

The risks of DIY Will Kits

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Every adult should have a Will which is professionally drafted by a lawyer experienced in Wills. There is a temptation, however, to save money by using a free (or very cheap) DIY Will kit; perhaps from the post office or an online site. But buyer beware; that kind of Will comes with hidden costs when it comes time to implement it after you have gone.

Frequently, these hidden costs to your estate can be significant and will significantly outweigh any savings you may have achieved at the time that you made the Will.

Having your Will prepared by a lawyer who specialises in Estate Planning will ensure you receive advice tailored to your needs and will help to minimise any hidden costs for your Estate. It will also help to avoid unnecessary headaches and stress for your family.

The dangers of drafting your own DIY Will include:

Taxation issues

There are no Death Duties in NSW or Australia but tax is still a 'live' issue when it comes to preparing a Will. If not drafted correctly, the structure of a Will can result in additional taxation liabilities that would not otherwise be payable.

Capital Gains Tax

By not accounting for embedded Capital Gains Taxes, a poorly drafted Will may result in one beneficiary receiving more from the estate and others missing out; even if they appear to receive equal amounts under the Will.

Stamp Duty

Gifts of real estate under a Will can trigger stamp duty if the beneficiaries wish to receive interests in real estate in proportions that are different from what the Will says. For example, if a property is gifted to two beneficiaries, but only one wants to keep the property, then they would need to 'purchase' the other half of the property and will pay stamp duty on that purchase; even if they received a lesser share of the other assets of the estate to balance the entitlements between the beneficiaries.

Tax on Superannuation Death Benefit

Tax may be payable on superannuation entitlements if they pass to certain beneficiaries, which would not otherwise be payable if they passed to other beneficiaries. For example, if the deceased left taxable superannuation entitlements to adult children then tax would likely be payable on the balance of the superannuation entitlements. Whereas, if those same superannuation entitlements were gifted to a spouse, then tax would not likely be payable.

Shortcomings of Wills generally

A Will does not automatically control all assets that a person may 'own'. This includes any jointly held assets, superannuation, trusts, international assets, etc. Additional planning is required to ensure that these types of assets will still pass to the intended beneficiaries. Without additional planning, some beneficiaries may receive substantially more at the expense of others.

Mistakes and omissions

Forgetting to appoint an executor, not having the Will witnessed correctly, incorrect description of assets, missing clauses, incorrectly completed forms, etc. These are all issues that may appear small but each can have significant and expensive consequences if they are incorrect. Part of the value you receive by preparing a Will with the assistance of a qualified estate planning lawyer is the additional oversight by a professional, ensuring that the Will achieves your desired intentions.

Ambiguous language

If the Will is not prepared with clear language, then the wording of the Will may have two or more possible meanings. Consider the following "I give my estate to be divided between Kate, Anne and Michael". One person might think that Kate, Anne and Michael receive equal shares. Another person (Kate) may think that it means that the estate is to be divided so that one share went to Kate and one share to Anne and Michael.

If the ambiguity is serious enough, it may be necessary for your executor to approach the court to decide which outcome was intended. This can cause large time delays to the administration of the estate and the cost of the court proceedings is far greater than the cost of engaging a lawyer to prepare the Will in the first instance.

Lack of legal knowledge and understanding

The *Succession Act* includes several sections that affect how a Will works and without an awareness of the different principles, your intentions may not be carried out. An example of this is the effect of marriage or divorce on a Will. An experienced estate planning lawyer will have an understanding of the *Succession Act* and will ensure that your Will adequately addresses the issues appropriately.

Creating a legal challenge to the Will

A Will can be challenged for several reasons, including a Family Provision Claim, claims for lack of testamentary capacity, or a claim that there was undue influence. If a claim is made, then it can result in expensive and divisive litigation, which may also frustrate your final wishes and intentions. The cost of this litigation (both the person contesting and the estate) is often paid for by the estate. Estate planning lawyers can help to assess the potential risk of challenging your estate and advise you on how to reduce the potential risk.

Trying to avoid the cost of drafting a proper and legal Will together with advice from an experienced estate planning lawyer now, can be a false saving and maybe a fraction of the cost of addressing issues after the Will-maker has died.

Estate Planning lawyers are trained to consider circumstances that are either not apparent or intentionally ignored. It may not always be the advice desired but depending on circumstances, may be necessary to avoid greater issues to the estate and disharmony amongst the beneficiaries.

Get help from a Wills and Estates lawyer

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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