

Client Scenario

NOTE: The Steven and Jenny Smith scenario follows this.

On the 2nd of March 2021 existing financial planning clients Jenny and Steven Smith (a married couple) meet with you in your office. They bring with them Steven's mother Betty, who while elderly (85 years old), still seems to have her faculties although she seems physically very frail. Betty lives at 5 Grace Avenue, Boronia 3155. Jenny and Steven inform you that Betty would like to discuss her estate planning issues with you. Although Betty has two other children Michael (aged 60) and Bill (aged 58), Jenny (aged 51) and Steven (aged 50) have always been very close to Steven's mother and to that end travel across Melbourne weekly to see her and make sure she is alright.

Betty has few assets but owns a home valued at \$880,000 and a small bank account with \$70,000 as well as a small car worth around \$10,000. Steven's brother Bill lives at the back of Betty's house and has not worked for many years having had cancer some 10 years ago and has a range of medical issues. Bill receives a disability support pension but regularly asks his brothers and mother for money. He pays no rent and sees his mother once a day when he comes into her kitchen to make breakfast. A few years ago Bill was arrested for drunk driving and was recently sacked from his part time position with a charity for taking money. Steven and Michael are concerned about Bill's behaviour and believe that he has been taking money from Betty for years. Further, they are worried as he refers to his mother's house as 'his' house.

Michael is married with adult children and lives and works in the countryside about two hours from his mother's house and so sees her as much as he can usually every few weeks.

Betty had a Will prepared when her husband was alive, but he passed some 25 years prior and she has never had Powers Of Attorney and has never worked since she became married in the 1950s. In conversation with Betty, she informs you that she would like advice regarding her Will and estate and that she would like Jenny and Steven to make decisions regarding her welfare when she is unable to. She does stress that she would like to ensure Bill continues to live in her home after she passes as long as he is alive. She also notes that she believes the most important thing is for her children get an equal share of her estate.

As they were leaving Jenny and Steven express their concern that Bill has said that no matter what happens that he will contest his mother's Will to get her entire estate because he thinks he deserves it as he has been living with Betty for several years.

Betty is concerned about Covid-19 and notes on leaving that she does not want to come into your office again but has heard from a friend that she can simply create an 'electronic Will' or give you the authority to sign a Will and other legal documents on her behalf.

Specific Requirements

You are required to provide estate planning advice to Betty to ensure that her assets are protected, and her wishes are upheld.

Clearly explain the reasons for your advice and discuss the options that she has available to her and examine the consequences of the options you present.

Your answer should be presented in the format of a SOA to Betty.

Clearly state any assumptions you make and provide appropriate references where applicable.



Limited Statement of Advice

Prepared for

Betty Smith

CLIENT CARE FINANCIAL PLANNERS PTY LTD
Authorised Representative of Professional Planners Pty Ltd
Australian Financial Services Licence (AFSL) No 11111
ABN 88 999 999 999
221 Burwood Highway, Burwood VIC 3125
Phone (03) 5227 2333

Your adviser is
Phillip Wong CPA,

Dated: 30/06/2021

This advice is valid for 60 days

You are entitled to receive a Statement of Advice (SOA) whenever we provide you with any personal financial advice as per Corporations Act 2001 and Corporations Regulations 2001. Personal financial advice is advice that takes into account any one or more of your objectives, financial situation or needs, limited as per your request. This is limited advice, and it does not cover all aspects of your financial situation. We are required by law to act in your best interests when providing you with financial advice.

This Limited SOA acts as a record of the personal financial advice provided to you and includes information on how we formulated our recommendations, a statement of our recommendations provided to you and the reasons why. Information about fees and commissions and interests or associations which might influence the advice is also included.



30/06/2021

Betty Smith

5 Grace Avenue
BORONIA VIC 3155

Dear Mrs Smith,

Betty

It is our aim to provide you with the appropriate advice tailored to your specific needs that allows you to take control of your financial affairs, achieve your goals and enjoy a lifestyle in keeping with your unique values.

In accordance with this philosophy, the financial planning recommendations outlined in this Statement of Advice have been designed to help you meet your financial and lifestyle objectives.

