



Do DIY Will Kits really save you?

It is true that DIY Will Kits are readily available and are relatively inexpensive. It is also true that a DIY Will may be appropriate in very straight forward circumstances. However, while the apparent simplicity and upfront savings are appealing, DIY Will Kits adopt a 'one size fits all solution'. Unfortunately life isn't that simple and your Will should be tailored to suit your situation.

You need to keep in mind that your Will is a very important document and there can be costly implications - both financial and emotional – if it's not done effectively.

The issues with DIY Wills only arise after the person who wrote it has died, and their family are attempting to deal with it and administer the estate. It is at this time problems might arise which can often lead to unintended consequences, to delays in finalising the estate and also to additional expense in trying to rectify or resolve the issues that arise.

While DIY Will Kits come with instructions, people inevitably make errors in completing the documents. They tend not to read the instructions properly, or misunderstand the instructions, and errors occur.

What are the common issues with DIY Wills?

For the reasons referred to earlier, common issues with DIY Wills include:

1. The Will is not completed, signed or witnessed correctly – this can render it invalid if not completed according to specific legal requirements.
2. The Executor appointed in the will dies and the Will does not appoint a substitute executor, or the Will is not dated so that confusion exists as to whether it overrides an earlier dated Will, or a beneficiary named in the Will witnesses the Will which may nullify the gifts to that beneficiary.
3. Incorrect naming or wording used – ambiguous wording is extremely common in DIY Wills, where it can be misinterpreted or challenged.
4. The DIY Will does not deal with all of the Willmaker's assets – this results in a partial intestacy and the laws of intestacy will then apply to distribute the assets not mentioned in the Will to predetermined people – this may result in unintended consequences.
5. The Will attempts to gift assets that may not be gifted under the Will eg; jointly owned assets, specific assets owned by a company, or a trust, superannuation if it is not paid to the estate by the trustee of the superannuation fund.
6. You may need to consider the impact of debt and tax on the fairness of your asset distribution eg; if you allocate different properties to each of your children, but one property has a mortgage with debt implications that make the inheritance unequal.



Things to consider in a properly drawn Will

In addition to ensuring the common issues with DIY Wills do not occur, some of the things considered in a properly drawn Will are:

1. What are all of your assets? – including real property, shares, loans owed to you by others.
2. Are your assets owned with other people? If so, how are they owned? If owned as joint tenants, the other owner becomes the sole owner on your death and you cannot gift that asset in your Will unless you sever the joint tenancy first.
3. Are any of your assets owned by a family trust, company or self-managed superannuation fund? These assets are outside your Will and these entities continue when you die. How, and to whom, can you pass control of these assets and entities?
4. Do you own a business? If so, how is that business owned? What provisions are in place to deal with the business?
5. Do you have children from a previous relationship? Have you adequately provided for them in your Will?
6. What debt do you have and against what asset is it secured? As a general rule an asset must take care of its own debt. Is this what you intend or do you intend some other arrangement (eg; Insurance) for payment of the debt?
7. What are the Capital Gain Tax implications of how you choose to leave your assets?
8. Is there anyone who might challenge your Will? If so how can you manage that risk?

Conclusion

Making a Will is something we should all do. Making a legally valid Will that is tailored to your situation and which provides the outcome you intend is even more important. If you would like assistance with your Will or would like more information in respect to any issue involving Wills or Estates, please contact [Lisa Delalis](mailto:Lisa.Delalis@batemanbattersby.com.au) on 02 4731 5899 or email willsestates@batemanbattersby.com.au.