to certain manner or formula of distribution, different from the provision of Section 6 of the Distribution Act 1958. In such situation, it is advisable to consult the lawyer. The Beneficiaries may sign a written agreement such as Deed of Family Arrangement, spelling out clearly the mutually agreed manner of distribution. This written agreement will be exhibited as supporting document when applying for the Distribution Order, for the assets to be distributed in accordance with the Deed of Family Arrangement, instead of Section 6 provision.

The process of applying for the Distribution Order is similar. The lawyer will gather all relevant documents to prepare the cause paper. The Beneficiaries will sign an affidavit before the Commissioner for Oath, and thereafter, all to be filed at the High Court. The Court will then fix a hearing date and the lawyer is required to attend and present, and provided the Court is satisfied with the application, a Distribution Order will be granted. The process is estimated to take 2-3 months.

ORDER FOR SALE



What is a Order For Sale?

Order For Sale is an order from the court approving the sale and transfer of the immovable property in the Estate to a third party other than the Beneficiaries and is generally required for the following circumstances: -

- i) where the Executor(s) is given the power, in the Will, to dispose off the asset to third party and a sale is concluded; or
- ii) where the Administrator(s), with the written consents from all Beneficiaries, has agreed to dispose off/transfer the assets to third party, in a sale and purchase transaction

then, the Executor(s) or the Administrator(s) is required to apply to the High Court for an Order For Sale, stating the sale and purchase and the intended purchaser and supported by affidavit by all the Beneficiaries consenting to the deal. Upon concluding the transaction, the Executor(s) and/or the Administrator(s) shall distribute the proceed of sale in accordance with the Will or Distribution Act, unless otherwise agreed.

It is advisable to consult the lawyer for an in-depth advise on the application for an Order For Sale, as it has to be reflected in the terms and conditions of the sale and purchase agreement. Generally, time period required to apply for an Order For Sale is 3 months.

Should there be more than one property (to be dispose off/transfer to third party), a separate Order For Sale is required for each transaction.

IMMOVABLE PROPERTIES

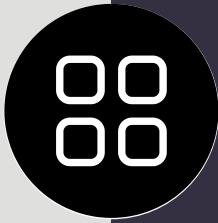
What are procedures to transfer the immovable properties to the Beneficiaries?

STEP 1 Preparation



First, preparation of relevant cause paper where the the Executor(s) or the Administrator(s) are required to furnish all information and documents as detailed and accurate as possible, to the lawyer. In case of any other arrangement, for example, Deed of Family Arrangement and/or sale of the assets, the Executor(s) and/or Administrator(s) shall inform the lawyer at this preparation stage.

STEP 2 Application



Secondly, the lawyer to prepare and file the necessary cause paper for the application, either the Grant of Probate, Letter of Administration and Distribution Order (which ever applicable) and attend hearings.

STEP 3 Transmission



Thirdly, upon obtaining the sealed and certified copies of the Grant of Probate or Letter of Administration, the lawyer will proceed with process of transmission by registering the name of the Executor(s) and/or Administrator(s) on the land title.

STEP 4 Transfer



Fourth, upon completion of the transmission, the name of the Executor(s) and/or Administrator(s) will appear on the land title and he/she will then be able to sign the relevant documents (transfer form) on behalf of the Deceased/Owner, in order to transfer the assets accordingly, as per the Will or Distribution Act.

STEP 5 Search



Lastly, it is advisable to request the lawyer to conduct land search upon completion of the registration, as an additional measure to ensure that the land registration reflect the Beneficiary(ies) as the owner(s). This is safeguard the interests of the Beneficiary(ies).

STAMP DUTY



Transfer of property to the Beneficiaries pursuant to a Will or Section 6 of the Distribution Act will not be subject to full stamp duty but only the nominal, i.e. RM10.00 per transfer.

However, in the event that the transfer is in deviations of the Will or Distribution Act, then there maybe ad valorem stamp duty as calculated below to be paid:

VALUE OF THE PROPERTY	CALCULATION FOR STAMP DUTY
First RM100,000.00	1%
RM100,001.00 to RM500,000.00	2%
RM500,001.00 to RM1,000,000.00	3%
For everything above RM1,000,000.00	4%

Meet Our ESTATE MANAGEMENT TEAM



NGEOW CHOW YING, Managing Partner

Ms Ngeow leads the Firm's Estate Management Team by empowering the team with her experience of 24 years of dealing with clients on matters related to Will, Grant of Probate and Letter of Administrations. She plays the role of **Advisor** and **Leader** in the Team.



SATIS KUMAR, Chief Operating Officer

Mr Kumar assists Ms Ngeow in planning and coordinating of the action plan for the execution or administration of the estate. He also design the execution and administration guidelines for Clients of the Firm. He plays the role of **Case Architect** and **Researcher** for the Team.



JOYCE LIM, Paralegal

Ms Joyce assist Ms Ngeow and Mr Kumar in all aspects pertaining to the Firm's Estate Management matters. She assists in the planning, coordinating and designing process. She plays the role of **Case Engineer** and **Legal Researcher** and case engineer for the Team.



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THANK YOU

All informations stated in the booklet is intended to be general guidelines exclusively for the Clients of MESSRS NGEOW LAW PRACTICE. Nothing stated above shall constitute legal advise given to the any party until engagement letter is signed and formal advise is given the Clients by our Firm. We shall not be responsible any events incidental to any actions of any parties in reliance to the informations contained herein without a formal engagement and formal professional advices provided by our Firm.

If you wish to know more about estate management or if you wish to engage our professional services, kindly contact us at the information below, we will be happy to assist you. Thank you.

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