This, your Statement of Advice is an important document that will help plan your estate and protect the entire family. Please take the time to carefully read and understand this document to ensure that it meets your objectives and reflects what we have discussed. To receive advice is important, to understand the advice is crucial. We are here to assist you by ensuring that you understand this advice and the decisions you are making. If there is anything that you do not clearly understand, please contact us immediately or raise your issue at our next meeting.

Please also review the Warnings and Disclosures sections of the Statement of Advice for an explanation of the fees associated with the development and implementation of the recommendations contained in the document.

Once you have had the opportunity to read and understand this Statement of Advice, please contact us so that we may discuss the next step in relation to the implementation of the recommendations that we have made.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Phillip Wong', with a long horizontal flourish extending to the right.

Phillip Wong CPA,

Directors of CLIENT CARE FINANCIAL PLANNERS PTY LTD





Table of Contents

Strategy overview / executive Summary	4
Client objectives	4
Strategies	4
Legal limitations	4
Adviser fees.....	4
Key Personal Details	5
Scope of Advice.....	5
Current position	6
Family Tree	6
ASSETS & LIABILITIES	7
Analysis: considering trades.....	8
Considering goals, conflicts and trade offs	8
Strategy Recommendations.....	10
Strategy 1 (Option A): Create a life interest trust [DISCOURAGED].....	11
Strategy 1 (Option B): Split the estate and establish a disability trust [PREFERRED]	12
Strategy 2: Powers of Attorney.....	13
“eWill”s - online witnessing	13
Appendices	14
Appendix 1: Assumptions.....	14
Appendix 3: Images Source	14



Strategy overview / executive Summary

Client objectives

Betty, we aim to protect your legacy and ensure your wishes are upheld. We understand your goals are:

Priority	Goals / Objective
1	Ensure Bill is well housed, specifically for Bill to reside in 5 Grace Avenue so long as he should live.
2	For all three children to receive an equal share in the estate.
3	Steven and Jenny should have the power to make financial and medical decisions if you become incapacitated.

Strategies

We are concerned there maybe a few practical issues that may make it difficult for you to meet both objectives fully. We will ask you to consider the trade-offs that enable you to ensure the family is well cared for equitability.

Strategy 1: Will structure

Select one option

Option A:

Create a life tenancy interest in your house, and include several safeguards to protect Bill's interest. Michael and Stephen receive their share when Bill passes away.

Option B: *preferred*

Your estate will be split evenly among your sons. Bill's share will be placed in a Special Disability Trust which will help house and protect his interests for the rest of his life.

Strategy 2:

Jenny and Stephen should be made your Enduring (Financial) and Medical Powers of Attorney

Legal limitations

Client Care Financial Planners are not legal practitioners, and our strategies should be reviewed by your lawyer when drafting and executing your will. If you do not have a legal representative, we recommend:

*Ms Lex Judicia
Judicia & Partners
(03) 5555 5555*

We receive no commissions or inducements.

Adviser fees

Our fees will be \$4,400 fee-for-service covering the preparation of this Statement of Advice. There are no commissions in this advice, and there is no ongoing fee arrangement.

Key Personal Details

Name	Betty Smith
Address	5 Grace Avenue BORONIA VIC 3155
Current Age	85
Occupation	Pensioner
Do you have a Will?	✓ Existing will (out of date, 25 years old)
Provision for testamentary trust	✗ None
Do they have a Power of Attorney?/ Type / Attorney's name	✗ No current PoA
Income	Pension

