

# Reasons not to do-it-yourself

**Elis Gomer** discusses the rise of the DIY will: more trouble than it's worth?

## IN BRIEF

► Homemade wills are becoming increasingly popular, bringing a number of problems as well as benefits when compared to the traditional will.

**H**omemade wills are nothing new. For as long as there have been professional will-drafters, there have been testators willing to eschew their services in favour of drafting their own.

The Probate Registry has seen all sorts of curiosities over the years which are nonetheless valid wills, including at least one which was written on the outside of an egg. Do-it-yourself will packs have been available from various high street sources for years, and with the rise of the internet the number of people who decide to draft their own wills has never been higher.

In many respects, there is nothing wrong with this. Deciding who should benefit from an estate is an important step that too many people don't take. Recent statistics suggest that roughly 60% of the adult population do not have a will, and we should be wary of creating barriers for would-be testators. However, just as an internet self-diagnosis is a poor substitute for a consultation with an experienced GP, those tempted to make their own wills should be aware of the potential pitfalls of taking that path, and the benefits of the many firms of solicitors who can provide an expert will-drafting service at a modest cost.

## Sticking to the rules

The first, and probably the most obvious point to make, is that there is much that can go wrong with drafting even the simplest will. For example, the rules about attesting a will—a valid will requires two witnesses, each of whom must see the testator sign in the other's presence and then sign to confirm this. These rules are different to those which apply to executing most other formal documents and will render the will invalid if they are not followed.

Gifts and will trusts can be misunderstood or badly drafted, causing



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headaches, delay and expense to the estate when executors come to interpret or implement the terms of the will after the death of the testator. I recently acted in a case where an attempt to set up a discretionary trust to benefit the will-writer's children and wider family—a perfectly normal and understandable desire on their part—had been botched to such an extent that the estate was effectively tied up and inaccessible to anyone unless the will trust was varied (at considerable expense). Well-meaning attempts to mitigate inheritance tax can often result in problems elsewhere or a tax liability from an unexpected quarter. Moreover, a will template is only ever as good as its author. There is no guarantee that the person who drafted the document being presented as authoritative knew what they were doing, that the draft is still up-to-date, or even that it was intended to be used in England and Wales.

## See you in court

More fundamentally, the salutary warning for would-be will-drafters is that it is worth

bearing in mind the increasing levels of will disputes in recent years. As a contentious probate specialist, I find that disputes about the sort of issues described above are significantly outnumbered by attempts by disappointed beneficiaries to challenge wills on the grounds that the testator lacked capacity or was unduly influenced by a family member.

These claims can be extremely expensive and time-consuming to deal with, regardless of their eventual result. Defending such claims, for those seeking to uphold the will, is invariably made easier if it was drafted by a solicitor, due to the presence of a detailed audit trail. A solicitor—assuming that good practice has been adhered to—will have taken instructions in the absence of any potential beneficiaries. They will have observed the testator's level of understanding of the provisions of the will and possibly recommended that a doctor should confirm the client's capacity before it is executed. There will be attendance notes which (hopefully) comprehensively set these points out and the solicitor can, in the rare cases which get as far as a trial, give evidence. This is usually of extremely significant value in fending off a challenge to the validity of a will.

If, on the other hand, the will is homemade, none of the evidence discussed above will usually be available, and the suspicion surrounding the will from the perspective of those who consider themselves disadvantaged by it—particularly if the beneficiary perceived to have profited from its execution played an active part in its creation—will be all the greater.

This tends to give a challenge to the validity of a will greater staying power than if it was professionally drafted, where early disclosure of a solicitor's file and evidence regarding the circumstances of its execution will often result in a better view being taken. The cost of having a will professionally drawn up will usually seem trifling in comparison to the cost of defending such a claim to trial.

Online wills are here to stay. The incentive to use a DIY version and avoid the cost of professional involvement will be a powerful one for many. My observation to those tempted by the siren call of the savings that may appear to be available, is that some thought about the potential problems down the line is sensible before taking the plunge. You think a professional is expensive? Wait till you've tried an amateur...

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