



Will Kits

Will Kits sound like a quick, easy, and cheap way of dealing with an essential on your “to do” list. While every adult should have a Will (see separate article entitled “Why You Should Have a Professionally Prepared Will”), you may actually do far more harm than good in trying to play lawyer.

Some of the problems that are typically found in Will Kit wills are:

Imprecise language

Lay persons who are unfamiliar with legal language and expressions frequently use words which they think are perfectly clear but which are subject to a number of interpretations. On your death, your estate could spend a lot of money and administration of your estate could be delayed while the courts interpret your words. In the process, you may set members of your family against one another in litigation as each argues for the interpretation which is most advantageous to them.

Omitting some assets

It is very common for people doing their own wills using Will Kits to focus on some assets and totally omit others. The one's that are overlooked will not be covered by the will even if the wording for the gifts to beneficiaries is entirely clear. These overlooked assets will have to be disposed of in accordance with the laws of intestacy applicable in Ontario. These may dictate that some assets will go to a relative whom you never intended to benefit.

Not putting appropriate qualifications on gifts

For example, if you leave something to a child, grandchild, brother or sister and do not say “provided he or she survives me” and the beneficiary dies before you, s. 31 of the Succession Law Reform Act could come into play and the spouse and children of the deceased beneficiary could end up sharing this gift to him or her, even though this was never your intention.

Not getting the Will signed properly

This is a problem that occurs very frequently. In Ontario, if your Will is printed or partially hand-written and partially printed, you must sign it in front of two witnesses who see you sign and who also see each other sign. This formality is often over-looked, rendering the so-called will null and void.



Not getting information on your witnesses

If your will has to be submitted to the Court for approval (“probated” in common language), you must file with it an Affidavit of Execution signed by one of the witnesses to the Will saying that all of the formalities of signing (see previous point) were met. Frequently, people bring in Will Kit wills on which the signatures of the witnesses are illegible and on which no one has printed any identifying information about the witnesses. It can be impossible to identify the witnesses, adding substantially to the cost and complexity of probating the will. If the will had been done in a lawyer’s office, the lawyer should have made certain that the witnesses’ names and addresses were printed on the will and that an Affidavit of Execution was prepared, signed, sworn, and attached to the original of the will, thereby facilitating the probate process.

In addition to potentially making one or more of these classic Will Kit mistakes, in doing your will on your own, you deny yourself the benefit of a lawyer’s advice and experience. Not only can a lawyer advise you on financial issues like making a tax-effective will but he or she will be able to provide guidance on many of the practical, people issues involved in doing your will, for example, choosing the right individual to act as your Estate Trustee or Executor.

Will Kits are cheap but they come with no guarantees. If you read the fine print, they are used entirely at your risk. If you make a mistake, you, your estate, and your beneficiaries have no one to blame but yourself. If a lawyer does your will and he or she makes a mistake, your estate and, potentially, your beneficiaries, may be able to obtain compensation from the lawyer’s professional liability insurer.

As with most things in life, you get what you pay for. Paying a lawyer to make certain that you have a properly drafted will is money which is very well spent. If you are put off by the potential cost, talk to a lawyer. You may find out that wills are not as expensive as you thought. You may also find that a lawyer will give you a break on fees in appropriate circumstances or that he or she will allow you to pay over time.