Estate Planning Standards Policy

Compliance Professional Standards and Quality
Including requirements of Accreditation

for

Spear Accountants

Protecting and serving the client

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This is a sample of the document you are building on our law firm's website.
Depending how you answer the questions the document and our letter may be different.

Dr Brett Davies
Partner
Legal Consolidated Barristers & Solicitors
Introduction
There is an obligation by an accountant to initiate, explain and support the needs of a client’s:

- Estate Planning
- Wills
- Medical Powers of Attorney
- Enduring Powers of Attorney
- Superannuation - Reversionary Pensions and binding nomination

There is a close relationship that an accountant has with their clients. A natural extension of this relationship includes discussing overall circumstances and estate planning. While a lawyer may see a client for a few hours, an accountant holds a special fiduciary relationship with their clients and has an unparalleled knowledge of the client’s family circumstances and overall affairs.

Often the client, even after many years of requests, still ‘can’t find the time’ to see a taxation lawyer to attend to their Estate Planning. One solution is for an accountant to build the Estate Planning documents on a law firm’s website.

Working together
Often, a non-taxation lawyer does not understand or consider how Superannuation, Family Trusts and death insurance pay-outs operate. The non-tax lawyer may not consider non-dependency superannuation tax, binding nominations and nominations for insurance policies.

Such lawyers may not even talk with the client’s adviser and accountant who do have this knowledge.

The best way to deal with client’s estate planning is to involve all professional advisors in the process. Legal Consolidated’s online documents building system allows you continuous communication with specialist estate planning lawyers.

Financial planning, accounting and legal work
It is the job of an accountant and lawyer, working together, to facilitate the provision of legal services.

Only an adviser gives opinions about financial products used in Estate Planning. For example, with superannuation these include self-managed superannuation funds, non-dependency tax, reversionary pensions, assisting with nomination forms and equalisation insurance.

Further, an accountant can:

- Recommend a client use a certain law firm and its website for preparing legal and Estate Planning documents
- Witness Wills, POAs, Superannuation Death Benefit Nominations and other legal documents
- Give advice on the taxation of financial products in the hands of the clients and their beneficiaries
- Refer to a lawyer and utilise an outsourced legal service; facilitate the client getting estate planning online documents
- Explain where superannuation goes at death; explain the difference between ‘dependants’ for superannuation and taxation purposes

For self-managed superannuation funds discussing taxation benefits and limited recourse borrowing arrangements

Because of their long-term relationship, an accountant is well positioned to collect relevant data. This enables the law firm’s online document system to prepare legal documents such as trust deeds, Wills and Powers of Attorney.

Accountants do accounting work. Financial advisers give financial planning advice. Similarly, legal work is the sole province of a law firm.

For example, only lawyers can prepare deeds such as:

- Company incorporations - as the Constitution is a deed
- Powers of Attorney
- Family Trust and SMSF Deeds

Therefore, if a non-lawyer was to prepare a POA from a government website, then they are providing legal advice.

Due diligence when building legal documents online

We considered these 3 questions:

**Who is preparing the legal document?** A Family Trust Deed, Power of Attorney, Will and the many other documents are prepared by the Australian law firm - Legal Consolidated Barristers & Solicitors. While accountants and clients may type in answers to the questions, the law firm controls the logic flow, questions, hints, training videos and systems. The law firm retains copyright of the document and carries the law firm Professional Indemnity insurance. The legal document comes with a covering letter, which confirms that the law firm prepared the online document.

**Who is responsible for the document?** Legal Consolidated solely controls the system. The law firm provides the completed document as a locked PDF. The covering letter confirms that Legal Consolidated prepared the legal document.

**Can a non-lawyer charge to prepare legal documents?** No, they cannot. However, a professional person such a financial adviser or accountant can charge for the time in giving the relevant financial planning and accounting advice. For example, much of the work in Estate Planning is the understanding of the client’s tax position, financial planning, superannuation and business structures. Where a person is acting as a mere scribe, i.e., just filling out the questions, they are not providing legal advice. See Attorney-General v Quill Wills Ltd (1990) 3 WAR 500.

Building legal documents online – only do so on a law firm’s website

You are building legal documents on a law firm’s website. The person you build the documents for becomes the law firm’s client. Your clients are directly covered by the law firm’s Professional Indemnity insurance.

In contrast, non-law firm websites only provide a subsale.

