

# **Wills and Estate Administration after the PRA**

<b>INTRODUCTION</b>	1
The Property (Relationships) Act 1976 impact on wills and succession planning	1
Different approach	1
Wills	2
Legal advice	3
Costs	3
Property acquisition	4
Asset protection and succession	4
Seminar chapters	5
<b>1. THE PROPERTY RELATIONSHIPS ACT - WILLS INSTRUCTIONS - QUESTIONS THAT NEED TO BE ASKED</b>	7
Introduction	7
Legal practice planning steps	7
<i>Client – testator</i>	9
<i>Current domestic relationships</i>	9
<i>Requirements and concerns of the family</i>	15
Assets	15
<i>Liabilities</i>	19
<i>Executors</i>	20
<i>Foreign property</i>	21
<i>Promises</i>	21
<i>Mutual wills</i>	21
<i>Execution of the will</i>	22
<b>2. WILL DRAFTING TIPS</b>	23
Instructions/explanatory notes	23
Balancing claims - what is relevant?	24
<i>The size of the estate</i>	24
<i>The lifestyle of the testator, partner/spouse and children</i>	24
<i>Other claimants and their proximity to the testator</i>	24
<i>The ages and circumstances of beneficiaries</i>	24
<i>The conduct of the parties</i>	25
<i>Provision made during the testator's lifetime and contributions made by beneficiaries to the testator while still alive</i>	25
Provision for a beneficiary's trust	25
Choice and number of trustees	26
Marriage dissolution v termination of relationship	27
Excluded assets	28
Separate interviews	28

Life interests	29
Checking the facts	31
Testamentary capacity	32
Provision for charities	34
Contrary intention - s 76	34
<b>3. DIVISION OF PROPERTY ON DEATH</b>	37
Introduction	37
Procedure	37
<i>Option A:</i>	37
<i>Option B:</i>	37
Elections	38
Time Limits	39
Choice irrevocable:	39
Setting aside the choice of option	39
The effect of electing option A	40
Distribution of estates	41
Rebuttable presumption	42
Impact of the rebuttable presumption	42
Multiple relationships	44
Administration Act	45
Family Protection Act	46
Estate Administration Check List	47
Distributions	48
<b>4. ADVISING SURVIVORS</b>	49
Conflicts	49
Consents to early distribution	50
Option A	50
Option B	52
What else should you consider?	53
<i>Notices of claim</i>	53
<i>Section 87 PRA</i>	53
<i>Caveats</i>	53
<i>Multiple partners</i>	54
<i>Intestacy</i>	55
Jointly owned property - survivorship	55
Further advice	56
Section 21 agreements	56
<i>Separation and division of property - s 21A</i>	56
<i>Contracting out agreements</i>	56
Section 21 agreements to accelerate gifting	58
Can attorneys or property managers sign section 21 agreements?	59

<i>Attorneys</i>	59
<i>Property managers</i>	59
<b>5. CONCLUSION</b>	61
Repositioning what of the future?	61
<i>Introduction</i>	61
<i>Social change</i>	61
<i>The client's agenda</i>	62
<i>Threats to the profession</i>	62
<i>Targeting the client base</i>	62
<i>Property acquired by succession – section 10</i>	64
Section 21 agreements	66
International will drafting	66
<i>Forced heirship versus testamentary freedom</i>	67
<i>Matrimonial property sharing regimes</i>	67
<i>Recognition of trusts and personal representative – trustees</i>	67
Tax	68
<i>Conclusion</i>	68
<b>APPENDIX 1 - Succession Planning Client Information Sheet</b>	69
<b>APPENDIX 2 - Explanatory note</b>	77
<b>APPENDIX 3 - Notice of choice of option</b>	79
<b>APPENDIX 4 - Notice of claim to interest</b>	83
<b>APPENDIX 5 - Surviving spouse - documents and details</b>	85