

What is wrong with a simple will kit?

Nothing at all. For many people this is the most cost effective method of preparing a will.

However, in our experience:

1. **No two wills are ever the same.** A simple will kit, no matter how comprehensive, cannot cover all the various tax and legal issues to be considered when preparing a will. One cannot properly complete such a document without the right advice on all the options available, and the tax and other consequences of each.
2. **Some issues are just too complicated to cover in a do-it-yourself will.** For instance such wills do not usually cover the establishment of a testamentary trust. Nor do they cover conditional bequests – ie bequests which are subject to certain pre-conditions being met.
3. **The estate planning process involves more than just a will.** At a bare minimum, it also involves powers of attorney, enduring guardianships and superannuation death benefit nominations. Depending on the complexity of a client's arrangements it can also include trust deeds, shareholder agreements, buy-sell agreements, etc.
4. **A large percentage of wills are not signed or witnessed properly if the simple will kit is used.** Moreover they are often completed incorrectly. There have been a number of court cases on the validity and interpretation of wills prepared using a will kit. The costs of running such cases would of course far exceed the costs of seeking professional advice on the estate planning process in the first place.

Examples

We note the following disclaimers on a website offering a “do-it-yourself” will kit:

“ ... It is a condition of use of this site that you will not hold us liable for any claims of compensation, or damage, as a result of any action or inaction.

You should understand that we are a low cost service and you will not have the luxury of suing us should something go wrong.

We will endeavour to make sure that documents obtained from this site are accurate and legal. However we cannot guarantee it....”

Elsewhere, the website states the following:

“... we aren't present when the will is signed, so we can't confirm that this has been done correctly. The most crucial factor in producing a legal Will is having it signed and witnessed correctly (clear instructions on how to do this are included with your Will when you download it from us). If you are in any doubt, you should seek professional legal advice.

Another important feature of producing a functional will, is that it should be clear and unambiguous. Again this is your responsibility we cannot determine the clarity of your descriptions. We are NOT qualified legal advisers (although of course we have employed some during the construction and testing of this site) We CANNOT and will not provide you with any legal advice....”

A further will kit website states:

“....The information on this site is derived from various sources that were believed in good faith to be accurate and reliable at the time it was sourced. The Company and its related companies provide no warranty or guarantee nor make any representation or

warranty on this site about the accuracy, timeliness, completeness or suitability of its information.

The information contained on the site is not intended to provide legal advice.

By completing the online Will and making payment to The Company you are agreeing to the following statements and accept the following terms and conditions:

That The Company, its directors, employees, agents, contractors and associates will not be liable for any unintended consequences to you or any potential beneficiary by you preparing an online Will;

That The Company, its directors, employees, agents, contractors and associates will not be responsible for any loss, injury, claim, liability, or damages that you or any other party may incur as a result of your use of this site, based on any errors or omissions in the content of the site;

That you and your Executors hereby agree to indemnify and keep indemnified The Company, its directors, employees, agents, contractors and associates from all or any liability or damages whatsoever resulting from the use of this site or any information contained in it, and any unintended consequences arising from the use of the site, whether they relate to the online Will's validity, its interpretation or effect on any of your intended or potential beneficiaries;..."

You only have one chance to get your will right. Once you have passed away, the will cannot be changed. It is therefore important that you get it right the first time!

Our commitment to you. Needless to say, we stand by our advice and the documents prepared by us.

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