

Will Kit Wills

People are always eager to save money. People are rarely eager to pay money to lawyers. That's a pretty good combination if you're in the business of selling will kits.

I'm often asked if those will kits really work. Yes, they can really work, provided they are used correctly. I have probated a number of will kits wills during my tenure as Wills & Estates lawyer and many of them have been probated without incident. But errors are sometimes made that lead to unintended results. Here are some errors to watch out for:

Failure to observe formalities of execution. Unless wills are entirely in the testator's own handwriting, they must be signed by the testator at the end or foot of it in the presence of two witnesses, who must also sign the will as attesting witnesses in the presence of the testator and each other. If these basic formalities are not met, the will is invalid.

Beneficiary acts as a witness. Gifts made to a beneficiary who signed as a witness to the will are void. So too are gifts made to the spouse of a person who witnessed the will. Since will kits are usually completed by the testator at home, it's easy to see how they could have one or more of their intended beneficiaries witness the will for them, inadvertently disinheriting them. Although the gifts to the witnesses or their spouses are void, the will itself is valid. Void gifts will be added to the residue of the testator's estate, which brings me to my next point . . .

Failure to dispose of residue. Testators sometimes get so caught up in making specific gifts and legacies to people that they inadvertently forget to dispose of the residue of their estate. They may gift their house to someone, their automobile to someone else, and make gifts of specific gifts of money to some other people still, but they forget to distribute everything else. A properly drafted will disposes of the entire estate, including the residue. If the testator has not disposed of the entire residue, it will be distributed according to the rules of intestacy.

Unclear wording. Words such as "money", "property" and "investments" are vague. When the testator directed that his "investments" be gifted to someone, did he intend that to include his registered investments? The proceeds of his life insurance? His interest bearing savings account? Or was that supposed to go to the person to whom he gave his "money"? And when he referred to his "house", did he mean the one he lives in or the one he rents out? Or the one at the lake? Or did he mean all of them?

Changes made after execution. People mistakenly believe that they can change their will simply by writing in the desired change and initialing it. Changes to wills must be made with the same formalities of execution as were observed when the will was made. That means changes must be signed by the testator in the presence of two attesting witnesses who must then sign in the presence of the testator and each other. Failure to observe these formalities will result in the changes being disregarded.

Will kit wills, when properly completed, can serve as valid wills and legal effect can be given to their contents. Will kit wills are almost always very basic documents that although are valid, may not be the will best suited for the testator. Estate planning involves more than the mere distribution of property at death. And that type of advice will not be found in a will kit.