

DIY Wills can be more expensive than you think!

They are often free or low cost and seem like a simple way for you to get your estate planning affairs in order, but according to *Australian Executor Trustees (AET)* home-made or do-it-yourself (DIY) Will kits (like the ones available at the newsagency or local post-office) often raise more issues than they solve and could end up costing thousands of dollars in legal fees.



Some of the issues with Wills made using a home-made or DIY Will kits include:

1. They have a 'one size fits all' approach which does not cover complex estate planning needs such as blended families, those with children from previous marriages, caring for a family member with special needs or persons who hold assets overseas.
2. They do not provide important advice in regards to asset protection, superannuation, jointly-owned assets or taxation.
3. The Wills are often not signed or witnessed properly, potentially leaving them invalid or open to challenges.
4. A Will should be updated whenever circumstances change (such as marriage, divorce or the birth of a child), and it is difficult to know when and how to do this without professional advice, which could lead to a Will that is out-of-date or inappropriate.
5. Instructions for completing the Will are difficult to understand which may lead to a non-compliant or invalid Will.
6. Many of these types of Will kits are not backed by a legal or trustee organisation with professionals who are qualified to give estate planning advice.
7. Most importantly, they are often poorly drafted and may not conform to the relevant legislation relating to Wills which may lead to the Will being challenged.

Mind you, most lawyers rub their hands together when they see problematic Wills, derived from a Will kit or home-made Will. Therefore, any money saved upfront is negligible compared to the legal fees which may result from fixing these problems.

And, should you die without a valid Will in place (known as intestate) their estate is distributed according to a strict Government formula, which may not be in line with their wishes.

The following comments from the case of *Re Maria Elizabeth Rudd; Ex Parte Prince [2015] WASC 10* shows the Judge's thoughts on the good intentioned friend.

'The first concerns how the documents in question came to be prepared. The deceased either was offered, or sought, the assistance of an entirely unqualified person to prepare these three documents. That person would no doubt protest that she was just trying to help a friend. She was no help at all. A claim of good intentions is no defence. The fact is that unqualified people who intermeddle in the preparation of documents that have legal operation cause great harm.

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The defence for such officiousness is often one of trying to save the will maker money. That is sterile. This deceased could have had several wills professionally prepared for a fraction of the cost that has been imposed on her estate by this application. The legal system should not be blamed for that expense.'

This is an example of a person 'just wanting to help' a friend, but who was not legally qualified to give estate planning advice and caused more harm than good. This situation is not uncommon and highlights why getting the right estate planning advice the first time is so important!

If you have a well-drafted, up-to date and valid Will in place when you pass away - it will save stress, time and money for your family and friends at an already difficult time.

Please note: not all solicitors are conversant with taxation and superannuation rules that could impact upon an Estate Plan. Getting this aspect wrong could have significant tax consequences for your estate. As a consequence we recommend that you only consult a solicitor who specialises in estate planning.

Tilea Wealth has alliances with several firms specialising in estate planning and is able to coordinate and assist clients to implement appropriate Wills and Powers of Attorney via these firms. Please contact our office on 07 3160 2600 for more information.

