



Preparation of wills

Superannuation

- Obtain details of the client's superannuation fund and policy.

- Determine whether the fund has binding, non-binding or no nominations. Review the superannuation fund trust deed if necessary.

- Alternatively, advise the client orally and in writing to contact the superannuation fund and obtain details of the nomination arrangements. This information should be confirmed in writing to the firm before the will is drawn and finalised.

- Give the client an oral and written explanation of what the form of nomination governing the fund means.

- Determine what nomination, if any, the client has made.

- When the will is finalised, confirm in writing whether the superannuation forms part of the estate or not and what steps the client needs to undertake with the superannuation fund in order to achieve his or her desired outcome.

Real Property

- When taking instructions, ask how real property is held.

- Develop a clear layman's explanation of the difference between joint tenancy and tenancy in common¹.

- Always conduct searches to verify or clarify the position.

- Revisit the will-maker's instructions in light of the search results.

¹See diagram on [tenants in common and joint tenants](#)



- Canvass the methods and cost of severance of joint tenancy if that is the only way to achieve the will-maker's intentions. Consider having a proforma letter explaining these options.
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- Be aware of the methods of severance (see above).
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- Keep file notes of the advice given in relation to severance and the instructions received.
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- Act promptly if instructions to sever are provided.

Adjustment clauses

- Consider if an adjustment clause is required where the will maker's intention is to leave the estate equally to the beneficiaries but some assets may fall outside the estate.

Advising about risk of TFM (or Part IV) claims

- Where the client wants to leave a potential beneficiary out of the will or give them substantially less than other beneficiaries of similar relationship, advise the will-maker orally and in writing of the potential for a testator family maintenance claim and the cost and consequences if such a claim is made.

Residuary clauses

- Ensure there is always a residuary clause in every will.
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- Address the position of both the will-maker predeceasing their spouse (or residuary beneficiary) and the other way around, ensuring there are residuary clauses for both scenarios.



Testing and checking

- Do not slavishly follow precedents without understanding the import of the words used.
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- Check names of beneficiaries especially charities.
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- Define terms like 'children' if beneficiaries names are not used.
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- Draw a diagram of the family tree and assets when taking instructions to make checking the will at the end easier.
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- 'Road test' or do test case scenarios on the residuary clause, as you would for a rental formulae in a lease, to ensure that it works the way it was intended.
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- You should also have a 'second pair of eyes' review the will to ensure it operates the way the will-maker intended it.