

New Wills & Estates Risk Management Package

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The Society has recently launched a suite of documents to assist practitioners engaging in Wills & Estates work

Wills and Estates continues to be an area of practice where claims against practitioners (and the cost of those claims) is trending upwards. In the 2017-2018 policy year claims received by Law Claims relating to Estate matters constituted 22% of the total claims for that year. This is a much greater proportion of the total number of claims than the average over previous policy years.

Claims against practitioners in the wills and estates area tend to feature the same sorts of mistakes. These mistakes fall into the distinct categories of preparation of wills, assessing of testamentary capacity, dealing with family provision claims and administering estates. Many of these mistakes could have been easily avoided.

We therefore developed a new Wills and Estates Risk Management session which was presented on Tuesday, 26 March, 2019. That session focused on Inheritance Family Provision claims and the use (or mis-use) of precedents with specific reference to situations which have resulted in claim payments. This session was, we thought, successful and is to be repeated, later in the year on Wednesday, 26 June, 2019 and Tuesday, 24 September, 2019.

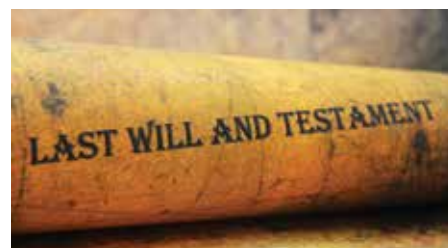
Good systems and procedures should do a lot to reduce a firm's vulnerability to claims. To this end we have recently entered into an agreement with Lexon (the Queensland legal professional indemnity insurer) to adapt and use some excellent material produced by Lexon in the Wills and Estate area. We have spent some time and effort adapting the material to South Australian Law and practice and the package was launched at the Risk Management session held on 26 March, 2019.

The package comprises a Wills and Estate Planning section which includes various comprehensive checklists for

- Estate Planning
- Initial Contact with the client
- Will Appointment
- Will Instruction
- No Immediate Will Acknowledgement
- EPA Instructions
- Will Execution
- EPA Execution
- EPA Essential Advice And Understanding
- Enclosing Costs Agreements
- chasing instructions
- a letter to a doctor re capacity,
- a letter confirming completion of work
- a letter to attorney re non engagement
- letter to client enclosing EPA,
- a letter to the client enclosing draft will (including IFP risk)
- a letter to the client's accountant or financial planner.

The second part of the package deals with Estate Administration and documents in that part of the pack include the following:

- Check list – Initial Interview With Executor
 - Schedule of Assets And Liabilities
 - Checklist – Initial Advice To Clients
 - Checklist – Obtaining A Grant Of Representation
 - Checklist – Scrutiny Of The Will
 - Scrutiny of a Death Certificate
 - Causes of Death To Query Testamentary Capacity
 - Checklist – Dealing With Taxation
 - Precedent letter – To Beneficiary re CGT Implications
 - Precedent letter – Joint Tenants With Deceased re CGT
 - Checklist – Distribution Of Estate
 - Precedent letter – to beneficiary
 - Precedent letter – to Beneficiary On Intestacy
 - Precedent Statutory Declaration
 - Precedent Distribution Authority
- The final component of the pack



comprises checklists relating to IFP and in particular the following:

- Checklist for the applicant (himself or herself)
- Checklist for commencing proceedings
- Checklist (for the practitioner) initial interview with applicant
- Checklist (for the practitioner) initial interview with legal personal representative
- Checklist – mediation and settlement
- Checklist – preparing for trial
- Letter – to potential applicant chasing instructions
- Letter – to potential applicant

Whilst these documents are and are not intended to be a universal panacea to all the problems that arise in Wills & Estates matters (and they come with the usual disclaimers) they are, hopefully, a very useful starting point for practitioners involved in Wills & Estates matters. We are hopeful that these documents will assist practitioners carrying out their work in this complex area of law and assist in minimising errors resulting in claims.

The package can be found on the Society's website at www.lawsocietyysa.asn.au/RiskManagementPackage.

Risk Management staff would welcome feedback from and dialogue with practitioners as to any comments practitioners may have as to their experience with using the package.

Please contact Grant Feary, Deputy Director (Law Claims) gfeary@lawclaims.com.au or Gianna Di Stefano (PII Risk Manager) Gianna.DiStefano@lawsocietyysa.asn.au with any comments or suggestions.