



# PRACTICE AREA Step-by-step CHECKLIST

## Will Writing

### File reference:

**DISCLAIMER** This Checklist is only intended to provide a general overview of the matters that should be considered in managing your case/transaction. The information provided in this Checklist is not intended to be legal advice. Many factors may affect the applicability of any steps or procedures set out here to your case and consequently you should apply your own discretion or seek appropriate advice (where applicable) before relying on these procedures.

		Yes	No	Remarks
<b>1.</b>	<b>Does the Client qualify as a Testator?</b>			
a.	Ascertain whether the Testator has the testamentary capacity.			
b.	The Testator has attained the age of majority, ie 18 years old.			
<b>2.</b>	<b>Confirm the Testator’s instructions accurately in writing</b>			
a.	Procure a copy of the National Registraion Identity Card (“NRIC”) and the current address of the Testator.			
b.	Confirm with the Testator whether he/she has previously drawn up a Will and if so, request a copy of the same. Explain that the current Will will automatically supersede the previous Will and will automatically be void.			
c.	Enquire about the Testator’s marital status.			
d.	Explain what can tantamount to assets then proceed to procure copies of documents to identify the immovable and movable assets (if any).			
e.	If the Testator has any properties out of Malaysia’s jurisdiction, advise the Testator to prepare a separate Will for the said properties in accordance with the respective Country’s inheritance law by appointing a legal advisor in the said jurisdiction.			
f.	Procure from the Testator a list of beneficiaries and their NRICs.			



		Yes	No	Remarks
g.	If the rightful beneficiaries are not bequeathed in the Will, it is preferable for a reason to be given.			
h.	Identify the assets which are bequeathed to each of the beneficiary as per the Testator's instruction.			
i.	Seek Testator's instructions on the language he wishes the Will to be explained in.			
<b>3. Does the Testator have an executor in mind?</b>				
a.	Explain the role of an executor and obtain the Testator's instructions on who the Testator chooses.			
b.	Obtain a copy of the NRIC of the executor.			
c.	If there are minors or life interest in the Will, explain to the Testator's the need to appoint at least two executors.			
d.	Ensure that you have obtained the executor's consent.			
<b>4. Prepare the will in accordance with the Testator's instructions</b>				
<b>5. Identify the two Witnesses to the Will</b>				
a.	Ensure that the two Witnesses have attained the age of majority, ie 18 years.			
b.	Ensure that the Witnesses are not beneficiaries to the Will.			
c.	Obtain the permanent addresses and NRICs of the Witnesses. Ensure that the Witnesses are not beneficiaries/ executors to the Will. Explain the requirements of existing beneficiaries surviving the beneficiaries.			

*My notes...*



		Yes	No	Remarks
<b>6.</b>	<b>Executing the Will</b>			
a.	Ascertain the testamentary capacity of the Testator on the day of execution. If the Testator shows signs of inability to comprehend, request for the presence of a doctor to assess the Testator's mental capacity. Once satisfied that the Testator has testamentary capacity, he may proceed to execute the Will.			
b.	Read and explain the Will to the Testator in the presence of both Witnesses.			
c.	If the Testator does not understand the language in which the Will is prepared, ensure that there is a translator and accordingly include an attestation clause.			
d.	The Testator executes the Will in the presence of both of the Witnesses.			
e.	The Witnesses sign the Will and state their full name, NRIC number and address.			
f.	Note that the Testator's signature must be appended at the foot or end of the Will.			
g.	Generally, the Testator and the Witnesses will execute three copies of the Will. One is stamped as the ORIGINAL copy, a DUPLICATE copy and the last COPY for the Solicitor's file.			
<b>7.</b>	<b>Sealing of the Will</b>			
a.	Original and Duplicate copies of the will are to be placed in different envelopes and the envelopes are sealed and marked as "the Will of XXX".			
b.	It is advisable to seal the envelope in front of the Testator before handing the ORIGINAL and DUPLICATE envelopes to the Testator.			
<b>8.</b>	<b>Store the office copy of the Will</b>			
a.	Ensure you store the copy of the Will in a common file for Wills and should be kept in the office safe.			



### Risk Management Tips:

1. In the event that a will cannot be located and a request for a letter of administration is made to the Court for the deceased's assets to be distributed, it is imperative that the existence of the missing Will is disclosed.
2. It may also be useful to have a recorded meeting with the Testator on tape. This will help as:
  - a. A point of reference if you feel you have left out certain details in the Will and to double check that you have put everything down in writing.
  - b. Proof of the Testator's wishes and intentions should allegations of fraud or undue influence arises against you later on.

Note: You should obtain the Testator's consent to have the meeting recorded on tape.

3. Where instructions for a Will are given to a Solicitor by a person who is to take a substantial benefit under it, you must obtain a confirmation of the instruction from the Testator personally – in any case, it is always best to obtain instructions directly from the Testator.
4. If possible, avoid drafting a will whose beneficiaries include someone who is of close proximity to you. In such a case, it is advisable to pass the file on to someone else in the firm. This may help you to avoid frivolous claims of conspiracy being made against you.

If the executor is below 21 years of age at the time of execution of the Will or of an advanced age, you may wish to advise the Client to consider providing for an alternative executor.



*My notes...*

