

\$700 saved costs family \$50,000

In a troubling example of the dangers of cutting costs in estate planning we've recently seen a case where not seeking professional advice has cost a family dearly. In this case a \$30 will kit was used, instead of seeking legal advice that would have cost around \$700, and the result will cost the family around \$50,000 in legal fees arising from a disputed will.

This is a sad result where a mum who thought she was doing the right thing by her children has drafted a Will herself using a Will Kit with the end result being that none of her children will receive what she hoped from her estate.

How it unfolded

Mum was an elderly lady with 6 adult children.

After her husband died, she bought and completed a Will kit which made the following gifts:

- Her house (worth approximately \$400,000) for Son 1 to live in it rent free for life; and
- Her cash at bank (just over \$10,000) was to be divided between all of her children except Son 1 and Daughter 2.

The Will did not mention how the ongoing house costs such as rates and repairs were to be paid while Son 1 lived there rent free nor how sale proceeds were to be divided when the house was eventually sold.

Further, there was no provision made for the distribution of the rest of the estate such as household contents, cars or other personal assets.

Finally, there was no provision made for Daughter 2 at all.

Son 1 and Daughter 2 were appointed as the executors of the estate.

Unfortunately, Son 1 and Daughter 2 have had a difficult relationship for some time and are unable to agree how to deal with the deficient Will and at this stage have appointed two separate law firms to provide advice.

It is anticipated that at least one of the other children are likely to bring a claim for further provision from the estate.

It is estimated that even if the claim for further provision is made, and this claim settles out of court the legal fees for all 6 parties involved are likely to be in excess of \$50,000 and will probably require the forced sale of the unit to pay out each child.

This could easily have been avoided.

If Mum had spoken to an experienced estate planning lawyer she would have received advice about the terms under which Son 1 could live in the house as well as advice about the need for a direction for the residue of the estate.

This may have meant her other children may not have considered bringing a claim against her estate as the shares in the house (or sale proceeds in the future) would be secure for each child.

This scenario yet again highlights the importance of seeking legal advice when preparing your estate planning documents.

This is a relatively small estate and with good advice a Will that ensured the testator's wishes were followed could easily have been prepared but now the emotional and financial cost of having to administer a Will that failed to properly deal with Mum's affairs is something this family will never forget.

For more information contact our [Tax, Structures & Planning Team](#).

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