

WILL WRITING APPROACH AND ACTIONS

Why are we doing this work?

For whom are we completing this document?

Are we satisfied with their capacity?

Are we satisfied with their identity?

Are we satisfied with the identity of their beneficiaries, successors, and representatives?

Does the client or their beneficiaries have a special disadvantage?

Does the client have a carer or representative through which or in conjunction with, we must act? Why?

To what legal jurisdictions is the client accountable and why?

What are the jurisdictional connections of our client, their family, beneficiaries, estate structures and business connections?

What objectives or concerns of the client must be addressed by the Will?

How does the Will have to interact with other elements of the client's estate administration?

To whom does the client owe a special duty or responsibility? How is this to be dealt with in the Will?

How concerned is the client about the defensibility of their document from 3rd party attack?

What are the non-negotiable elements of this engagement?

Does the client have a connection to someone else for whom we act?

If yes, Is there a conflict of interest?

If not, why not?

Do not forget, married couples are separate clients!

What Work Does the Will Have to Do?

Lawyers Action – Operation of Will	Client intention – the Job of the Will	Client situation – Drives Intention
Operates on property beneficially owned by the will maker at the time they die	I want my property that I have when I die to be given away in accordance with the rules I define, subject to the law.	What is my property and how is it owned or controlled?
Appoint Executor	I want this person to handle my affairs following my death	Who do I trust? Why?
Appoint Trustee	I want this person to be the trustee of some or all of my estate following my death	Who is appropriate? Why?
Make Specific Gifts – General Property	I want these people to have the following property when I die (on the following conditions, as appropriate)	What benefits do I want to create? How do I want to create them? When do I want them delivered?
Make Specific Gifts – Special Property	I want the following property dealt with in the special way I define e.g. Control shares in Trustee Companies Business equity subject to buy sell arrangements SMSF trustee succession SMSF benefit discretion Estate equalisation Property subject to contracts, guarantees or other representations or arrangements	What benefits do I want to create? How do I want to create them? When do I want them delivered?

Exercise powers of appointment	I want the following powers of appointment that I have been given in my life to be exercised in the following way after my death.	What actions need to be taken after my death to complete tasks I have been given in my life?
Representative Succession	If the first people I appoint as executors and trustees are not available or cannot perform their role, then the succession of that role is to happen as follows:	Who is most appropriate to carry on my representatives roles?
Estate Management Discretion Control	I want the estate management discretions I create to be exercised in accordance with the following conditions, prescriptions or objectives:	Why are discretions necessary in managing my affairs? Flexibility, wealth preservation or both?
Beneficiary inclusion	I only want the following people included in my estate, irrespective of their estate claim rights	To whom am I accountable and why?
Beneficiary exclusion	I only want the following people excluded in my estate, irrespective of their estate claim rights	To whom am I accountable and why? Are spouses of beneficiaries in or out?
Estate Residue Management	I want the residue of my estate dealt with in the following way: Gifts v. trusts; short or long term; general or special conditions	To whom am I accountable and why? What benefits do I want to create? When and Why? What vulnerability am I responding to in my beneficiaries, if any?
Estate General Power and Authorities	My executors and trustees are to have the following power to do their job.	How best can I equip my representatives with the appropriate scope of power to do the job I am giving them?

How Do We Structure the Approach to Our Work?

Depends on the professional focus of the adviser concerned.

On What Assumptions Is Your Will Based?

Scenario modelling based approaches are needed. For example:

Other than the briefing you provide us, you have no particular wishes in relation to any of the following estate administration objectives other than handing over such of your estate that is available after payment of your debts, funeral and other permitted expenses to the beneficiaries your nominate in the proportions, asset description (e.g., my principal place of residence or publicly listed shares) or amounts that you nominate:

1. Family Governance and Continuity
2. Wealth Preservation and Transfer
3. Financial Security and Legal Compliance
4. Personal Representation and Succession
5. Family Business Retention or Disposal

All your property is solely owned by you in your personal capacity (rather than as a company, trustee, partnership, venture, or comparable form of property ownership).

There is no reason why any of beneficiaries should not receive their gift from you as a direct gift as soon as practical following your death.

You do not intend to create any long-term administration of your estate following your death.

You do not wish to impose any particular restriction on the management of your estate by any of your legal personal representatives during your life or following your death.

There is no property or asset owned by you that requires special provisions in your will (for example, powers of appointment under trusts, collectables, geared investment property, intra family loans, business equity, direct interests in estate structures such as a company, unit trust, partnership GST liable enterprise or other venture).

It is appropriate for your primary beneficiaries to also be the executors and trustees of your estate. You see no material conflict of interest between you and your legal personal representative that needs particular consideration in the making of your will.

You are not concerned that any person appointed as your attorney, executor, trustee, guardian, agent or carer has a conflict of interest with your interests or may abuse the power given to them as your representative.

No person other than your spouse is dependent upon you.

You have only simple requirements for the appointment of testamentary guardians of any infant children, funeral requirements, or handling insurance superannuation benefit succession.

You have no assets that are located outside New South Wales.

You do not believe there is any risk of your will being challenged by your estate claimants.

You have no particular wish to benefit any charity or social or community contribution purpose through the operation of your will.

You do not wish to provide any written guidance to your legal personal representatives about how the administration of your estate should occur in the event of your disability, incapacity, or death.