Legal Consolidated Barristers & Solicitors

Legal Consolidated’s website empowers accountants and financial advisers to build legal documents for their clients. Documents include Trust Deeds, Self-Managed Super Deeds, Companies and 3-Generation Testamentary Trust Wills.
There are two types of services being offered in Australia for online documents.

1. Documents prepared by a website that is not a law firm. We do not recommend that you use a non-law firm website to build companies, trust deeds, Wills and other legal documents.

2. Legal Consolidated Barristers & Solicitors is an Australian law firm. It provides legal documents online. When you are on their website, you are dealing directly with a law firm. You benefit from:
   - law firm Professional Indemnity insurance
   - legal professional privilege
   - legal advice and help to answer the questions
   - a letter with the document confirming that Legal Consolidated authored, prepared and retains copyright in the document

Legal professional indemnity insurance for online documents
A law firm has a direct obligation to protect the client. The law firm carries the liability and insurance for providing legal advice on how online information is provided, how questions are answered, how answers appear on the computer screen and signing of the documents. Such advice, from them, includes:
   - mandatory fields in the online questions
   - hints and training videos for each question
   - dynamic logic flow depending on the previous answer
   - a full sample of the document, including Legal Consolidated's covering letter
   - their covering letter sets out how to sign the document

Additional legal advice by the telephone and email, if selected
No, you are not providing legal advice when you or your client build documents on their law firm’s website. This is provided you are acting as a ‘mere scribe’. The logic flow, hints and training videos provide the legal advice. While an accountant provides accounting and tax advice, an adviser provides financial planning advice - neither gives legal advice. This complies with:
   - Attorney-General v Quill Wills Ltd (1990) 3 WAR 500
   - Legal Practice Board v Computer Accounting & Tax Pty Ltd [2007] WASC 184
   - Cornall v Nagle [1995] 2 VR 188 at 210
   - Tax Agent Services Act 2009 (Cth)
   - Sinclair v C of T [2010] AATA 902
   - Legal Practice Board v Computer Accounting and Tax Pty Ltd [2007] WASC 184

Am I providing legal advice when building Legal Consolidated’s website?

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As stated in the Tax Institute’s Estate & Business Succession Planning, 7th edition, page 9:

Work that is undertaken in association with the law or legal practice will not necessarily constitute engaging in legal practice. Examples include:
   - clerical or administration tasks;
   - selling legal documents; and

You can build a more up-to-date version of this document for free at https://www.legalconsolidated.com.au/estate-planning-standards/
• advising of incidental legal requirements by a person in the pursuit of an occupation other than law, e.g. tax agents advising on the requirements of tax legislation.

Signing a Will and Power of Attorney
Wills, 3-Generation Testamentary Trust Wills and POAs have strict signing conditions. These are clearly set out in the covering letters provided by Legal Consolidated. If required, contact the law firm directly for help in signing the document. This is included in the cost.

Support provided by Legal Consolidated
Every document has hints and training videos. Further, as you build the online document you can seek free legal advice from Legal Consolidated via:

• Email
• Telephone
• Online Chat

Your client is welcome to join you on any telephone calls.

Legal Consolidated can explain the document before the client signs
If you choose, a Legal Consolidated lawyer telephones your client directly. This is to explain the document. You can join that telephone call.

Being an attorney, executor and storing Wills
You are not authorised to hold an attorney position in any Power of Attorney. You are also not allowed to be an executor of a Will. Finally, you are not permitted to store the original Will. Storage of the Will is set out in Legal Consolidated’s letter.

No referral fees
Irrespective of whether there is disclosure or not, it is always illegal for a law firm to provide a referral fee to you. A law firm also cannot share profits with non-lawyers. It is, however, acceptable for a law firm, including Legal Consolidated, to provide training courses and documents at a discount.

Accreditation
Before an accountant offers Estate Planning services, they complete the accreditation courses.

Accreditation comprises four online courses. The usual cost for these four courses is $1,985. However, we have arranged for you to complete the courses at no charge to you. Please approach us or Legal Consolidated on 1800 141 612. You are provided with vouchers to complete the 4 online courses:

Upon completing, you are provided with an online Certificate of Completion. Retain these 4 Certificates of Completion in your due diligence file.

**Contacting Legal Consolidated Barristers & Solicitors**

Legal Consolidated is a law firm. They can and will give you legal advice. You can contact them:

1. **Telephone:** 1800 141 612
2. **Afterhours duty lawyer:** 0477 796 959
3. **Chat:** available on their website
4. **Email:** brett@legalconsolidated.com

The Estate Planning Standards was prepared in consultation with Legal Consolidated’s Estate Planning national partner:

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