

Estate Planning and Disputed Estates Services Guide



We have extensive experience in advising our clients as to the best ways to:

- provide for their families whilst also protecting their hard-earned assets;
- provide assistance on the management of estates; and
- deal with disputes if they arise.

We know that every client is different. We listen to each client tailoring our advice according to that client's individual needs. We explain to our clients what they need to know, while giving our clients what they want.

Some of the services we offer are:

- Preparing both simple and complex Wills to achieve the best way of providing for family members after death.
- Liaising with clients' existing advisors, such as accountants and financial planners, to achieve a holistic individually-tailored succession plan that suits clients' distinct needs.
- Preparing Testamentary Trusts, Enduring Powers of Attorney, Discretionary Trusts, Self-Managed Superannuation Fund Trust Deeds, Advance Health Directives and Enduring Powers of Guardianship.
- Assisting Executors to apply for, and obtain, Probate of Wills from the Supreme Court.
- Advising Executors and Trustees as to their obligations towards beneficiaries under Wills and Trusts.
- Advising clients about both the taxation and asset protection advantages of testamentary trusts.
- Advising clients about compliance with superannuation legislation for self-managed superannuation funds.
- Advising clients about challenging or defending Wills.
- Advising beneficiaries of Wills in compelling Executors to comply with their duties and obligations to properly administer the Will.



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- Advising clients in respect of their rights to claim against the Estate under the *Family Provision Act 1972 (WA)*.
- Advising clients in respect of disputes between beneficiaries under a Will.
- Conducting estate litigation up to and including trial, including dispute resolution.

You will be able to draw on our vast experience and skills in advising clients at the “front end” of Will preparation, but also at the “back end” of estate administration and dispute resolution.

Here are some examples of matters in which we have assisted clients, working together with our client’s financial advisors (accountants and financial planners):

Advising an Executor/s concerning issues regarding the validity of amendments made to a Will by the Deceased	The Deceased made handwritten and unwitnessed amendments to the Will prior to the date of [his/her] death. We advised the Executor/s of the Estate as to the proper course of action in light of these amendments in order to comply with his/her/their duties to administer the Will.
Claims under the <i>Family Provision Act 1972 (WA)</i>	We have acted on numerous matters both prosecuting and defending claims under the <i>Family Provision Act 1972 (WA)</i> . Recently we acted for the Executors and beneficiaries of an Estate in defending a claim made against the Estate by their Stepmother. This claim was successfully settled at mediation.
Dispute between beneficiaries regarding a property devised to them jointly under a Will	We acted for a beneficiary that was devised a property along with her sister under their father’s Will. A dispute arose between the parties as to whether or not the property should be sold. Our client wanted the property sold and commenced proceedings in the Supreme Court of Western Australia
Grant of Letters of Administration (with the Will annexed) of copy of a Will in favour of Incorporated Association’s representative	For an incorporated association which was the beneficiary of a Will, we successfully obtained a Grant of Letters of Administration (with the Will annexed) of a copy of the Will where the original Will had gone missing. Ordinarily, a Grant will only be made to an individual executor or beneficiary or, alternatively, to a trustee company, but we provided compelling reasons accepted by the Court that the copy Will should be allowed into Probate and that the incorporated association could appoint a representative to take out the Grant on its behalf.
Grant of Probate concerning issues of advanced dementia	We successfully obtained a Supreme Court Grant of Probate of a Will in circumstances where there was “advanced dementia”. Despite the absence of satisfactory evidence, we were able to prove to the Court that the deceased had testamentary capacity at the time she signed the Will and that the dementia developed approximately 12 months after the Will was signed.
Grant of Probate of a Will and Codicil concerning issues of testamentary capacity	We received from the Supreme Court a Grant of Probate of a Will and Codicil in circumstances where it was more likely than not that both the Will and Codicil would be found to be invalid for lack of testamentary capacity. The medical evidence obtained was inconclusive but pointed to the distinct possibility that the deceased lacked capacity at one or both times. We were able to obtain detailed evidence from other parties which led to the Grant being made.
Grant of Probate of an Informal Will	We successfully obtained a Grant of Probate of an informal Will. The Will was prepared in 2000 and was given to the client for signing. The client mistakenly forgot to sign the Will and it was filed amongst the client’s personal documents for 13 years. In 2013, the client came across the unsigned Will and executed it in the presence of one witness (two witnesses are required) before going on holiday. We set out compelling reasons in the executor’s affidavit as to why that 2013 Will should be accepted to probate instead of a Will which the client made in 1982 (which was correctly signed).



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Transfer of farming land to a new trustee of a family trust	We received instructions to change the trustee of a family trust to a new corporate trustee where, unfortunately, the records relating to the original purchase by the trustee of the properties in 1987 were lost. After much negotiation with OSR and 'piecing together' snippets of information and documents provided by the client which related to different bank accounts held by the trust and various receipts which stated the trading name of the trust, we built a picture that satisfied OSR that the trust owned the properties and the transfer of the farming land to the new trustee was assessed at nominal duty. This saved our client a considerable amount of money which would otherwise have been payable for transfer duty on numerous parcels of farming land, as well as avoided potential capital gains tax issues.
Passing of Accounts	Upon request to the Supreme Court by a disgruntled beneficiary, the Supreme Court ordered the executor of the deceased's Will to pass accounts in relation to the Estate which the executor had been administering for a number of years. The Court audited voluminous accounts. We successfully assisted the executor to address all of the objections raised by the beneficiary, and to pass the accounts successfully.

If you would like more information, please contact us on +61 8 9388 3100 or visit our [website](#).