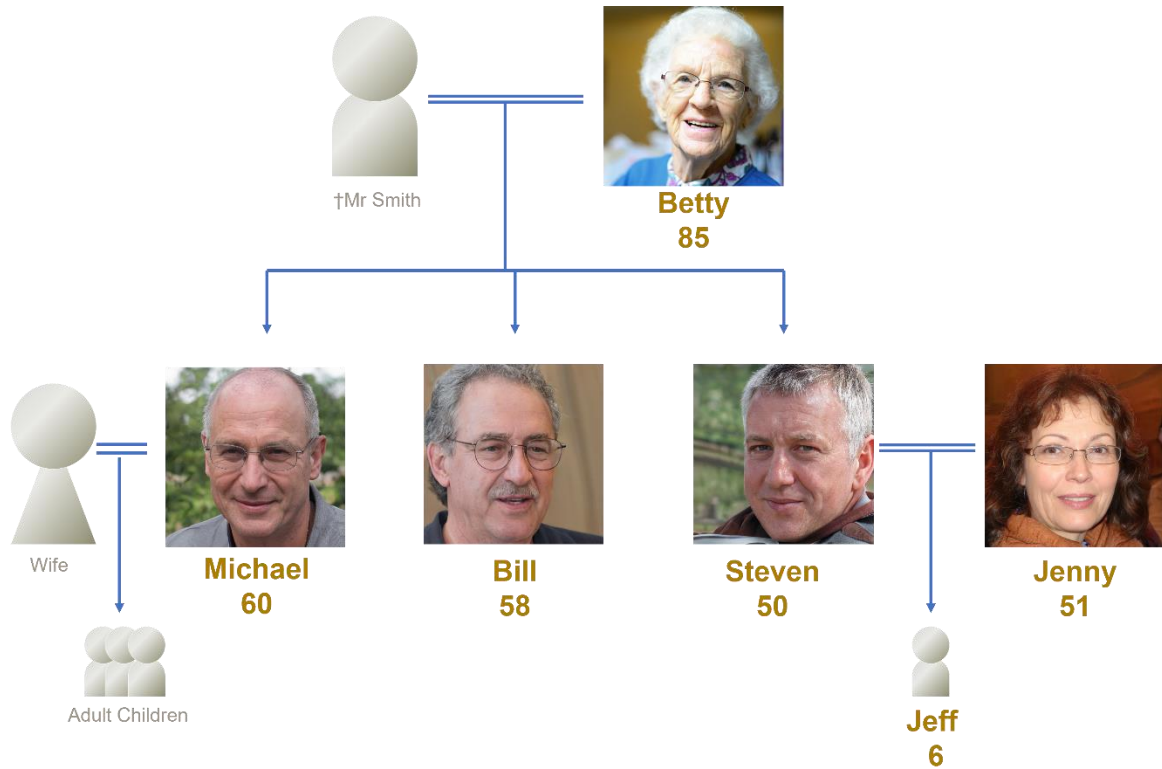
Scope of Advice

This Limited Statement of Advice has been prepared based on our recent discussions to achieve your objectives.

In Scope	<ul style="list-style-type: none"> • Estate Planning
Out of Scope	<ul style="list-style-type: none"> • Aged care • Superannuation planning • Retirement Income • Pension and or Veteran's Affairs Assistance • Centrelink Assistance • Debt management • Cashflow (budgeting) • Taxation • Insurance

Current position

Family Tree



ASSETS & LIABILITIES

Statement of Net Worth		<i>Notes</i>
For the Financial year ending 30 June 2021		
Life Style Assets	\$Market Value	
Main Residence	880,000	
Home contents	-	¹
Vehicle	10,000	
Subtotal	890,000	
Investment Assets		
Savings	10,000	
Subtotal	10,000	
Total Assets	900,000	
Liabilities		
Credit Card	nil	
Mortgage - Main Res	nil	
Subtotal	- nil	
Net Wealth	900,000	
Note		
1	Please provide an estimate for your home contents. Jewellery, heirlooms and collectors items may add up.	

Analysis: considering trades

Considering goals, conflicts and trade offs

Your stated goals may have unintended consequences which we discuss in this section. In the following section we propose two alternatives which will help you to achieve your goals. Please consider the trade-offs and select one.

Betty, you have expressed a desire to (1) allow Bill to live in the house so long as he is alive, and (2) to distribute the estate evenly between your sons.

Life interest an interest in property, whether real or personal, conferring the right to the use of that property and the right to take the income or fruits or produce of that property for the period of the beneficiary's life.

At law, this right to occupy is known as a “**LIFE INTEREST**”.

After the occupant (Bill) passes away, the house would then be split evenly between Michael and Steven who are collectively known as the “residual claimants” or the “remaindermen”. On paper, a life interest sound like it would directly address both of your stated goals.

Life interests can be useful tools in estate planning but often create competing interests. We have found that structures can create competing interests and often exacerbate rivalry, especially where some family members already do not share complete trust.

We are concerned about unintended consequences of a vanilla life interest arrangement, as it may fail to adequately protect Bill and still leave each of your sons feeling like they have not received a fair outcome. Ideally, we look for a strategy that does not create animosity within the family.

