

Why it's a bad idea to write your own Will

It is relatively easy to find a free Will template on the internet and fairly cheap to buy a Will "kit" from a newsagent or online. There are also websites that have "data collectors" that take your information and create a Will for you seemingly without any legal expertise required.

So, is it really a good idea to write your own Will?

Why you need a valid Will

The sole purpose of writing a Will is so you can direct where your assets go when you pass away.

If you have a valid Will your executor applies to the Court for a grant of Probate and can then distribute your estate in accordance with what you have written in your Will. If you hold joint property with your spouse probate is not usually required unless substantial assets are held in your own name.

There are many common situations however where a valid Will is required to properly distribute your estate and look after your family and loved ones.

If you have a Will that is deemed invalid by the Court then your estate will most likely be exposed to delays in distributing your estate, increased legal and court costs and potential financial hardship and emotional anguish for your family.

Most people think that their situation is simple and that a DIY Will is enough but consider the following situations and whether they may apply to you or someone you know.

Your home-made Will is lost or cannot be found

When a lawyer prepares a Will for you they usually hold the Will after signing in safe custody on your behalf and provide you with copies for your records.

Even if you take the original Will the lawyer will keep properly certified copies of the original Will. If you subsequently lose the original Will your family can ask the court to look at the copy of the Will and allow the wishes in that Will to stand.

If there are no copies the family is put to the expensive task of applying to the probate court for a grant of administration which is a more lengthy and costly method of dealing with an estate than the usual grant of probate.

Your hand-written Will is not signed correctly

There are very strict requirements for the signing and witnessing of Wills, if your Will is not signed correctly or is not witnessed properly it may be invalid.

If your Will does not deal with all of the assets and liabilities that you leave when you die your Will may be ineffective in dealing with those assets.

Once your Will is made even writing on it later or making any changes will invalidate that Will and may render it ineffective, either partly or fully, in dealing with your assets.

You own a business

It is likely that the business will continue to run after you die. You will need a validly appointed executor to run the business until it is either sold or dissolved. You can achieve this in a valid Will.

Consider that the business may have ongoing expenses such as rent and staff costs that still have to be paid and may cause the family hardship until the business can be liquidated if there is no one validly appointed to run the business.

You and your partner are not married

When you purchased the property together it was bought in equal (or unequal) shares, for example because you both have children from a previous relationship.

Again, the property may not get transferred to either your de facto partner or your children as a matter of course. If you do not have a valid Will your property cannot be dealt with in a simple and cost-effective way.

Previously made Wills are not automatically revoked when you make a new Will

If you have a Will that you made when you were younger, perhaps leaving all of your estate to your parents, and then move residence and commence a relationship and have children.

If your new Will is invalid your estate may go to your parents not to your new family as you intended and if it does it will be a costly and longer process.

You are married but hold property solely in your name

You may have bought the property when you were single or owned the property from a previous marriage or inherited it from your parents.

If you have no valid Will and no executor to put into effect what you have written in your Will, the property cannot be transferred until the Court appoints an administrator after delay and costs have been incurred.

If you leave your superannuation in your DIY Will

Superannuation may form part of your estate and be dealt with in accordance with the terms of your Will, but in most cases superannuation will be paid directly to a beneficiary nominated in your superannuation policy without any reference to the terms of your Will.

Whilst you can provide in your Will that your estate be given to whoever you would like there is only a small eligible group of beneficiaries who can directly receive superannuation benefits on your death.

Superannuation funds have particular rules for releasing funds to an estate and an invalid Will makes this process more difficult to navigate.

Again, the release of funds is not automatic to your family and your loved ones may suffer hardship if the release of funds is delayed.

Lawyers are trained to write valid Wills

Your lawyer will always do these two things when drafting your Will, they:

- take into account the strict law requirements for a Will to be considered valid by the state probate court; and
- also consider your particular situation and the specific individualised elements you need included in your Will.

Your lawyer can also help plan other aspects of your estate such as whether you need to appoint a guardian for your children, a trustee to run your business or whether an elderly relative needs to remain in your home after you are gone and a myriad of life circumstances that are particular to you.

If you or someone you know wants more information or needs help or advice in preparing a valid Will please contact us on (03) 9459 5764 or email admin@rtlegal.com.au.