

Doing your Will(s) yourself... ...rather than through a legal professional

Inheritance Services

Estate Planning & Advice | Wills | Inheritance Tax
Trusts | Asset Protection | Powers of Attorney | Probate
...to protect your family's future



There is no cookie cutter approach or template that is going to be able to cater to everyone's unique circumstances, no matter how simple the individual may believe their estate to be.

Online Wills

An online Will is a prefabricated questionnaire that will guide the user through a sequence of questions. 'Artificial intelligence' sits behind the product to assist with structuring the Will. However, the product is limited in its ability to tackle all the variations that must be considered as part of the estate planning process.

In addition, what many people overlook is the fact the electronic version of the Will is not a finished product. To finalise the document, you must still print out the Will and sign it before witnesses according to the law of the state or territory in which the Will is signed. These formal requirements for signing and witnessing differ in some states and territories in order for the the Will to be valid or 'legal'.

The disclaimer which appears on most online Will websites should be a red flag to anyone considering going down this path. Usually, a disclaimer like the following example is stated at the bottom of these types of websites:

"Disclaimer: XXX is a technology platform that allows you to create your own estate planning solutions using our forms and other information. XXX is not a law firm and does not provide legal, financial, taxation or other advice. If you are unsure whether our estate planning solutions are suitable for your personal circumstances, legal advice should be sought from a law firm,"

It is often the case that people assume they only have a modest estate and that their Will requires simple conditions to pass that estate to their family or next of kin (and/or a charity).

The opposite is usually the case, with many people underestimating the implications of the assets they own and the complexities of their family make-up.

Then there are the issues to consider around property and any wishes a Will-maker may have about creating a right of occupation for their surviving spouse or joint tenant to ensure that person is able to continue living in the property for a specified period of time, whilst ensuring upon the termination of that right of occupation, that share of the property will ultimately be inherited by the intended beneficiaries. These are complex matters that require well drafted conditions and effective estate plan structuring.

Where there are underage children in the family there need to be appropriately worded provisions for Guardians should their parents tragically die.

Then there is the question of protection for bequests against losing inheritance outside the family, third party attacks on the inherited assets and repeated exposure to inheritance tax.

When an estate planning specialist sits down with a client to take instructions for their Will, they must collect enough information to fully understand who's who in the family, what assets the individual owns, if any assets are held in trust or jointly with another party, and what the intentions and wishes of the testator are. From this information an experienced estate planning specialist can provide advice and guidance and formulate a strategy to suit the individual and ensure their wishes can be fulfilled.

ISUK makes a point of ensuring clients fully understand the provision being advised and answer any questions the client may have.

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Paper or Printable Will Forms

These can be bought from various sources quite inexpensively. However, while they might be accompanied by guidance notes, these are going to be even more limited than the ‘artificial intelligence’ that sits behind some online systems.

Writing Your Will Yourself

In theory you can do it entirely yourself, but the associated risks are really self-evident.

What can go wrong?

If your online (or paper form or do-it-yourself) Will is one of the high percentage of Wills deemed invalid, here are the potential consequences that could follow:

1. **The rules of intestacy will apply:** If a Will is deemed invalid, and there is no earlier Will to reference, then the rules of intestacy may apply. This means that your estate will be distributed according to a set formula set out in the Laws Of Intestacy, most of which were established in 1925. Who inherits your assets may not necessarily be who you wanted to benefit from the estate.
2. **Interpretation and construction issues:** If your Will is ambiguous and disputes arise about how to interpret the Will, the loved ones you leave behind may be forced to go to Court to obtain orders to interpret the Will. This can incur significant costs, draining the estate and stripping beneficiaries of what you had intended them to receive.
3. **Revert to a previous Will:** If the Will is deemed invalid, a Court may refer to a previous Will. That Will may not reflect your most recent testamentary wishes.
4. **Higher risk of a Family Provision Application:** When someone completes an online Will without seeking appropriate advice, they may fail to leave adequate provision for people who are eligible to make a claim on the estate. The cost of Family Provision Claims can be excessive, not to mention the emotional turmoil caused to loved ones who are left to fight it out in litigation to try to have the Will upheld. An online Will cannot give advice on whether you should make provision for someone who may very well be the black sheep of the family or estranged.
5. **Undue influence and issues around capacity:** When someone completes an online Will, or even a do-it-yourself Will kit or homemade Will, there can be a significant risk of undue influence by third parties. After someone passes away, if their Will is challenged, there will be little evidence available to prove that the Will-maker had the testamentary capacity to make their Will and were not unduly influence by other parties when making the Will. By contrast. when you get your Will drafted by an experienced estate planning specialist, they are able to ensure vulnerable people are protected from third parties and that the Will-maker has the testamentary capacity to execute their Will. This is all documented in comprehensive file notes and can be referenced in the event anyone challenges the Will based on its validity after the Will-maker has passed away.
6. **Gifts failing:** It is common for people who lack the legal knowledge of estate planning to try to gift assets in their Will that they do not own. Whether it is gifting a jointly owned asset, or non-estate assets such as superannuation, trust assets, or company assets, if someone includes these in an online Will, the gift will fail.

So our general advice is – don’t risk it! You might think you are saving money compared to professional fees but it could end up costing your estate and intended beneficiaries considerably more. Do contact us if you would like more information.

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