The following table outlines our concerns with a vanilla life interest.

Potential issue	Explanation	Risk / Probability
This structure creates a conflict of interests between Bill against Michael and Steven.	In the absence of any specific arrangements, the life tenant holder (Bill) will ordinarily be responsible for ongoing costs of the house, such as: municipal rates, water, electricity, phone/internet connection, building insurance and so forth. Any capital improvements are the responsibility of the remaindermen (Michael and Steven).	Medium
Bill is unable to maintain the house	There is a split of interest between the life tenant and the remaindermen. Bill has a history of difficulty in managing finances and may already be living beyond his income. Currently, Bill does not pay rent and several incidences indicate he is still short of funds. Were Bill granted a life tenancy, he would responsible for the running costs of the home.	High to certain.

This is a fictional scenario.

RELEASED FOR EDUCATIONAL PURPOSES ONLY.

	We are concerned that lacks sufficient resources or capacity to do so.	
Necessary capital improvements are often ignored.	<p>suppose that Bill wishes to install a new air conditioning or heating unit. As a capital item, this cost would fall to the Michael and Steven, despite them receiving no benefit.</p> <p>The remaindermen may be unwilling to undertake any such works, even if the life tenant has a genuine need. This is especially so if the remaindermen feel the original arraignment was unfair.</p>	High
In the event that Bill fails to meet his duties, he could be left homeless	A beneficiary can apply to the Supreme court to force the life tenant to pay for costs, or else terminate the life tenancy. This is a high burden of responsibility for Bill to bear. Given his disability and history, it is possible that he may make several poor budgeting choices which could result in homelessness.	High
As Bill ages, the house may no longer be appropriate	<p>A life tenancy can create unnecessary burdens as the tenants circumstances change.</p> <p>As Bill ages, he may simply wish to downsize into a smaller, more manageable flat or may require additional capital to modify the house to be a more suitable assisted living space. Suppose hypothetically if Bill suffers a fall, then he may need the assistance offered in an aged care facility. In this case he will no longer able be able to benefit from the life-tenancy.</p> <p>Ordinarily a life tenant have the right to lease the home and receive rent. While Bill could use this income to fund his next occupancy, it will reduce his disability support payments (more here). It also can create tension to his siblings at the same time.</p>	Medium.

We find these often result in all parties being unhappy with the conflict, and the property is often allowed to deteriorate.

Life tenancies arrangements are set up with the best intentions for family, but frequently result in conflict between the estate beneficiaries. Indeed, it is common for life tenants and the remaindermen to negotiate a settlement and wind up the life interest arrangement.¹ Therefore, we do **NOT** recommend a simple life tenancy arrangement.

¹ O'Sullivan (2016) Estate & Business Succession Planning 7th edition, P101

Strategy Recommendations

We are concerned that creating this arrangement will only result in additional conflict and legal costs after long after your estate has been finalised. We thus emphasise that your first and second objectives may result in a conflict:

Priority	Goals / Objective
1	Ensure Bill is well housed, specifically for Bill to reside in 5 Grace Avenue so long as he should live.
2	For all three children to receive an equal share in the estate.
3	Steven and Jenny should have the power to make financial and medical decisions if you become incapacitated.



Strategy 1 (Option A): Create a life interest trust [DISCOURAGED]

In this option we explore ways to allow Bill to remain in the house, but we recommend several safeguards. Your vehicle will be sold, and together with your savings there is a total of \$20,000 available funds from which your estate must pay funeral costs, and administration fees. The house and remaining cash will be placed into a life benefit trust.

In this family situation we would ordinarily recommend a professional trustee company to administer the house, as this reduced of conflict between the life tenant and the remaindermen. However, we warn you that the funds are insufficient, and will probably only be enough to maintain the property for only two or three years.

This is NOT a good long-term plan.

Drawbacks

- Bill is not equipped to maintain the house or pay for its upkeep.
- The trust will have insufficient cash to maintain the house in the long term
- It will be difficult to fund home modification for Bill as he ages.
- This arrangement will almost certainly cause serious conflict between your sons.
- Renting out the house will reduce Bill's disability pension, effectively trapping him in the house.
- It is highly likely your sons will seek legal arbitration to wind up the life tenancy. Legal expenses will further erode away your legacy, and Bill will be left with even less.
- Even if the life tenancy works out well, Steven and Michael may pre-decease Bill, meaning their descendants may miss out on their share.

