

DANGERS OF DISCOUNT WILLS

Understand
what you may be
bargaining for



A Will alone is not an estate plan

A Will is a key component of an effective estate plan. A true estate plan is a reasoned strategy for arranging your personal and property affairs. Estate planning goes beyond simply deciding who gets what; it's about taking care of yourself and your property while you are living, and making decisions about caring for your family when you have passed on.

Advertisements for do-it-yourself Will kits leave the impression that one need only fill in a few blanks to create a legally enforceable Will. **Be careful:**

- You may miss out on tax and personal planning opportunities that do not require a Will, and in fact may require that a Will **not** be involved
- Without being properly informed about tax, estate, family and property laws, you run the risk that your wishes are rendered void — **or worse** — you create unintended legal results that cause increased costs and grief for your family
- There is no ongoing monitoring to ensure your estate plan continues to be effective
- All else being equal, do-it-yourself Wills are much more easily challenged than a Will prepared after full consultation with a lawyer.

The situation

Below describes what happened to an actual client (call her AC) of an Ontario lawyer. AC had been ready to prepare her Will on her own and decided to run it past a friend who happened to be a lawyer. Here's what happened:

AC's husband passed away over 20 years ago, leaving her with three children to raise. Virtually all of their wealth was tied up in the house, a small hobby farm and some vacant vacation property.

AC has just retired. She now wishes to write a Will to pass the property on to her children. Each of the three children are to receive one of the properties. Though the values are wide ranging, everyone is in agreement on who is to receive what.

AC's original plan

AC intended to use a do-it-yourself Will planning kit. As advertised, she would be able to avoid the cost of having a lawyer assist her in the preparation of her Will.

Her plan was simple. She would state in her Will the three specific properties which would pass to each of her three children upon her death. With no other assets to speak of, she didn't see any reason to do anything more.

The best intentions...

When AC sat down together with her lawyer friend to do a 'reality check' on her plan, she got a few unpleasant shocks:

Probate tax

By having all property ownership pass under her Will as intended, AC was guaranteeing that her estate would pay the maximum amount of probate tax, in her case \$6,000+.

Capital gains and land transfer taxes

Though her home would be protected, the other properties would be subject to over \$80,000 (and growing) in capital gains tax at her death. Without a plan in place for payment of this tax, the unfortunate result might have been a sale of one or more of the properties. Land transfer tax might also have to be paid.

Unintended beneficiaries

AC had taken no steps to protect her children's inheritances from a marriage breakdown. A child's estranged spouse could become entitled to part of the inheritance, particularly where the property is used as a matrimonial home – and in this case that was already happening.

Payment of debts generally

While her present debts were not excessive, they would still have to be paid before the estate could be distributed. Without any financial resources having been set aside for such payments, one or more of the properties would likely have to be sold out of her estate.

Sale of one or more properties

The intended gift to each of the three children is the three respective properties. Any sale of a property, during her life or at death, would result in a change in the distribution structure, potentially in effect disinheriting one or more of her children.

Family harmony?

Nothing like an unequal distribution of wealth to wreak havoc on family relations and lead to a Will challenge. And even assuming the family is still talking, if a child had predeceased AC (which was a distinct possibility given the health status of two of the children), a government agency called *The Children's Lawyer* might have to step in to challenge the Will on behalf of that child's children.

The solution

AC is now aware of these and other complications that she would not have known how to plan for by herself. Among the recommended steps for AC:

- A properly drafted Will
- Powers of Attorney to protect her and her property during her lifetime;
- Probate avoidance techniques such as outright gifts and transfers to joint ownership;
- A mortgage-supported investment plan or other income mechanism; and
- Life insurance to cover her final expenses, with premiums paid by her children

STEPUP

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