

Do It Yourself Will Kits -

Beware!

Daphne wanted to leave her daughters, Paulette and Leanne, assets of equal value. Using a Do-It-Yourself (DIY) will kit, she decided to leave the holiday house to Paulette and a rental property to Leanne. Cash was to be shared equally between the two.

She believed this was the fairest way to plan her estate as the two properties had similar market values. Unfortunately, the standard clauses of the DIY kit did not cater for Daphne's particular needs and the daughters ultimately received very different inheritances.

As the holiday house was purchased in 1980, prior to the introduction of Capital Gains Tax, its capital gains tax cost base was the Market value (\$600,000) calculated at the time of Daphne's death.

However, the rental property inherited by Leanne was purchased 1988 after the introduction of capital gains and its capital gains tax cost base (\$280,000) was significantly less than that of the holiday house.

If each daughter placed their respective inherited homes on the market straight away, Paulette would not pay any capital gains tax while Leanne is left with a substantial liability.

This was clearly not the outcome Daphne had planned, or the daughters had expected!

Most of us take a great deal of care to ensure we have sufficient funds for our retirement and to provide for our loved ones when we depart. Is it really worth putting these funds at risk, or being uncertain as to how they will be distributed when we die?

Whilst there is no doubt that for some people a DIY will kit is a good option (they are low cost and often available over the Internet), for most people the initial savings advantage represents false economy.

Consider for example the common situation where a person wishes to leave their spouse a life interest in the family home. Most DIY will kits contain a standard clause providing for this situation.

However, what if the family home no longer meets the needs of your spouse? The trustee may wish to sell the home and purchase another. Is this allowed under the standard clause? In many cases the answer will be no.

When is a DIY will kit inappropriate?

Whilst it is difficult to generalise, there are a number of individuals who should not put their estate at risk by contemplating the use of a DIY will kit. These include people who:

- have a complex tax structure including discretionary trusts and money in self-managed superannuation funds;
- do not intend to provide adequately for a close family member;
- use testamentary trusts;
- want to provide for beneficiaries requiring special protection;
- conduct a business.

When it comes to estate planning there can be no room for the kind of uncertainty that may lead to disappointment or, worse still, to discord and dispute.

When considering your estate planning needs:

- be very wary of DIY will kits - the incidence of wills being contested is on the rise;
- review your estate plan every two years;
- ensure your accountant has reviewed your estate plan;
- consider any asset protection implications of your estate plan;
- pay special attention to assets held in superannuating funds or discretionary trusts;
- know the market value of your assets (taking into account capital gains cost bases);
- understand the legal ownership of your assets (for example assets held via joint tenancy or in trusts and companies automatically revert to the survivor on death and can't be dealt with in your will)

