

Short Minutes Transcript: With the Best Will in the World

There are an increasing number of claims against solicitors arising from basic errors in taking instructions, drafting and executing wills.

The errors arise in the following four main areas:

1. Incorrectly describing the beneficiaries

The most common error is a failure to identify step children as in the case of [Warton v Yeo](#). Also, the failure to properly describe an intended charity as in [O'Connor's](#) case.

2. Gifting assets not capable of being gifted

Attempts to gift an asset such as real estate held in joint tenancy or a bank account held in joint names is, unfortunately, not uncommon. A simple check such as a title search may save an embarrassing or expensive claim by a beneficiary.

3. Not identifying previous arrangements

Instructions must be requested as to any current:

- Mutual will contract
- Financial agreement; or
- Restriction on disposal of an asset such as a shareholders agreement with pre-emptive rights

4. Incorrect execution of will

Lawcover has had claims where the husband and wife executed each other's will in error and in the presence of the solicitor.

Lawcover has also had a claim where the solicitor failed to sign as witness and unfortunately died before the death of the testator.

Many of these claims are resolved with the intervention of the court by way of rectification or construction proceedings but at the expense of Lawcover and the insured.

A link to the cases can be found below:

- [Warton v Yeo \[2015\] NSWCA 115](#)
- [Public Trustee as Executor of the Estate of Cathrine Elizabeth O'Connor \(Dec'd\) \[2014\] SASC 46](#)

I'm Malcolm Heath