



COMMON PROBLEMS WITH **DIY** WILLS

More than \$120 billion in assets was inherited by family members during 2018. The Productivity Commission believes this number is set to double to \$224 billion by the year 2050.

*Are you sitting in the shoes of the 70% of Australians who do not have a **CURRENT** and legally binding Will?*

YES?

So what?

If you pass away without one, your hard-earned wealth (your estate) will be distributed according to the rules of intestacy – a government determined formula.

This formula may not divide your estate as you have indicated or would like. And if your family consists only of distant relatives, your assets could end up enriching your state government's coffers.

If this has convinced you that a Will is a good idea, then how do you go about making one?

There are three main options:

1. Engage a solicitor

Using a solicitor to prepare your Will, particularly one who specialises in estate planning, is most likely to deliver the desired result.

If your situation calls for anything more than the most basic of Wills, for example if:

- there is a family business
- disabled dependents, or
- complex family or financial structures,

an estate planning lawyer will be able to provide advice on how to best structure your Will.

The downside is the upfront cost. This can range from a few hundred dollars for a straightforward Will to several thousand dollars where the situation is more complicated.



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2. Use a trust company

There are public or state trustees in each state and territory as well as a number of private trustee companies. They are specialists in preparing Wills and can also act as the executor of an estate. A private trustee will charge a few hundred dollars to prepare a Will, and the estate will be charged a fee when the trustee performs the role of executor. Some public trustees will waive the fee to prepare or update a Will if they are to also act as the executor.

3. Do it yourself

Will kits are available from newsagents, post offices, the Internet and other sources. Doing it yourself certainly appears to be the cheapest option, but if something goes wrong the cost of putting things right may dwarf the initial savings.

Common problems with DIY Wills include:

1. Ambiguous wording that may need to be ruled on by a court.
Fixing this can cost big dollars.
2. The Will is not properly signed or witnessed.
This can invalidate the Will.
3. The Will covers only part of the estate.
The remainder will be dealt with under the rules of intestacy (ie your state government decides).
4. The Will contains unenforceable or unreasonable conditions, such as omitting to leave a gift to an entitled beneficiary.
This can also lead to expensive legal costs.
5. Business ownership issues may be overlooked or not properly addressed.
This can leave confusion and wrongful decision making leaving your legacy and family out of pocket.

Involve your accountant

Your accountant can't prepare a Will but is the professional (combined with your financial planner) the most likely to have a detailed overview of your financial and personal circumstances. They are often the person best equipped to identify estate planning issues and brief your estate planning lawyer.

There is a fourth option

We can refer you to our preferred and recommended estate planning specialists and work with them to create a Will that will deliver a smooth transfer of wealth at a time of great personal distress for your loved ones.

Sources:

Wills and Powers of Attorney www.asic.gov.au

Wills Frequently Asked Questions: <http://www.tag.nsw.gov.au/wills-faqs.html>

.afr.com "Australia on the cusp", Michael Read, 7 December 2021 (accessed 13 July 2022)