

WILLS AND ESTATE LAW – LOSS PREVENTION TIPS

Ask client probing questions

Some lawyers are not asking the questions that could uncover facts that could cause problems later. They also do not make it clear what information the client needs to provide. Are all the beneficiaries identified correctly? What about giftovers? Were all assets identified and how are they registered? Was there a previous marriage? Ask, ask, ask. And then do a reporting letter to confirm everything that was discussed.

Take time to compare the drafted will with your notes

It sounds like obvious advice, but we see claims where the will did not adequately reflect the client's instructions, or overlooked some important contingencies. Many of these errors can be spotted by simply reviewing the notes from the meeting with the client. It can help to have another lawyer proofread the will, or set it aside for a few days and reread it with fresh eyes. When you review it, consider the will from the position of the beneficiaries or disappointed would-be beneficiaries. Ask yourself if you were going to challenge this will, on what basis would you do so?

Confirm as best you can the capacity of the testator and watch for undue influence

With greater numbers of elderly clients, lawyers need to be vigilant about these issues. Meet with the client separately from those benefiting from a will change, and have written proof that the client understands what they are asking and the advice you've given. And while it is difficult to be completely certain of capacity, be sure to document the steps you've taken to satisfy yourself that the client's capacity has been verified.

Don't act for family members or friends

Lawyers don't make proper enquiries or make proper documentation because they assumed they had good knowledge of their family or friends' personal circumstances. It's best not to act for them, but if you must, treat them as if they were strangers. Remember if a claim arises it will likely not be from the friend or family member, but from a disappointed beneficiary with no personal relationship with you.