Benefits

- Bill is still able to live in the house as a life interest tenant as you wish.
- While there are remaining funds, trustee will attempt to maintain the house if/when Bill fails to do so.

You would only pick this option if you absolutely insist that Bill must live in this specific house. You should be fully aware of the downsides to this.

WE DO **NOT** RECOMMEND THIS OPTION

Strategy 1 (Option B): Split the estate and establish a disability trust [PREFERRED]

If we reinterpret your first goal as “**to ensure Bill’s protection**”, we now have the flexibility to meet both objectives.

- We recommend your entire estate be liquidated.
- Each of your sons are to receive a third share of the estate after funeral and administration costs.
- Bill’s third should be placed into a Special Disability Trust (SDT), which will ensure he is housed.
- The disability trust could either:
 - purchase a suitable dwelling of his choosing, or
 - invest the capital and use the proceeds to pay for the rent on a house of his choosing.
- We recommend a professional trustee company who specialised in disabilities.

The key advantage is that the assets of the SDT are not included in the assets of the principle beneficiary of the trust up to the cap of \$694,000 (for 2020/21). Bill’s share is substantially less than Bill’s share, and this will grant Bill better standard of living as he can continue to claim disability entitlements. Only one trust can be created for each disabled beneficiary and must comply with Pt3.18A of the Social Security Act.

Betty, as the donor establishing the Special Disability trust, you get to specify who will receive the remaining trust value when Bill passes away. We suggest the following contingency: Firstly, to any child fathered by Bill, should they exist at the time of his death. If Bill has no descendants, it should be split evenly between Michael and Steven. If either or Michael and Steven predecease Bill, their share is to be split evenly amongst their descendants.

Drawbacks:

- Bill will no longer be able to live in the house 5 Grace Avenue.
- This will involve some relocation costs for Bill, which perhaps could be met by the estate. We suggest you cap these costs at \$4,000.
- A professional trustee will charge an annual fee.

Benefits:

- The special disability trust ensures Bill is adequately cared for.
- The three sons receive a fair split of your legacy.
- This removes any conflicting interests, and we hope they will have a better relationship.
- Bill will still receive the maximum Disability Pension as the value of the trust or rent paid by the trust will be disregarded for the means test.



Strategy 2: Powers of Attorney

We recommend you consult with your lawyer to establish, enduring and medical powers of attorney which will allow your spouse to handle your affairs should you be incapacitated. Stephen and Jenny should be your nominated attorneys as discussed.

“eWill”s - online witnessing

Remote execution of a will is available in Victoria. It is now possible to remotely witness wills and other testamentary instruments online via audio visual link. You do NOT need to return to the office to sign your will.

This change was first introduced in 2020 during the COVID19 pandemic, and has since been codified into the Wills Act 2014 during 2021.

We ask that you speak with your lawyer for exact detail on this arrangement. Nevertheless we will provide you with a general overview of the requirements.

- One or more of the participants can be present via audio visual link
- All participants must be physically located in Victoria.
- A phone call is insufficient, the audio visual link can be Zoom, Facetime, Facebook Messenger Video Chat, Skype or other video calling service.
- The remote execution procedure must be completed on the same day.
- One of the witnesses must be the designated “special witness” (a lawyer) for online witnessing of wills and other testamentary documents.

You will need to have access to a scanner and printer. A scanning app on your phone will be sufficient if you do not have a flatbed scanner. We recommend TurboScan or CamScan from the AppStore or Google Play Store.

More information on the process can be found at:

<https://www.justice.vic.gov.au/justice-system/legal-assistance/wills-online-witnessing>

Appendices

Appendix 1: Assumptions

- 2020/21 tax rates and laws
- 2020/21 Pension rates and laws
- Household contents are valued at zero. Please check and inform us if there are any jewellery, collectors item, historical artefacts or other high values in your possession.

Appendix 3: Images Source

All images are original and were generated by Phillip Wong. This includes all portraits which were produced using the GAN (generative adversarial network) AI algorithm. Please see <https://thispersondoesnotexist.com/> for more information



These images are not of real people!